

## I. INTRODUCTION

Certain filings require the proponents to post a public notice of their request, generally in the form of a legal announcement, in one or more newspapers of general circulation. The notice informs the public of its right to comment on or to protest the filing during the relevant comment period. Information regarding filings subject to the Community Reinvestment Act (CRA) or public comment is available to the general public through the FDIC external website at [FDIC CRA applications](#). Public materials associated with the filing may be requested from the FDIC, and public comments may be submitted to the FDIC regarding the filing.

Under Section 303.5 of the FDIC Rules and Regulations, the FDIC takes into account the record of performance under the CRA of each applicant in considering a filing for approval of:

- The establishment of a domestic branch;
- The relocation of the bank's main office or a domestic branch;
- The relocation of an insured branch of a foreign bank;
- A transaction subject to the Bank Merger Act; and
- Deposit insurance.

Under Section 303.7 of the FDIC Rules and Regulations, the public must be provided prior notice of a filing to 1) establish a domestic branch, relocate a domestic branch or the main office, relocate an insured branch of a foreign bank, 2) engage in a merger transaction, 3) initiate a change of control transaction, or 4) request deposit insurance.

Members of the public can submit comments that may address a number of areas, which can be either supportive or critical of the filing, and may protest the filing on the basis of, for example, CRA considerations or convenience and needs of the community to be served.

Section 303.2(l) of the FDIC Rules and Regulations defines the term "CRA protest" to mean any adverse comment from the public related to a pending filing that raises a negative issue relative to the CRA, whether or not it is labeled a protest and whether or not a hearing is requested. An "adverse comment" is defined under Section 303.2(c) of the FDIC Rules and Regulations, as any objection, protest, or other adverse written statement submitted by an interested party relating to a filing. The term does not include any comment that the appropriate Regional Director or designee determines to be frivolous (for example, a non-substantive comment submitted primarily as a means of delaying action on the filing).

## II. PROCESSING

The Case Manager should forward any protest or comment (collectively, submission) based on CRA or compliance considerations via the appropriate document distribution system to the appropriate Division of Depositor and Consumer Protection (DCP) counterparts and the Regional Office (RO) Community Affairs Officer for review and comment. Within three business days of receipt, the DCP Review Examiner must send an acknowledgement letter to the submitter stating that the matter has been received and referred for further review and analysis. The Case Manager should work closely with their DCP counterparts to ensure the letter is prepared and sent.

When submissions are received after the public comment period has closed, the comment period may be extended or reopened if: (1) all required information was not filed on a timely basis to permit review by the public or a request for confidential treatment was not granted that delayed public availability; (2) it was satisfactorily demonstrated that additional time was necessary to develop factual information; or (3) for

good cause. All CRA-related submissions will be considered by DCP.<sup>1</sup> Submissions based on factors other than CRA or compliance considerations will be assessed by the Case Manager and appropriate RO management staff.<sup>2</sup>

If a submission is received and no application is anticipated or pending, the submission should be handled as a routine inquiry or complaint. The Case Manager should ensure that DCP staff has advised the submitter that if an application is not filed within 30 days, the submission will be evaluated as either a consumer complaint through the consumer complaint process, or as part of the next CRA examination as a public comment on the institution. If an application is anticipated or expected to be filed, the Case Manager should coordinate with DCP staff regarding appropriate treatment of the submission. Section 303.9 of the FDIC Rules and Regulations provides additional guidance for the submission of comments, comment period, extension, solicitation of comments, and applicant response.

#### *Review and Processing of the Submission*<sup>3</sup>

If the submission is not deemed to be a protest, within seven business days of receipt, the Case Manager must send a letter to inform the submitter that the issues raised do not constitute a protest and provide an explanation for the decision.

If the submission is deemed a protest, the Case Manager must send a letter to the submitter within seven business days, acknowledging receipt of the submission. The letter must advise the submitter that the submission will be forwarded to the applicant and that a copy of any future submissions should be sent to both the applicant and the Regional Director. The Case Manager should send a letter advising the applicant of the receipt of the submission and enclose a copy of the submission. The letter should:

- 1) include the name and address of each submitter;
- 2) request that the applicant notify the FDIC within three business days after receipt of the letter, whether the applicant intends to respond to the submission;
- 3) instruct the applicant that any response should be in writing and should be sent on or before ten business days after the date of the FDIC letter; and
- 4) advise the applicant to send copies of any responses to the FDIC, each submitter, and each supervisory authority that received a copy of the application (for example, the appropriate Federal Reserve Bank or state banking department).

The Case Manager must coordinate closely with DCP staff who will evaluate and process the protest. Such coordination should include collaborating on the response letter, Summary of Investigation preparation, possible conditions to include in an Order, and development of the approval letter and Order, if applicable.

#### *Statement on Protests*

When DCP staff receives and evaluates a CRA protest, they will prepare a Statement that will summarize

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<sup>1</sup> Within five business days, the DCP Deputy Regional Director will make a determination whether the adverse comment is a CRA protest. Further, within 45 business days of receipt of a CRA protest, Regional DCP staff shall submit a brief memorandum, or summary email, to the Case Manager describing the analysis and recommendation on the application.

<sup>2</sup> Within five business days of a final determination on approval of an application, Regional DCP shall send a letter to the protester describing the final action taken on the application.

<sup>3</sup> Whether a submission is a comment or a protest, the Case Manager should coordinate with DCP staff, and Legal (as appropriate) regarding preparation and sending of the letter.

the allegations of the CRA protest received, the attendant analysis, and how the entity will serve the convenience and needs of the community. This Statement will be provided by DCP staff to the Case Manager, who should ensure the Statement is attached to the document transmitting FDIC approval of such covered application, such as a letter or Order.

### III. PROCESSING HEARING REQUESTS

Before the end of the comment period<sup>4</sup> related to a certain filing, any person may submit to the appropriate Regional Director a written request for a hearing on a filing. The request must describe the nature of the issues or facts to be presented and the reasons why written submissions would be insufficient to make an adequate presentation of those issues or facts to the FDIC. A person requesting a hearing shall simultaneously submit a copy of the request to the applicant.

Section 303.10 of the FDIC Rules and Regulations covers hearings and other proceedings in connection with filings for:

- Deposit insurance;
- The establishment of a domestic branch or the relocation of a main office or domestic branch;
- The relocation of an insured branch of a foreign bank;
- A transaction subject to the Bank Merger Act, except for mergers that the FDIC Board determines must be acted upon immediately to prevent the probable failure of one of the institutions involved or a transaction that must be handled expeditiously due to an emergency;
- Nullification of a decision on a filing; and
- Any other purpose or matter that the FDIC Board in its sole discretion deems appropriate.

After receiving a hearing request, the FDIC may choose to:

- Hold a formal hearing,
- Hold an informal proceeding, or
- Not hold a hearing or informal proceeding.

The Regional Director, after consultation with RO Legal, may grant or deny a request for a hearing and may limit the issues to those deemed relevant or material. The FDIC generally grants a hearing request only if it determines that written submissions would be insufficient or that a hearing otherwise would be in the public interest. If the Regional Director, after consultation with Legal, denies a hearing request, he or she shall notify the person requesting the hearing of the reason for the denial. A decision to deny a hearing request is a final agency determination that is not appealable to the FDIC Board.

#### Formal Hearing

If the FDIC decides to hold a hearing, the Regional Director must coordinate with the Office of Communications to issue a notice of that hearing stating the subject and date of the filing, the time and place of the hearing, and the issues to be addressed. The FDIC will send a copy of the notice of hearing to the applicant, to the person requesting the hearing, and to anyone else requesting a copy. Any person who

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<sup>4</sup> The length of the comment period will vary depending on the type of filing. Refer to the applicable sections of these Procedures and Part 303 of the FDIC Rules and Regulations for information regarding comment periods.

wishes to appear (participant) shall notify the appropriate Regional Director of his or her intent to participate in the hearing no later than ten calendar days from the date that the FDIC issues the notice of hearing. At least five calendar days before the hearing, each participant shall submit to the appropriate Regional Director, the applicant, and any other person as required by the FDIC: the names of witnesses, a statement describing the proposed testimony of each witness, and one copy of each exhibit the participant intends to present.

The FDIC will appoint a presiding officer to conduct the hearing, who will usually be the appropriate Regional Director. The presiding officer is responsible for procedural questions not covered by Section 303.10 of the FDIC Rules and Regulations.

#### Informal Proceedings

The Regional Director may arrange for an informal proceeding in connection with a filing, either upon receipt of a written request for such a meeting made during the comment period, or upon the FDIC's own initiative. No later than ten calendar days prior to an informal proceeding, the Regional Director shall notify the applicant and each person who requested a hearing or oral presentation of the date, time, and place of the proceeding. The proceeding may assume any form, including a meeting with FDIC representatives at which time the participants will be asked to present their views orally. The Regional Director may hold separate meetings with each of the participants. If the Regional Director decides not to hold a meeting, the Regional Director, or designee, shall notify the applicant and all persons who requested an opportunity to be heard. The notification should explain the Regional Director's rationale for their decision.

#### **IV. REFERENCES**

[Sections 303.2\(l\), 303.5, 303.9, and 303.10 of the FDIC Rules and Regulations](#)