

## **2.1-104 Branch Office Notice and Application Procedures**

**DATE:** 10/7/22

**REFERENCED SOURCES:** G.L. c. 167C; G.L. c. 171, s. 8; G.L. c. 171, ss. 8A through 8F, as added by St. 2014, c. 466; G.L. c. 171, s. 75.

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## **1.0 Applicability and Scope**

The purpose of this bulletin is to set forth the Division of Banks' (Division) procedures for a bank or credit union to establish, relocate, or close a branch office both within the Commonwealth and outside the Commonwealth or to relocate or redesignate the main office within the Commonwealth. Certain activities require only a notice to the Division while others require an application as set forth below in Section 2.0. Procedures for out-of-state banks and foreign credit unions branching within the Commonwealth are discussed in Section 3.0. For school related branch transactions, please refer to the educational components set out in Regulatory Bulletin 2.3-104.

## **2.0 Policy and Procedures**

Please note, in addition to the requirements below, a notice to establish a branch or an application to establish, relocate, or close a branch may be subject to additional requirements or requests for information, including holding a public hearing, if deemed appropriate by the Division. The Division will contact the bank or credit union to discuss additional requests or procedures.

### **2.1 Notice to Establish a Branch within the Commonwealth**

Banks or credit unions that meet eligibility standards set forth in Section 2.1.1 below may submit a notice to the Division to establish a branch within the Commonwealth. Those institutions that do not meet the criteria for notice must submit either the Uniform Bank Interstate Application or the Uniform Credit Union Application, which are available on the Division's website at [www.mass.gov/dob](http://www.mass.gov/dob). Refer to Section 2.2 for application instructions. The Division also accepts bank applications to establish a branch that are submitted electronically via any programs offered by the federal banking agencies. Banks interested in using this service must register with the appropriate federal banking agency. If an application is submitted electronically through such a program, please submit the information in Section 2.2 to the Division in a separate addendum.

## 2.1.1 Eligibility to Submit Notice to Establish a Branch in the Commonwealth

### Eligibility For Banks

Banks may submit a notice to establish a branch (not including a purchase and assumption) at any location in the Commonwealth if the following conditions are met:

Received a "Satisfactory" or higher Community Reinvestment Act (CRA) rating at its most recent CRA examination by the Division or federal regulator;

The bank is adequately capitalized as defined under the prompt corrective action provisions of the Federal Deposit Insurance Act (12 USC 1831(o)) and the FDIC's Capital Adequacy Regulations (12 CFR 325.103);

The bank has not been notified that it is in troubled condition by the Division or any federal regulatory agency.

### Eligibility For Credit Unions

Credit unions may submit a notice to establish a branch within 100 miles from the premises of its main office at a location within the Commonwealth if the following conditions are met:

Received a "Satisfactory" or higher CRA rating at its most recent CRA examination by the Division;

The credit union is adequately capitalized as defined under the prompt corrective action provisions the Federal Credit Union Act (12 USC §1790d) and of the regulations promulgated by the National Credit Union Administration (NCUA);

The credit union has not been notified that it is in troubled condition by the Division or the NCUA.

**A bank or credit union that does not meet these eligibility requirements should submit an application as described in Section 2.2.**

## 2.1.2 Procedures for Submitting a Notice to Establish a Branch in the Commonwealth

A bank or credit union which meets the conditions in Section 2.1.1 may submit a notice to establish a branch using the following procedures:

### 2.1.2.1

Submit the notice at least 30 days prior to the intended effective date. The notice should be on the institution's letterhead and signed by an authorized officer or the notice can be submitted on behalf of an institution by an outside party if authorized to do so by the institution. Please include the official name and address of the proposed office as well as the proposed effective date.

### **2.1.2.2**

Indicate whether the deed or lease on the proposed branch will contain any exclusive lease provisions or restrictive covenants that would preclude the sale or lease of the proposed site or related space to a competing institution. If so, please refer to Regulatory Bulletin 2.2-103 for the Division's position regarding exclusive leases and other restrictive agreements.

### **2.1.2.3**

Provide details regarding involvement in the proposal, if any, by any officer, director/trustee or ten (10) percent shareholder, or their interests, including any financial arrangements relating to fees, the acquisition of property, leasing of property, and construction contracts.

### **2.1.2.4**

Provide the bank's proposed capital expenditures for the establishment of this branch office. If a bank's capital expenditures or leasehold improvements will exceed statutory limits set forth in M.G.L. c. 167F, § 2, paragraph 9, the bank must submit a separate request for approval from the Division. Provide a branch profitability breakeven analysis.

### **2.1.2.5**

Provide the estimated amount of the credit union's investment in this branch office. If a credit union's investment in a proposed branch results in the credit union's aggregate investment in fixed assets for the transaction of its business to exceed 5% of shares and retained earnings as set forth in M.G.L. c. 171, § 75, the credit union must submit a separate request for approval from the Division as part of its branch notice letter.

### **2.1.2.6**

Federal banking agencies may require additional information to establish a branch. Please contact the appropriate federal banking supervisory agency to determine if additional information is necessary.

### **2.1.2.7**

A fee payable to the "Division of Banks" must be submitted at the time of filing the notice. For each notice to establish a branch office, the fees are \$500 for a bank and \$500 for a credit union.

During the 30-day period, the Division may deny the notice if it determines that the establishment of the branch would not benefit the public or that competition would be adversely affected. The Division reserves the right to notify the bank or credit union before the 30th day that the notice will be subject to additional procedures which may include the submission of additional information. Unless the institution is notified otherwise, the notice will be deemed approved within 30 days of receipt.

## **2.2 Application to Establish or Relocate a Branch within the Commonwealth**

A bank or credit union may file an application to relocate a branch within the Commonwealth. Relocation means moving the premises of a branch or main office within a one-mile radius of the site and within the same city or town. Relocation also applies if a bank or credit union is moving the premises of a branch or main office to a different location at the same address. See section 2.2.8 for the process to relocate a branch or main office at the same address. A bank or credit union may also submit an application to establish a branch within the Commonwealth if it does not meet the requirements of Section 2.1.1. The Uniform Bank Interstate Application and the Uniform Credit Union Application are available on the Division's website at <http://www.mass.gov/dob>. Please refer to the criteria below for additional instructions regarding a branch application. As mentioned above, the Division also accepts bank applications to relocate a branch or relocate the main office that are submitted electronically via any programs offered by the federal banking agencies.

In addition to submitting the application, a bank or credit union must submit the following information in an addendum:

### **2.2.1**

Indicate whether the deed or lease on the proposed branch will contain any exclusive lease provisions or restrictive covenants that would preclude the sale or lease of the proposed site or related space to a competing institution. If so, please refer to Regulatory Bulletin 2.2-103 for the Division's position regarding exclusive leases and other restrictive agreements.

### **2.2.2**

If the application involves the relocation or redesignation of the main office, please indicate in the addendum and state the reasons for the change. The Division may require additional information for an application to relocate or redesignate the main office.

### **2.2.3**

Provide the bank's proposed capital expenditures for the establishment of this branch office. If a bank's capital expenditures or leasehold improvements will exceed statutory limits set forth in M.G.L. c. 167F, § 2, paragraph 9, the bank must submit a separate request for approval from the Division. Provide a branch profitability breakeven analysis.

### **2.2.4**

Provide the estimated amount of the credit union's investment in this branch office. If a credit union's investment in a proposed branch results in the credit union's aggregate investment in fixed assets for the transaction of its business to exceed 5% of shares and retained earnings as set forth in M.G.L. c. 171, § 75, the credit union must submit a separate request for approval from the Division as part of its branch relocation application.

### **2.2.5**

If the application submitted is to establish a branch, a fee payable to the "Division of Banks" must be submitted at the time the application is submitted. For each application to establish a branch office, the fees are \$500 for a bank and \$500 for a credit union.

### **2.2.6**

If the application submitted is to relocate a branch or main office, a fee payable to the "Division of Banks" must be submitted at the time the application is submitted. For each application to relocate a branch or main office, the fees are \$500 for a bank and \$250 for a credit union

### **2.2.7**

Public notice is required for a bank or credit union to relocate a branch office. Refer to Section 4 of this Bulletin for notice requirements.

### **2.2.8**

If a bank or credit union is moving the premises of a branch or main office to a different location at the same address, such as a different suite or floor, the relocation procedures in 2.2 through 2.2.7 do not apply. The process for such action is to submit a letter to the Division requesting approval to modify the address. The letter should include the reasons for the relocation, the new address of the location, and the expected timeline for completion of the relocation. The Division will contact the bank or credit union if additional information is required.

## **2.3 Application to Close a Branch within the Commonwealth**

A bank or credit union may submit an application to close a branch within the Commonwealth at least 90 days prior to the intended effective date using the applicable application. The Uniform Bank Interstate Application and the Uniform Credit Union Application are available on the Division's website at <http://www.mass.gov/dob>. In addition, the bank or credit union must submit the following information in an addendum to the application:

### **2.3.1**

A detailed description of the branch's operations and financial performance, including the number and types of accounts and transactions, and a statement of profitability for the branch.

### **2.3.2**

An analysis of any liabilities or penalties that may result from the termination of the lease or any contract. If the bank or credit union owns the building housing the branch location, provide the plans for the property after closure.

### **2.3.3**

A description of any steps taken or intended to reduce any adverse effects on the community. Include any information on increased hours at other branch locations, new or enhanced services not available at other financial institutions in the area, and the availability of credit and deposit services in the area. Indicate how the closing of the branch will affect employment of the staff of the branch.

### **2.3.4**

A fee payable to the "Division of Banks" must be submitted at the time the application is submitted. For each application submitted to close a branch office, the fee is \$250.

### **2.3.5**

Public notice is required for a bank or credit union to close a branch office. Refer to Section 4 of this Bulletin for notice requirements.

During the 90-day period, the Division may deny the application if it determines that the closing of the branch would adversely affect the area served by the branch.

## **2.4 Application to Establish, Close or Relocate a Branch Outside the Commonwealth**

A bank or credit union may file an application to establish, close or relocate a branch outside the Commonwealth. (A credit union may submit an application to establish an out-of-state branch once per calendar year and the branch must be on a site within 100 miles of its main office in the states of Connecticut, Maine, New Hampshire, New York, Rhode Island or Vermont in accordance with 209 CMR 58.00.) The Division will coordinate with the applicable state's bank or credit union regulator on behalf of the institution to assure that the respective state's authorities and responsibilities are fulfilled. The Division will contact the bank or credit union if additional information is required for these interstate transactions. All other provisions of applicable laws, including but not limited to applicable Community Reinvestment Act (CRA) assessment areas, should be considered as part of a bank's or credit union's internal review, and any questions should be raised to the Division.

The procedures to establish, relocate or close a branch outside the Commonwealth are the same as those for within the Commonwealth. Refer to Sections 2.2 and 2.3 for further instructions.

As part of each credit union's internal review process, prior to submitting an application to the Division to establish a branch in one of the other New England states or New York, each credit union should thoroughly review its existing field of membership provisions within its by-laws and is encouraged to consult with the Division on any questions regarding the process for any necessary amendments, if applicable, prior to filing an application with the Division. All other provisions of applicable laws, including but not limited to applicable CRA assessment areas, should also be considered as part of a credit union's internal review, and any questions should be raised to the Division. Please refer to Regulatory Bulletin 4.1-104.

## **2.5 Application for a Bank to Establish a Branch Office through a Purchase and Assumption of a Branch of Another Bank**

A bank may submit the Uniform Bank Interstate Application to establish a branch through a purchase and assumption. In addition, the bank must submit the following information in an addendum to the Uniform Bank Interstate Application:

### **2.5.1**

Indicate whether the deed or lease on the proposed branch will contain any exclusive lease provisions or restrictive covenants that would preclude the sale or lease of the proposed site or related space to a competing institution. If so, please refer to Regulatory Bulletin 2.2-103 for the Division's position regarding exclusive leases and other restrictive agreements.

### **2.5.2**

Provide the bank's proposed capital expenditures for the establishment of this branch office. If a bank's capital expenditures or leasehold improvements will exceed statutory limits set forth in M.G.L. c. 167F, § 2, paragraph 9, the bank must submit a separate request for approval from the Division. Provide a branch profitability breakeven analysis.

### **2.5.3**

A copy of the terms of any agreement reached by the respective governing boards of each bank as well as a certified copy of the votes of such boards.

### **2.5.4**

Public notice is required to establish a branch through a purchase and assumption of a branch of another bank. Refer to Section 4 of this Bulletin for notice and publication requirements.

## **3.0 Procedures for an out-of-state bank or foreign credit union to establish, relocate, or close a branch within the Commonwealth**

An out-of-state bank or foreign credit union seeking to establish, relocate or close a branch in the Commonwealth may submit an application to its home state regulator. The Division will work closely with the home state regulator to coordinate the review of the application. All out-of-state banks and foreign credit unions are reminded that they must comply with all consumer compliance, community reinvestment, and fair lending laws and regulations applicable to a Massachusetts-chartered bank or credit union and may be examined by the Division of Banks.



## 4.0 Public Notice

Public notice is not required for a bank or credit union to establish a branch by notice or application.

Public notice is required for a bank or credit union to relocate or close a branch. A bank or credit union that intends to close or relocate a branch must post a copy of the public notice to customers on its website in the applicable form of notice below as soon as practical after the date of application. This notice must also be posted in a conspicuous manner on the premises of the branch proposed to be closed or relocated for at least 30 days after the date of application. In addition to the language below, the notice posted on the premises of the branch should also state the proposed date of closing and identify where customers may obtain service following that date or provide a telephone number for customers to call to determine such alternative sites.

A bank seeking to establish a branch through a purchase and assumption must publish a public notice once in a newspaper of general circulation with a paid circulation in the city or town or if no such citywide or town wide publication exists, in the county in which the branch office is to be located. Documentation that the notice was published must be submitted to the Division within 30 days of filing an application. It may take the form of a certification by the publisher or the submission of the page on which the notice was published. An electronic version of such documentation is also acceptable. In order to ensure the timely review of the application, the notice should appear not later than five business days after filing the application.

The required notice must conform to the applicable example provided below.

### **Notice to Relocate a Branch**

NOTICE

[Name of BANK/CREDIT UNION and city or town where its main office is located] Massachusetts has petitioned the Massachusetts Division of Banks for permission to relocate a branch office from [complete address of existing branch office] to [complete address of proposed branch office]. Any objections or comments relative to this proposal must be communicated in writing to the Commissioner of Banks, [full name of current Commissioner], [current address of Division of Banks] or [dob.comments@mass.gov](mailto:dob.comments@mass.gov) no later than two weeks from [insert date of posting].

### **Notice to Close a Branch**

NOTICE

[Name of BANK/CREDIT UNION and city or town where its main office is located] Massachusetts has petitioned the Massachusetts Division of Banks for permission to close a branch office at [complete address of existing branch office]. Any objections or comments relative to this

proposal must be communicated in writing to the Commissioner of Banks, [full name of current Commissioner], [current address of Division of Banks] or dob.comments@mass.gov no later than two weeks from [insert date of posting].

### **Notice for a Purchase and Assumption Transaction**

#### NOTICE

[Name of BANK and city or town where its main office is located] Massachusetts has petitioned the Massachusetts Division of Banks for permission to (1) purchase certain assets and assume certain deposit and other liabilities of [Name of other BANK and city or town and state where its main office is located] and; in connection therewith, (2) establish and maintain branch office(s) at the following locations [address(es) of proposed branch office(s) including city(ies)/town(s) and state(s)]. Any objections or comments relative to these proposals must be communicated in writing to the Commissioner of Banks, [full name of current Commissioner], [current address of Division of Banks] or dob.comments@mass.gov no later than two weeks from [insert date of posting].

## **5.0 Historical Notes**

This bulletin was first issued and became effective on September 27, 1996 as Administrative Bulletin 36-1 and established an expedited procedure to open a branch for any bank or credit union with an "Outstanding" CRA rating. The bulletin was revised in October 2002 to clarify the circumstances under which an institution would be eligible for expedited branch application procedures. The bulletin was substantially revised in April 2005 to reflect changes made to the branching procedures, as set forth in Chapter 461 of the Acts of 2004, *An Act Relative to Banks and Banking*. The bulletin was revised on March 29, 2013 to reflect changes in available methods of reporting and the use of electronic media. The bulletin was revised on November 18, 2015 to reflect changes in credit union branching authorities and procedures as set forth in Chapter 466 of the Acts of 2014. The bulletin was revised on September 12, 2016 to reflect changes in credit union investment authorities as set forth in 209 CMR 50.00. This bulletin was most recently revised on October 7, 2022 to reflect changes in credit union investment authorities and the fee for a bank to establish a new branch, pursuant to amendments set forth in Chapter 338 of the Acts of 2020, *An Act Modernizing the Credit Union Laws*. In addition, there were several clarifications, including a clarification regarding the relocation for branches or main offices of banks and credit unions at the same address.

## **6.0 Authority**

G.L. c. 167C; G.L. c. 171, s. 8; G.L. c. 171, ss. 8A through 8F, as added by St. 2014, c. 466; G.L. c. 171, s. 75.