

MEMORANDUM TO: Board of Directors
FROM: Ryan Billingsley, Acting Director
Division of Risk Management Supervision
SUBJECT: *Notice of Proposed Rulemaking.* Establishment and Relocation of
Branches and Offices.

Summary: Staff presents for the approval of the Federal Deposit Insurance Corporation (FDIC) Board of Directors (FDIC Board) a request to publish the attached FDIC notice of proposed rulemaking (proposal) in the *Federal Register*. The proposal would streamline the processes for an insured state nonmember bank to establish a branch or relocate a main office or branch, and for an insured branch of a foreign bank to move from one location to another, by clarifying definitions, eliminating certain filing requirements, reducing processing timelines, and eliminating public notice procedures.

Recommendation: Staff presents to the FDIC Board for approval the attached proposal and authorization of its publication in the Federal Register with a public comment period of 60 days.

Concur:

Acting General Counsel

Matthew P. Reed

I. Background

a. Legal Framework

Section 18(d) of the Federal Deposit Insurance Act (FDI Act)¹ requires the FDIC's prior written consent for a state nonmember bank to establish a domestic branch or to move its main office or any domestic branch from one location to another, and for a foreign bank to move any insured branch from one location to another. The FDIC must evaluate each application in relation to the statutory factors set forth in Section 6 of the FDI Act.²

Subpart C of 12 CFR part 303 of the FDIC Rules and Regulations (subpart C)³ implements Section 18(d) of the FDI Act and sets forth the filing requirements and procedures for insured state nonmember banks to establish a branch, relocate a branch or main office, and retain existing branches after the interstate relocation of a main office. Subpart A of 12 CFR part 303 contains general filing procedures relevant to branch applications. Within subpart J of 12 CFR part 303, section 303.184 implements Section 18(d) of the FDI Act in relation to insured branches of foreign banks and sets forth the filing requirements and procedures for moving an insured branch from one location to another.

b. Branching Statistics

From 2015 to 2024, the FDIC received an average of 664 branch applications annually. During this period, the FDIC approved an average of 630 branch applications annually. On average, 537 applications per year were approved under expedited processing (85%) and 93 were approved under standard processing (15%). An average of approximately 7,300 staff hours per year were spent processing all branch applications. Expedited processing required an average of 10 staff hours and standard processing required an average of 18 staff hours (per application).

¹ 12 U.S.C. 1828(d).

² 12 U.S.C. 1828(d)(1). These statutory factors are as follows: (1) the bank's financial history and condition; (2) the adequacy of the bank's capital structure; (3) the bank's future earnings prospects; (4) the general character and fitness of the bank's management; (5) the risk presented by the bank to the Deposit Insurance Fund; (6) the convenience and needs of the community to be served by the bank; and (7) whether the bank's corporate powers are consistent with the purposes of the FDI Act. *See* 12 U.S.C. 1816.

³ 12 CFR 303.40 through 303.46.

II. Proposed Rule

The proposed rule would reduce the regulatory burden on both insured state nonmember banks seeking to establish a branch or relocate a branch or main office and insured branches of foreign banks seeking to move from one location to another.

a. Shortened Processing Timelines

Each application to establish or relocate a branch, relocate a main office, or relocate an insured branch of a foreign bank is subject to either an expedited processing or standard processing timeline. The proposed rule would significantly shorten the timeframe within which a filing is processed under expedited processing; such applications would be automatically deemed approved on the third business day after receipt of a substantially complete filing instead of the 21st day, as is the case under the existing rule. Applications not processed under expedited processing would remain subject to standard processing.⁴

b. Expanded Expedited Processing

Expedited processing is generally available for applications submitted by an “eligible depository institution.”⁵ Currently, the FDIC may remove an application from expedited processing for any of the reasons set forth in 12 CFR 303.11(c)(2), which include when: (1) an adverse comment is received that warrants additional investigation or review; (2) a CRA protest is received that warrants additional investigation or review, or the appropriate regional director determines that the filing presents a significant CRA or compliance concern; (3) the appropriate regional director determines that the filing presents a significant supervisory concern, or raises a significant legal or policy issue; or (4) the appropriate regional director determines that other

⁴ 12 CFR 303.43(b).

⁵ A state nonmember bank is considered an “eligible depository institution” if it “meets the following criteria: (1) Received an FDIC-assigned composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (UFIRS) as a result of its most recent federal or state examination; (2) Received a satisfactory or better Community Reinvestment Act (CRA) rating from its primary federal regulator at its most recent examination, if the depository institution is subject to examination under part 345 of [the FDIC Rules and Regulations]; (3) Received a compliance rating of 1 or 2 from its primary federal regulator at its most recent examination; (4) Is well-capitalized as defined in the appropriate capital regulation and guidance of the institution's primary federal regulator; and (5) Is not subject to a cease and desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding, or other administrative agreement with its primary federal regulator or chartering authority.” See 12 CFR 303.2(r).

good cause exists for removal.⁶ The proposed rule would remove the FDIC's discretion to remove a filing from expedited processing.

In addition, the proposed rule would provide that filings for intrastate branch relocations or intrastate main office relocations would be acknowledged in writing by the FDIC and would receive expedited processing if the bank received an FDIC-assigned composite rating of 3 or better under the UFIRS as a result of its most recent Federal or State examination, regardless of whether the institution satisfies the other criteria in 12 CFR 303.2(r) for an eligible depository institution.

c. Elimination of Public Notice Requirements

Currently, applications to establish or relocate a branch or relocate a main office are subject to a regulatory requirement that notice of such proposals be published in a newspaper of general circulation.⁷ The proposed rule would eliminate the newspaper publication requirements for an insured state nonmember bank seeking to establish or relocate a branch, or relocate a main office. The proposed rule would make additional conforming changes by striking references to branch applications in the context of public notice requirements and public hearing provisions of subpart A of part 303. The proposed rule would also make conforming technical revisions to the interested parties provisions of the FDIC's CRA regulation by striking references to branches and the relocation of a main office in 12 CFR part 345.

d. Narrowing of Filing Content Requirements.

Under the proposed rule, informational requirements for branch filings would be narrowed. The proposed rule would retain the current requirements to submit a statement of intent for the proposal and the exact location of the branch or main office, and would eliminate all other informational requirements contained in the current rule. However, with respect to branch and main office relocations, the proposed rule would add to the filing content requirements confirmation that advance notice has been provided to customers.

In lieu of the filer submitting this information, the FDIC would rely upon the bank's prior examination and supervision history and other eligibility criteria to inform its consideration

⁶ See 12 CFR 303.184(b)(1) and 303.11(c)(2)(i)-(iv).

⁷ 12 CFR 303.44(a) and 303.184(c).

of the statutory factors. As noted above, the proposed rule would eliminate public notice requirements for branch applications.

e. Additional Changes

In addition to proposing regulatory changes that would streamline the processing of branch applications, the proposed rule would make additional changes to update subpart C. Notably, section 3(o) of the FDI Act excludes remote service units (RSUs) from the definition of “domestic branch.” Neither the FDI Act nor the FDIC’s regulations define RSU, and the proposed rule would adopt the definition of RSU incorporated in the regulations of the Office of the Comptroller of the Currency. This definition would expressly include within the definition of RSU drop boxes, and would accommodate most facilities commonly referred to as “interactive teller machines.”

The proposal would also establish a rule of construction within the definition of “branch relocation” to exclude a “*de minimis* change in address,” which would be defined as occurring when a branch exchanges one physical facility for another within the same approximate location. A *de minimis* change in address would not be subject to an application requirement.

III. Conclusion

FDIC staff presents to the FDIC Board for approval the attached proposal and authorization of its publication in the *Federal Register* with a public comment period of 60 days.

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