

# Title 22: Banking Commission

## Chapter 1: Designation of Depository Banks

### § 1-01 Short Title.

These rules and regulations shall be known and may be cited as "Requirements for Designation".

### § 1-02 Definitions.

The following definitions are solely for the purposes of these rules:

**Bank.** "Bank" shall mean (1) a bank or trust company, as defined in New York State General Municipal Law § 10; or (2) a branch of a savings bank, savings and loan association, federal savings and loan association, or federal savings bank located in a banking development district, as approved by the State of New York Banking Department, provided such branch (i) was opened after such approval or (ii) is a branch of the applicant to the Department for designation of the district and was opened on or after January 1, 1997.

**Banking Commission.** The "Banking Commission" shall consist of the mayor, the commissioner of finance and the comptroller as specified in Section 1524 of the Charter and shall by majority vote designate, by written notice to the Commissioner of Finance, banks in which all moneys of the City shall be deposited.

**Banking development district.** "Banking development district" shall mean a geographic area approved by the New York State Banking Department as a banking development district pursuant to New York State Banking Law § 96-d and rules promulgated thereunder.

**Branch.** A "branch" shall mean any office or facility of a bank that is approved to operate as a branch by applicable state or federal authorities. Notwithstanding the above, the definition of "branch" shall not include automatic teller machines, convenience centers, mobile teller units, point-of-sale terminals, or similar facilities.

**Branch closing.** A "branch closing" shall refer to a situation whereby an existing branch of a bank shall cease to meet the definition of a "branch" as defined in 22 RCNY § 1-02 "Branch". Each branch merged or consolidated into a new or existing branch shall be deemed a branch closing. A sale or transfer of ownership of a branch of a bank that does not result in the cessation of branch services at that particular location as defined in 22 RCNY § 1-02 "Branch" shall not be deemed a closing, even though ownership of such branch has been transferred or sold to another entity or person.

**Branch network.** A "branch network" shall mean all of the branches of a bank which are located in New York City.

**Branch opening.** A "branch opening" shall mean the establishment of a new branch at a particular location as defined in 22 RCNY § 1-02 "Branch". A branch opening shall not include

- (1) a consolidation or merger of two or more branches that results in a new branch at a particular location, or
- (2) an acquisition of an existing branch.

**De minimis exception.** The "de minimis exception" shall apply:

(1) to any bank that maintains at least seventy-five branches in New York City and has closed no more than two branches in lower income neighborhoods during the prior calendar year and no more than a total of five branches in lower income neighborhoods over the three prior consecutive calendar years; and

(2) to any bank that maintains between fifteen and seventy-four branches in New York City and has closed no more than one branch in a lower income neighborhood during the prior calendar year and no more than a total of two branches in lower income neighborhoods during the three prior consecutive calendar years.

**Lower income neighborhood or area.** "Lower income neighborhood or area" shall mean a census tract located in New York City that is eligible for Federal Community Development Block Grants as administered by the U.S. Department of Housing and Urban Development.

### § 1-03 Designation Requirements.

(a) *Banking Commission procedures.* Every bank in which City moneys shall be deposited shall be designated by the Banking Commission by majority vote, by written notice to the Commissioner of Finance.

(b) *Application for designation: Term.* Application for designation shall be continuously available. The Banking Commission shall act on a complete application at its next scheduled meeting, provided a complete application is received at least sixty days in advance of such meeting. Subsequent to its initial designation, to remain a designated bank, a bank must submit a new application to the Banking Commission in the second year following the year of its previous designation. Such new application must be submitted by March 1 immediately preceding the Commission's annual designation meeting in May of such second year. The term of a designation shall be for a period no longer than two years, unless the Banking Commission shall by majority vote extend such designation period.

(c) *Content of application for designation.* Except as provided in subdivision (f) of this section, a bank's application for designation shall consist of the following:

(1) *Filings.* When applying for designation each bank shall file with the Banking Commission:

- (i) a copy of the bank's charter;
- (ii) the names and occupations of the bank's Directors;
- (iii) the names and titles of bank officers;
- (iv) the location of the main office and branch offices;
- (v) the location of all processing centers other than branches;
- (vi) the independently audited public financial statements for the bank and bank holding company for the most recent fiscal year;

(vii) a list of all bank and bank holding company executives, employees, shareholders, legal counsel, consultants and advisors and/or their spouses or domestic partners, who

(A) individually, jointly or severally hold in excess of a five percent (5%) beneficial interest in the bank and/or in the bank holding company, and who

(B) are, or whose spouses or domestic partners are, contemporaneously elected or appointed holders of public office or of party office in any political party;

(viii) written confirmation that a completed Division of Labor Services of the Department of Business Services Supply and Service Rider form for any bank that provides at least one distinct service to the City that incurs an annual service charge of at least \$50,000 payable by the City has been delivered to the Division of Labor Services;

(ix) the names of the federal and state regulatory agencies with jurisdiction over such bank's Community Reinvestment Act ("CRA") activities;

(x) a copy of the most recent federal supervisory agency CRA examination summary report issued on or after July 1, 1990, and the most recent New York State Banking Department examination summary report as applicable;

(xi) the most recent federal CRA rating for the bank issued on or after July 1, 1990 and/or the most recent state CRA rating for the bank; provided, however, that any more current federal or state CRA rating issued during the period after designation must be submitted to the Banking Commission upon issuance; and

(xii) the name, title, address and telephone number of the bank official who will act as contact for City banking relationship matters involving bank accounts; and

(xiii) a copy of the bank's banking development district application and the New York State Banking Department's approval of such application, if applicable, or, in the event the bank did not submit the application, information to establish that the bank has opened a branch in a banking development district after the district's establishment and that location of the branch in the district promotes the purposes of the banking development district program by providing banking services in geographic locations where there is a demonstrated need for such services. After the initial application for designation, in lieu of any one or more of the filings enumerated in subparagraphs (i), (ii), (iii), (v), (vi), (ix) or (xi) above, a bank in subsequent applications for designation, may file with the Banking Commission a certificate signed by the president or other duly authorized officer of such bank, certifying that the information most recently filed by the bank in compliance with each such subparagraph named in a certificate remains current, accurate, full and complete and agreeing that the bank shall deliver new filings in compliance with such subparagraphs to the Banking Commission upon the request of the Banking Commission or upon any change in the information contained in the original filings. Each designated bank shall also submit to the Banking Commission any financial statements, CRA examination summary reports or CRA ratings (as described in subparagraphs (vi), (x) and (xi) above, respectively) issued by or with respect to the bank subsequent to its previous filings with the Banking Commission pursuant to paragraph 1 above. For purposes of this paragraph, "domestic partner" shall mean a person who has registered a domestic partnership in accordance with applicable law with the City Clerk or has registered such partnership with the former City Department of Personnel pursuant to Executive Order 123 (dated August 7, 1989) during the period August 7, 1989 through January 7, 1993. (The records of domestic partnerships registered with the former City Department of Personnel have been transferred to the City Clerk.)

(2) *Certificates.* Each bank shall file with the Banking Commission and the City Clerk the following certificates, each signed by the president or other duly authorized officer of such bank:

(i) a certificate setting forth that its board of directors has established and will adhere to a policy of hiring and promotion of employees and officers without regard to race, color, religion, religious affiliation, sex, sexual orientation, national origin, marital status, disability or age. The certificate shall further set forth affirmatively the steps taken by such bank to implement said policy;

(ii) a certificate setting forth that the bank adheres and will continue to adhere to all equal credit opportunity laws and that its board of directors has established and will adhere to a policy of nondiscrimination in the bank's delivery of banking services to all customers in New York City, including account openings and the offering and extension of credit, which dealings shall at all times be conducted without regard to race, color, religion, religious affiliation, sexual orientation, sex, marital status, disability, age or national origin, and which certificate shall further set forth the detailed plan and the specific steps affirmatively taken by such bank to implement and monitor said policies; and

(iii) a certificate setting forth the bank's policy regarding branch closings, and the specific steps affirmatively taken by the bank to implement and monitor said policy. Such policy shall include but not be limited to:

(A) the criteria for evaluating the necessity of a branch closing;

(B) the process of assessing the impact of the branch closing on the community,

(C) the procedure for notifying a community of a branch closing, including but not limited to, the persons to be notified and the timing of such notification and

(D) any plans for the continuation of service to the affected community. After the initial application for designation, in lieu of any or all of the certificates enumerated in subparagraphs (i), (ii), or (iii) above, a bank may file with the Banking Commission a certificate signed by the president or other duly authorized officer of such bank, certifying that the certificate most recently filed by the bank in compliance with each such subparagraph named therein remains current, accurate, full and complete and agreeing that the bank shall deliver a new certificate in compliance with any such subparagraph to the Banking Commission upon the request of the Banking Commission or upon any change in the information contained in the bank's original certificate.

(3) *Report on branch network.* Each bank shall submit or make available to the Banking Commission, at the Banking Commission's option, a written report on its branch network activities. Such written report shall be certified by the president or other duly authorized officer of the bank and shall include but not be limited to the following information:

(i) the address, county, zip code and census tract of each branch that was opened, closed, or involved in a consolidation, acquisition or sale during the three prior calendar years and during the current calendar year, or that is planned to be opened, closed or involved in a consolidation, acquisition or sale during the current calendar year, and the date such transaction became or will become effective; and

(ii) for each branch closing occurring in the prior calendar year:

(A) the reasons for such closing, with any supporting information stated in belief;

(B) the past three years', present and projected financial analyses of deposits at the closed branch, including but not limited to historical and projected profit and loss information, and brief descriptions of other material factors in the closing of the branch; and

(C) a detailed map of the general area served by such branch, showing the distance from remaining bank facilities or offices of such bank or other institutions providing branch banking services within such area; Any information submitted to the Banking Commission under this paragraph (3) of subdivision (c) shall be deemed confidential and shall be treated as such subject to applicable provisions of law.

(4) *Community service rating.* The Banking Commission shall rate the community service of each bank filing for designation. The basis of such rating shall be a bank's most recent Federal and State Community Reinvestment Act rating, and may also include such other factors as the Banking Commission deems relevant to achieving the purposes of these rules, including but not limited to a bank's participation in the banking development district program. Each bank shall submit to the Banking Commission any information required by the Commission in order to issue such ratings. Such

rating shall be used by City agencies in their process of selecting banking service providers.

(5) *Notice.* Each bank shall submit to the Banking Commission a written statement certified by the president or other duly authorized officer of the bank that it will give to the Banking Commission notice of changes in its branch network as follows:

(i) for a branch closing, notice shall be at least 90 days in advance of the date such closing becomes effective;

(ii) for a sale of a branch, notice shall be at least 90 days in advance of the date such sale becomes effective, or upon approval of the transaction by the bank regulator, whichever is later; and

(iii) for changes in location of an existing branch, at least 90 days in advance of such change, or when the date of such change in location is known, whichever is later.

(d) *Timely submission; extensions.*

(1) Each bank seeking designation shall submit its application and any other information required by these rules to the Banking Commission in accordance with this section. If a bank has timely submitted its application, the Banking Commission shall notify such bank if its application is incomplete or is not in compliance with the required format and shall give such bank fifteen days from the date of such notice to complete its application or to conform such application as required.

(2) If a bank knows that it will be unable to complete its application in a timely manner, it may apply for an extension of time for submission of materials to the Banking Commission. The Banking Commission shall have the discretion to grant an extension of time up to an additional thirty days for the submission of missing materials if the bank applies for such an extension thirty days prior to the date the application is due.

(3) If a bank has failed to timely submit its application by the required date or within the applicable extension of time, or to complete or conform its application within fifteen days of notification by the Banking Commission of the need thereof, and such bank is not subject to the "necessity exception" as set forth in subdivision (f) of this section, then such bank shall not be designated and shall be subject to the provisions of 22 RCNY § 1-04.

(e) *Other requirements.*

(1) Except as provided in subdivision (f) of this 22 RCNY § 1-03, no bank shall be designated or shall remain designated pursuant to these rules unless it shall meet the following criteria:

(i) it shall agree to pay into the City treasury interest or to provide the City with equivalent value on the daily balances at a rate which the Banking Commission shall negotiate according to the current rate of interest upon like balances deposited in banks in the City by private persons or corporations;

(ii) it shall retain throughout the designation period a minimum state CRA rating of "2" or its equivalent as determined by the New York State Banking Department and a minimum federal CRA rating of "Satisfactory" or its equivalent as determined by the appropriate federal regulator on or after July 1, 1990, as applicable;

(iii) (A) *Branch closing formula.* For a bank that maintains at least fifteen branches in New York City at the time it applies for designation and has opened more branches than it closed in New York City during the prior calendar year or cumulatively over the three prior calendar years: Such bank shall not have (a) opened in lower income areas, fewer than 25% of the total number of branches it opened in New York City during the prior calendar year or cumulatively over the three prior calendar years and (b) closed in lower income areas, more than 66% of the total number of branches it closed in New York City during the prior calendar year or cumulatively over the three prior calendar years; or

(B) for a bank that maintains at least fifteen branches in New York City at the time it applies for designation and has closed more branches than it opened in New York City during the prior calendar year or cumulatively over the three prior calendar years: Such bank shall not have closed in lower income areas, more than 66% of the total number of branches it closed in New York City during the prior calendar year or cumulatively over the three prior calendar years;

(C) the above branch closing formula shall not apply to a bank so long as the bank satisfies the de minimis exception set forth in 22 RCNY § 1-02.

(iv) it shall adhere to its policies as provided in the certificates filed by such bank with the Banking Commission and the City Clerk

(A) on branch closings, as set forth in 22 RCNY § 1-03(c)(2)(iii); and

(B) of not discriminating in the hiring and promotion of employees and officers or in the provision and delivery of banking services, as set forth in 22 RCNY § 1-03(c)(2)(i) and (ii)

(v) if any bank seeking to be designated or any bank that is already designated fails to meet the branch closing formula set forth in 22 RCNY § 1-03(e)(1)(iii) or to conform to any of its policies stated above in paragraph (1)(iv) of this subdivision (e), then such bank shall be given the opportunity to raise relevant material facts in its defense before any action on its designation is taken. If the Banking Commission determines that the bank has either not met the branch formula standards or failed to conform to any stated policies, then the Banking Commission shall not designate such bank or shall revoke its designation upon thirty days' notice to such bank, except as provided in subdivision (f) of this section, and such bank shall be subject to the provisions of 22 RCNY § 1-04.

(2) The Banking Commission shall have discretion not to designate a bank:

(i) which closed more branches than it opened in New York City during the prior calendar year or cumulatively over the three prior calendar years if more than 25% but fewer than 66% of its total closings in New York City in the prior calendar year or cumulatively over the three prior calendar years were in lower income areas; or

(ii) which opened more branches than it closed in New York City during the prior calendar year or cumulatively over the three prior years if fewer than 25% of its total openings in New York City in the prior calendar year or cumulatively over the three prior calendar years were in lower income areas. Before determining whether not to designate a bank under this paragraph (2) of subdivision (e), the Banking Commission shall provide such bank an opportunity to raise relevant material facts in its defense. If the Banking Commission determines not to designate such bank, such bank shall be subject to the provisions of 22 RCNY § 1-04.

(3) The total amount of City funds deposited at below-market rate shall not exceed \$ 20 million per branch. Below-market rate is defined as below such bank's current rate, so long as it is not less than the three-month constant maturity rate of the United States Treasury for 90-day deposits.

(f) *Necessity exception.*

(1) The Banking Commission in its discretion may designate as a City depository a bank that does not meet the criteria set forth in this section upon a determination in writing, by majority vote, that the deposit of City moneys in such bank is necessary to obtain essential services that are not reasonably obtainable elsewhere. Notwithstanding the preceding sentence, the Banking Commission shall not designate a bank pursuant to this subdivision where the bank (i) is a branch of a savings bank, savings and loan association, federal savings and loan association, or federal savings bank located in a banking development district; or (ii) fails to comply with the designation criteria specified in subparagraphs (c)(2)(i) and (e)(1)(i) of this section.

(2) This exception to the designation requirements, hereinafter referred to as "the necessary exception," may be invoked by a City agency or a public

administrator of the counties within New York City by petitioning the Banking Commission in writing to designate a bank under the necessity exception. Such petition shall set forth:

- (i) the agency's or public administrator's determination that the services provided by such bank are essential services which are not reasonably obtainable elsewhere and
- (ii) the agency's or public administrator's reasons supporting such a determination. Such petition must be approved by majority vote of the Banking Commission.

(3) (i) If the petition for a necessity exception is denied by the Banking Commission, then such bank shall not be designated, and the agency or public administrator shall not deposit any moneys or obtain any services incidental to the deposit of City moneys from such bank. In addition, such bank shall be subject to the provisions of 22 RCNY § 1-04.

(ii) If such petition is granted, the Banking Commission shall

- (A) by majority vote designate such bank, in writing, under the necessity exception for the sole purpose of providing such services to the City,
- (B) state in writing which services provided by the bank are specifically covered by the necessity exception and thus are services that the bank is allowed to provide to the City and
- (C) send a copy of such designation and written authorization of allowable services to be provided by such bank to the City Office of Contracts, or its equivalent.

(4) If such bank shall be designated by the Banking Commission under the necessity exception as set forth above, then such bank shall be conditionally designated and its relationship to the City shall be subject to the following conditions:

(i) The bank shall provide only those services to the City that are specifically permitted under the necessity exception and that have been authorized in writing by the Banking Commission. No other banking agreements, banking services, or bank accounts with the City of New York shall be permitted and no currently effective agreement between the subject bank and the City shall be renewed or extended unless and until such bank meets all of the designation requirements under these rules and is then designated by the Banking Commission unconditionally. The provisions of 22 RCNY § 1-04 shall apply to all deposits or other incidental banking services not specifically covered by the necessity exception.

(ii) A bank which shall have been conditionally designated may submit its application to be unconditionally designated for the next biennial designation period, or for some earlier time at the discretion of the Banking Commission.

(Amended City Record 11/10/2020, eff. 12/10/2020)

#### **§ 1-04 Revocation and Consequences of Nondesignation.**

(a) Except as provided for under the necessity exception, the Banking Commission shall not designate any bank if it determines in writing, by majority vote, that such bank has not complied with any designation requirement contained herein.

(b) If the Banking Commission shall determine in writing, by majority vote, that a designated bank has violated any designation requirement stated herein and that such bank is not subject to the necessity exception, then the Banking Commission shall revoke its designation upon thirty days' notice to such bank. If a designated bank violates the branch closing formula that is set forth in paragraph (1)(iii) of subdivision (e) of 22 RCNY § 1-03 or fails to conform to any of the policies listed in paragraph (1)(iv) of that subdivision, then such bank shall be given the opportunity to raise relevant material facts in its defense before any action on its designation is taken.

(c) If the Banking Commission does not designate a bank or revokes its designation based upon the bank's failure to meet the City's designation requirements as stated herein, and if such bank has not been conditionally designated, then such bank shall be prohibited from holding City or public administrator deposits, and from providing banking services to the City, and making agreements or contracts with City agencies for banking services that are incidental to the holding of deposits of City moneys.

(d) In any such case described in subdivisions (b) and (c) herein, City agencies or public administrators that obtain any services incidental to the holding of City deposits from such bank must prepare a plan for the prompt and orderly withdrawal of funds from the bank, including but not limited to, termination of any agreement with such bank for the provision of banking services incidental to the holding of deposits of City moneys and removal of any City deposits from such bank.

(e) Any bank not designated by the Banking Commission or whose designation has been revoked, may resubmit its application for designation in accordance with the provisions of these rules.

#### **§ 1-05 Severability.**

If any provision of these rules and regulations or the application thereof to any person, entity, bank or circumstance is adjudged invalid by a court of competent jurisdiction, such determination shall not affect or impair the validity of the other provisions of these rules and regulations or the application thereof to other persons, entities, banks or circumstances.