

I. INTRODUCTION

Pursuant to Section 18(d) of the Federal Deposit Insurance (FDI) Act, an insured state nonmember bank must receive FDIC approval before establishing a new branch. 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, Establishment and Relocation of Domestic Branching Offices, of the FDIC Rules and Regulations provides filing procedures and definitions. However, other guidance is listed for reference throughout this Section.

Interstate Branching: Section 18(d)(4) of the FDI Act permits, subject to certain requirements and conditions, interstate branching through *de novo* branches. Under this authority, the FDIC may approve an application by a state nonmember bank to establish and operate a *de novo* branch in a state that is not the bank's home state and in which the bank does not currently maintain a branch, if the requirements and conditions of this subsection are met. While interstate branching applications are generally processed the same as others, Case Managers should be mindful of unique procedures involved with these applications, which are included in this Section.

State Savings Associations: The establishment of state savings association branches is not subject to approval under the Home Owners' Loan Act or other federal statute. Title III of the Dodd-Frank Act transferred to the FDIC the functions, powers, and duties of the former Office of Thrift Supervision (OTS) relating to state savings associations and also amended Section 3 of the FDI Act to designate the FDIC as the appropriate federal banking agency for state savings associations. Consistent with this authority, the FDIC Board approved the transfer and redesignation of certain OTS regulations to the FDIC. The regulations developed by the OTS and subsequently adopted by the FDIC do not have provisions that relate to applications for branch establishments. The FDIC may take the following actions related to OTS transferred rules: incorporating them into other FDIC regulations, amending them, or rescinding them, as appropriate. As of July 2021, the FDIC has not implemented regulations for the establishment of a branch by a state savings association. As with all institutions, Case Managers should be alert to any supervisory or other concerns that may arise through established offsite monitoring or onsite reviews as state savings associations establish new branch locations.

The Regional Office (RO) must consult with the Risk Management and Applications Section (RMAS), and as appropriate Washington Office (WO) Legal, on any application or notice related to a state savings association to ensure that the proper procedures and timelines are followed. Refer to *Applications Overview*, Section 1.1 for information on filings involving state savings associations.

Definitions contained in Section 303.41 of the FDIC Rules and Regulations that pertain to establishing a domestic branch:

- **Home State** means the state in which the bank is chartered.
- **Host State** means a state other than the bank's home state in which the bank maintains, or seeks to establish and maintain, a branch.
- **Branch** means any branch bank, branch office, additional office, or any branch place of business located in any state of the United States or in any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands¹, the Virgin Islands, and the Northern Mariana Islands at which **deposits are received or checks are paid or money is lent**. A branch does not include an automated teller machine (ATM), automated loan machine (ALM), remote service unit (RSU), or a facility used for financial education programs. Facilities that are remotely

¹ If an application to establish a branch in or by a bank in the Trust Territory of the Pacific Islands (now known as Federated States of Micronesia, the Marshall Islands, and Palau) is received, Legal should be consulted.

staffed and incorporate interactive features are often referred to as interactive teller machines (ITMs). When considering the appropriate classification of an ITM or similar facility, Case Managers should ascertain the capabilities of the facility and as appropriate, consult RMAS staff, as well as RO and WO Legal.

Note: Applications to establish a foreign branch of a domestic bank are covered under Section 303.182 of the FDIC Rules and Regulations - Establishing, moving or closing a foreign branch of an insured state nonmember bank. Procedures for such applications are discussed in *Foreign Activities of Insured State Nonmember Banks*, Section 26 of these Procedures.

The term branch also includes the following:

- **Messenger Service** - a service operated by a bank or its affiliate that picks up and delivers items relating to transactions in which deposits are received, checks are paid, or money is lent. A limited service messenger service branch application is required for instances in which the institution will be using bank employees to operate this service (and for which the institution will retain liability). A messenger service established and operated by a non-affiliated third party generally does not constitute a branch. If a non-affiliated party is to operate the service, the Case Manager should forward the application and all agreements to Legal for a determination as to whether the non-affiliated party is adequately insured. An application would still be required if it is determined that the institution would retain liability.

An application for a messenger service must specify the geographic area in which service will be provided, but does not have to include a schedule. A specific address is required for ViSION purposes, but it could be the same address as the institution's main office or a branch out of which the messenger service will be operated. The code for the type of branch will differentiate the messenger service as a separate branch.

- **Mobile Branch** – a service, other than a messenger service, that does not have a single, permanent site and uses a vehicle that travels to various locations to enable the public to conduct banking business. A mobile branch may serve defined locations on a regular schedule, or may serve a defined area at varying times and locations. For example:

A bank wishes to serve defined locations at regular times – A bank intends to establish a mobile unit that travels to specific communities on specific days (such as in sparsely populated areas where it may not be cost effective for a bank to establish a permanent branch). In such a case, the bank would file an application and include the various communities the mobile unit will serve and planned hours in the required publication. Approval letters for mobile branches should include conditions that direct the applicant to notify the appropriate RO of changes to the days of service specified in the application. If the bank wishes to add communities, a new application is required. If the mobile unit stops serving any of the designated communities, it is considered a branch closing and would be subject to the branch closing notice requirements.

A bank wishes to serve a certain type of community in a defined area – A bank intends to establish a mobile unit that travels to certain types of communities (such as retirement communities). In such a case, the bank would file an application and submit a schedule of locations within a defined geographic area that the mobile unit will serve. The publication must include the specific type of communities to be served within the defined geographic area. Subsequent to approval, the bank could add new locations within the previously approved community type and geographic area without filing a new application. However, discontinuing service at any specific location is considered a branch closing and subject to the branch closing notice requirements.

- **Temporary Branch** – a location that operates for a limited period of time, not to exceed one year, as a public service, such as following an emergency or disaster situation.
- **Seasonal Branch** - a location that operates at various, periodically recurring intervals, such as during state and local fairs, college registration periods, and other similar occasions. This differs from a temporary branch in that, after an application is approved for a seasonal branch, the applicant bank may return to that site on a recurring basis without the need to reapply. In this case, only the initial publication is required.
- **A De Novo Branch** - a location that is newly established by the bank as a branch and does not become a branch as a result of: the acquisition of an insured depository institution (IDI) or a branch of an IDI; or the conversion, merger, or consolidation of any institution or branch. The purchase of only fixed assets from another institution for the purpose of housing a new branch is also treated as establishing a new branch. (**Note:** the purchase of assets and assumption of liabilities of an existing branch from another financial institution is treated as a merger transaction. Refer to *Merge or Consolidate*, Section 4 of these Procedures, for additional information.)

Proposals that May Not Require a Branch Application

The key criteria for a proposed facility to be considered a branch are accepting deposits, paying checks, or lending money (core banking functions) pursuant to Section 3(o) of the FDI Act. Facilities that do not engage in any of these activities are not considered branches and, therefore, are not subject to FDIC approval under Section 18(d) of the FDI Act.

Loan Production Offices (LPO)

The following activities can be conducted at an LPO without causing the facility to be considered a branch.

- **Loan Origination:** Credit information may be assembled and loan applications can be solicited or processed.
- **Loan Approval:** Loan applications may be approved at the LPO facility in either a public or nonpublic area of the facility.
- **Loan Closing Activities:** Loan closing activities, such as the execution of promissory notes and deeds of trust, may be conducted at an LPO facility. The customer may not, however, take actual receipt of the loan funds at the LPO facility. Loan proceeds may be received by a customer by mail or in person at a place that is not the bank's headquarters office and is not licensed as a branch, provided that a third party is used to deliver the funds and the location is not established by the lending bank. A third party includes a person who customarily delivers loan proceeds directly from bank funds under accepted industry practice, such as an attorney or escrow agent at a real estate closing. Similarly, computer equipment located at the LPO through which the bank initiates electronic disbursements of loan funds to the customer will not cause the LPO facility to constitute a "branch", as long as the customer does not receive the loan funds at the LPO facility.

Deposit Production Offices (DPO)

A DPO may not receive deposits, pay withdrawals, or make loans. Generally, a DPO may advertise the availability of deposit accounts for an institution, provide information about deposit products, and assist customers and prospective customers in completing forms and documents related to opening or maintaining a deposit account. Deposit and withdrawal transactions must be performed by the customer, either in person at the main office or a branch office of the institution, or by mail, electronic transfer, or similar method. An

institution may contract with third parties in its deposit production activities.

Back Office Facilities

The following activities can be conducted at a back office facility without causing the facility to be considered a branch subject to FDIC approval. A back office facility is a bank facility that is neither accessible to nor visited by the public.

- Loan Origination: Credit information may be assembled and loan applications can be solicited or processed.
- Loan Approval: Loans that originate at an LPO or other bank facility may be approved at a back office facility.
- Receipt of Loan Funds: Since back office facilities only refer to bank facilities that are neither accessible to nor visited by the public, there should be no situation in which a customer receives loan funds at the back office facility. A back office facility may credit loan funds (through ACH, wire transfer, or other electronic method) to a deposit account of the borrower at the bank without any in-person contact between the back office facility and the borrower.

FDIC supervised institutions that contact the FDIC regarding a new site not intended to be a branch should be informed that none of the core banking functions may subsequently be conducted at that location, unless a formal application is filed and approved.

Financial Education Programs

Section 303.46 of the FDIC Rules and Regulations states that a branch application or prior approval is not required for a state nonmember bank to participate in one or more financial education programs that involve receiving deposits, paying withdrawals, or lending money if:

- (a) Such service or services are provided on school premises, or a facility used by the school;
- (b) Such service or services are provided at the discretion of the school;
- (c) The principal purpose of each program is financial education. For example, the principal purpose of a program would be considered to be financial education if the program is designed to teach students the principles of personal financial management, banking operations, or the benefits of saving for the future, and is not designed for the purpose of profit-making; and
- (d) Each program is conducted in a manner that is consistent with safe and sound banking practices and complies with applicable law.

Evaluating whether a facility is a branch can be very technical, and any questions should be referred to the applicable WO staff (RMAS, LBS, or CISR) and Legal for a determination.

Branch Closings

Many states require an application to close a branch office. FDIC approval is not needed to close a branch. However, a notice is required under Section 42 of the FDI Act as the financial institution must take certain actions to notify depositors. Refer to *Branch Closings*, Section 9 of these Procedures, for further information.

Emergency or Disaster Events and Impact on Branches

In the case of an emergency or disaster at a main office or a branch that requires an office to be immediately closed and/or relocated to a temporary location, the affected bank typically notifies the appropriate Regional Director within three days of such temporary relocation. Also, within 10 days of any temporary relocation resulting from an emergency or disaster, the bank is expected to submit a written application to the appropriate FDIC office that identifies the nature of the emergency or disaster, specifies the location of the temporary branch, and provides an estimate of the duration of time that the bank plans to operate the temporary branch. Refer to *Move a Domestic Main Office or Relocate a Branch*, Section 8 of these Procedures, for further information.

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 public notice requirements.

II. FORM OF APPLICATION

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

The RO may receive a branch application after a branch was established in violation of Section 18(d) of the FDI Act. An after-the-fact filing requires a complete application, including publication, and is processed in the same manner as presented below. As appropriate, the FDIC may consider pursuing enforcement action, including monetary penalties. Refer to *Applications Overview*, Section 1.1 of these Procedures, for further guidance regarding after-the-fact filings.

The application should contain the following information:

1. A statement of intent to establish 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.

With regard to messenger services, the location is defined by the geographic area to be served, for example, “the Anytown metropolitan area” or “Anycounty and Othercounty, Anystate.” With regard to a mobile branch, specify the locations to be served along with the approximate times of operation. If the mobile branch will not maintain a regular schedule, indicate the manner in which the branch will be used and specify the community or communities in which the vehicle will operate. A specific address where the messenger service or mobile branch will be parked is needed to establish the application tracking system record.

If the branch is to be opened in temporary quarters, the application should contain a request for the use of temporary quarters and the reasons for this decision. If the site of the temporary quarters is other than the permanent building site, the applicant must furnish the exact address of the temporary site and the distance between the permanent and the temporary site.

3. Details concerning the involvement of any 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. Documentation provided by the applicant demonstrates 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 regarding 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 Community Reinvestment Act (CRA).
5. A copy of each newspaper publication, the name and address of the newspaper, and date of the publication.
6. Applicants subject to Section 38 of the FDI Act (Prompt Corrective Action) should provide information required by Section 303.204 of the FDIC Rules and Regulations. Applications pursuant to Sections 38 and 18(d) of the FDI Act can be filed concurrently or as a single application. Refer to Prompt Corrective Action, Section 12 of these Procedures, for further details.
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.²

1. Branch applications 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, applications by an eligible depository institution will be deemed approved as described in Time Frame for Processing, Part V of this Section. As such, branch 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.
2. Matters that cause concern and possibly justify removing an application from expedited processing may include a “3” management component rating or a newly insured institution with which the FDIC has had little experience, for example.
3. 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.
4. Initially review all materials for completeness, and request additional information if necessary. Determine whether the branch proposal is consistent with the institution’s current business plan and whether the proposal will result in an increase in the institution’s risk profile. For instance, a proposed branch outside of the institution’s current trade area, especially where the local economy differs from that within the existing market, may indicate a departure from the current business

² Case Managers should follow the general guidance and expectations for all applications regarding receipt and acceptance, ViSION AT responsibilities, Division of Depositor and Consumer Protection notifications, WO action or input, delegations, etc., in *Applications Overview*, Section 1.1 of these Procedures.

model. For branch applications that may materially change the institution's risk profile, whether through entrance into new trade areas, products or services, significant growth, or other changes that may significantly impact the business plan and financial projections for the institution as a whole, the RO should consider obtaining and evaluating additional information. Examples of additional information requests include, but are not limited to:

- Reasons and support for the proposed changes;
- Financial projections reflecting deposit and loan generation associated with the proposal, and the effect on earnings, liquidity and capital;
- Whether the proposed branch will offer products and services that differ from current offerings, or whether the new location's focus will result in a shift in balance sheet composition;
- Whether the proposed branch will serve a customer base that differs from the customers currently served; and/or
- Analysis of the target community's and the institution's ability to support another branch.

For *de novo* institutions, Case Managers should also ensure that the proposed branch application is consistent with the current, approved business plan.

5. Notify the Division of Depositor and Consumer Protection (DCP) of receipt of the application because it is a "Covered Application." Refer to *Applications Subject to CRA and Compliance Examinations*, Section 1.10 of these Procedures, for additional information. DCP staff 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.
6. Analyze the application and complete the appropriate Summary of Investigation form.³ 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.
7. 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 timeframes. Pursuant to Section 303.45(c) of the FDIC Rules and Regulations, approvals expire after 18 months. The letter should request that the applicant notify the appropriate RO of the consummation date.

The 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.

8. 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 disapproval letter. Refer to *Denials and Disapprovals*, Section 1.3 of these Procedures, for further guidance.

³ 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.

9. 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.
10. **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:
 - 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 Riegle–Neal Interstate Banking and Branching Efficiency Act (DCP counterparts will provide input into these determinations).
11. 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 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, and the supporting analysis, should be commensurate with the risk profile of the institution and the risk posed by the application. Under expedited processing, the Financial History and Condition, Adequacy of Capital Structure, Future Earnings Prospects, and General Character and Fitness of Management factors may be favorably resolved by a review of the institution's CAMELS and Statistical CAMELS Offsite Rating, composite consumer Compliance rating, and CRA record, and other relevant supervisory information. Refer to Analysis of Statutory Factors in *Summary of Investigation*, Section 1.2 of these Procedures, for additional information regarding SOI comments.

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 may be favorably resolved when there is reasonable assurance of successful operation of the branch. The applicant's CRA history is especially relevant in evaluating this factor. Consistency of Corporate Powers will be applicable to branch proposals, if the bank contemplates some additional corporate power or activity not normally exercised by banks in connection with such applications. The Risk to the Deposit Insurance Fund factor can be favorably resolved by consideration and resolution of the other factors.

The FDIC must also evaluate each branch application in relation to the requirements of the CRA.

V. TIME FRAME FOR PROCESSING

Expedited Processing for Eligible Institutions:

The RO must take action on a branch application subject to 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 establish and operate a *de novo* branch in 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

Publication should occur once in a newspaper of general circulation in the community in which the main office is located, and once in the communities to be served by the branch (including messenger services and mobile branches). Publication should occur no more than five days prior to submission of the application to the appropriate FDIC office. Comments must be received by the appropriate FDIC office within 15 days after publication. Section 303.9 of the FDIC Rules and Regulations provides for comment period extensions in certain situations. Refer to *Applications Overview*, Section 1.1 of these Procedures, for further guidance regarding the submission of comments.

VII. 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.

VIII. REFERENCES

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

Federal Deposit Insurance Act Sections 3(o), 6, 13(f), 13(k), 18(d), 38, and 44(b)

RMS Manual of Examination Policies

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