

MISSOURI REGULATORS PROPOSE MODERNIZED BANK BRANCHING RULES

The Missouri State Banking and Savings and Loan Board has proposed updates to state banking rules that would modernize Missouri’s bank branching laws and put Missouri banks on an even footing with national banks for purposes of branching and establishing other types of banking offices.

Purpose of Rule. The proposed rule, which addresses establishment by Missouri state-chartered banks^[1] of various types of bank offices (e.g., branches, loan production offices, deposit production offices, “back office” office facilities, etc.), would revise the current Missouri rule (20 CSR 1140-6.075) by:

- replacing outdated definitions with definitions drawn from the current federal bank branching statutes, rules, interpretive letters and case law;
- facilitating streamlined filing requirements for non-branch offices and eliminating burdensome annual regulatory filings; and
- eliminating outdated limitations on office functions.

Summary of Rule. Under the proposed rule revisions, for Missouri state-chartered banks:

- **Branch Definition – Statutory Approval Requirement.** “Branches” are specifically defined as offices where “deposits are received or checks paid or money lent” (consistent with federal law). This definition is applicable to [Section 362.107 RSMo.](#), which requires pre-approval by the Missouri Commissioner of Finance for the establishment of any branch in any jurisdiction by a Missouri state-chartered bank or trust company. Approval by the applicable federal bank regulator is also required for bank branches under federal law.
- **LPO, DPO and Trust Offices in Missouri – Post-Notice Filing.** The following types of “non-branch banking facilities” established in Missouri require only an after-the-fact notice to the Missouri Division of Finance within 30 days after establishing the office:
 - loan production offices (LPOs) from which banks can conduct a variety of defined “loan-related functions;”

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- deposit production offices (DPOs) from which banks can conduct a variety of defined “deposit-related functions;”
 - combination offices, which can include, for example, functions of LPOs, DPOs, automated teller machines (ATMs) and/or interactive video terminals (IVTs), as long as they do not include the designated branch definition functions; and
 - trust offices.[\[ii\]](#)
- **Other Bank Facilities and Offices in Missouri – No Filing.** The following do not require any regulatory filing to establish in Missouri:
 - ATMs, IVTs, similar automated devices and drop boxes;
 - administrative offices (i.e., back-office facilities with no customer access); and
 - extensions to a main office or existing branch.
 - **Out-of-State Non-Branch Banking Facilities – No Filing.** The rule does not require approvals or filings for establishment of “non-branch banking facilities” outside Missouri.
 - **Pre-approval of Certain Real Estate Transactions.** The proposed rule acknowledges the requirement under Missouri statutory [Section 362.105.2\(1\) RSMo.](#) to secure prior approval from the Missouri Commissioner of Finance for any purchase or lease of real estate that exceeds the bank’s legal loan limit or that is from an “officer, director, employee, affiliate, principal shareholder or a related interest of such person.” Accordingly, a bank may need to get this pre-approval in connection with establishing any type of office or facility (e.g., branch, LPO, DPO, administrative office, ATM, etc.) if the facts require it – whether or not other approvals or filings are required under the proposed rule or by statute.
 - **No Impact on Remote Work Arrangements.** The proposed rule also expressly clarifies that it does not apply to typical bank employee work-from-home arrangements, so that those arrangements will not result in an employee’s home being considered a regulated bank office. This policy continues the Missouri Division of Finance’s approach to work-from-home arrangements in prior regulatory issuances, such as [Interpretive Letter 2-2022 \(April 13, 2022\) regarding Permissible Lending Activities Conducted Outside of a Branch.](#)

Related Considerations.

- **Out-of-State Offices – Requirements of “Host States” and Federal Law.** Other states have their own definitions for bank branch and non-branch offices, which may not match Missouri’s proposed rule definitions. These other states may also require filings and even approvals and may impose other requirements for the establishment

and operation of such offices by out-of-state banks. Federal law also defines bank branch and non-branch offices and may, in some cases, preempt certain of these state laws. However, any Missouri-chartered bank establishing out-of-state offices should consider “host state” laws carefully and may need to seek legal guidance to address the interplay of the laws of the home and host states and federal law.

- **Community Reinvestment Act Issues.** Whether a bank office qualifies as a branch or non-branch can make a difference under the federal Community Reinvestment Act (CRA), because, for most banks, the branch footprint impacts determination of the bank’s CRA assessment area. However, when it becomes effective, the [new federal CRA rule](#) will decrease the significance of branch locations for establishing a bank’s CRA assessment area for some banks, depending on the bank’s size and the geographic distribution of its lending activity.

Comment Period and Effective Date. The proposed rule was published in the *Missouri Register* on Nov. 15, 2023, and is subject to public comment for a period of at least 30 days from the publication date. The proposed rule may be modified into a final order of rulemaking based on comments received. After the final order of rulemaking is properly filed and published, it will be added to the *Missouri Code of State Regulations* and will become effective 30 days after that. So, the proposed rule will not become final until the first calendar quarter of 2024 at the earliest.

[i] The proposed rule would generally apply the same standards for establishment of certain “non-branch banking facilities” to out-of-state, state-chartered banks, although establishment of trust offices (and other trust services facilities) in Missouri by state and federally chartered out-of-state banking institutions is governed by Section 362.600 RSMo.

[ii] The proposed rule indicates that a “trust office” is not defined as a “branch,” and, therefore, does not require pre-approval by the Missouri Commissioner of Finance under Section 362.107 RSMo. Also, the proposed rule text addresses trust office establishment only by Missouri-chartered institutions with a “depository or non-depository trust company” charter (i.e., but not a “bank” charter with trust powers, which is technically different under Missouri law). However, this language will likely be clarified through the rulemaking comment process to address bank charters with trust powers. Also, see footnote one regarding establishment of trust offices by out-of-state banking institutions.