

COMPTROLLER'S LICENSING MANUAL

Public Notice and Comments



Version 1.0, May 2017

Version 1.1, November 2017

Contents

- Introduction.....1**
- Public Notice..... 1
- Public Comment..... 4
- Community Reinvestment Act..... 6
- Removal of an Application From the Expedited Review Process
- Due to Receipt of a Comment..... 8
- Convenience and Needs 9
- Meetings..... 9
- Public Hearings..... 9
- Public Decisions..... 10

- References11**

- Table of Updates Since Publication.....12**

Introduction

This booklet of the *Comptroller's Licensing Manual* addresses general requirements related to the public notice process, impact of Community Reinvestment Act (CRA) performance on certain applications or notices (filings), application of the convenience and needs standard under the Bank Merger Act, and requirements and procedures for conducting public hearings, public meetings, and private meetings. The booklet applies to national banks and federal savings associations (collectively, banks) unless otherwise noted and should be used with other Office of the Comptroller of the Currency (OCC) *Licensing Manual* booklets.¹

Certain transactions or activities require prior OCC approval. In many cases, a bank must publish notice of its filing pursuant to a specific law or regulation.² This publication process allows the public to submit written comments to the OCC in support of or in opposition to the filing. The public may request an extension of the comment period, a meeting, or a public hearing and may recommend that the OCC deny the filing or grant approval only if the OCC imposes certain conditions. Generally, when a notice is published, interested persons have 30 days from the initial date of publication of the notice to submit a written comment to the OCC (see the "Duration of Public Comment Period" section of this booklet). Publication requirements vary depending on the type of filing and can be found in the *Licensing Manual* booklet for the specific filing type.³

Public Notice

In general, an applicant⁴ is required to publish a notice of its filing in a newspaper of general circulation in the community in which it proposes to engage in business. For example, if a bank proposes to establish a branch, it publishes notice in a newspaper of general circulation in the community in which the branch will be located. In a merger between two banks, each headquartered in a different city, the applicant must publish notices in newspapers in both cities. The publication must occur on the same date as the filing or as soon as possible before or after the filing.

The applicant must publish notice containing specific information for the following types of filings:

- Organizing a bank (other than conversions from another type of depository institution to a bank)

¹ This booklet also applies to federal branches and agencies of foreign banks.

² For a change in control of a bank, the person(s) or entity seeking to acquire control is generally required to publish a public notice.

³ This booklet addresses public comments for a specific filing or a bank's CRA performance. General comments regarding a bank can be addressed to the OCC's Customer Assistance Group at www.HelpWithMyBank.gov.

⁴ Refer to 12 CFR 5.3(a).

- Establishment of domestic branches
- Relocation of a national bank's main office, a federal savings association's home office, or branches of either⁵
- Business combinations
- Changes in bank control

Public Notice Content

Generally, the public notice must contain the following:⁶

- A statement that the filing is being made
- The date of the filing
- The applicant's name and address⁷
- The type of filing and a description of the proposed transaction
- The name(s) of the institution(s) that is the subject of the filing
- A statement that the public may comment to the OCC
- The appropriate OCC office address where comments should be sent
- A statement that the public portion of the filing is available on request
- The closing date of the comment period (if known at the time of publication of notice)
- A statement that information about the filing may be found in the OCC's Weekly Bulletin available on the OCC website.
- Any other related information required by the OCC

Note: Refer to the specific filing booklet to obtain specific public notice requirements and sample public notices.

Promptly after publication, the applicant must provide to the appropriate Director for District Licensing (DDL) a statement containing the date of publication, the name and address of the newspaper(s) that published the public notice, and a copy of the public notice. The bank should submit to the DDL an Affidavit of Publication prepared by the publishing newspaper(s), once the affidavit is available.

Special Considerations

If the filing is part of a multiple-step transaction or a series of transactions, the applicant should explain the entire transaction in one public notice, as if it were a single filing, so that

⁵ Although branch closings typically do not require a published notice, a bank must send advance notification of branch closings to its customers and post a notice at the closing branch(es) (refer to the "[Branch Closings](#)" booklet of the *Comptroller's Licensing Manual*).

⁶ Although there is no requirement for the OCC to review a proposed public notice, a review may help avoid errors that could result in the OCC requiring republication of the notice.

⁷ Public notices for changes in control do not require the bank's address. They require the bank's legal name (and any names used in the community in which the public notice will be made), city or town, and state.

the public will understand the entire transaction. For example, a bank should not publish a relocation of a main office in one public notice, establishment of a branch at the current main office location in a second public notice, and a merger in a third public notice, because they are all steps in the transaction. In addition, the description of the multiple-step transaction should include all steps, even if one particular step would not require a public notice if it were treated as a single, separate transaction.

When a bank operates under more than one name or under a name substantially different from its legal name, each public notice should include both the bank's legal name and the name(s) it is using or intends to use in the community in which the publication circulates.

The bank should consider the languages used by the residents of the communities in which public notice is required. If the OCC determines that the primary language of a significant number of adult residents of the community is not English, the OCC may require that an additional notice be published in the appropriate language(s).

Additional Public Notice

In addition to the legally required public notices, the OCC may require a new public notice if the applicant submits either a revised filing or new or additional information related to the filing, a major issue of law or change in circumstances arises after the filing, or the agency determines that a new public notice is appropriate. The OCC usually provides the applicant with specific guidance about the form and content of a new notice, based on the filing type and the issues presented.

When the applicant is not required by statute to publish a notice, the OCC has the authority to publish a notice requesting comment on the filing. If the OCC decides to provide public notice, it may publish the notice in any manner it determines appropriate for the particular filing, such as the *Federal Register* or local or regional newspapers. The OCC considers such public notices when

- the filing presents novel or complex issues.
- the filing is likely to be controversial.
- the filing may have widespread implications for banks or customers.
- the OCC would benefit from public comments.

Another Agency's Public Notice

Upon an applicant's request, the OCC may accept the public notice required by another federal agency to satisfy the applicant's public notice requirements for its OCC filing. The public notice must adequately satisfy the OCC's requirements and state that comments must be submitted to the OCC and, if applicable, the other federal agency.⁸

⁸ Refer to 12 CFR 5.8(e).

Weekly Bulletin

The OCC publishes in its [Weekly Bulletin](#) report all filings subject to public notice and other filings received or acted on each week. Although the Weekly Bulletin indicates the public comment period end date for filings that require public notice, the Weekly Bulletin does not satisfy the applicant's public notice requirement.

Notification Upon Request

The public may request OCC notification of filings, for a specific bank, that require consideration of that bank's record of performance under the CRA.⁹ The public should direct the notification request to the DDL at the [appropriate OCC district office](#) that processes filings for that bank.

Public Comment

The OCC welcomes public comments and is committed to providing the public with easy access to public information on filings. Any interested person may comment in writing on any filing for which public notice has been published.

The public may submit comments by e-mail, mail, or fax to the appropriate DDL. If a business combination application receives an adverse public comment, the comment, any subsequent comments, and a copy of the public portion of the application are made available on [Regulations.gov](#) and on the "[Public Comments on Applications](#)" page of the OCC's website. Once the comment is available on those two websites, subsequent comments may be submitted through [Regulations.gov](#).

Comments should be specific and contain data or references to support conclusions or recommendations. Specific comments assist the OCC in understanding the matters that commenters believe merit investigation and consideration, and allow the OCC to review potential issues more completely.

The OCC is committed to processing filings and reaching decisions without unnecessary delay. The OCC, however, also intends to provide each filing with the scope and depth of review warranted, even if that review requires an extension of time. The OCC considers all comments it receives within the comment period. (Updated November 17, 2017)

The bank places all comments received on a filing that raise CRA-related issues in the bank's CRA public file. The OCC also places the comments in the official OCC file for that filing. A public copy of any filing is available upon request to the DDL. In addition, the OCC makes available on its website all business combination applications for which the resulting entity is a bank. The public can access the public copy of the application in the [Freedom of Information Act Electronic Reading Room](#).

⁹ Refer to 12 CFR 25.29 and 195.29.

In addition, during the public comment period, any interested person can write to the OCC and request

- a copy of the public portion of the filing (refer to the “Procedures: Information Request” section of the [“General Policies and Procedures”](#) booklet of the *Comptroller’s Licensing Manual*).
- an extension of the public comment period (refer to the “Requests for Extension of the Public Comment Period” section of this booklet).
- that the OCC conduct a public hearing; arrange a public meeting; or arrange a private meeting among the commenter, the bank, and the OCC; or arrange a meeting between the commenter and the bank at which the OCC will not be present. (Refer to the “Meetings” and “Public Hearings” sections of this booklet.)

Because of concerns over confidentiality and fairness, the OCC refrains from commenting publicly on the merits of a filing under review. Generally, the OCC provides an applicant with a copy of any comment received. The OCC encourages the applicant to respond directly to both the OCC and the commenter. If the applicant does not provide a copy of its response to the commenter, the OCC will do so.

Duration of Public Comment Period

Commenters generally have 30 days from the initial date of publication of the notice of the filing to provide written comments to the OCC. Under exceptional circumstances, such as natural disasters or unusual transactions, the OCC may adjust a public comment period. If the closing date is available, the applicant is required to include the filing’s comment period closing date in the public notice.¹⁰

Requests for Extension of the Public Comment Period (Updated November 17, 2017)

During the public comment period, anyone may make a written request to the DDL for additional time to submit comments. The OCC may extend any public comment period if

- the applicant fails to timely file all required publicly available information to permit review by interested persons or makes a request for confidential treatment not granted by the OCC that delays the public availability of that information.
- the requester satisfactorily demonstrates that additional time is necessary to develop factual information that the OCC determines is necessary for its consideration of the filing.
- the OCC determines that other extenuating circumstances exist.

The OCC promptly notifies the applicant and any interested party if it decides to extend the public comment period.

¹⁰ For mergers, consolidations, and purchase and assumption transactions, refer to the [Weekly Bulletin](#) for additional guidance.

Community Reinvestment Act

Congress enacted the CRA to require federal banking regulators to assess an institution's record of helping to meet the credit needs of the local communities in which the institution is chartered, consistent with safe and sound banking practices. Pursuant to the CRA, the OCC periodically evaluates each bank subject to the CRA, assigns a CRA rating, and issues a performance evaluation (PE). The OCC assigns a bank a CRA composite performance rating of "outstanding," "satisfactory," "needs to improve," or "substantial noncompliance." CRA PEs and ratings for OCC-regulated banks are published on the OCC's website.

Pursuant to the CRA, the OCC takes into account a bank's record of CRA performance in considering a filing for¹¹

- establishment of a domestic branch.
- relocation of the main office, the home office, or a branch office.
- business combination.
- conversion to a bank charter.

This record may be the basis for conditionally approving or denying a filing.¹²

An applicant for a new bank (other than a depository institution that has applied to convert its charter to a bank charter) must submit a description of how it will meet its CRA objectives. The OCC evaluates the description in considering the application.¹³

The OCC considers the CRA performance records of all insured depository institutions for certain filings.¹⁴ (Updated November 17, 2017) In certain interstate transactions, such as a Riegle–Neal¹⁵ merger or interstate de novo branch,¹⁶ the OCC, in determining whether to approve a filing, considers

- the bank's record of performance as reviewed by the OCC.
- the bank's record of compliance with applicable state community reinvestment laws.
- the most recent CRA evaluation of any bank that would be an affiliate of the resulting bank.

The OCC's CRA information is available on the OCC [website](#), including a quarterly [list](#) of banks scheduled for CRA evaluation as well as completed [CRA PEs](#).

¹¹ Refer to 12 CFR 25.29(a) and 195.29(a).

¹² Refer to 12 CFR 25.29(d) and 195.29(d).

¹³ Refer to 12 CFR 25.29(b) and 195.29(b).

¹⁴ Refer to [PPM 6300-2](#).

¹⁵ Refer to the Riegle–Neal Interstate Banking and Branching Efficiency Act of 1994.

¹⁶ These considerations apply only to national banks.

CRA Comments Unrelated to a Filing

The OCC encourages members of the public, including community and civic organizations, to express their views about a bank's CRA performance to the bank and the OCC at any time. The OCC will consider these comments when assessing a bank's CRA performance.

The CRA regulation facilitates the public's ability to provide comments to banks and the OCC. Under 12 CFR 25.43 and 12 CFR 195.43, every bank must maintain a public file that includes the following:

- All written comments received from the public for the current year and each of the previous two calendar years that specifically relate to the bank's performance in helping to meet community credit needs and any response by the bank to the comments.
- A copy of the bank's most recent CRA PE prepared by the OCC.
- A list of the bank's branches, their street addresses, and geographies.
- A list of branches opened or closed during the current year and each of the previous two calendar years, their street addresses, and geographies.
- A list of services generally offered at the branches.
- A map of each assessment area.

CRA Comments on a Filing

The OCC considers written public comments that address a bank's CRA performance in connection with certain filings. These comments should contain or reference specific information about a bank's lending, investments, or services in one or more particular geographic areas. Comments that provide specific details identifying and explaining issues or concerns help the OCC evaluate these matters thoroughly as part of the decision-making process. Accordingly, commenters are encouraged to include analyses about specific issues. The OCC forwards a copy of all public comments to the bank and gives the bank an opportunity to respond. The OCC forwards any responses to the commenter if not already provided by the bank.

Removal of an Application From the Expedited Review Process Due to Receipt of a Comment

As discussed in the “[General Policies and Procedures](#)” booklet of the *Comptroller’s Licensing Manual*, the OCC provides expedited review¹⁷ for certain filings if the bank meets the definition of eligible bank or eligible savings association in 12 CFR 5.3(g). The OCC may extend the expedited review period or remove a filing from expedited review if the filing, or an adverse public comment about the filing, presents a significant supervisory, CRA (if applicable), or compliance concern, or raises a significant legal or policy issue that requires additional OCC review.

The OCC may remove a filing from expedited review for CRA issues if

- the bank’s most recent CRA PE indicates a less than satisfactory rating for any assessment area.
- an adverse public comment is received that contains information that will require OCC analysis past the expedited review period.
- additional time is needed to obtain or analyze information relevant to a filing, regardless of whether adverse public comments are filed, including information from a targeted CRA or fair lending review or a comment raising multiple issues about a complex proposal.
- additional time is needed to schedule and hold a public or private meeting or a public hearing.
- the applicant requests the removal.

The OCC notifies the bank promptly whenever the agency removes a filing from expedited review, with a written explanation of the reasons for the decision to process it under standard procedures. The OCC will not remove a filing from the expedited review process if it determines that an adverse public comment does not raise a significant issue or concern, is frivolous, appears to have been filed primarily to delay action on the filing, or raises CRA concerns that the OCC determines have already been resolved satisfactorily.

The OCC considers a CRA concern to have been resolved satisfactorily if the OCC previously reviewed (for example, in connection with another application) a concern as presenting substantially the same issue in substantially the same assessment area during substantially the same time, and the OCC determined that the concern would not warrant denial or imposition of a condition on approval of the filing. The OCC construes these standards narrowly. The OCC may consider a CRA concern to be unresolved, for example, if the agency receives new information on a matter that it reviewed previously.

¹⁷ Expedited review means that a filing subject to a public comment period will be considered approved as of the 15th day after the close of the comment period, unless the OCC acts sooner on the filing, formally extends the expedited review period, or removes the filing from the expedited review process.

Convenience and Needs

The OCC also considers the convenience and needs of the community to be served when reviewing Bank Merger Act filings. The convenience and needs factor is distinguished from the CRA requirements in that the convenience and needs analysis is prospective, whereas the CRA requires the OCC to consider the applicant's record of performance. The OCC considers any plans of the resulting, combined bank to close branches, particularly in low- or moderate-income areas, reduce services, or provide expanded or less costly services to the community.

Meetings

The OCC considers all written information when making a decision on a filing. The OCC may also obtain information through meetings and considers all such information in its decision making. Such meetings, which are informal, should not be confused with formal public hearings. Information on public hearings appears later in this booklet.

The OCC may arrange for a meeting either upon receipt of a written request for such a meeting made during the public comment period or on the OCC's own initiative if the agency determines that written submissions are insufficient to address facts or issues raised in the application or otherwise determines that a meeting will benefit the decision-making process. A person or group that desires to have the OCC hear oral statements relevant to a filing should submit a written request for a meeting to the OCC during the public comment period. The request should explain why a written submission is not sufficient. If the OCC agrees that such a meeting is warranted, the OCC will arrange a public meeting or a private meeting.

A public meeting is advertised and open to participation or observation by all members of the public including individuals and community organizations. The OCC appoints a presiding officer to arrange and preside over the public meeting, and summarizes and places in the official file significant information it obtains during those meetings.

If warranted, to help narrow issues or facilitate their resolution, the OCC may also arrange a private meeting with an applicant or other interested parties.

Public Hearings

In general, the OCC relies on any written public comments in reaching a decision on a filing. The OCC may, however, hold a public hearing to clarify facts or issues about a filing and to receive additional information that may assist the agency in making a decision. A hearing is neither an adversarial proceeding nor a forum for the presentation or settlement of legal arguments. All interested persons may participate in the hearing process. Persons challenging the legality of a filing should submit comments separately in writing.

Before the end of the public comment period, any person may submit a written request for a hearing on a filing. The request must describe the nature of the issues or facts to be presented

and the reasons written submissions are insufficient. A person requesting a hearing should simultaneously submit a copy of the request to the bank. The OCC may grant or deny a request or may limit the issues to those it deems relevant or material. The OCC generally grants a hearing request if the agency determines that written submissions would be insufficient, a hearing would otherwise benefit the decision-making process, or a hearing would be in the public interest. If the OCC denies a hearing request, the agency notifies the person requesting the hearing of the reason for the denial.

The OCC issues a Notice of Hearing if the agency grants a hearing request or orders a hearing. The OCC sends a copy of the Notice of Hearing to the applicant, to the person(s) requesting the hearing, and anyone else requesting a copy. The Notice of Hearing states the subject and date of the filing, the time and place of the hearing, and the issues to be addressed. The OCC appoints a presiding officer who conducts the hearing. The OCC also arranges for a hearing transcript.¹⁸

Any persons wishing to appear or participate should notify the appropriate OCC licensing office of his or her intent to participate in the hearing within 10 days of the date the OCC issues the Notice of Hearing. At least five days before the hearing, each participant should submit to the appropriate OCC licensing office, the applicant, and any other person the OCC requires the names of witnesses and one copy of each exhibit the participant intends to present.

Subject to the rulings of the presiding officer, the applicant and participants may make opening statements and present witnesses, materials, and data. A person presenting documentary material should furnish one copy to the OCC, the applicant, and each participant. At the applicant's or participant's request, the OCC may keep the hearing record open for up to 14 days following the agency's receipt of the transcript. The OCC resumes processing the filing after the record is closed.

Public Decisions

The OCC issues a public decision when a decision represents a new or changed policy or presents issues of general interest to the banking industry or the public. This includes decisions in which a condition is imposed and enforceable under 12 USC 1818 or that address adverse public comments related to CRA, compliance, or convenience and needs. These decisions are posted to the OCC's monthly publication, "[Interpretations and Actions](#)," on the OCC's website.

¹⁸ A person requesting the hearing may be required to bear the cost of one copy of the transcript for his or her use.

References

In this section, “NB” denotes that the referenced law, regulation, or issuance applies to national banks, and “FSA” denotes that the reference applies to federal savings associations.

Comments and Requests for Hearings and Other Meetings

Regulation 12 CFR 5.10 and 5.11 (NB and FSA)

Community Reinvestment Act of 1977

Law 12 USC 2901–2908 (NB and FSA)

Regulation 12 CFR 25 (NB) and 195 (FSA)

Definitions

Regulation 12 CFR 5.3 (NB and FSA)

Public Availability of Information

Regulation 12 CFR 4.11–4.39 and 5.9 (NB and FSA)

Public Notice Requirement

Regulation 12 CFR 5.8 (NB and FSA)

Table of Updates Since Publication

Version 1.0: Published May 8, 2017			
Version number	Date	Reason	Affected pages
1.1	November 17, 2017	Policy change Regulatory clarification	4, 5, 6