

PROPOSED REGULATION

46-404.2 - APPLICATION FILING FEES. APPLICATIONS WHICH ARE NOT FILED WITH THE STATE BANKING BOARD (Reference A.C.A. 23-46-404)

- | | |
|---|---------|
| a) New branch banking office (Expedited branch application) A.C.A. § 23-48-703 | 300 |
| b) New branch banking office (Standard branch application) A.C.A. § 23-48-703 | \$ 500 |
| c) New branch banking office (Mobile branch application) A.C.A. § 23-48-703 | \$ 300 |
| d) Plan of exchange
(plus expenses of Commissioner; does not include costs associated with appraisals of bank stock) | \$ 500 |
| e) Filing of fictitious name | \$ 25 |
| f) Filing of out-of-state bank/bank holding company | \$ 300 |
| g) Change in Control | \$5,000 |
| h) Purchase or Assumption (less than fifty percent (50%) of assets or liabilities) | \$300 |
| i) Registered Agent for Service of Process A.C.A. § 23-48-327 | \$ 25 |

PROPOSED REGULATION

46-406.1 - HEARINGS. FILING FEES FOR WRITTEN/OFFICIAL PROTESTS (Reference A.C.A. § 23-46-406)

a) A filing fee of \$2,500 will be required to file an official protest for the following applications:

- 1) New bank charter;
- 2) Merger application;
- 3) Purchase or assumption (over fifty percent (50%) of assets or liabilities);
- 4) Conversion (national to state bank);
- 5) Conversion (stock savings and loan or federal savings bank to state bank);
- 6) Relocation of main office (from one municipality to another)(Simple Application);
and
- 7) Reorganization and Relocation of Bank Charter (Complex Application).

b) A filing fee of \$500 will be required to file an official protest for a new branch banking office application (standard branch application) (A.C.A. § 23-48-703).

c) A filing fee of \$300 will be required to file an official protest for the following applications:

- 1) Purchase or Assumption (less than fifty percent (50%) of assets or liabilities);
- 2) New branch banking office application (expedited branch application) A.C.A. § 23-48-703; and
- 3) New branch banking office application (mobile branch application) A.C.A. § 23-48-703.

46-406.2 ADJUDICATIVE HEARINGS BEFORE THE STATE BANKING BOARD AND/OR THE COMMISSIONER (Reference A.C.A. § 23-46-406)

The following rules shall apply to adjudicative hearings before the State Banking Board and/or the Commissioner:

(a) Public Hearing at Commissioner's Discretion. The Commissioner at his/her discretion, regardless of whether any formal protest or letters of opposition were filed, may hold a hearing on an application.

(b) Decision Maker.

- 1) Matters Before the State Banking Board. When an adjudicative hearing is conducted before the State Banking Board, the Board Chairman will conduct the hearing. The State Banking Board, collectively, will act as the decision maker.
- 2) Matters Before the Commissioner. When an adjudicative hearing does not involve the State Banking Board, the Commissioner reserves the right to act as decision maker or have a decision maker appointed. In the event the Commissioner decides to act as the decision maker, but is unable to conduct the hearing, a Deputy Commissioner will conduct the hearing. In the event the Commissioner decides to have a decision maker appointed, a list of five (5) potential decision makers will accompany the notice of the hearing sent to the parties entitled to notice by mail. This list will be compiled by the Commissioner. All parties will receive the same list of five (5) potential decision makers. Two (2) potential decision makers are to be chosen from the list and communicated by facsimile or hand delivery to the Commissioner within two (2) business days of receipt. The Commissioner may authorize an employee of the Arkansas State Bank Department to be served in the event of hand delivery. The Commissioner will then choose a decision maker to conduct the hearing from those potential decision makers submitted by the parties receiving notice by mail.

(c) Hearing Procedures. For the purpose of the actual hearing, the following rules will govern:

- 1) The decision maker may rule on motions, require briefs, and issue such orders as will ensure the orderly conduct of the proceedings;
- 2) All objections must be made in a timely manner and stated on the record;
- 3) Subject to terms and conditions prescribed by the Administrative Procedure Act, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and, upon request of the decision maker, may submit briefs and engage in oral argument;

- 4) The decision maker is charged with maintaining the decorum of the hearing and may refuse to admit, or may expel, anyone whose conduct is disorderly; and
- 5) The hearing will be held in accordance with the Administrative Procedure Act.

(d) Order of Proceedings. The decision maker will conduct the hearing in the following manner:

- 1) The decision maker will give an opening statement, briefly describing the nature of the proceedings;
- 2) The parties are to be given the opportunity to present opening statements;
- 3) The parties will be allowed to present their case in the sequence determined by the decision maker;
- 4) Each witness must be sworn or affirmed by the decision maker, or the court reporter, and be subject to examination and cross-examination as well as questioning by the decision maker. The decision maker may limit questioning in a manner consistent with the law; and
- 5) When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

(e) Court Reporter. In the event of a hearing before the State Banking Board and/or the Commissioner, the Arkansas State Bank Department will arrange for a court reporter to be present for the hearing. The applicant will be responsible for paying the costs of the court reporter appearing at the hearing and for copies of the transcript. The applicant will provide a copy of the transcript, free of charge, to the Arkansas State Bank Department.

(f) Order of Decision Maker. The decision maker will issue an oral ruling at the conclusion of the hearing or a letter opinion within a reasonable time after the conclusion of the hearing. The prevailing party will then have ten (10) days from the date of the oral ruling or letter opinion to prepare and submit a written order to the Commissioner and the opposing party(s). Upon receipt of the written order by the Commission, the opposing party(s) will then have ten (10) days to object to the form or precedent.

(g) Expiration of Approval. The decision maker's Order approving and application shall expire eighteen (18) months from the date of the approval. Upon written request, the Commissioner may approve an extension of the eighteen (18) months.

48-701 HEALTHY BANK (Reference A.C.A. § 23-48-701)

A “healthy bank” is defined as an institution meeting all of the following criteria:

- 1) Received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (CAMELS) as a result of its most recent commercial bank examination;
- 2) Received a satisfactory or better Community Reinvestment Act (CRA) rating from its primary federal regulator at its most recent examination;
- 3) Received a compliance rating of 1 or 2 from its primary federal regulator at its most recent examination;
- 4) Is well-capitalized as defined in the appropriate capital regulation and guidance of the institution’s primary federal regulator;
- 5) Is not subject to a cease and desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding, board resolution or other administrative agreement with its primary federal regulator or chartering authority; and
- 6) Have no major unresolved supervisory issues outstanding or any other significant concerns (as determined by the Commissioner or other regulatory agency).

Only a “healthy bank” is eligible to file an expedited branch application. If any one of the listed criteria is not met, a standard branch application must be filed.

PROPOSED REGULATION

48-702.1 RELOCATION OF EXISTING FULL SERVICE BRANCH (Reference A.C.A. § 23-48-702)

A state bank may file a notice with the Commissioner to relocate any existing full service branch to another location then authorized by law. The following rules govern such notice:

(a) Fees. A fee of three hundred dollars (\$300) shall accompany the notice to the Commissioner as set by this regulation.

(b) Notice to the Commissioner. Written notice shall be filed with the Commissioner (on a form prescribed by the Commissioner) at least thirty (30) days prior to the proposed relocation of the existing full service branch.

(c) Publication of Notice. The state bank shall publish a notice of the proposed relocation of the existing full service branch in a newspaper of statewide circulation one (1) time prior to filing notice of relocation with the Commissioner. A proof of publication must accompany the notice of relocation to the Commissioner. The publication may be run more than three (3) weeks before the filing of the notice.

(d) Approval by Commissioner. A notice of relocation of existing full service branch is deemed approved if the Commissioner takes no action on the notice within thirty (30) days after filing of the notice.

(e) Formal Protest. Each bank(s), corporation(s), or individual(s) that files with the Commissioner a formal written protest to the relocation of an existing full service branch shall be required to pay a protest fee of three hundred dollars (\$300). The fee must accompany or precede the formal written protest, which must be received by the Commissioner within fifteen (15) calendar days of the actual filing of the notice of relocation. The written protest must include a specific reason or reasons for protesting the relocation. Further, the State Banking Board requires all formal protests be specific to those principles set forth in A.C.A. § 23-48-703(a).

(f) Letter of Opposition. Any aggrieved bank, corporation, or individual(s) may file a letter of opposition (not an official protest) to a notice of relocation of an existing full service branch without incurring any liability for the fee assessed to formal protesting parties.

(g) Date of Filing. Written notice to the Commissioner to relocate an existing full service branch, formal protest(s), and letter of opposition(s) are considered “filed” the date stamped as filed by the Commissioner.

(h) Public Hearing at the Commissioner’s Discretion. The Commissioner at his/her discretion may hold a public hearing on a notice of relocation of existing full service branch. If a hearing is to be held, the Commissioner shall give notice in a newspaper of statewide circulation once at least ten (10) days prior to the date of the hearing. Further, the Commissioner shall notify by mail the party sending notice of relocation and official protestant(s) at least ten (10) days prior to the hearing. The hearing will be held in accordance with the Administrative Procedure Act.

REPEALED REGULATION

48-702.1 - BRANCH APPLICATION PROCEDURES (Reference A.C.A. § 23-48-702)

A state bank's application (on a form required by the Commissioner) for authority to establish a new branch or relocate an existing branch shall be filed with the Commissioner. The following rules govern the procedure on such applications:

(a) Notice Published by Applicant. The applicant shall publish a notice of the application in a newspaper of statewide circulation one (1) time at or prior to the actual filing of the application with the Commissioner. A copy of such notice must accompany the application.

(b) Fees; Investigation. The sponsors of a branch bank application are required to pay a filing fee of three thousand dollars (\$3,000) as set by regulation. The Commissioner in his/her discretion may or may not require a field investigation of a branch application.

(c) Formal Protests. Each bank, corporation or individual that files a formal written protest to a branch bank application shall be required to pay a protest fee of one thousand dollars (\$1,000). The fee must accompany or precede the formal written protest which must be received within the fifteen (15) calendar days of the actual filing of the application.

(d) Letter of Opposition. Any aggrieved bank or person may file a letter of opposition (not an official protest) to an application for a branch bank, without incurring any liability for the fee assessed to officially protesting parties.

(e) Public Hearing at Commissioner Discretion. The Commissioner at his/her discretion, may hold a public hearing on a branch bank application. If a hearing is to be held the Commissioner shall give notice in a newspaper of statewide circulation by publication once at least ten (10) days prior to the date of the hearing and shall notify by mail the applicant and official protestant(s) at least ten (10) days prior to the hearing. The hearing will be held in accordance with the Arkansas Administrative Procedure Act.

(f) Expiration of Approval. The Commissioner's Order approving a branch application shall expire one year from the date of approval unless a request for an extension has been approved in writing by the Commissioner.

PROPOSED REGULATION

48-702.2 SHORT DISTANCE RELOCATION (Reference A.C.A. § 23-48-702)

(a) In accordance with A.C.A. § 23-48-702 (d)(5)(A) and (B), the State Banking Board rules a bank may relocate an existing full service branch within a limited area without requiring publication of notice pursuant to Act 42 of 2007; however, the bank must file written notice of relocation within a limited area with the Commissioner. The following rules govern such notice:

1. Fees. A fee of two hundred and fifty dollars (\$250) shall accompany the notice to the Commissioner as set by this regulation.
2. Notice to the Commissioner. Written notice shall be filed with the Commissioner (on a form prescribed by the Commissioner) at least thirty (30) days prior to the proposed relocation of an existing full service branch within a limited area.
3. Approval by Commissioner. A notice of relocation within a limited area is deemed approved by the Commissioner if the Commissioner takes no action on the notice within thirty (30) days after filing of the notice.
4. Date of Filing. Notice to the Commissioner to relocate a branch within a limited area is considered “filed” the stamped as filed by the Commissioner.

(b) The statute defines “within the immediate neighborhood” as including, but not limited to:

1. Across the street;
2. Around the corner;
3. Within two (2) blocks;
4. Within one thousand feet (1000’); or
5. In densely populated areas, within five thousand feet (5000’).
6. For the purpose of relocating within limited area, “densely populated area” is defined as a community with a population of over five thousand (5,000) people.

REPEALED REGULATION

48-702.2 - RELOCATION OF BRANCH (Reference A.C.A. § 23-48-702)

a) Any state bank may file an application with the Commissioner to relocate any existing full service branch to another location then authorized by law.

(b) If the proposed location is within the same municipality a fee of \$1,000 shall accompany the application. If the proposed location is to a different municipality a fee of \$2,500 shall accompany the application.

(c) An abbreviated branch application provided by the State Bank Department is required to relocate a branch within the same municipality. A bank desiring to relocate an existing branch to an area outside of the incorporated city or town in which the existing branch is located must file a branch relocation application which will consist of the information required to establish a new branch. Intent to make such a relocation shall be conveyed in writing to the Commissioner no later than twenty business days before such relocation shall occur. A relocation application will follow the same notice procedures as a new branch application, giving other banks or interested parties an opportunity to object or officially protest. Official protestants will be required to pay a fee of one thousand dollars (\$1,000) as in a new branch application proceeding.

(d) The Commissioner shall approve such relocation unless it is determined the relocation is not economically feasible or will not serve the public convenience and necessity. Such relocation shall not occur until the Commissioner shall approve the relocation.

(e) In accordance with A.C.A. § 23-48-702(d)(5)(A), a bank may relocate an existing branch within a limited area without requiring a branch bank application; however, the bank must provide written notice to the Department, which includes a \$250.00 filing fee prior to the relocation. The notice must include the following information:

1. Location of the existing branch;
2. Proposed location of resulting branch;
3. Date of closing existing branch;
4. Whether the branch is opened, built, or established due to the consolidation of two (2) or more banks within the immediate neighborhood of an existing branch or main office of the bank; and
5. That the nature of the business and customers of the branch are not substantially affected.
6. If the relocation involves an increase in fixed assets (acquisition of real estate or construction of facilities) the bank must request prior approval for incurring these costs.

The statute defines “within the immediate neighborhood” as including, but not limited to:

1. Across the street;
2. Around the corner;
3. Within two (2) blocks;
4. Within one thousand feet (1,000’); or
5. In densely populated areas, within five thousand feet (5,000’).

PROPOSED REGULATION

48-702.3 - LIMITED PURPOSE OFFICE (Reference A.C.A. § 23-48-702)

(a) Establishment of limited purpose office:

1. Within the State of Arkansas. Any bank may establish a limited purpose office anywhere in the state to conduct non-core banking activities upon satisfaction of the notice requirement set forth in this subsection.
2. Outside the State of Arkansas. Any state bank may establish a limited purpose office in another state subject to the rules and regulations of the state which it seeks to establish the limited purpose office. The state bank must also satisfy the notice requirement set forth in this section.

(b) As to each limited purpose office which a state bank proposes to establish or use within or outside the State of Arkansas, the state bank shall give not less than thirty (30) days prior written notice of its intention to establish or use the limited purpose office to the Commissioner.

(c) The written notice to the Commissioner shall include the following information:

1. The location and general description of the surrounding area;
2. Whether the location will be owned or leased;
3. The non-core banking activities to be conducted;
4. An estimate of the initial cost of the limited purpose office; and
5. Such other relevant information as may be required by the regulatory authority.
6. If the limited purpose office involves an increase in fixed assets (acquisition of real estate or construction of facilities) the bank must request prior approval for incurring these costs.

REPEALED REGULATION

48-702.3 - LIMITED PURPOSES OFFICES (Reference A.C.A. § 23-48-702)

a) Any bank may establish a limited purpose office anywhere in the state to conduct non-core banking activities upon satisfaction of the notice requirement set forth in this subsection.

(b) As to each limited purpose office which a state bank proposes to establish or use, the state bank shall give not less than thirty (30) days prior written notice of its intention to establish or use the limited purpose office to the Commissioner.

(c) The notice shall be on the form prescribed by the Commissioner and shall include the following information:

- (1) The location and a general description of the surrounding area;
- (2) Whether the location will be owned or leased;
- (3) The non-core banking activities to be conducted;
- (4) An estimate of the initial cost of the limited purpose office; and
- (5) Such other relevant information as may be required by the regulatory authority.

PROPOSED REGULATION

48-703.1 EXPEDITED, STANDARD, AND MOBILE BRANCH APPLICATION PROCEDURES (Reference A.C.A. § 23-48-703)

A state bank's expedited, standard, or mobile branch application (on separate forms required by the Commissioner) for authority to establish a new branch shall be filed with the Commissioner. The following rules govern the procedure on such applications:

(a) Expedited, Standard, and Mobile Branch Applications.

1. Expedited Application. To file an expedited application, a bank must meet the criteria of a healthy bank as set forth by regulation. The application will be processed within sixty (60) days of filing with the Commissioner.
2. Standard Application. An application not filed as an expedited application will be filed as a standard application.
3. Mobile Application. A separate application must be filed with the Commissioner for each separate county the state bank proposed to operate the mobile branch

(b) Fees.

1. The sponsor(s) of an expedited branch application are required to pay a filing fee of three hundred dollars (\$300) as set by regulation. This fee must accompany the filing of the application. The Commissioner at his/her discretion may or may not require a field investigation of a branch application.
2. The sponsor(s) of a standard branch application are required to pay a filing fee of five hundred dollars (\$500) as set by regulation. This fee must accompany the filing of the application. The Commissioner at his/her discretion may or may not require a field investigation of a branch application.
3. The sponsor(s) of a mobile branch application are required to pay a filing fee of three hundred dollars (\$300) as set by regulation. This fee must accompany the filing of the application. The Commissioner at his/her discretion may or may not require a field investigation of an application

(c) Notice Published by Applicant. The applicant, for either an expedited, standard, or mobile branch application, shall publish notice of the application in a newspaper of statewide circulation one (1) time per week for four (4) consecutive weeks prior to filing the application with the Commissioner. A proof of publication must accompany the application to the Commissioner.

(d) Notice by Commissioner. The Commissioner shall give notice of the application to Arkansas state-chartered banks with a bank or a full service branch currently open and operating within the market area of the proposed new branch. As set by this regulation, the following shall apply:

1. All state chartered banks are required to file with the Commissioner a designated officer (not to be confused with the designated agent for service of process) and email address for which service can be made on that bank for the purpose of giving notice of an expedited, standard, or mobile branch application for a new branch. This must be filed with the Commissioner by state chartered banks currently open and operating within the State of Arkansas no later than March 26, 2007. All new state chartered banks open and operating after March 26, 2007, must file a designated officer and email address with the Commissioner not more than thirty (30) days from the day of opening the new state chartered bank. Failure to file this information with the Commissioner will constitute a waiver of notice in regards to expedited, standard, or mobile branch applications. Failure to file a change of designated officer and email address with the Commissioner will also constitute a waiver of notice in regards to expedited, standard, or mobile branch applications.
2. The Arkansas State Banking Board defines “market area” as within the county where the applicant proposes to open the new branch.
3. “Open and operating” is determined by checking the Federal Deposit Insurance Corporation database. Those banks having a main banking office or branch office(s) actually open and operating as of the date of the actual filing of an application, as reflected by the Federal Deposit Insurance Corporation database, in the proposed market area will receive notice from the Commissioner.
4. The Commissioner will email the banks a notice of the filing of the expedited, standard, or mobile branch application. This email will constitute as notice to the Arkansas state-chartered banks currently open and operating within the market area of the proposed new branch.
5. The Commissioner will send notice to banks entitled to notice under this subsection not more than two (2) business days from the filing of the application. The notice will include the date the application was filed.
6. An application for an expedited, standard, or mobile branch is considered “filed” the date stamped as filed by the Commissioner.

(e) Expiration of Approval. The Commissioner’s Order approving a branch application shall expire eighteen (18) months from the date of approval unless a request for extension has been approved in writing by the Commissioner.

PROPOSED REGULATION

48-703.2 MOBILE BRANCH (Reference A.C.A. § 23-48-701 and § 23-48-703)

The State Banking Board, in accordance with Act 42 of 2007, promulgates the following rules governing mobile branches:

- 1) A mobile branch only conducts banking business within the same county as the main office or another full service branch of the bank;
- 2) A mobile branch may not have a single, permanent site;
- 3) A mobile branch may not remain within five (5) miles of any banking location for more than two (2) business days;
- 4) A mobile branch travels to various locations within the county(s) to enable customers to conduct banking business; and
- 5) A mobile branch must maintain a log of operations indicating the date and specific location of each stop.

PROPOSED REGULATION

48-703.3 PROTEST (Reference A.C.A. § 23-48-703)

A protest may be filed with the Commissioner as to the filing of a branch application, an expedited branch application, or a mobile branch application. The following rules govern such protest:

(a) Formal protest. Each bank(s), corporation(s), or individual(s) must file with the Commissioner a formal written protest within fifteen (15) calendar days of the actual filing of a branch application, an expedited application, or a mobile branch application. The written protest must include a specific reason or reasons for protesting the application. The following fees apply:

1. Expedited Branch Application. A fee of three hundred dollars (\$300) is required to be paid when filing a formal protest to an expedited branch application. The fee must accompany or precede the formal written protest.
2. Standard Branch Application. A fee of five hundred dollars (\$500) is required to be paid when filing a formal protest to a branch application. The fee must accompany or precede the formal written protest.
3. Mobile Branch Application. A fee of three hundred dollars (\$300) is required to be paid when filing a formal protest to a mobile branch application. The fee must accompany or precede the formal written protest.

(b) Letters of Opposition. Any aggrieved bank(s), corporation(s), or individual(s) may file a letter of opposition (not an official protest) to a branch application, an expedited branch application, or a mobile branch application without incurring any liability for the fee assessed to formal protesting parties.

(c) Date of Filing. Formal written protest and letters of opposition filed with the Commissioner to under this subsection are considered “filed” the date stamped as filed by the Commissioner.

(d) Public Hearing at Commissioner’s Discretion. The Commissioner at his/her discretion, regardless of whether any formal protest or letters of opposition were filed, may hold a public hearing on a branch application, an expedited branch application, or a mobile branch application. If a hearing is to be held, the Commissioner shall give notice in a newspaper of statewide circulation once at least ten (10) days prior to the date of the hearing. Further, the Commissioner shall notify by mail the party(s) filing the application and official protestant(s) at least ten (10) days prior to the hearing.