

Board of Governors of the Federal Reserve System

Board of Governors—Rules of Procedure

12 CFR 262; as amended effective May 10, 2021



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Appendix A—Statement Clarifying the Role of Supervisory Guidance

AUTHORITY—5 U.S.C. 552; 12 U.S.C. 248, 321, 325, 326, 483, 602, 611a, 625, 1467a, 1828(c), 1842, 1844, 1850a, 1867, 3105, 3106, 3108, 5361, 5368, 5467, and 5469.

statement of the time, place, and nature of public participation.

8-018

(b) *Public participation.* The usual method of public submission of data, views, or arguments is in writing. It is ordinarily preferable that they be sent to the Secretary of the Board, Washington, D.C. 20551, with copies to the appropriate Federal Reserve Bank. The locations of the 12 Federal Reserve Banks and the boundaries of the Federal Reserve districts are shown in the appendix to the Board's Rules of Organization. Such material will be made available for inspection and copying upon request, except as provided in section 261.6(b) of this chapter regarding availability of information.

8-016

SECTION 262.1—Basis and Scope

This part is issued pursuant to section 552 of title 5 of the United States Code,* which requires that every agency shall publish in the *Federal Register* statements of the general course and method by which its functions are channeled and determined, rules of procedure, and descriptions of forms available or the places at which forms may be obtained.

(c) *Preparation of draft and action by Board.* In the light of consideration of all relevant matter presented or ascertained, the appropriate division of the Board's staff, in collaboration with other divisions, prepares drafts of proposed regulations or amendments, and the staff submits them to the Board. The Board takes such action as it deems appropriate in the public interest. Any other documents that may be necessary to carry out any decision by the Board in the matter are usually prepared by the Legal Division, in collaboration with the other divisions of the staff.

8-017

SECTION 262.2—Procedure for Regulations

(a) *Notice.* Notices of proposed regulations of the Board of Governors of the Federal Reserve System (the "Board") or amendments thereto are published in the *Federal Register*, except as specified in paragraph (e) of this section or otherwise excepted by law. Such notices include a statement of the terms of the proposed regulations or amendments and a description of the subjects and issues involved; but the giving of such notices does not necessarily indicate the Board's final approval of any feature of any such proposal. The notices also include a reference to the authority for the proposed regulations or amendments and a

(d) *Effective dates.* Any substantive regulation or amendment thereto issued by the Board is published not less than 30 days prior to the effective date thereof, except as specified in paragraph (e) of this section or as otherwise excepted by law.

8-019

(e) *Exceptions as to notice or effective date.* In certain situations, notice and public participation with respect to proposed regulations may be impracticable, unnecessary, contrary to the public interest, or otherwise not required in the public interest, or there may be reason and good cause in the public interest why the effective date should not be deferred for 30

* See 5 U.S.C. 552(a)(1) at 8-249.

days. The reason or reasons in such cases usually are that such notice, public participation, or deferment of effective date would prevent the action from becoming effective as promptly as necessary in the public interest, would permit speculators or others to reap unfair profits or to interfere with the Board's actions taken with a view to accommodating commerce and business and with regard to their bearing upon the general credit situation of the country, would provoke other consequences contrary to the public interest, would unreasonably interfere with the Board's necessary functions with respect to management or personnel, would not aid the persons affected, or would otherwise serve no useful purpose. The following may be mentioned as some examples of situations in which advance notice or deferred effective date, or both, will ordinarily be omitted in the public interest: The review and determination of discount rates established by Federal Reserve Banks, and changes in general requirements regarding reserves of member banks, maximum interest rates on time and saving deposits, or credit for purchasing or carrying securities.

8-020

SECTION 262.3—Applications

(a) *Forms.* Any application, request, or petition (hereafter referred to as "application") for the approval, authority, determination, or permission of the Board with respect to any action for which such approval, authority, determination, or permission is required by law or regulation of the Board (including actions authorized to be taken by a Federal Reserve Bank or others on behalf of the Board pursuant to authority delegated under part 265 of this chapter) shall be submitted in accordance with the pertinent form, if any, prescribed by the Board. Copies of any such form and details regarding information to be included therein may be obtained from any Federal Reserve Bank. Any application for which no form is prescribed should be signed by the person making the application or by his duly authorized agent, should state the facts involved, the action requested, and the applicant's interest in the matter, and should indi-

cate the reasons why the application should be granted. Applications for access to, or copying of, records of the Board should be submitted as provided in section 261.9(a) of this chapter.

8-021

(b) *Notice of applications.*

(1) (i) In the case of applications—

(A) by a state member bank for the establishment of a domestic branch or other facility that would be authorized to receive deposits,

(B) to become a bank holding company (except as provided in section 225.15 of this chapter),

(C) by a bank holding company to acquire ownership or control of shares or assets of a bank, or to merge or consolidate with any other bank holding company,

(D) to become a savings and loan holding company (except as provided in section 238.14 of this chapter), and

(E) by a savings and loan holding company to acquire ownership or control of shares or assets of a savings association, or to merge or consolidate with any other savings and loan holding company, the applicant shall cause to be published a notice in the form prescribed by the Board.

(ii) The notice shall be placed in the classified advertising legal-notices section of the newspaper, and must provide an opportunity for the public to give written comment on the application to the appropriate Federal Reserve Bank for the period specified in Regulation H (12 CFR 208) in the case of applications specified in section 262.3(b)(1)(i)(A), and for at least 30 days after the date of publication in the case of applications specified in section 262.3(b)(1)(i)(B) and (C). Within seven days of publication, the applicant shall submit its application to the appropriate Reserve Bank for acceptance along with a copy of the notice. If the Reserve Bank has not accepted the application as complete within 90 days of the date of publication of the notice, the applicant may be required to republish notice of

the application. Such notice shall be published in a newspaper of general circulation in

(A) [Reserved]

(B) the community or communities in which the head office of the bank and the proposed branch or other facility (other than an electronic funds transfer facility) are located in the case of an application for the establishment of a domestic branch or other facility that would be authorized to receive deposits, other than an application incidental to an application by a bank for merger, consolidation, or acquisition of assets or assumption of liabilities,

(C) the community or communities in which the head office of the bank, the office to be closed, and the office to be opened are located in the case of an application for the relocation of a domestic branch office,

(D) the community or communities in which the head office of each of the banks to be party to the merger, consolidation, or acquisition of assets or assumption of liabilities are located in the case of an application by a bank for merger, consolidation, or acquisition of assets or assumption of liabilities,

(E) the community or communities in which the head offices of the largest subsidiary bank, if any, or an applicant and of each bank, shares of which are to be directly or indirectly acquired, are located in the case of applications under section 3 of the Bank Holding Company Act, or

(F) the community or communities in which the head offices of the largest subsidiary savings association, if any, or an applicant and of each savings association, shares of which are to be directly or indirectly acquired, are located in the case of applications under section 10 of the Home Owners' Loan Act.

8-021.1

(2) In addition to the foregoing notice, an applicant, in the case of an application to

relocate a domestic branch office or other facility that would be authorized to receive deposits, shall post in a conspicuous public place in the lobby of the office to be closed a notice containing the information specified in section 262.3(b)(1). Such notice should be posted on the date of the notice required by section 262.3(b)(1).

8-021.2

(3) In the case of an application for a merger, consolidation, or acquisition of assets or assumption of liabilities, if the acquiring, assuming, or resulting bank is to be a state member bank, the applicant shall cause to be published notice in the form prescribed by the Board. The notice shall be published in a newspaper of general circulation in the community or communities in which the head office of each of the banks to be a party to the merger, consolidation, or acquisition of assets or assumption of liabilities is located. The notice shall be published on at least three occasions at appropriate intervals. The last publication of the notice shall appear at least 30 days after the first publication. The notice must provide an opportunity for the public to give written comment on the application to the appropriate Federal Reserve Bank for at least 30 days after the date of the first publication of the notice. Within 7 days of publication of notice for the first time, the applicant shall submit its application to the appropriate Reserve Bank for acceptance, along with a copy of the notice. If the Reserve Bank has not accepted the application as complete within 90 days of the date of the first publication of the notice, the application may be required to republish notice of the application.

8-022

(c) *Filing of applications.* Any application should be sent to the Federal Reserve Bank of the District in which the head office of the parent banking organization is located, except as otherwise specified on application forms, and that Bank will forward it to the Board when appropriate; however, in the case of a foreign banking organization, as defined in section 211.23(a)(2) of this chapter, applica-

tions shall be sent to the Federal Reserve Bank of the District in which the operations of the organization's subsidiary banks are principally conducted. In the case of a foreign banking organization that is not a bank holding company but that has one or more branches, agencies, or commercial lending companies in any state of the United States or the District of Columbia, applications shall be sent to the Federal Reserve Bank of the district in which the organization's banking assets are the largest. Applications of a member bank subsidiary, however, should be filed with the Reserve Bank of the district in which the member bank is located.

(d) *Analysis by staff.* In every case, the Reserve Bank makes such investigation as may be necessary, and, except when acting pursuant to delegated authority, reports the relevant facts, with its recommendation, to the Board. In the light of consideration of all relevant matter presented or ascertained, the Board's staff prepares and submits to the Board comments on the subject.

8-023

(e) *Submission of comments and requests for hearing.* 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 thirtieth 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 com-

ment 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. At the same time it transmits its response to the Board, the applicant should transmit a copy of its response to the person or supervisory authority making such comment or requesting a hearing. Notwithstanding the foregoing, the Board may, in its sole discretion and without notifying the parties, take into consideration the substance of comments with respect to an application, (but not requests for hearing) that are not received within the time periods provided herein.

8-024

(f) *Action on applications.* The Board takes such action as it deems appropriate in the public interest. Such documents as may be necessary to carry out any decision by the Board are prepared by the Board's staff. With respect to actions taken by a Federal Reserve Bank on behalf of the Board under delegated authority, statements and necessary documents are prepared by the staff of such Federal Reserve Bank.

(g) *Notice of action.* Prompt notice is given to the applicant of the granting or denial in whole or in part of any application. In the case of a denial, except in affirming a prior denial or where the denial is self-explanatory, such notice is accompanied by a simple statement of the grounds for such action.

(h) *Action at Board's initiative.* When the Board, without receiving an application, takes action with respect to any matter as to which opportunity for hearing is not required by statute or Board regulation, similar procedure is followed, including investigations, reports, and recommendations by the Board's staff and by the Reserve Banks, where appropriate.

8-025

(i) *General procedures for bank holding company, savings and loan holding company, and merger applications.* In addition to procedures

applicable under other provisions of this part, the following procedures are applicable in connection with the Board's consideration of applications under sections 3 and 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842 and 1843), hereafter referred to as "section 3 applications" or "section 4 applications," applications under section 10(c), (e), and (o) of the Home Owners' Loan Act (12 U.S.C. 1467a), hereafter referred to as "section 10 applications," and of applications under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1823), hereafter called "merger applications." Except as otherwise indicated, the following procedures apply to all such applications.

(1) The Board issues each week a list that identifies section 3, section 4, section 10, and merger applications received and acted upon during the preceding week by the Board or the Reserve Banks pursuant to delegated authority. Notice of receipt of all section 3 section 4(c)(8), and section 10 applications acted on by the Board is published in the *Federal Register*.

8-026

(2) If a hearing is required by law or if the Board determines that a formal hearing for the purpose of taking evidence is desirable, the Board issues an order for such a hearing, and notice thereof is published in the *Federal Register*. Any such formal hearing is conducted by an administrative law judge in accordance with subparts A and B of the Board's Rules of Practice for Hearings (part 263 of this chapter).

(3) In any case in which a formal hearing is not ordered by the Board, the Board may afford the applicant and other properly interested persons (including governmental agencies) an opportunity to present views orally before the Board or its designated representative. Unless otherwise ordered by the Board, any such oral presentation is public and notice of such public proceeding is published in the *Federal Register*.

8-027

(4) Each action taken by the Board on an application is embodied in an order that indicates the votes of members of the

Board. The order either contains reasons for the Board's action (i.e., an expanded order) or is accompanied by a statement of the reasons for the Board's action. Both the order and any accompanying statement are released to the press. Each order accompanied by a statement and any order of general interest, together with a list of other orders, are published in the *Federal Reserve Bulletin*. Action by a Reserve Bank under delegated authority as provided for under part 265 of this chapter is reflected in a letter of notification to the applicant.

(5) Unless the Board shall otherwise direct, each section 3, section 4, section 10, and merger application is made available for inspection by the public except for portions thereof as to which the Board determines that nondisclosure is warranted under section 552(b) of title 5 of the United States Code.

8-028

(j) *Special procedures for certain applications.* The following types of applications require procedures exclusive of, or in addition to, those described in paragraphs (i)(1)-(5) of this section.

(1) Special rules pertaining to section 3 and merger applications follow. (i) Each order of the Board and each letter of notification by a Reserve Bank acting pursuant to delegated authority approving a section 3 application includes, pursuant to the act approved July 1, 1966 (12 U.S.C. 1849(b)), a requirement that the transaction approval shall not be consummated before the thirtieth calendar day following the date of such order. (ii) Each order of the Board approving a merger application includes, pursuant to the act approved February 21, 1966 (12 U.S.C. 1828(c)(6)), a requirement that the transaction approved shall not be consummated before the thirtieth calendar day following the date of such order, except as the Board may otherwise determine pursuant to emergency situations as to which the act permits consummation at earlier dates. (iii) Each order or each letter of notification approving an application also includes, as a condition of approval, a requirement that the transaction approved shall be consum-

mated within three months and, in the case of acquisition by a holding company of stock of a newly organized bank, a requirement that such bank shall be opened for business within six months, but such periods may be extended for good cause by the Board (or by the appropriate Federal Reserve Bank where authority to grant such extensions is delegated to the Reserve Bank).

(2) For special rules governing procedures for section 4 applications, refer to section 225.23 of this chapter.

(3) Special rules pertaining to applications filed pursuant to section 10(e) and (o) of HOLA follow:

(i) Each order or each letter of notification approving an application also includes, as a condition of approval, a requirement that the transaction approved shall be consummated within 3 months and, in the case of acquisition by a holding company of stock of a newly organized savings association, a requirement that such savings association shall be opened for business within 6 months, but such periods may be extended for good cause by the Board (or by the appropriate Federal Reserve Bank where authority to grant such extensions is delegated to the Reserve Bank).

(ii) [Reserved]

8-029

(k) *Reconsideration of certain Board actions.* The Board may reconsider any action taken by it on an application upon receipt by the secretary of the Board of a written request for reconsideration from any party to such application, on or before the fifteenth day after the effective date of the Board's action. Such request should specify the reasons why the Board should reconsider its action, and present relevant facts that, for good cause shown, were not previously presented to the Board. Within 10 days of receipt of such a request, the general counsel, acting pursuant to delegated authority (12 CFR 265.2(b)(7)), shall determine whether or not the request for reconsideration should be granted, and shall notify all parties to the application orally by telephone of this determination within 10

days. Such notification will be confirmed promptly in writing. In the exercise of this authority, the general counsel shall confer with the directors of other interested divisions of the Board or their designees. Notwithstanding the foregoing, the Board may, on its own motion if it deems reconsideration appropriate, elect to reconsider its action with respect to any application, and the parties to such application shall be notified by the secretary of the Board of its election as provided above. If it is determined that the Board should reconsider its action with respect to an application, such action will be stayed and will not be final until the Board has acted on the application upon reconsideration. If appropriate, notice of reconsideration of an application will be published promptly in the *Federal Register*.

8-030

(l) *Waiver.* The Board, or the officer or Reserve Bank authorized to approve an application, may waive or modify any procedural requirements for that application prescribed or cited in this section and may excuse any failure to comply with them upon a finding that immediate action on the application is necessary to prevent the probable failure of a bank or company or that an emergency exists requiring expeditious action.

8-031

SECTION 262.4—Adjudication with Formal Hearing

In connection with adjudication with respect to which a formal hearing is required by law or is ordered by the Board, the procedure is set forth in part 263 of this chapter, entitled "Rules of Practice for Hearings."

SECTION 262.5—Appearance and Practice

Appearance and practice before the Board in all matters are governed by section 263.3 of this chapter.

SECTION 262.6—Forms

Necessary forms to be used in connection with applications and other matters are avail-

able at the Federal Reserve Banks. A list of all such forms, which is reviewed and revised periodically, may be obtained from any Federal Reserve Bank.

8-031.5

SECTION 262.7—Use of Supervisory Guidance

(a) *Purpose.* The Board issues regulations and guidance as part of its supervisory function. This section reiterates the distinctions between regulations and guidance, as stated in the Statement Clarifying the Role of Supervisory Guidance (appendix A to this part) (Statement).

(b) *Implementation of the Statement Clarifying the Role of Supervisory Guidance.* The Statement describes the official policy of the Board with respect to the use of supervisory guidance in the supervisory process. The Statement is binding on the Board.

(c) *Rule of construction.* This section does not alter the legal status of guidelines authorized by statute, including but not limited to, 12 U.S.C. 1831p-1, to create binding legal obligations.

8-031.6

APPENDIX A—Statement Clarifying the Role of Supervisory Guidance

The Board is issuing this statement to explain the role of supervisory guidance and to describe the Board’s approach to supervisory guidance.

Difference Between Supervisory Guidance and Laws or Regulations

The Board issues various types of supervisory guidance, including interagency statements, advisories, letters, policy statements, questions and answers, and frequently asked questions, to its supervised institutions. A law or regulation has the force and effect of law.¹ Unlike a law or regulation, supervisory guidance does

¹ Government agencies issue regulations that generally have the force and effect of law. Such regulations generally take effect only after the agency proposes the regulation to the public and responds to comments on the proposal in a final rulemaking document.

not have the force and effect of law, and the Board does not take enforcement actions based on supervisory guidance. Rather, supervisory guidance outlines the Board’s supervisory expectations or priorities and articulates the Board’s general views regarding appropriate practices for a given subject area. Supervisory guidance often provides examples of practices that the Board generally considers consistent with safety-and-soundness standards or other applicable laws and regulations, including those designed to protect consumers. Supervised institutions at times request supervisory guidance, and such guidance is important to provide insight to industry, as well as supervisory staff, in a transparent way that helps to ensure consistency in the supervisory approach.

Ongoing Efforts to Clarify the Role of Supervisory Guidance

The Board is clarifying the following policies and practices related to supervisory guidance:

- The Board intends to limit the use of numerical thresholds or other “bright-lines” in describing expectations in supervisory guidance. Where numerical thresholds are used, the Board intends to clarify that the thresholds are exemplary only and not suggestive of requirements. The Board will continue to use numerical thresholds to tailor, and otherwise make clear, the applicability of supervisory guidance or programs to supervised institutions, and as required by statute.
- Examiners will not criticize (through the issuance of matters requiring attention), a supervised financial institution for, and the Board will not issue an enforcement action on the basis of, a “violation” of or “non-compliance” with supervisory guidance. In some situations, examiners may reference (including in writing) supervisory guidance to provide examples of safe and sound conduct, appropriate consumer protection and risk management practices, and other actions for addressing compliance with laws or regulations.
- Supervisory criticisms should continue to be specific as to practices, operations, financial conditions, or other matters that could have a negative effect on the safety

and soundness of the financial institution, could cause consumer harm, or could cause violations of laws, regulations, final agency orders, or other legally enforceable conditions.

- The Board has at times sought, and may continue to seek, public comment on supervisory guidance. Seeking public comment on supervisory guidance does not mean that the guidance is intended to be a regulation or have the force and effect of law. The comment process helps the Board to improve its understanding of an issue, to gather information on institutions' risk-management practices, or to seek ways to achieve a supervisory objective most effec-

tively and with the least burden on institutions.

- The Board will aim to reduce the issuance of multiple supervisory guidance documents on the same topic and will generally limit such multiple issuances going forward.
- The Board will continue efforts to make the role of supervisory guidance clear in communications to examiners and to supervised financial institutions and encourage supervised institutions with questions about this statement or any applicable supervisory guidance to discuss the questions with their appropriate agency contact.