

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### Applications To Relocate Main Office or Branch Statement of Policy (Includes Remote Service Facilities; Rescission of Policy Statement)

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Proposed rescission of statement of policy.

**SUMMARY:** As part of the FDIC's systematic review of its regulations and written policies under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), the FDIC proposes to rescind its Statement of Policy "Applications to Relocate a Main Office or Branch (Includes Remote Service Facilities)" (Statement of Policy).

The Statement of Policy provides information and guidance to state nonmember banks planning to relocate the bank's main office or a branch. The information and guidance is out-of-date. The FDIC proposes to rescind the Statement of Policy because proposed revisions to its applications regulation published elsewhere in today's **Federal Register** update the requirements and sufficiently address all required application procedures to relocate a main office or a branch.

**DATES:** Comments must be submitted on or before January 7, 1998.

**ADDRESSES:** Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 17th Street building (located on F Street), on business days between 7 a.m. and 5 p.m. (Fax number (202) 898-3838; Internet address: comments@fdic.gov). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC 20429, between 9 a.m. and 4:30 p.m. on business days.

**FOR FURTHER INFORMATION CONTACT:** Jesse G. Snyder, Assistant Director, (202/898-6915), Division of Supervision; Susan van den Toorn, Counsel, (202/898-8707), Legal Division, FDIC, 550 17th Street, NW, Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:** The FDIC is conducting a systematic review of its regulations and written policies. Section 303(a) of the CDRI (12 U.S.C. 4803(a)) requires the FDIC to streamline and modify its regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. Section 303(a) also requires the FDIC to remove inconsistencies and outmoded and duplicative requirements from its regulations and written policies. As part of this review, the FDIC has determined that the Statement of Policy is outmoded, and that the FDIC's written policies can be streamlined by its elimination.

The FDIC developed the Statement of Policy to provide general supervisory information and guidance to state nonmember banks relative to the application process and the evaluation of statutory factors in relocating main office or branches. The FDIC last amended the Statement of Policy September 8, 1980. 2 FDIC Law, Regulations, and Related Acts (FDIC) 5125.

In the time since the Statement of Policy was last amended, the application process for relocating branches and main offices has changed significantly. As a result, the supervisory information and guidance contained in the Policy Statement, which although general in nature, are now out-of-date.

As part of the FDIC's comprehensive review of its applications process, elsewhere in today's **Federal Register**, the FDIC is proposing to amend part 303. The proposed revisions to part 303 cover the relocation of main offices and branches in sufficient detail so as to address the required application procedures. Commenters are invited to review subpart C of proposed part 303 in conjunction with the proposal to rescind the Statement of Policy.

For the above reasons, the FDIC proposes to rescind the following Statement of Policy:

### Applications To Relocate Main Office or Branch (Includes Remote Service Facilities)

#### A. Introduction

Section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d); hereafter the (Act) requires the prior written consent of the Corporation before any state nonmember insured bank may move its main office or any branch. In analyzing these applications, the Corporation must evaluate each application in relation to the six statutory factors prescribed in section 6

of the Act (12 U.S.C. 1816) as well as the requirements of the National Historic Preservation Act, the National Environmental Policy Act of 1969, and the Community Reinvestment Act. The six statutory factors under section 6 of the Act are: the financial history and condition of the bank, the adequacy of its capital structure, its future earnings prospects, the general character of management, the convenience and needs of the community to be served by the bank, and whether its corporate powers are consistent with the purposes of the Act.

The degree and extent to which the six statutory factors are applied in reviewing relocation applications depend largely upon the nature and purpose of the relocation which, in the majority of instances, are of two basic types: (1) Relocations to a different primary market area; and (2) relocations within the same primary market area. It is noteworthy that the Corporation will analyze all relocation applications from the standpoint of the convenience and needs of the community the office is leaving as well as the community to which it is moving.

#### B. Procedures

Application forms to relocate and instructions for their completion may be obtained from the regional office of the FDIC region in which the main office of the applicant is located. Upon receipt of an application which is found complete, the regional director will notify the bank, in writing, that the application has been accepted for filing and the date thereof. The procedures governing the administrative processing of relocation applications are contained in part 303 of the Corporation's rules and regulations (12 CFR part 303), particularly §§ 303.3, 303.10, 303.11, 303.12, and 303.14. Section 303.14 sets forth, among other things, the procedures controlling establishment of a public file, publication requirements, and consideration of comments and protests received in connection with an application.

The Corporation will normally not render a decision on any relocation application until the State Authority has approved or expressed its intent to approve the proposal; however, applicants are encouraged to submit their applications to the Corporation at the same time an application is forwarded to the State Authority in order to promote concurrent and more timely processing of the proposal.

Notification of the granting or denial of an application will be provided together with a statement supporting the decision. Under § 303.10(e) within 15

days of receipt of notice that its application has been denied, the applicant may petition the Board of Directors for reconsideration of the application. Opinions will be published when the Corporation determines that the decision represents a new or change in policy or presents issues of general importance to the public or the banking industry.

Under § 303.14(i) of the Corporation's rules and regulations, where the Board of Directors, based upon available information at the time, plans to deny an application and no hearing has been held under § 303.14(e), the Director of the Division of Bank Supervision may be instructed to notify the applicant in writing of the tentative denial. The applicant has 15 days from receipt of the notice to file a written request to amend the application or to submit information in rebuttal of the deficiencies noted. Upon filing of such a request, the applicant has 30 days to amend its application or to provide rebuttal information.

There is no application form for the relocation of a remote service facility. The regulations issued by the Corporation in March 1979 provide that an applicant merely notify the regional director of its intention, comply with the appropriate publication requirements and, unless notified otherwise by the regional director, the remote service facility may be relocated 30 days after the last publication date.

### *C. Statutory Factors—Application To Relocate to Different Primary Market Area*

#### 1. Financial History and Condition

In connection with applications for relocation to a different primary market area the emphasis will, of course, be placed on the financial history and condition of the existing bank. The relocation of an office to a different primary market area normally encompasses risks or a degree of management attention which banks that are experiencing financial difficulties are not generally prepared to undertake. Banks with excessive volumes of subquality assets, significant liquidity problems, or other problems threatening the soundness of the institution would fall in this category.

Under this factor, as well as under the general character of management factor, the current asset condition of the bank and its compliance with applicable laws and regulations are primary areas of consideration. Other primary areas of consideration here are investment in fixed assets, including leases, and insider transactions, all of which also

impact importantly on the evaluation of the general character of management factor. Lease transactions shall be reported in accordance with Financial Accounting Standards Board Statement 13 as required by the Instructions for the Preparation of Consolidated Report of Income and Condition.

(a) Investment in Fixed Assets and Leases—The applicant's aggregate direct and indirect fixed asset investment, including lease obligations, must be reasonable in relation to its projected earnings capacity, capital and other pertinent bases for consideration. Except where state law obviates the need, lease agreements should contain a bankruptcy termination clause acceptable to the Corporation. An example of such clause may be obtained from the regional office.

It is recommended that applicants should not purchase any fixed assets or enter into any noncancelable construction contracts, lease agreements, or other binding arrangements related to the proposed relocation unless and until the Corporation approves the application.

The Corporation expects applicants to follow closely the representations made in the application regarding fixed asset arrangements. If any substantive changes become necessary in fixed asset arrangements, including increases of 10% or more in the cost of any major category of fixed assets (such as land, building, or furniture fixtures and equipment), after submission of the application, applicant must promptly advise the regional director of these changes as well as its plans for the old quarters. Major changes may result in reconsideration.

(b) Insider Transactions—Any financial arrangement or transaction involving the applicant, its directors, officers, 5% shareholders, or their associates and interest (hereafter referred to as "insiders") should ordinarily be avoided. If there are arrangements or transactions of that type, the applicant must demonstrate clearly that any proposed transactions with insiders are made on substantially the same terms as those prevailing at the time for comparable transactions with noninsiders and do not involve more than normal risk or present other unfavorable features to the applicant bank. In addition, full disclosure of any arrangements with an insider must be made to all directors and shareholders and, in the event any new capital offering is to be made, included in any new capital offering material distributed in connection with the application.

Whenever any transaction between the applicant and an insider involves

the purchase of real property or a construction contract, the purchase price must be supported by an independent appraisal or in the case of a construction contract by competitive bids. Further, with respect to any lease arrangement between the applicant and an insider, the applicant must submit reliable evidence showing that the lease arrangement is as beneficial to the applicant as the purchase of the property and direct ownership. Normally, this type of lease arrangement will also be required to include terms protecting the bank against unreasonable escalation of payments under the lease and granting the bank the option to purchase the property during the life of the lease on appropriate terms.

#### 2. Adequacy of Capital Structure

The relocation of an office to a different primary market area generally involves an expansion of deposits and/or an increase in expenses not immediately offset by additional income. This normally results in some dissipation of relative capital strength. Consequently, banks contemplating a relocation must possess an adequate level of capital protection or, in the case of capital deficiencies not considered overly extreme, set forth a plan which will improve capital to more than offset any deterioration which may flow from the relocation.

The applicant's adjusted capital and reserves, including written commitments for additional capital funds, should be adequate relative to its adjusted gross assets. The adjusted capital and reserves is computed by deducting from total capital and reserves all assets and nonbook liabilities classified "loss" and 50% of those classified "doubtful" at the last examination of the applicant. Such facts as the quality of assets, prospective earnings capacity, volume of risk assets, liquidity, capability of management, and other factors affecting the relative strength of a bank will exert either positive or negative influences on the level of capital protection.

#### 3. Future Earnings Prospects

This factor will be considered both in terms of the relocation and the applicant bank as a whole. This factor will be measured in terms of the ability of overall bank earnings to absorb the anticipated expenses resulting from the proposal. In addition, anticipated future earnings for the bank as a whole should be adequate, after expenses, to absorb normal losses, pay reasonable dividends, and provide some meaningful contribution to capital.

#### 4. General Character of Management

To be acceptable under this factor a management must, except in exigent circumstances, have demonstrated, or be expected to demonstrate, an ability to operate the bank in a manner which is free of excessive criticism or concern as to the overall soundness and viability of the institution. In summary, the Corporation views the quality of a bank's management as critical to its overall success and will seriously question the relocation of an office to a different primary market area if the quality of management is not considered adequate prior to the proposed relocation.

The Corporation will not question fees for legal services or other organizational expenses solely because of an amount but will consider the reasonableness of fees in relation to the services performed. Applicants are required to furnish the amounts of fees for such services which have been incurred and estimates of additional fees to be incurred in connection with the proposed transaction. All fees for legal, organizational or similar services should be disclosed whether directly or indirectly related to the application pending before the Corporation. If legal or other organizational fees appear to be excessive in relation to fees for comparable services, or if the volume of services performed exceeds that usually incurred with respect to comparable applications, supportive documentation will be required. In the case of legal fees, such documentation may consist of materials such as itemized time sheets showing the time actually expended by counsel on the applications concerned, the hourly rate charged, and the specific circumstances, including unusual complexities, the necessity for agency or court appearances, and the like necessitating the time expended. In reviewing legal fees for reasonableness, the following factors will ordinarily serve as guides:

- (a) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the services obtained;
- (b) The fee customarily charged in the locality for similar legal services;
- (c) The time limitations imposed by the client or by the circumstances; and
- (d) The experience and ability of the lawyer or lawyers performing the services.

Even though a fee may be wholly or partially absorbed by another entity such as a holding company, that fee or organizational expense will nonetheless be reviewed by the Corporation under the terms of this policy statement in

view of the fact that the commitment for the fee or organizational expense is a commitment of management of the proposed or existing institution. Expenses for legal or other services rendered by organizers, present or prospective board members or major shareholders will receive special scrutiny in this regard for any evidence of self-dealing to the detriment of the bank and its other shareholders. As a matter of practice, the FDIC requires full disclosure to all directors and shareholders of any fee in excess of \$5,000 paid to insiders or their interests.

In no case, states the policy, will an FDIC application be approved when the payment of a fee, in whole or in part, is contingent upon any act or forbearance by the Corporation or by any other federal or state agency or official.

The applicant bank should at all times maintain sufficient surety bond coverage on its active officers and employees to conform with generally accepted banking practices and should at all times maintain an excess employee dishonesty bond in the amount of \$1 million or more if primary blanket bond coverage is less than \$1 million.

#### 5. Convenience and Needs of the Community To Be Served

It should be noted that the provisions of the Community Reinvestment Act are especially relevant in evaluating this statutory factor. Guidelines on the Community Reinvestment Act may be obtained from the appropriate regional office.

The essential considerations in evaluating this factor are the legitimate deposit and credit needs of the community to be served and the nature and extent of the banking opportunity available to the applicant in that location and the willingness and ability of the applicant to serve those needs. Largely because of the requirements of the Community Reinvestment Act, the Corporation will also evaluate this factor in terms of the impact of the proposal on the community which the office is leaving to ascertain the adequacy of banking services there in light of the move. The ensuing discussion of this factor deals mainly with the community to which the office is moving.

In keeping with the Corporation's policy of promoting competition among financial institutions, this factor will generally be considered favorably when there is reasonable assurance of successful operation of the office to be relocated (as measured by future earning prospects). However, competitive

considerations will also include whether the potential viability of a newly organized bank within a market would be threatened significantly by a proposed relocation.

The applicant bank must clearly define the community it intends to serve and provide the type of information on that community discussed below. It is emphasized, however, that the degree of detail that must be provided may vary depending on the size and type of service to be offered at the proposed relocation site.

(a) Economic Data—The economic condition and growth potential of the area to which the bank proposes to relocate, both presently and in the near term, are important in evaluating the business potential available, the amount of that business that it can reasonably expect to secure, and the probable success of the operation. Indicators of the available business would include, but not be limited to, a description of the principal industrial, trade, or agricultural activity as well as the annual value of the primary products in the geographic area. In addition, trends in employment, residential and commercial construction, sales, company payrolls, and businesses established are also important indicators.

(b) Demographic Data—Population figures within the new community or trade area as well as the surrounding areas are important determinants in considering convenience and needs. These population figures should include not only the present population but also data on population trends for the future. Population characteristics such as income, age distribution, educational level, occupation, and stability should be considered.

(c) Competition—Some consideration will be given to the adequacy or inadequacy of existing bank facilities in the community and in nearby communities. The growth rate and size of bank and other financial institutions in the community or trade area may provide meaningful indications of the economic condition of the area and the potential business for the office to be relocated. Other financial institutions such as savings and loan associations, credit unions, finance companies, mortgage companies and insurance companies may be considered competing institutions to the extent their services parallel those of the proposed newly located office.

(d) Other Supporting Data—The extent of new or proposed residential, commercial and industrial development and construction is a significant secondary consideration in resolving the

convenience and needs factor. Evidence of plans for development of shopping centers, apartment complexes and other residential subdivisions, factories, or other major facilities near the proposed site of the proposed newly located office are also relevant.

#### 6. Consistency of Corporate Powers

This factor will rarely be applicable to relocation proposals, except in those instances where a bank may contemplate some additional corporate power, not normally exercised by banks, in connection with its application.

#### *D. Statutory Factors—Application To Relocate Within Same Market Area*

Normally, office relocations within the same primary market area are of a short geographic distance and are intended to expand or improve services to the consumer. In addition, such relocations are, in most cases, regarded by the Corporation of less significance than moves to different primary market areas. Thus, relocations within the same primary market area generally entail some adjustment and less stringent application of the standards and the six

statutory factors discussed in section C above. Accordingly, in assessing these types of applications the Corporation focuses largely on the following factors:

(a) Whether any real estate or other transactions involve any insiders of the applicant and, if so, whether any insider would realize a profit or other advantage which would not normally accrue to noninsiders in comparable transactions;

(b) The impact of fixed asset or other additional expenses associated with the proposal on the bank's capital adequacy and earnings capacity;

(c) Whether the bank has or agrees to obtain sufficient surety bond coverage of its officers and employees to conform with generally accepted banking practices and maintains or will maintain an excess employee dishonesty bond in the amount of \$1 million or more, if the primary blanket bond coverage is less than \$1 million; and

(d) Whether the application involves special factors, which, in the opinion of the Board of Directors, have substantial bearing on its final determination. For example, although the factors described in paragraphs (a), (b), and (c) above are favorable, the Corporation may

nevertheless deny the application because of the overall serious financial condition of the applicant bank.

#### *E. Statutory Factors—Relocate Remote Service Facility*

In view of the nature of the remote service facility, the six statutory factors will not be applied to the same degree and extent as in the case of a traditional branch. For instance, with respect to the earnings factor, detailed projections of deposits, income and expenses, are not necessary. A determination that operating expenses will not burden the bank's future earnings will generally suffice. Similarly, detailed or extensive economic information and demographic data are not required when considering the convenience and needs factor.

By order of the Board of Directors.

Dated at Washington, D.C. this 23rd day of September, 1997.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

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