

BRANCH APPLICATIONS

OVERVIEW

Bank branching in North Carolina has been permissible since the first bank charters were granted by the State Legislature early in the 19th century. The Bank of Cape Fear, in Wilmington, was the first North Carolina bank to exercise this authority, establishing a branch in Fayetteville in 1804.

In 1814, the Legislature specifically empowered directors of banks to establish “branches or agencies” at any location they saw fit.

Both state chartered and, since passage by Congress of the McFadden Act in 1927, National banks, take their branching authority from state law.

NCGS 53-62 provides specific statutory authority for bank branching in North Carolina, with implementing regulations found in Title 4, Chapter 3, Section .0200 of the North Carolina Administrative Code. Nationwide interstate bank branching is permitted on a reciprocal basis by Article 17B of Chapter 53 of the General Statutes, and is applied in tandem with G.S. 53-62 and its implementing rules in the Administrative Code.

A branch is defined by NCGS 53-1(1a) as “...an office of any bank in which deposits are received, monies are paid, and loans are made. Any of the functions or services authorized to be engaged in by a bank may be carried out in a branch.”

In 1989, an amendment to NCGS 53-62 created a new category of branch known as a “limited service facility (LSF).” As defined by NCGS 53-1(3a), an LSF is “...an office of a bank in which deposits are received, monies are paid, or other duties and functions of a teller are performed...”.

An LSF is very similar to its statutory predecessor, the “teller’s window,” and allows for the creation of an office with many of the powers of a branch, with the exception that an LSF can neither make nor disburse the proceeds of loans. Despite this prohibition, loan applications must be available to customers at an LSF. Initially LSF’s were exempt from the minimum hours of operation required of banks and full-service branches pursuant to NCGS 53-77.1A, allowing for their operation any number of days of the week, and for any number of hours, as bank management wishes. In 1995, the Legislature extended this same flexibility of hours to all bank offices, at the discretion of each bank’s Board of Directors.

Unlike branches, LSF’s can be discontinued upon 30 days advance notice to the Commissioner of Banks, without formal customer notification requirements. However, if an LSF has operated as a branch at any time during the five years preceding its proposed closing, the normal closing requirements of NCGS 53-62(e) do apply. This closing flexibility, however, was made largely moot by the passage by Congress in 1991 of the Federal Deposit Insurance Corporation Improvement Act (“FDICIA”). Under FDICIA § 228, an insured depository institution must provide at least 90 days advance notice of a branch closing to customers of the branch, and must post notice of the closing in a conspicuous location in the branch at least 30 days in advance of closing. Since the Federal Deposit Insurance Corporation (“FDIC”) makes no legal distinction

between full-service branches and North Carolina's limited service facilities, the 90-day notice procedure applies to LSFs.

As a result of the Legislature's extension of full discretionary days and hours of operation and the Federal 90-day notice of closing requirement, LSFs have lost much of their advantage, and are largely obsolete except that they may not make loans. Arguably, a full-service branch must make loans under North Carolina law, and LSFs offer banks a vehicle for operation of deposit-gathering facilities without making loans.

All state bank branches approved and operating as teller's windows prior to, July 1, 1989, are now considered LSFs.

Upon application to and approval by the Commissioner of Banks, banks may convert branches to LSFs or LSFs to branches.

BRANCH APPLICATIONS

Three types of branch application are processed by this agency, the application to **establish a branch**, application to **relocate a branch**, and application to **close or consolidate a branch**.

Branches may be intrastate or interstate, the former being governed by G.S. 53-62 and the latter being governed by both G.S. 53-62 and Article 17B of the General Statutes.

New branch applications

A bank may establish a branch either by starting a completely new branch ("*de novo*"), or by purchasing the assets and liabilities of the existing branch of another depository institution (purchase and assumption, or "P&A"). A *de novo* branch establishes an entirely new branch "franchise," while a P&A merely transfers an existing franchise to a different bank. In a situation where a bank buys the building used as a branch by another depository institution, but does not acquire its deposits, the acquiring bank must file a *de novo* branch application. Where a bank acquires only the loans and/or deposits of the existing branch of another depository institution, but services those loans out of its own existing branch, no branch application is required to be filed with the Commissioner.

Under the provisions of NCGS 53-62, a State bank must obtain prior approval of the Commissioner of Banks to establish a branch or LSF. The two basic statutory tests that must be met for such approval are that "...the establishment of such branch or limited service facility will meet the needs and promote the convenience of the community to be served by the bank..." and "...that the probable volume of business and reasonable public demand in such community are sufficient to assure and maintain the solvency of said branch or limited service facility and of the existing bank or banks in said community."

In evaluating branch applications, the statute directs the Commissioner to consider, although **not by way of limitation**, such factors as the financial history and condition of the applicant bank, the adequacy of its capital structure, its future earnings prospects, and the general character of its management.

The first step in establishing a branch is submission of a branch application to the Commissioner of Banks, together with supporting materials. Management of banks in operation less than three years, or banks under supervisory enforcement actions or otherwise presenting supervisory concerns, should contact a representative of the Commissioner of Banks to discuss the branch proposal, and the prospects and possible conditions for regulatory approval of an application.

A branch application should be submitted to the bank's federal regulator at the same time as application is made to the Commissioner of Banks. In the case of state nonmember banks, the application goes to the FDIC, and in the case of Fed member banks, to the appropriate Federal Reserve Bank. While the Commissioner of Banks, FDIC and FRB share information and cooperate in processing such applications, **obtaining FDIC or FRB approval is the applicant bank's responsibility**. The Commissioner's approval is always conditioned upon the applicant bank obtaining prior approval of all other supervisory authorities having jurisdiction in the matter.

All correspondence with the Commissioner of Banks with respect to an application should be copied by applicant to the FDIC or FRB, and *vice versa*.

An applicant must publish notice of the filing of a branch application in a format prescribed by the Commissioner of Banks in a newspaper published in the city, town or county in which the branch is to be located. (**See "Publication format" below**). This notice describes the location of the proposed branch, and solicits public comment to the Commissioner for a 14-day comment period. Any interested party may respond to the notice with written comments during the comment period. No decision on the application can be made by the Commissioner until expiration of the 14-day period. Any interested party who makes written request will be entitled to receive written notice of the Commissioner's decision with respect to the application. A review of the Commissioner's decision by the State Banking Commission may be requested in writing by the applicant or any interested person, provided they make written request within 14 days after the Commissioner's decision. Absent any request for review, the Commissioner's decision becomes final at law 14 days after its issuance.

Form of application

Branch applications have been greatly simplified over the past several years, and in most instances require the applicant bank to provide only minimal information. However, the statutory requirements for approval must still be satisfied by the applicant bank and determined by the Commissioner of Banks. The Commissioner of Banks will accept any of several different application forms. The most commonly used form is the *FDIC Connect* electronic branch application, used for **de novo branch establishment**. State nonmember banks should contact their FDIC case manager to discuss this system. By filing this application electronically with the FDIC, a copy is automatically provided electronically to the Office of the Commissioner of

Banks.

The Commissioner will also accept a letter application in which the applicant bank gives notice of the intent to establish a branch and provides the street address (or orientation by distance and direction from an intersection, if no street address has been assigned to the location), the name they intend to use for the branch, a brief description of the Primary Service Area (“PSA”) the branch will serve, whether the branch will be in quarters leased or owned, and information about their notice of branch filing publication. If the branch notice has already been published and the applicant bank has obtained the tearsheet and affidavit of publication, these should be provided with the application. If the tearsheet and affidavit of publication are not submitted with the application, they should be obtained from the newspaper and forwarded to the Commissioner as soon as possible.

If a branch is to be **established by P&A**, both the FDIC and FRB require filing of a bank merger application. In order to avoid requiring banks to prepare and submit two different application forms for the same transaction, the Commissioner requires the applicant bank to submit a conformed (signed) copy of the same merger application filed with the FDIC or FRB. Otherwise, the processing considerations, publication requirements and comment period are the same as for *de novo* branch applications.

Branch facilities

Banks should avoid making irrevocable commitments for the purchase or lease of land and buildings for branches until such time as branch approval has been obtained. While a permanent site must be identified for an application to be considered and approved, a commitment letter from the owner or lessor of the property will suffice for branch application purposes. Any offer to purchase or lease should be conditioned upon the applicant bank obtaining regulatory approvals within a reasonable period of time.

Branch applications will usually not be approved where the resultant investment by the bank in fixed assets of the proposed branch would result in a total fixed asset investment exceeding 50% of the bank’s unimpaired capital. (Unimpaired capital is defined at G.S. 53-1(9)). This prohibition does not extend to leased quarters and furniture and equipment where the leases are not eligible for capitalization under GAAP. If the bank lends the lessor the money to construct or acquire the quarters or furniture and equipment to be leased by the bank, the loans funding such construction or acquisition costs are considered assets indirectly representing investment in fixed assets, and the 50% limit will apply.

In 2007, the Commissioner elected to rescind the long-standing prohibition against **mobile branching**, often referred to as “bookmobile branches.” Applications for such branches will need to provide the Commissioner with information regarding the geographic market the mobile branch will serve, whether the vehicle will make regularly scheduled stops at designated locations on a prescribed route, or will serve multiple markets by making periodic visits to designated locations within those markets. As with any other branch applications, the Applicant bank will need to apply to their federal regulator, either the FRB for Fed member banks, or the FDIC for nonmember banks. The Applicant bank must also be aware of and comply with FDIC

requirements pertaining to minimum security provisions for mobile branch facilities. See Part 326 of the FDIC Rules and Regulations.

Temporary branch locations

In some circumstances, a bank may find it desirable to apply for a branch using temporary quarters. Often this is because the permanent quarters are under construction or renovation and will not be ready for occupancy as early as management wishes. Provided the bank has identified and obtained a commitment to purchase or lease the permanent quarters, and further provided that a suitable facility can be obtained near the planned permanent quarters, the bank may apply for authority to establish a branch at the permanent site, and for authority to operate that branch in temporary quarters pending readiness of the permanent quarters for occupancy, in the same application.

In such cases, the public notice for the branch application must identify both the permanent location and the temporary location by street address or orientation to an intersection or landmark.

Temporary quarters may only be applied for in connection with identified permanent quarters. In other words, a bank may not apply to operate in temporary quarters pending the future identification of suitable quarters for a permanent site. Where the applicant bank considers it important to establish a branch in a particular market, but has been unable to find an optimal permanent site, the appropriate solution may be to apply for a “compromise” site in which to establish the branch until more suitable facilities can be identified. In such a case, the bank should apply for the “temporary” site as though it will be permanent, and later apply for authority to relocate the branch when a desirable permanent location is found. (Refer to **“Branch Relocation Applications”** subsection below.)

Interstate branch applications

North Carolina State-chartered banks may establish branches in other states, either as *de novo* establishments or by P&A, provided the state into which the North Carolina bank seeks to branch (“host state”) permits interstate branching. The processing of such applications is the same as for intrastate branch establishment, except that the North Carolina bank must also provide the host state banking authority a copy of the application they file with their Federal regulator at the same time they file with that Federal regulator, and a check for the host state’s branch application fee, if any.

Conversely, state banks from other states may branch into North Carolina, provided their home state offers reciprocity with North Carolina banks, i.e., that they allow North Carolina banks to branch into their state. If their home state imposes any limitations or conditions on North Carolina banks branching into their state, then the Commissioner is required to impose similar

limitations and restrictions on branching of their banks into North Carolina. (*G.S. 53-224.14, et seq.*)

Out of state banks should (1) file a branch application with their home state regulator, (2) provide the North Carolina Commissioner of Banks with a copy of the application they file with their federal regulator, (3) comply with the provisions of Article 15 of the North Carolina Business Corporation Act (register with Secretary of State), and provide the North Carolina Commissioner of Banks with written affirmation that, so long as they maintain a branch in North Carolina, they will comply with all applicable North Carolina laws.

Application fees

There is no filing fee for a branch application.

Application processing

Processing of the application consists of a review of the application and supporting documentation for completeness and accuracy. However, new banks or banks presenting financial, managerial or other unusual risks known to the Commissioner of Banks may be required to provide additional information in support of the basic application.

All applications will be viewed in light of the applicant bank's overall condition, as determined through periodic reports of examination, offsite analysis, and other information available to the Commissioner, together with any additional information required in support of the specific application. The impact of the proposed branch on the overall financial and operational condition of the bank is assessed, with particular emphasis given to the adequacy of the bank's capital to support both present growth rates and the added growth resulting from the branch, as well as to absorb expected operating losses from the early years of operation of the branch. The ability and depth of management, the bank's compliance with state and federal banking law and regulations, and the reasonableness of projections as to deposit growth and earnings performance of the branch (if required), are also considered.

Economic, demographic and competitive characteristics of the proposed branch's PSA are important considerations, as they bear directly upon the statutory requirements as to probable volume of business of both the proposed branch and existing banks in the PSA and the public need and convenience. The probable impact of the branch on existing state banks in the proposed branch's PSA is considered, and in a case where the additional competition from a new branch entrant in a market may endanger the solvency of an existing State bank, the Commissioner has discretionary authority to deny the new branch application.

Branch application denials

Applications for branches will generally not be approved for banks considered by the Commissioner of Banks to have insufficient capital or other significant financial difficulties, major operational deficiencies, inadequate management, pending or unresolved regulatory enforcement actions, or other material problems considered sufficiently serious to warrant denial. Where the Commissioner considers such action appropriate, conditions of approval may be imposed. For example, approval of a branch may be conditioned upon increasing capital to a level acceptable to the Commissioner.

If, in the opinion of the Commissioner of Banks, there is insufficient business volume in a proposed branch's PSA to provide reasonable assurance of the branch's attaining profitable operation in a reasonable period of time, or if establishment of the proposed branch is considered likely to impair the solvency of an existing bank, such as a new or financially troubled bank, the application may be denied.

Decisions on branch applications

Upon completion of processing, the Commissioner of Banks will prepare an order approving or denying the application. A copy of the order will be furnished to the applicant bank, to the bank's federal regulator and, in the case of branches outside the State of North Carolina, to the state regulator of the host state. In addition, any interested party making the required written request will be furnished a copy of this order. If no hearing is requested within 14 days, the order becomes final at law. If a hearing is requested, it will generally be scheduled for the next regularly scheduled meeting of the State Banking Commission, which meets every other month.

After receipt of approval by the Commissioner and by the FDIC or FRB, applicant bank has one year in which to open the branch. This period may be extended by the Commissioner of Banks for cause, provided prior written approval for the extension is obtained.

Prior to the proposed opening date, applicant must provide written notification of the date of opening to the Commissioner and the appropriate Federal supervisory authority, so their respective databases may be brought current and branch certificates issued. The letter to the Commissioner should also certify that any contingencies or conditions of approval have been satisfied.

Timing

Under normal circumstances, the Commissioner of Banks will process and decide upon a branch application within 14 days of receipt, provided the 14-day comment period provided with the public notice has expired. However, delays may result from incomplete applications, failure to properly publish notice of filing of the application or promptly furnish the tearsheet and affidavit of publication, material errors in preparation of the application or supporting materials, failure by the applicant to provide additional information requested by the Commissioner on a timely basis, or substantive changes in the application subsequent to filing, such as location changes. FDIC

approval may be delayed for the above reasons, as well as delays in obtaining clearance from the State Historical Preservation Office.

Limited review procedures:

branch As previously discussed, branch application forms and procedures have been greatly simplified and streamlined in recent years, largely as a result of improvements in reporting, communications and offsite analytical tools. A application from a profitable, well-capitalized bank in operation more than three years, with a CAMELS rating of “1” or “2” and not believed to present any extraordinary supervisory concerns, will be processed and approved with only a limited review to assure compliance with legal requirements.

However, the Commissioner continues to be responsible for determining that applications satisfy safety and soundness and other statutory requirements. The examiner processing a branch application is responsible for determining whether the applicant bank’s condition, trends, or other circumstances require a more comprehensive review of the application. On the basis of such a determination, any or all of the comprehensive review procedures listed below may be applied to processing the application, in the discretion of the Commissioner’s staff.

Publication format

The “Notice of Branch Opening” is to be published one time in a newspaper of general circulation in the community in which the branch is to be located. A weekly newspaper may be used where no daily paper is published, provided it is generally circulated in that community.

Publication may be done prior to filing of the application, provided it is not run too far in advance of the actual filing, as the comment period will commence the date the ad notice is published. If advance publication is done, the tearsheet and affidavit of publication may be submitted with the application. Otherwise, it may be submitted subsequent to filing. No branch application may be approved until publication of notice and expiration of the comment period.

If temporary quarters are to be used, the public notice must include reference to this fact, and provide the physical address of both the temporary quarters and permanent quarters.

The following format should be used to publish notice of filing of an application in accordance with 4NCAC 3C .0201(2):

Notice of Branch Opening

An application has been filed by ___(1)___, ___(2)___, ___(3)___ County, North Carolina, for authority to establish a branch at ___(4)___, ___(5)___, ___(6)___ County, ___(7)___, to be known as the _____(8)_____ Branch, to be processed in accordance with G.S. 53-62 and Rule 4 NCAC 3C .0201 of the North Carolina Administrative Code.

The public is invited to submit written comments on this application to the Commissioner of Banks, 4309 Mail Service Center, Raleigh, North Carolina 27699-4309. The comment period for this application will end 14 days from the date of this publication. The Commissioner of Banks will consider written comments received within the comment period.

Commissioner of Banks

- (1) Name of applicant bank.
- (2) City in which applicant's Main Office is located.
- (3) County in which applicant's Main Office is located.
- (4) Physical address of proposed branch, or orientation by distance and direction from an intersection or other major, readily recognizable landmark, where no street address has been assigned, such as "at the southwest quadrant of the intersection of Main Street and Maple Avenue."
- (5) Name of city or town in which branch is to be located.
- (6) Name of county in which branch is to be located.
- (7) Name of state in which branch is to be located. Note: If the state is not North Carolina, the last line of the first paragraph, after the name of the proposed branch, should be "to be processed in accordance with G.S. 53-62 and Article 17B of the General Statutes and Title 4, Chapter 3, Rule 3C .0201 of the North Carolina Administrative Code."
- (8) Name by which applicant bank wants the proposed branch to be known.

Branch relocation applications

A bank may relocate its Main Office or one or more of its branches, subject to prior approval of the Commissioner of Banks, in accordance with the provisions of 4 NCAC 3C .0301. A branch relocation is any change of the physical location of a branch from one site to another. A Main Office relocation may include either a physical change of location of the existing Main Office, or a redesignation of another site, typically a branch, as the bank's Main Office. A Main Office relocation may relocate within its existing community, or under certain circumstances, may relocate to another community. If a bank wishes to relocate its Main Office to another location, but retain the original Main Office site as an authorized branch, an application to relocate the Main Office, AND to establish a branch at the former Main Office site following the relocation, is required, and publication requirements for both transactions must be satisfied. This can be done in a single combined publication.

A branch relocation is generally limited to a move within the same community, and is subject to distance limitations based on the market the branch was established to serve. Procedures in this manual refer to the relocation of a bank's branches.

Branch relocations may only be effected when, in the opinion of the Commissioner, the change does not result in a significant change on the primary service area of the branch. (The primary service area refers to that area from which a branch derives approximately 75% of its business.) This usually means the new location is within the "same vicinity" as the existing location. Typically, a relocation within one mile has been presumed to satisfy this requirement. However, the Commissioner may permit longer relocations where market conditions suggest such a relocation will not result in material inconvenience to the banking public. For example, branch relocations within less-congested rural areas where people are accustomed to traveling greater distances for services, may be permitted over greater distances than in more urban markets. Relocations beyond two miles will only rarely be approved.

If the Commissioner decides the distance of the proposed move is too great to treat as a relocation, he may require the bank to file a closing notice for the existing branch, and a *de novo* branch application for the new location.

As with the establishment of a new branch, an applicant bank should exercise caution in entering into agreements to purchase or lease property for relocation of existing branches, and should generally avoid commitments that are not conditioned upon obtaining necessary supervisory approvals within a reasonable period of time.

The branch relocation application may be handled through the FDIC *Connect* online system, for nonmember banks, or by letter application for Fed member banks. The Commissioner of Banks will accept either the electronic FDIC filing or a letter filing. If a letter application is used, the letter should clearly identify the branch by name and physical address, the reason for the relocation, the street address or physical orientation of the new location, and the distance and direction of the new site from the current branch location.

Relocation application fees

There is no filing fee for a branch relocation application.

Decisions on branch relocation applications

Upon completion of processing, the Commissioner of Banks will prepare an order approving or denying the application. A copy of the order will be furnished to the applicant bank, to the bank's federal regulator and, in the case of branches outside the State of North Carolina, to the state regulator of the host state. In addition, any interested party making the required written request will be furnished a copy of this order. If no hearing is requested within 14 days, the order becomes final at law. If a hearing is requested, it will generally be scheduled for the next regularly scheduled meeting of the State Banking Commission, which meets every other month.

After receipt of approval by the Commissioner and by the FDIC or FRB, applicant bank has one year in which to relocate the branch. This period may be extended by the Commissioner of Banks for cause, provided prior written approval for the extension is obtained.

Prior to the proposed relocation date, applicant must provide written notification of the effective date of relocation to the Commissioner and the appropriate Federal supervisory authority, so their respective databases may be brought current. In addition, the bank must return the branch certificate to the Commissioner for reissuance to reflect the new address. The letter to the Commissioner should also certify that any contingencies or conditions of approval have been satisfied.

Timing

Branch relocation applications will normally be processed within 14-days following receipt of a satisfactory and complete application, including tearsheet and affidavit of publication, provided the 14-day comment period has expired. As with branch establishment applications, delays may result from incorrect or incomplete applications, failure to provide additional information that might be required, failure to properly publish notice of filing of the application or to provide the necessary tearsheet and affidavit of publication.

Publication format

The “Notice of Branch Relocation” is to be published one time in a newspaper of general circulation in the community in which the branch is located. A weekly newspaper may be used where no daily paper is published, provided it is generally circulated in that community.

Publication may be done prior to filing of the application, provided it is not run too far in advance of the actual filing, as the comment period will commence the date the ad notice is published. If advance publication is done, the tearsheet and affidavit of publication may be submitted with the application. Otherwise, it may be submitted subsequent to filing. No branch relocation application may be approved until publication of notice and expiration of the comment period.

If temporary quarters are to be used, the public notice must include reference to this fact, and provide the physical address of both the temporary quarters and permanent quarters.

The following format should be used to publish notice of filing of an application in accordance with 4NCAC 3C .0201(2):

Notice of Branch Relocation

An application has been filed by ___(1)___, ___(2)___, ___(3)___ County, North Carolina, for authority to relocate its ___(4)___ Branch, ___(5)___, ___(6)___, ___(7)___ County, ___(8)___, to ___(9)___, ___(10)___, ___(11)___, ___(12)___, to be processed in accordance with G.S. 53-62 and Rule 4 NCAC 3C .0301 of the North Carolina Administrative Code.

The public is invited to submit written comments on this application to the Commissioner of Banks, 4309 Mail Service Center, Raleigh, North Carolina 27699-4309. The comment period for this application will end 14 days from the date of this publication. The Commissioner of Banks will consider written comments received within the comment period.

Commissioner of Banks

- (1) Name of applicant bank.
- (2) City in which applicant's Main Office is located.
- (3) County in which applicant's Main Office is located.
- (4) Name of branch to be relocated.
- (5) Current street address of branch to be relocated.
- (6) Name of city or town in which branch is located.
- (7) Name of county in which branch is located.
- (8) Name of state in which branch is located.
- (9) Street address or physical location to which the branch is to be relocated.\
- (10) City or town in which the branch will be relocated.
- (11) County in which the branch will be relocated.
- (12) State in which the branch will be relocated.

Branch closing applications

No State bank branch may be closed without the prior written approval of the Commissioner of Banks, as provided in G.S. 53-62(e). There are two forms of closing, and an emergency closing procedure for temporary closings.

Consolidation closings

A branch may be consolidated into the operation of another existing branch of the bank, provided the branch into which the closing branch will be consolidated is within the "same vicinity" as the closing branch. As with branch relocations, a consolidation into a branch within one mile of the closing branch is presumed to be in the same vicinity, but longer distances may be considered on a case by case basis, depending upon the character of the market.

If a closing is considered by the Commissioner to satisfy the conditions for a consolidation, the consolidation is not subject to the more stringent requirements for approval of closings, such as 90-day advance notice to the Commissioner and to customers of the branch. However, the determination whether a branch is eligible for consolidation treatment must be made by the

Commissioner upon proper request by, and sufficient information from, the applicant bank. As a result, applicant banks are advised to plan for consolidations as though they are closings, i.e., they should follow the instructions to apply for a branch closing, including allowing sufficient time for closing notices. If the bank believes the closing is eligible for consolidation treatment, they should request this in their letter closing application to the Commissioner. If the information provided in the letter or otherwise available to the Commissioner supports a consolidation, a letter approving the consolidation, effective upon receipt, will be promptly mailed back to the applicant bank.

Branch closings

A branch closing occurs when a bank chooses to discontinue banking operations at a branch for other than emergency reasons, or when a bank sells a branch to another bank AND the acquiring bank does not intend to continue to operate that branch.

To obtain authority to close a branch, a bank must first obtain permission from the Commissioner of Banks by submitting a letter application to the Commissioner. The letter must be accompanied by a resolution of the bank's board of directors, authorizing the closing, and must include the name and physical address of the branch to be closed, the reason(s) for closing, and supporting information. This letter must be provided to (received by) the Commissioner not less than 90 days prior to the proposed closing date.

In addition to notice to the Commissioner, the bank must (1) provide written notification to customers of the branch not less than 90 days in advance of the proposed closing date, either as a separate letter mailed to each customer, or in the form of a "statement stuffer" notification included with one or more regular statements provided to each customer no less than 90 days in advance of the proposed closing date, and (2) must conspicuously post notice of the proposed closing on the premises of the branch to be closed not less than 30 days in advance of the proposed closing.

Please note there are no requirements to publish notice of filing of a branch closing application beyond notification of the Commissioner, the appropriate federal regulator, and customers of the branch to be closed.

Closing/consolidation application fees

There is no filing fee for closing or consolidation applications.

Decisions

Upon receipt of a branch closing request from an applicant bank, the Commissioner will promptly make a determination whether the proposed closing can be treated as a consolidation. If so, a letter will be mailed to the bank giving notice of this determination, and this approval is effective immediately, subject to the bank obtaining all other requisite approvals.

If the branch closing does not qualify as a consolidation, the Commissioner will issue a letter of

conditional approval of the closing effective 90 days from receipt of the letter application, by which the applicant bank will be instructed to notify the Commissioner of the date the branch was closed, the date and means by which notice was provided to customers of the branch, and the date notice was posted on the branch premises.

Timing

The timing of filing of branch closing applications is almost entirely a function of the 90-day advance notice requirements to the Commissioner, the federal regulatory authorities and customers of the branch. Even where consolidation treatment is to be requested, it is highly recommended the bank give at least 90 days notice in case the Commissioner finds consolidation treatment is not appropriate.

Emergency closings

Under certain circumstances, a branch may be closed for reasons considered to constitute an emergency, pursuant to N.C.G.S. 53-77.3. An “emergency” is defined as “any condition or occurrence, which may interfere physically with the conduct of normal business operations at one or more or all of the offices of a bank, or which poses an imminent threat to the safety or security of persons or property or both.” The statute goes on to provide examples of such emergencies. In addition to the examples cited, the Commissioner of Banks has permitted temporary closing of branches under this statute during reconstruction or renovation of branches, as well as during remediation for environmental hazards, such as asbestos removal and mold eradication.

In the event a situation exists that might qualify for such treatment, bank management should contact the Director of Bank Applications or other appropriate staff at the Office of the Commissioner of Banks to determine whether a temporary closing is permissible under this statute. If so, immediate permission will be granted, provided a written request be sent to the Commissioner of Banks as soon as possible, including the nature of the emergency, the expected duration, and where customers may conduct their business until the branch reopens. Upon reopening the branch, the bank must give written notice to the Commissioner.

Loan production offices

Loan production offices are permissible in North Carolina, and may be established by banks domiciled in this state or in other states (“nonresident banks”). A loan production office (“LPO”) is not a branch, provided it operates within the framework of applicable State and federal constraints.

Resident banks

A **North Carolina bank** may establish a loan production office (“LPO”) by giving prior written notice to the Commissioner of Banks of the intent to establish the office, the street address of the office, the name of the bank official who will be responsible for operation of the LPO, and a brief but complete description of the functions to be carried out at the LPO. The latter is particularly important, as it will enable the Commissioner to determine whether those functions are appropriate for an LPO, or might require the filing of a branch application. The restrictions over permissible LPO activities applicable to nonresident banks operating LPOs in North Carolina, detailed below, also apply to resident banks, and there are similar federal restrictions as well. Bank management should contact their federal supervisory authority for guidance.

Nonresident banks

Establishment of an LPO by a nonresident bank is governed by 4 NCAC 3C .1702. **Permissible activities** include the solicitation of loans, assembly of credit information, property inspections and appraisals, the completion and taking of loan applications, and the completion of paperwork preparatory to the making of loans.

LPOs are **specifically prohibited** from taking or soliciting deposits, and from approving loans or disbursing their proceeds.

To establish an LPO in North Carolina, a nonresident bank must register with the Commissioner of Banks, and may be required to obtain a certificate of authority to do business in North Carolina from the Secretary of State. The form for registration may be obtained from Daniel E. Garner, Esq., Executive Legal Specialist, at (919) 733-3016, or dgarner@nccob.org, or his assistant, Mr. Lonnie Christopher, at (919) 715-7438, or lchristopher@nccob.org.

LPO fees

None.

APPLICATIONS SECTION

Forms, Documents and Information

All applications not submitted electronically should be mailed to the following address:

Office of the Commissioner of Banks
4309 Mail Service Center
Raleigh, NC 27699-4309

Forms and documents not available on the Commissioner's website may be requested by telephone or e-mail from the following individuals:

Ray Grace, Director, Bank Applications: (919) 733-3016 Rgrace@nccob.org

Minda Ray, Applications Assistant: (919) 733-0580 Mray@nccob.org

Unless a specific form or document is requested, a packet including all forms and documents necessary for a branch application, together with transmittal letter and supplemental information, will be furnished in response to a request. There is no charge for these materials.

Application forms are largely self-explanatory, and in most cases provide detailed instructions. In preparing these forms, it is important that applicant carefully follow instructions and submit the application in the specified format. All questions should be fully answered. Where a question or schedule is not applicable, applicant should respond to that question with "Not Applicable," and include a reason if appropriate.

Before submission to the Commissioner of Banks, Applicant should carefully review the application to ensure that it is complete and accurate. Failure to do so may lead to unnecessary delays in processing and, in the case of significant errors or omissions, return to applicant and suspension of processing pending receipt of correction.

Questions relating to FDIC application processing should be directed to the bank's Case Manager at the Atlanta Regional Office of the FDIC, or to the appropriate officer of the Federal Reserve Bank of Richmond, Richmond, Virginia.