

I. INTRODUCTION

Section 18(d) of the Federal Deposit Insurance (FDI) Act requires a state nonmember bank to receive the FDIC's prior written approval before moving its main office or any branch from one location to another. Section 18(d) states that the factors to be considered in granting or withholding the consent of the FDIC under this subsection shall be those enumerated in Section 6 of the FDI Act. Section 303, Subpart C of FDIC's Rules and Regulations, *Establishment and Relocation of Domestic Branches and Offices*, provides filing procedures, definitions, processing information, and public notice requirements, as well as information on special provisions discussed in greater detail later in this section.

A branch relocation means a move within the same immediate neighborhood of the existing branch which does not substantially affect the nature of the business of the branch or the customers of the branch. Moving a branch to a location outside its immediate neighborhood is considered the closing of an existing branch and the establishment of a new branch. Refer to *Establish a Domestic Branch*, Section 7 of these Procedures, for branch definitions, and the *Interagency Policy Statement Concerning Branch Closing Notices and Policies* (Policy Statement) and Section 303.41 of the FDIC Rules and Regulations for additional details.

A consolidation is the combination of one existing branch into another existing branch that is located within the same immediate neighborhood. The combination of an existing branch into another existing branch that is not located within the same immediate neighborhood would constitute a branch closing with respect to the branch that will no longer exist. A consolidation requires no application. However, subsequent notice is requested so that the appropriate internal database can be updated to reflect the closing.

Applications to interchange a branch office and the main office, also referred to as a redesignation, are processed as main office relocations. If an applicant desires to redesignate its main office as a branch and redesignate an existing branch as the main office, a single application should be submitted. Only one application tracking record is required. The Regional Director should generally waive the requirements for a newspaper publication if the redesignation is within the applicant's home state and the application presents no significant policy, supervisory, Community Reinvestment Act (CRA), compliance, or legal concerns.

Determination of Whether Proposal Meets Relocation/Consolidation Criteria:

Banks that apply for office relocations may not have considered the possibility that the proposed transaction could be considered either the establishment of a new branch and the closing of another, or a consolidation of two branches. Consequently, after reviewing the application and the position of the bank, as well as the applicable regulations and requirements, if provided, the Case Manager must determine if a transaction is a relocation, a branch opening and closing, or a branch consolidation (consolidations require no application). This determination is made in accordance with the provisions of Section 42 of the FDI Act and the Policy Statement. Please note that main office moves are not within the scope of Section 42 and the Policy Statement. Refer to *Branch Closings*, Section 9 of these Procedures, for further information.

The Policy Statement indicates that a relocation will have occurred if the new branch and the closed branch are within the same immediate neighborhood and the nature of the business and the customers served by the branch are substantially unaffected by the change. Generally, relocations will have occurred only when short distances are involved: for example, moves across the street, around the corner, or a block or two away, and moves of less than 1,000 feet will generally be considered relocations. In less densely populated areas, where neighborhoods extend farther and a longer move would not substantially affect the nature of the business or the customers served by the branch, a relocation may occur over longer distances.

A relocation outside the immediate community will be treated separately as both a branch closing and a request to establish a new branch. This requires written notification of the closing in accordance with

Section 42 of the FDI Act, as well as an application for consent to establish a branch office. Refer to the Policy Statement for additional discussion.

Interstate Relocations

Section 18(d)(3)(B) of the FDI Act permits a state nonmember bank, after the relocation of its main office to another state, to retain branches in its former home state. In effect, this provision means that a state nonmember bank can relocate its main office to another state and retain its existing branches in the original state if, as a bank chartered in the new state, it would have been able to establish those branches in the original state. An applicant seeking to relocate its main office to another state must indicate whether it intends to retain its existing home state branches. Additionally, Section 18(d)(4)(A) of the FDI Act provides, generally, that a host state cannot prevent the establishment of a *de novo* branch in its state by an out-of-state bank, if a bank chartered by the host state could establish the branch.

Additional guidelines and information on interstate branching requirements are discussed in *Accepting and Processing the Application*, Part III of *Establish a Domestic Branch*, Section 7 of these Procedures.

State Savings Associations

Case Managers must consult with the Washington Office (WO) on any application or notice related to a state savings association to ensure that the appropriate procedures and timelines are followed. Refer to *Applications Overview*, Section 1.1 of these Procedures, for information regarding filings involving state savings associations.

II. FORM OF APPLICATION

Section 303.42 of the FDIC Rules and Regulations requires branch relocation applications to be submitted in letter form to the appropriate Regional Office (RO) on the date the required notice is published in the newspaper, or within five days after the date of the last required publication. Applications to relocate the main office or a branch can also be filed electronically through *FDICconnect*. Refer to *Applications Overview*, Section 1.1 of these Procedures, for further information regarding applications filed through *FDICconnect*. The Uniform Application/Notice adopted by the Conference of State Bank Supervisors may be used.

Without regard to the format used, all applications of this nature must contain the information required by 303.42. Any application submitted should contain the following information:

1. A statement of intent to relocate the main office or a branch.
2. The exact location of the proposed site, including the street address. If the site does not have a street address, a precise description of its location will have to be provided. For example, "the east side of U.S. Highway xxx, 400 feet south of the intersection of U.S. Highway XXX and State Road xx." If the site is at the intersection of two roads, the quadrant in which it lies should also be designated. The location of the site must be used for publication purposes.

If the relocated main office or branch is to be opened in temporary quarters, the application should also contain a request for the use of temporary quarters and the reasons for using temporary quarters. If the site of the temporary quarters is other than the permanent building site, the applicant should indicate the exact address of the temporary site and the distance between the permanent and the temporary site.

3. Details concerning any involvement in the proposal by an insider (as defined in Section 303.2(u) of the FDIC Rules and Regulations), including any financial arrangements relating to fees, the

acquisition of property, leasing of property, and construction contracts. Case Managers should review documentation provided by the applicant to demonstrate that the proposed insider transactions are fair and reasonable in comparison to similar arrangements that could have been made with independent third parties.

4. Comments on any changes in services to be offered, the community to be served, or any other effect the proposal may have on the applicant's compliance with the CRA.
5. A copy of each newspaper publication, the name and address of the newspaper, and date of the publication.
6. **Requirement Specific to Interstate Main Office Relocation:** When an application is submitted to relocate the main office of the applicant from one state to another, a statement of the applicant's intent regarding retention of branches in the state where the main office exists prior to relocation.

Note: Applications by undercapitalized institutions subject to Section 38 of the FDI Act to establish a branch should also include the information required by section 303.204 of the FDIC Rules and Regulations. Applications pursuant to Sections 38 and 18(d) of the FDI Act may be filed concurrently or as a single application.

7. The FDIC may request additional information to complete processing.

III. ACCEPTING AND PROCESSING THE APPLICATION

Case Managers should review and process branch applications following the steps below and should refer to *Applications Overview*, Section 1.1 of these Procedures, for general information regarding receipt and acceptance of applications.¹

1. If the application is for a branch relocation, determine that the criteria for relocation have been met. Legal and Division of Depositor and Consumer Protection (DCP) personnel can be consulted, as needed, in determining whether the application should be handled as a relocation or an application to establish a branch with a notice to close the corresponding branch. If the proposal does not meet the criteria for relocation, but is instead a closing and an establishment of a new branch, advise the applicant to send notification of the branch closing to the appropriate RO and request that the application be amended to an application to establish a branch. In such instances, process the application following the guidelines in *Establish a Domestic Branch*, Section 7 of these Procedures.
2. An application filed by an eligible depository institution, as defined in Section 303.2(r) of the FDIC Rules and Regulations, will receive expedited processing unless the applicant is notified in writing that the application is being removed from expedited processing and provided the basis for that decision prior to the deemed approved date. Absent such removal, an application filed by an eligible depository institution will be deemed approved as described in *Time Frame for Processing*, Part V of this Section. As such, branch-related applications should be reviewed upon receipt, or as promptly as possible, to determine if expedited processing applies or if there are issues that would justify removal of the application from expedited processing pursuant to Section 303.11(c)(2) of the FDIC Rules and Regulations.

¹ Case Managers should follow the general guidance and expectations for all applications regarding receipt and acceptance, recordkeeping responsibilities, DCP notifications, WO action or input, delegations, etc., in *Applications Overview*, Section 1.1 of these Procedures.

3. Matters that may cause concern and possibly justify removing an application from expedited processing include, for example, a “3” management component rating or a newly insured institution with which the FDIC has had little experience.
4. Create a record in the application tracking system within three business days of receipt. In all cases, dates and comments in the record should be updated regularly to reflect the current status of the application.
5. Initially review all materials for completeness, and request additional information if necessary.
6. Notify DCP of receipt of the application because it is a “covered” application per Parts 303 and 345 of the FDIC Rules and Regulations. Refer to *Applications Using CRA and Compliance Information*, Section 1.10 of these Procedures, for additional information. DCP counterparts will provide input into the determination as to the interstate provisions pertaining to compliance with the CRA and Section 109 of the Interstate Act, if applicable.
7. Analyze the application and complete the Summary of Investigation (SOI) form.² The Application Summary Statement should be retrieved from the appropriate internal database and attached to the SOI. Refer below to *Areas of Consideration*, Part IV of this Section, for guidance concerning the analysis of the proposal and the comments to be included in the SOI.
8. If approval is being recommended, prepare an approval letter. If the application was processed under expedited processing, the approval letter will state that the filing is deemed approved on a specific future date based on expedited processing time frames. Pursuant to Section 303.45(c) of the FDIC Rules and Regulations, approvals expire after 18 months. The approval letter should request that the applicant notify the appropriate RO of the consummation date.
9. The approval letter should include all applicable standard conditions and any recommended non-standard conditions. The Case Manager should obtain the applicant’s written commitment to adhere to any non-standard conditions prior to submitting the approval documents for signature. See *Standard and Non-standard Conditions*, Section 1.11 of these Procedures, for additional guidance regarding the imposition of conditions.
10. If consideration of the statutory factors may result in a denial of the application, the RO should advise the applicant of the deficiencies to ensure that all relevant facts are obtained prior to making a decision. If recommending denial, prepare a draft denial letter. Refer to *Denials and Disapprovals*, Section 1.3 of these Procedures, for further guidance.
11. Case Managers should determine upon receipt, or as soon as possible thereafter, whether the Regional Director has delegated authority to act on the application. For applications that cannot be acted on by the RO under delegated authority, the Case Manager should forward the draft letter, the SOI, and any other pertinent documents to the WO for final action no later than 30 days after receipt of a substantially complete application. The WO will prepare and/or finalize the necessary approval/denial documents. Refer to *Applications Overview*, Section 1.1 of these Procedures, for additional instructions regarding applications that require WO action or input.
12. **Procedures Specific to Interstate Branching:** Pursuant to Section 18(d)(4) of the FDI Act, applications involving interstate branching into a host state where the applicant does not currently operate a branch require additional matters be addressed. To approve an interstate branch application, the FDIC must:

² Case Managers should follow the general instructions and a detailed discussion of SOI requirements for all types of applications found in *Summary of Investigation*, Section 1.2 of these Procedures, as well as the specific instructions in this Section.

- Receive written confirmation from the host state that the applicant has complied with the state's filing requirements, and that the applicant has submitted a copy of its FDIC filing to the host state bank supervisor;
 - Determine that the applicant is adequately capitalized as of the date the application is filed and will be well capitalized and well managed at consummation of the transaction;
 - Confirm that the host state will permit a bank chartered by the host state to establish the branch within the host state; and
 - Determine that the applicant is in compliance with the CRA and has not failed to meet the credit needs of the communities served in a host state pursuant to Section 109 of the Interstate Act (DCP counterparts will provide input into these determinations).
13. Update the application tracking system record with the final action date, expiration date, hours devoted to the application, and other required information.

IV. AREAS OF CONSIDERATION

When analyzing branch or main office relocation applications, the FDIC must evaluate each application in relation to the following seven statutory factors set forth in Section 6 of the FDI Act:

- Financial History and Condition;
- Adequacy of Capital Structure;
- Future Earnings Prospects;
- General Character and Fitness of Management;
- Risk to the Deposit Insurance Fund;
- Convenience and Needs of the Community to be Served; and
- Consistency of Corporate Powers with the Purposes of the FDI Act.

The narrative portion of the SOI should include consideration of each of the statutory factors and answer any questions raised by the general data or delegated authority sections. The level and depth of commentary should be commensurate with the risk profile of the institution and the risk posed by the application. The SOI should address any departures from the institution's current business plan within the comments for the affected statutory factors. For *de novo* institutions, the SOI comments should specifically address whether the proposal is consistent with the most recent, approved business plan. Material departures from the current business model and proposals inconsistent with the most recent approved business plans for *de novos* should be discussed with RO management. Such findings could adversely impact the analysis of applicable statutory factors.

The analysis of the General Character and Fitness of Management factor should consider whether any insider transactions are involved. Any financial arrangement or transaction involving the applicant and an insider (as defined in Section 303.2(u) of the FDIC Rules and Regulations) should be described and discussed in the SOI comments.

The Convenience and Needs of the Community to be Served factor will be favorably resolved when there is reasonable assurance of successful operation of the office to be relocated or redesignated. The applicant's CRA history is especially relevant in evaluating this factor. Consistency of Corporate Powers will rarely be applicable to relocation proposals, unless the bank contemplates some additional corporate power not normally exercised by banks in connection with such applications. The Risk to the Deposit Insurance Fund factor can be resolved by virtue of favorable resolution of the other factors.

V. TIME FRAME FOR PROCESSING

Expedited Processing for Eligible Institutions:

The RO must take action on a branch relocation or main office redesignation application receiving expedited processing prior to the “deemed approved” date. Section 303.43(a) of the FDIC Rules and Regulations defines the “deemed approved” date as the **latest** of the following:

- The 21st day after receipt by the FDIC of a substantially complete filing;
- The 5th day after expiration of the comment period; or
- **Timeframe Specific to Interstate Branching:** In the case of an application to relocate a branch into a state that is not the applicant’s home state and in which the applicant does not maintain a branch, the 5th day after the FDIC receives confirmation from the host state that its application filing requirements have been met and that it has received a copy of the FDIC filing.

Expedited processing is not available if the Regional Director does not have delegated authority. The FDIC may remove an application from expedited processing prior to the “deemed approved” date for any of the reasons set forth in Section 303.11(c)(2) of the FDIC Rules and Regulations.

Standard Processing:

RO Processing Guideline: Within 30 days of receipt of a substantially complete application.

Earliest Date of Approval

Assuming all other requirements for approval have been met, the earliest date of approval for applications requiring public notice is the day after the comment period ends. Such applications cannot be approved before the expiration of the comment period.

VI. PUBLICATION REQUIREMENT

Publications should occur once in a newspaper of general circulation for applications to relocate a branch. For applications to relocate a main office, notice shall be published at least once each week on the same day for two consecutive weeks.³ The required publication shall be made in the following communities:

To relocate a main office: In the community in which the main office is currently located and in the community to which the main office proposes to relocate.

To relocate a branch: In the community in which the branch is located.

Lobby Notices: In the case of applications to relocate a main office or a branch, a copy of the required newspaper publication shall be posted in the public lobby of the office to be relocated for at least 15 days beginning on the date of the last required published notice.

Comments must be received by the appropriate FDIC office within 15 days after the date of the last required publication. Section 303.9(b)(2) of the FDIC Rules and Regulations provides for comment period

³ The Regional Director may waive the requirements for a newspaper publication in cases where an applicant wishes to redesignate its main office as a branch and an existing branch as its main office if the redesignation is within the applicant’s home state and the application presents no significant policy, supervisory, CRA, compliance, or legal concerns.

extensions in certain situations. Refer to *Applications Overview*, Section 1.1 of these Procedures, for further guidance regarding the submission of comments.

VII. SPECIAL PROVISIONS

Emergency or Disaster Events:

- In the case of an emergency or disaster at a main office or a branch that requires an office be immediately relocated to a temporary location, applicants shall notify the Regional Director within three days of such temporary relocation. In such limited cases, the FDIC will accept initial notification by whatever means available and appropriate. The FDIC has made this limited exception to accommodate the public's need to have uninterrupted access to banking services.
- Within 10 days of the temporary relocation resulting from an emergency or disaster, the bank shall submit a written application to the Regional Director that identifies the nature of the emergency or disaster, specifies the location of the temporary branch, and provides an estimate of the duration the bank plans to operate the temporary branch.
- As part of the review process, the Regional Director will determine on a case-by-case basis whether additional information is necessary and may waive the public notice requirements.

VIII. DELEGATED AUTHORITY

The Case Manager should refer to the delegations of authority matrices; additional information is provided in *Applications Overview*, Section 1.1 of these Procedures.

IX. REFERENCES

FDIC Rules and Regulations Parts 303, 309, 326, 345, 390, and 391

Federal Deposit Insurance Act Sections 3(o), 6, 13(f), 13(k), 18(d), 42, and 44

Section 613 of the Dodd-Frank Act

RMS Manual of Examination Policies

Interagency Policy Statement Concerning Branch Closing Notices and Policies, dated June 29, 1999

FDIC Introduces Electronic Submission of Branch Applications Through FDICconnect, FIL-96-2003, dated December 18, 2003