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MEMO

From: Kenneth H. Thomas, Ph.D.

To: Acting FDIC Chairman Travis Hill

Date: September 16, 2025

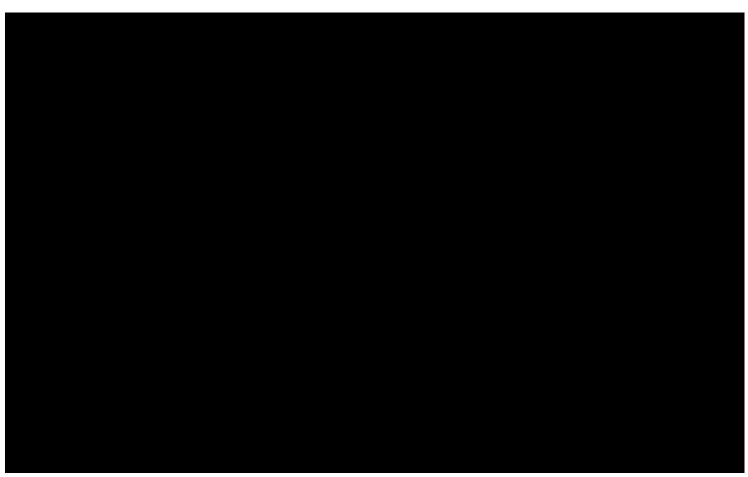
Re: **Comment on FDIC's Proposed Rule on Establishment and Relocation of Branches and Offices, RIN 3064-AG10**

This is my formal comment *opposed* to the July 18, 2025 FDIC Proposed Rule (or "Proposal") regarding Establishment and Relocation of Branches and Offices. I will first review my relevant CRA and branch location background, as they are both relevant to this comment.

Please note that my comments represent my personal views and not those of any company, university, financial institution, or other organization with which I am now or previously have been associated.

My Relevant Background on CRA Reform

My current and past expertise in CRA in general and its reform in particular are relevant to this comment. In short, I have spent the majority of my professional life since 1977 focused on the CRA. I was greatly honored to have known and spent time with former Senator William Proxmire, the "Father of CRA." The following photo was during one of our CRA reform discussions in 1995:



I am proud of the fact that my first book on CRA, Community Reinvestment Performance (Probus Publishing, Chicago, 1993), received the only endorsement he ever gave to any CRA publication:

> *Dr. Thomas' book, Community Reinvestment Performance, is far and away the best analysis of government regulation that I have seen in any field. He spotlights the regulatory problems that continue in CRA and points out precisely how they are being overcome. CRA will benefit enormously from this superlative examination and report.*

I have worked closely with numerous banks, community groups, and regulators on CRA since 1977, including training federal bank CRA examiners and doing considerable CRA *pro bono* work. Besides acting as a CRA consultant and being on the boards of various financial institutions, I am a cofounder and founder of two different CRA mutual funds devoted to providing CRA qualified investments to benefit low- and moderate-income areas and people.

I had the privilege of testifying before Congress and federal bank regulators several times on CRA and related bank regulatory and public policy issues. Many of the recommendations in my books, including various CRA exam procedures and tests, were directly implemented into the current 1995 regs, and more details in this regard are found in The CRA Handbook (McGraw Hill, New York, 1998) at www.CRAHandbook.com.

I was honored to receive the first "Award of Excellence" from the National Community Reinvestment Coalition (NCRC), along with Representative Joseph P. Kennedy and Comptroller Ludwig. It is very important that we keep CRA stronger than ever, especially with actual and planned fair lending and other "deregulatory" changes that indirectly impact CRA.

My Relevant Background on Bank Branch Location Analysis

My current and past consulting experience in bank branch location analysis is also relevant to this comment, because a specialized skill set and level of experience is required to analyze bank branch locations.

I have been involved in helping banks and thrifts around the nation analyze branch location opportunities since 1969, longer than anyone else in this specialized space. I have been quoted in dozens of articles on branch locations, and many of the articles I have written on this topic are summarized on the website www.BranchLocation.com).

The Proposal is Counter to the Letter and Intent of CRA

CRA clearly states that *"the appropriate Federal financial supervisory agency shall (1) assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution; and (2) take such record into account in its evaluation of an application for a deposit facility by such institution."*

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Thus, the review of branch, merger, and other applications is the enforcement mechanism of CRA. Any effort to reduce or eliminate any element of this process, such as the proposal to eliminate public notice and comment procedures and use a super-streamlined three-day approval period, is counter to the CRA and its intent to encourage institutions to help meet the credit needs of their entire community.

Toward this end, I fully support the recent *American Banker* 9/10/2025 BankThink op-ed by Matthew Lee titled "*The FDIC is taking the 'community' out of CRA enforcement*." As pointed out there, the elimination of the public notice and comment process runs counter to the CRA statute. Moreover, the proposed three-day approval process to comply with the statute is unreasonably short, with no time for a meaningful analysis.

The Proposed Rule would also eliminate the current requirement that an applicant comment on any changes in services to be offered by a proposed branch or any other effect the proposed branch may have on CRA compliance. CRA's Large Bank Service Test specifically addresses both retail services and branch delivery systems, and this is also the case with CRA's Community Development Test.

The Proposal to Eliminate the Longstanding Disclosure of Bank Insider Financial Transactions on Branches is Alarming and Totally Without Precedent

The Proposed Rule has buried within it the planned elimination of the longstanding requirement to disclose <u>bank insider dealings</u> regarding branch transactions. The Proposal only mentions this shocking suggestion twice, as if it is trying to "sandwich" it in so no one notices. Importantly, there is no basis or reasoning behind this outrageous suggestion, other than to help banks who might benefit from this ill-advised idea.

The FDIC apparently forgot the previously reported episode involving the spouse of the CEO of New Jersey's Commerce Bank, who financially benefited from decorating their new branches. As a result, the OCC in June 2007 issued a C&D Order against that bank. If there was not a disclosure of such a relevant fact, it might not have been picked up by the media and others reporting on it.

As a long-time branch location consultant, I have witnessed dozens of cases involving branches proposed to be built or leased on property owned by a director or officer or their friends and family.

In my more than 50 years of consulting on bank branch locations, I have never found a single proposed branch involving insider dealings, particularly those tied to properties owned by directors or other insiders, to be independently determined as a feasible location. Feasible for the property owner but not the bank.

The disclosure of this relevant information not only allows the public to be more knowledgeable on insider dealings at a bank but also stockholders and other community stakeholders who should be aware of the fact that a branch is being built primarily to benefit an insider instead of the community.

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The FDIC Unfortunately Appears to be Moving Toward Decreased Disclosure of Relevant Information

Instead of labeling this Proposed Rule as "*Establishment and Relocation of Branches and Offices,"* it should be called "*Proposed Elimination of Public Notification and Comment Process and Disclosure of Bank Insider Financial Transactions."*

The proposed elimination of the longstanding disclosure of bank insider financial dealings involving branches and other currently required disclosures in this Proposed Rule are suggestive of a troubling trend toward decreased disclosure by the FDIC compared to the other prudential regulators.

With all due respect, the FDIC's Acting Chair should not confuse justifiable deregulation, which truly reduces the bank regulatory burden, such as needed deregulation involving BSA, with the outright elimination of the longstanding disclosure of relevant information.

The Proposal justifies this shocking elimination of a longstanding important and relevant disclosure because it would "*reduce reporting burden."* Why not eliminate the filing of call reports or the disclosure of conflicts of interest on lending transactions, as they too would "*reduce regulatory burden?"*

There is no public policy benefit of a regulator going through all its regulations with a chainsaw in hopes of eliminating or reducing as many as possible to meet some Administration (e.g., "*Remove ten existing regs for every new one*") or other soundbite goal.

It should be noted that he FDIC lags both the Fed and OCC in some important areas of public disclosure. For example, both the Fed and OCC disclose and publish complete CRA Strategic Plans of all banks that have chosen this exam procedure. However, the FDIC, which has more Strategic Plan banks than the other agencies combined, is the only regulator that does NOT disclose this important information on its website.

Interested community members are forced to contact individual banks in hopes they reach the right party and get the requested information within a reasonable time. This problem could be avoided with the previously recommended requirement that all banks post their CRA Public File on their websites. I have personally contacted the FDIC to express my concern over their lack of Strategic Plan disclosures, but nothing has been done about it to date.

The Proposed Rule is Counter to the Interests of the FDIC's Lender of Last Resort – the U.S. Taxpayer

Any deregulatory or other proposal that eliminates transparency and sunshine in banking is suspect, because the goal should be more not less disclosure and public involvement. This is especially the case with any proposals involving the FDIC, since it is taxpayers, not banks paying insured deposit assessments, that ultimately stand behind the FDIC sticker.

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When the FDIC's fund went negative not once but twice, it was the U.S. Treasury's Federal Financing Bank that bailed it out. Yes, instead of the FDIC bailing out a failed bank, all taxpayers, through the U.S. Treasury, bailed out the FDIC.

The proposal states that *"The FDIC acknowledges that there may be ancillary costs to the public*." So, the FDIC returns the favor of two public bailouts by eliminating public comment and reducing disclosure? How is this good public policy?

The proposal further states the FDIC's view that it has received a "*limited number of public comments"* on branch applications. But, this does not mean the notification process should be eliminated.

Perhaps the current process enabled the public to review all relevant aspects of a proposed branch, and members of the public decided NOT to comment. In any case, PUBLIC NOTIFICATION is critical to get the facts and allow the public to decide to comment or not.

This is especially the case when good journalists constantly monitor such public notices and often write stories to inform the public and other banks in the area, alerting those who might otherwise not be aware of a proposed branch or especially an insider transaction involving one.

The Proposed Rule Does Not Meet its Policy Objectives and Stated Expected Results

The Proposal does not meet its stated policy objective of improving the (1) speed and (2) certainty of and (3) reducing the regulatory burden associated with branch application/relocation filings and the expected results of (1) reducing the volume of branch filings and (2) resources required by banks to file.

Let's look at these proposed policy objectives and why they are not met by the Proposed Rule:

1. The *speed* of branch application processing is NOT an issue for any bank, except those with compliance or safety and soundness issues. This previously was an issue when branches were challenged and required hearings, but this is NOT the case today. In fact, the Proposal itself states that 85% of branch applications were approved under "*expedited processing*," defined as 25 days or less. The real world of planning for and opening a branch means a YEAR or more of time for: advanced area planning; comparing site alternatives; detailed onsite (not online) fieldwork; lease/purchase negotiations; zoning and other approvals; board and committee approvals; monitoring changes in construction and improvement costs; marketing; staffing; and, other time-consuming procedures. So, what is the relevance of a claimed reduction of a few days of time by removing the current public notice and comment procedure? What banks are complaining about the approval process being too slow and needing improvement?

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2. The *certainty* of branch approval is likewise NOT an issue for any bank, because every bank knows it can branch anywhere and get a near automatic approval, as long as there are no adverse compliance or safety and soundness issues. This was not the case in the 1970s and 1980s when branch applications were often protested by local banks wanting to insulate themselves from new competition. The result was lengthy and costly hearings, but this is not the case anymore.

3. There is no reduction in *regulatory burden* because almost every bank knows it will be quickly approved with little effort, basically a notification procedure, as long as there are no adverse compliance and safety and soundness issues. In fact, some banks proudly publicize the fact that they are opening a new branch to serve a community, and the publication of this fact is a way to let the media know about their pending expansion to help generate goodwill. While the general public may not read postage-stamp public notices buried in the classified section, good journalists always look for such disclosures and often follow up with stories of interest to the community about a proposed branch the community might not otherwise know about. That is the power of public disclosure in action.

4. The *volume of branch filings* has little to nothing to do with the proposed elimination of the public comment process. The main items determining the volume of branch filings include such factors as: a bank's compliance record; its capital strength and other safety and soundness factors; the increased usage of digital vs. personal banking; the existing and projected demand for and supply of financial services in a given community; and, the availability of top-ranking, i.e., "100% locations" there.

5. The *bank resources* required in the current public comment process are minimal at best, and the guesstimated savings in the proposal are unrealistically overstated as shown below.

The Proposed Rule Lacks Necessary Documentary Evidence

There is NO documentation whatsoever justifying the FIVE previously mentioned policy objectives of the Proposal reducing speed, uncertainty, or regulatory burden associated with branch applications OR increasing the volume of branch applications and reducing required bank resources.

One of the few relevant piece of information in the Proposal is the fact that 85% of branch applications are approved within a 25-day expedited window. As noted above, even a few days reduction in this process, IF it could be documented, is irrelevant to the typical year associated with the planning for and establishment of a successful branch.

The Proposal states over the past five years the FDIC received an average of seven comments per year on branch applications, a period covering the Pandemic when there was reduced branch application activity.

Ignoring the Pandemic impact, if members of the public spent their time and money to send in 35 comments over the past five years, why shouldn't those 35 submitters be given the right to comment on what is happening in their community? What if just one of those comments had some very valuable local information that the FDIC was not aware of via the branch application filing? Why should those 35 voices be silenced?

The Proposal is rife with general statements with little backup documentation. The Proposal states that the public comment process causes a "*meaningful delay*" in the amount of time to render a final decision, but what does this mean? How many hours or days or weeks is a meaningful delay? How often has it happened? Where is the support for such a general statement?

The Proposal states the public hearing process has "*not materially benefited*" the FDIC's consideration of a branch application and therefore should be removed. If the FDIC only *"rarely"* receives hearing requests, how many were there? Why were they not material? Public hearings are routine on big M&A deals to garner important community input, so why eliminate hearings on branch applications if they are important to the community?

The Proposal states that "*The FDIC does not have the information necessary to further quantify the benefit associated with the reduction in the time it takes for the FDIC to process filings, but believes that processing time reductions would improve productivity and competitiveness for applicants."* Finally, the FDIC is admitting the limitations of its own cost/benefit analysis.

Worse yet, the Proposal references "*the historically limited benefit of the public notice and related comment period."* What is the basis for such a general statement? Where is the documentation?

What savings estimates the FDIC made in this Proposal are overstated, starting with the assumption that the Proposal would reduce time from 5 to 3 hours or by 40%. What is the source for this statement?

How much of those 5 hours is related to the specific public notice and comment process? Based on my experience, the maximum savings of this Proposal in a realistic situation would be no more than an hour at best, so a maximum of 20% savings but likely in the 10-20% range.

This means that all the estimated dollar savings are at least TWICE what they should be, thus minimizing the actual benefits to banks relative to the costs to the community of no longer being able to be notified about and comment or learn about service changes and insider branch dealings under the current procedures.

Even using the FDIC's overstated estimates, the absolute dollars involved are relatively minimal for new branches, which can cost several million dollars, all in, sometimes $3 to $5 million considering all hard and soft costs.

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The Proposal claims it would save ALL (estimated 30) relocated applicants per year only $1,000 per bank or $30,000 per year in total and ALL (estimated 670) regular branch applicants per year only $382 per bank or $268,000 per year in total. Again, these are aggregate numbers for all applications in a year, using the FDIC's inflated numbers.

Considering the significant costs to the public through eliminated disclosure, any claimed benefits are minimal relative to the actual costs of planning for and opening a successful branch.

Summary: The Costs to the Public Far Outweigh the Guesstimated Benefits of the Proposed Rule

In summary, the few proposed and overstated benefits of this Proposal are greatly outweighed by the actual costs to public in terms of a local community being able to be notified of and provide important, relevant and timely commentary on the impact of a proposed branch, including changes in services to be offered and other CRA effects, as well as being made aware of insider branch dealings.

For these and other reasons, the proposed elimination of the public notice and comment process; the unreasonably short three-day approval process on branch applications; the removal of current commentary on branch service changes and other CRA effects; and, the proposed elimination ("hiding") of insider branch transactions are not good public policy and should be removed from further consideration.

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