

FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. 9642
February 22, 1984]

**Revision of Policy on Processing
Protested Applications of Banks and Bank Holding Companies**

*To All Bank Holding Companies, and Others Concerned,
in the Second Federal Reserve District:*

The following statement was issued by the Board of Governors of the Federal Reserve System:

The Federal Reserve Board has announced adoption of amendments to its procedures for processing applications, including revision of the Board's Statement of Policy on Handling Protested Applications of banks and bank holding companies. These amendments are intended to provide the public with clearer and easier-to-use procedures for filing protests, and for requesting meetings or hearings.

The amendments are based in part on recommendations of a Board staff task force, established to review the Board's procedures for handling protested applications. The Consumer Advisory Council¹ was requested to study the Board's implementation of the Community Reinvestment Act, and the Board's amendments to its procedures and policy statement incorporate most of the CAC recommendations on procedures for bringing applications to public notice and for dealing with protests.

The amendments apply to applications for which notice is published on or after January 31, 1984.

The amendments incorporate the following recommendations by the Consumer Advisory Council task force:

- Adopt a revised newspaper notice of applications, published in plain English and including a statement that one of the factors the Board considers in acting on applications is the performance of banks concerned in the application in helping to meet local credit needs.
- Explore ways in which Reserve Bank weekly bulletins noting applications newly received can be made more informative.
- Publish a comprehensive document consolidating publications relating to CRA and additional information on factors the Board considers in evaluating applications under CRA.
- Formalize procedures for notifying protestants of the Board's decision on a protested application and take steps to explain the decision.
- Make special efforts to provide protestants with an explanation of the analysis of data relating to a protest.

To implement Board action on these recommendations of the Council's task force, Federal Reserve procedures will be revised as follows:

- A model "plain English" newspaper notice of an application will be used and the Community Affairs Officer of the Reserve Banks will be designated as a source of further information. Newspaper notices will include a statement that in acting on applications one of the factors the Board considers is the performance under CRA of banks involved in the application.

1. The Consumer Advisory Council, established by Congress at the Board's request, meets with the Board periodically to advise the Board on its responsibilities under the Consumer Credit Protection Act. It is comprised of 30 members representing a broad range of consumer and creditor interests. At the same time as the Board acted on the Council's advice concerning protested applications it adopted most of the Council's further recommendations deriving from its study of Board implementation of the Community Reinvestment Act in the fields of development of Federal Reserve compliance personnel, examination procedures and community affairs officers. These actions are being announced separately.

(OVER)

- An expanded uniform format has been developed and will be used for the weekly bulletin published by the Reserve Banks detailing applications received during the preceding week. This notice will include reference to laws or regulations governing the processing of applications, identify Reserve Bank personnel (Community Affairs Officer) who can provide further information, and list available publications concerning CRA.
- The Board will work with the Federal Financial Institutions Examination Council to update the Council's publication "A Citizen's Guide to CRA" and will publish a summary reflecting current Board positions on CRA factors.
- The Board will amend its Policy Statement to formalize notification of protestants of decisions on protested applications.
- Federal Reserve personnel will be prepared to furnish protestants with an explanation of how data have been analyzed in a variety of protests and provide a sampling of relevant Orders and other material.

Additionally, the Board approved staff recommendations to:

- Amend the Board's Policy Statement on Handling Protested Applications to specify that Reserve Banks generally will arrange private meetings between an applicant and protestant following the first exchange of correspondence between the parties.
- Amend the policy statement and the Board's rules regarding delegation of authority to delegate to the Board's General Counsel authority to convene a public meeting or other proceeding and appoint a presiding officer with respect to a protested application.
- Amend the policy statement to designate the Community Affairs Officer of the Reserve Banks as the contact person to answer questions concerning protest procedures and CRA matters in general.
- Amend the Board's Rules of Procedure, in the interests of ensuring due consideration of comment on an application, to clarify that comment must be received by the Board's Secretary on or before the date specified as the end of the comment period. The Secretary can give extensions on showing of good cause.

Enclosed is the text of the amended Policy Statement and of the amendments to the Board's Rules Regarding Delegation of Authority and Rules of Procedure referred to in the above statement. It has been reprinted from the *Federal Register* of February 14, 1984. Copies of the enclosure are available to others upon request directed to the Circulars Division of this Bank (Tel. No. 212-791-5216). Questions regarding the amended policy may be directed to our Domestic Banking Applications Department (Tel. No. 212-791-5861).

ANTHONY M. SOLOMON,
President.

FEDERAL RESERVE SYSTEM

12 CFR Parts 262 and 265

[Docket No. R-0507]

Rules of Procedure; Applications; Timeliness of Comments; Informal Meetings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Amendment of Statement of Policy and final rule.

SUMMARY: The Board has amended its policy statement concerning the procedures used to process protested applications to provide more flexibility in conducting public meetings. The statement also clarifies the Board's policy with respect to sponsoring private meetings between the applicant and the protestant and specifically designates Community Affairs Officers at the Reserve Banks as the Federal Reserve representatives available to answer questions concerning Federal Reserve procedures for protested applications. In addition, the General Counsel has been delegated authority, in consultation with the directors of the other interested divisions of the Board and the Reserve Bank (or their designees), to convene a public meeting and to designate the presiding officer in any such proceeding. The Board is also amending its Rules of Procedure to clarify that comments on an application must be received on or before the last date specified in the notice.

EFFECTIVE DATE: January 31, 1984. This Statement will apply to applications for which notice is published on or after January 31, 1984.

FOR FURTHER INFORMATION CONTACT: Bronwen Chaiffetz, Senior Counsel (202/452-3564) or Susan Weinburg, Attorney (202/452-3707), Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: In December 1980, the Board adopted a Policy Statement to provide members of the public with guidance on the procedures to be used in filing protests and requesting public meetings or hearings, on applications filed with the

Board. Based on its experience, the Board believes the Policy Statement has served a useful purpose, and that the changes being adopted today will further facilitate the processing of protested applications.

In the amended statement, the Board has clarified its policy concerning private meetings between the applicant and the protestant in connection with protested applications; specified that the Community Affairs Officer at the appropriate Reserve Bank will be available to answer questions by members of the public concerning the filing of a protest; delegated to its General Counsel the authority to convene public meetings and to designate the Presiding Officer in such proceedings and has amended its procedures for conducting public meetings to provide more flexibility.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Board certifies that the amendments will not have a significant impact on a substantial number of small entities, since they pertain to the Board's procedures.

Regulatory Impact Analysis

Pursuant to section 3(a)(1) of Executive Order 12991 of February 17, 1981, it has been determined that the proposed amendments do not constitute a major rule within the meaning of section (1)(b) of the Executive Order. The proposed amendments have no effect on the operations of the depository institutions subject to them. As such, the amendments will not have an annual effect on the economy of \$100 million or more, will not effect costs or prices for consumers, individual industries, government agencies or geographic regions, and will not have adverse effects on competition, employment, investment productivity or on the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects

12 CFR Part 262

Administrative practice and procedure, Federal Reserve System.

12 CFR Part 265

Authority delegations (Government Agencies), Banks, banking, Federal Reserve System.

The Board has issued these amendments pursuant to its statutory authority under sections 3(a), 4(c)(8) and 5(b) of the Bank Holding Company Act of 1956 as amended (12 U.S.C. 1842(a), 1843(c)(8) and 1844(b)), section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)), and sections 9 and 11(i) of the Federal Reserve Act (12 U.S.C. 321 and 248(i)).

The Board is not soliciting public comment with regard to these amendments under authority of 5 U.S.C. 553(b), which authorizes waiver of public comment in case of interpretative statements and rules of procedure. The interpretation is issued as a policy statement and not as a part of the regulation and is, therefore, considered interpretative. The amendments to the Rules Regarding Delegation of Authority and to the Rules of Procedure are procedural in nature and do not constitute substantive rules subject to the requirements of 5 U.S.C. 553 and 604. The Board's expanded rulemaking procedures have not been followed because the amendments are technical in nature. The amendments are effective January 31, 1984 pursuant to 5 U.S.C. 553(d)(2).

PART 262—[AMENDED]

1. Therefore, § 262.25 is revised to read as follows:

§ 262.25 Policy statement regarding notice of applications; timeliness of comments; informal meetings.

(a) *Notice of Applications.* A bank or company applying to the Board for a deposit-taking facility must first publish notice of its application in local newspapers. This requirement, found in § 262.3(b)(1) of the Board's Rules of Procedure covers applications under the Bank Holding Company Act and Bank Merger Act, as well as applications for

membership in the Federal Reserve System and for new branches of State member banks. Notices of these applications are published in newspapers of general circulation in the communities where the applicant intends to do business as well as in the community where the applicant's head office is located. These notices are important in calling the public's attention to an applicant's plans and giving the public a chance to comment on these plans. To improve the effectiveness of the notices, the Board has supplemented its notice procedures as follows.

(1) The Board has adopted standard forms of notice for use by applicants that will specify the exact date on which the comment period on the application ends, which may not be less than thirty calendar days from the date of publication of the first notice. The newspaper forms also provide the name and telephone number of the Community Affairs Officer of the appropriate Reserve Bank as the person to call to obtain more information about submitting comments on an application. In general, the Community Affairs Officer will be available to answer questions of a general nature concerning the submission of comments and the processing of applications.

(2) The Board also publishes notice of bank holding company applications for bank acquisitions (but not for bank mergers or branches) in the *Federal Register* after the application is received and the Community Affairs Officer can provide the exact date on which this comment period ends. (The *Federal Register* comment period will generally end after the date specified in the newspaper notice.)

(3) In addition to the formal newspaper and *Federal Register* notices discussed above, each Reserve Bank publishes a weekly list of applications submitted to the Reserve Bank for which newspaper notices have been published. Any person or organization may arrange to have the list mailed to them regularly, or may request particular lists, by contacting the Reserve Bank's Community Affairs Officer. Each Reserve Bank's list includes only applications submitted to that particular Reserve Bank, and persons or groups

should request lists from each Reserve Bank having jurisdiction over applications in which they may be interested. Since the lists are prepared as a courtesy by the Reserve Bank, and are not intended to replace any formal notice required by statute or regulation, the Reserve Banks and the Board do not assume responsibility for errors or omissions. In addition, the weekly lists prepared by Reserve Banks include certain applications by bank holding companies for nonbank acquisitions filed with the Reserve Bank.

(4) With respect to applications by bank holding companies to engage *de novo* in nonbank activities or make acquisitions of nonbank firms, the Board publishes notice of most of these applications in the *Federal Register* when the applications are filed. Notice of certain small acquisitions may be published in a newspaper of general circulation in the area(s) to be served. While applications for nonbanking activities are not covered by the provisions of the Community Reinvestment Act or the notice provisions of § 262.3 of the Board's Rules of Procedure, the provisions of this Statement apply to such applications.

(b) *Timeliness of Comments.*

(1) All comments must be actually received by the Board or the Reserve Bank on or before the last date of the comment period specified in the notice. Where more than one notice is published with respect to an application, comments must be received on or before the last date of the latest comment period. The Board's Rules allow it to disregard comments received after the comment period expires. In particular, § 262.3(e) of the Board's Rules of Procedure states that the Board will not consider comments on an application that are not received on or before the expiration of the comment period. Thus, a commenter who fails to comment on an application within the specified comment period (or any extension) may be precluded from participating in the consideration of the application.

(2) In cases where a commenter for good cause is unable to send its comment within the specified comment period, § 265.2(a)(10) of the Board's Rules Regarding Delegation of Authority

(12 CFR 265.2(a)(10)) allows the Secretary of the Board to grant requests for an extension of the period. Under this provision, upon receipt of a request received on or before the expiration of the comment period, the Secretary may grant a brief extension upon clear demonstration of hardship or other meritorious reason for seeking additional time.

(c) *Private Meetings.* When a timely protest to approval of an application is received, the Reserve Bank may arrange a meeting between the applicant and the protestant to clarify and narrow the issues, and to provide a forum for the resolution of differences between the protestant and the applicant. If the Reserve Bank decides that a private meeting would be appropriate, the Reserve Bank will arrange a private meeting soon after the receipt of a protest and the applicant's response, if any, to the protest. In scheduling the meeting, the Reserve Bank will consider convenience to the parties with respect to the time and place of the meeting. A decision to hold a private meeting will not preclude the Reserve Bank or the Board from holding a public meeting or other proceeding if it is deemed appropriate.

(d) *Public Meetings.* The Board's General Counsel (in consultation with the Reserve Bank and the directors of other interested divisions of the Board) may order that a public meeting or other proceeding be held if requested by the applicant or a protestant who files a timely protest, or if such a proceeding appears appropriate. In most instances, the determination to order a public meeting will be made after a private meeting has been held; however, where appropriate a public meeting may be convened immediately after receipt of the protest and the applicant's response, if any. Additional information may be requested prior to making a determination to convene a public meeting. In these cases, a determination will be made within ten days from the date all relevant information is received. The public meeting will be scheduled as soon as possible, but in no event, later than 30 days after the decision to hold the proceeding is made. The purpose of the public meeting will be to elicit

information, to clarify factual issues related to the application and to provide an opportunity for interested individuals to provide testimony. The Board has adopted the following guidelines to be used for convening public meetings, although specific provisions may be altered by the General Counsel if circumstances warrant.

(1) *Requesting a Public Meeting.* A meeting may be requested by a person or an organization objecting to the application during the comment period, and by the applicant during the period within which it must respond to comments. Such a request must be timely and in writing.

(i) A protest does not have to be filed in a legal brief or other format in order for a public meeting to be granted. The Community Affairs Officer at the Reserve Bank will be available to assist any member of the public regarding the types of information generally included in protests; the format generally used by protestants; and any other specific questions about the procedures of the Federal Reserve System regarding protested applications.

(ii) In general, a protest should identify the protestant, state the basis for objection to approval of the application, and provide available written evidence to support the objection. Objections to approval of an application must relate to the factors that the Board is authorized to consider in acting on an application. Generally, these factors relate to the financial and managerial resources of the companies and banks involved, the effects of the proposal on competition, and the convenience and needs of the communities to be served by the companies and banks involved. If a public meeting is requested, the protest should indicate that there are members of the public who wish to speak on the issues in a public forum.

(iii) The protest will be transmitted by the Reserve Bank to the applicant, and the applicant will generally be allowed eight business days to respond in writing to the protest.

(2) *Arranging the Public Meeting.* Public meetings will be arranged and presided over by a representative of the Federal Reserve System ("Presiding

Officer"). In determining the time and place for the public meeting, such factors as convenience to the parties, the number of people expected to attend the meeting, access to public transportation and possible after-hour security problems will be taken into account.

(3) *Conducting the Public Meeting.* Prior to the meeting, all necessary steps will be taken to ensure that the meeting is conducted appropriately, including scheduling of witnesses, submission of written materials and other arrangements. In conducting the public meeting the Presiding Officer will have the authority and discretion to ensure that the meeting proceeds in a fair and orderly manner. Generally, the public meeting will consist of opening and closing remarks by the Presiding Officer, a presentation by the protestant and a presentation by the applicant. An official transcript will be made of the proceedings and entered into the record. The conclusion of the public meeting normally marks the close of the public portion of the record on the application.

(4) *Notification of Board decision on the application.* After a decision is made on the application, and the applicant is notified of the decision, staff will notify the protestant by telephone. This notification will be confirmed promptly in writing. As set forth in § 262.3(k) of the Board's Rules of Procedure (12 CFR 262.3(k)) or § 265.3 of the Board's Rules Regarding Delegation of Authority (12 CFR 265.3), a party to the application may request reconsideration of the Board's order, or review of the Reserve Bank's decision.

PART 265—[AMENDED]

2. Pursuant to its authority under section 11(k) of the Federal Reserve Act (12 U.S.C. 248(k)) and section 5(b) of the Bank Holding Company Act (12 U.S.C. 1844(b)) the Board of Governors is amending 12 CFR Part 265 (Rules Regarding Delegation of Authority) effective January 31, 1984 by revising (b)(10) of § 265.2 to read as follows:

§ 265.2 Specific functions delegated to Board employees and to Federal Reserve Banks.

* * * * *
(b) * * *

(10) Pursuant to the provisions of section 265.25 of this chapter (Rules of Procedure) after consultation with the directors of other interested Divisions of the Board and the appropriate Reserve Bank, to order, under such terms and conditions as the General Counsel deems appropriate, that a public meeting or other proceeding be held in connection with any application or notice filed with the Board and to designate the presiding officer in any such proceeding.

* * * * *

3. Pursuant to its authority under sections 3(a), 4(c)(8) and 5(b) of the Bank Holding Company Act, 12 U.S.C. 1842(a), 1843(c)(8) and 1844(b); and section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) and sections 9 and 11(i) of the Federal Reserve Act (12 U.S.C. 321 and 248(i)), the Board is amending 12 CFR Part 262 (Rules of Procedure) effective January 31, 1984.

PART 262—RULES OF PROCEDURE

In Part 262, § 262.3 is amended by revising the first five sentences in paragraph (e) as follows:

§ 262.3 Applications.

* * * * *

(e) * * * The Board is only required to consider a comment or a request for a hearing with respect to an application or notice if it is in writing and received by the Secretary of the Board or the appropriate Federal Reserve Bank on or before the latest date prescribed in any notice with respect to the application or notice, or where no such date is prescribed, on or before the 30th day after the date notice is first published. Similarly, the Board will consider comments on an application from the Attorney General or a banking supervisory authority to which notification of receipt of an application has been given, only if such comment is received by the Secretary of the Board within 30 days of the date of the letter giving such notification. Any comment on an application or notice that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the

evidence that would be presented at a hearing. In every case where a timely comment or request for hearing is received as provided herein, a copy of such comment or request shall be forwarded promptly to the applicant for

its response. The Board will consider the applicant's response only if it is in writing and sent to the Secretary of the Board on or before eight business days after the date of the letter by which it is forwarded to the applicant. * * *

By order of the Board of Governors,
effective January 31, 1984.

William W. Wiles,
Secretary of the Board.

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