§ 308.152 Grounds for disapproval of notice.

The Board of Directors or its designee may issue a notice of disapproval with respect to a notice submitted by a state nonmember bank pursuant to section 32 of the FDIA (12 U.S.C. 1831i) where:

(a) The competence, experience, character, or integrity of the individual with respect to whom such notice is submitted indicates that it would not be in the best interests of the depositors of the state nonmember bank to permit the individual to be employed by or associated with such bank; or

(b) The competence, experience, character, or integrity of the individual with respect to whom such notice is submitted indicates that it would not be in the best interests of the public to permit the individual to be employed by, or associated with, the state nonmember bank.

[56 FR 37975, Aug. 9, 1991, as amended at 64 FR 62101, Nov. 16, 1999]

§ 308.153 Procedures where notice of disapproval issues pursuant to § 303.103(c) of this chapter.

(a) The Notice of Disapproval shall be served upon the insured state nonmember bank and the candidate for director or senior executive officer. The Notice of Disapproval shall:

(1) Summarize or cite the relevant considerations specified in §308.152;

(2) Inform the individual and the bank that a request for review of the disapproval may be filed within fifteen days of receipt of the Notice of Disapproval; and

(3) Specify that additional information, if any, must be contained in the request for review.

(b) The request for review must be filed at the appropriate regional office.

(c) The request for review must be in writing and should:

(1) Specify the reasons why the FDIC should reconsider its disapproval; and

(2) Set forth relevant, substantive and material documents, if any, that for good cause were not previously set forth in the notice required to be filed pursuant to section 32 of the FDIA (12 U.S.C. 1831i).

[56 FR 37975, Aug. 9, 1991, as amended at 64 FR 62101, Nov. 16, 1999]

§ 308.154 Decision on review.

(a) Within 30 days of receipt of the request for review, the Board of Directors or its designee, shall notify the bank and/or the individual filing the reconsideration (hereafter “petitioner”) of the FDIC’s decision on review.

(b) If the decision is to grant the review and approve the notice, the bank and the individual involved shall be so notified.

(c) A denial of the request for review pursuant to section 32 of the FDIA shall:

(1) Inform the petitioner that a written request for a hearing, stating the relief desired and the grounds therefore, may be filed with the Executive Secretary within 15 days after the receipt of the denial; and

(2) Summarize or cite the relevant considerations specified in §308.152.

(d) If a decision is not rendered within 30 days, the petitioner may file a request for a hearing within fifteen days from the date of expiration.

§ 308.155 Hearing.

(a) Hearing dates. The Executive Secretary shall order a hearing to be commenced within 30 days after receipt of a request for a hearing filed pursuant to §308.154. Upon request of the petitioner or the FDIC, the presiding officer or the Executive Secretary may order a later hearing date.

(b) Burden of proof. The ultimate burden of proof shall be upon the candidate for director or senior executive officer. The burden of going forward
with a *prima facie* case shall be upon
the FDIC.

(c) *Hearing procedure.* (1) The hearing
shall be held in Washington, DC or at
another designated place, before a pre-
siding officer designated by the Execu-
tive Secretary.

(2) The provisions of §§308.6 through
308.12, 308.16, and 308.21 of the Uniform
Rules and §§308.102 through 308.102, and
308.104 through 308.106 of subpart B of
the Local Rules shall apply to hearings
held pursuant to this subpart.

(3) The petitioner may appear at the
hearing and shall have the right to in-
trude relevant and material docu-
ments and make an oral presentation.
Members of the FDIC enforcement staff
may attend the hearing and participate
as representatives of the FDIC enforce-
ment staff.

(4) There shall be no discovery in pro-
ceedings under this subpart.

(5) At the discretion of the presiding
officer, witnesses may be presented
within specified time limits, provided
that a list of witnesses is furnished to
the presiding officer and to all other
parties prior to the hearing. Witnesses
shall be sworn, unless otherwise di-
rected by the presiding officer. The pre-
siding officer may ask questions of any
witness. Each party shall have the op-
portunity to cross-examine any witness
presented by an opposing party. The
transcript of the proceedings shall be
furnished, upon request and payment of
the cost thereof, to the petitioner af-
forded the hearing.

(6) In the course of or in connection
with any hearing under paragraph (c)
of this section the presiding officer
shall have the power to administer
oaths and affirmations, to take or
cause to be taken depositions of un-
available witnesses, and to issue, re-
voke, quash, or modify subpoenas and
subpoenas duces tecum. Where the
presentation of witnesses is permitted,
the presiding officer may require the
attendance of witnesses from any
state, territory, or other place subject
to the jurisdiction of the United States
at any location where the proceeding is
being conducted. Witness fees shall be
paid in accordance with §§308.114 of the
Uniform Rules.

(7) Upon the request of the applicant
afforded the hearing, or the members of
the FDIC enforcement staff, the record
shall remain open for five business
days following the hearing for the par-
ties to make additional submissions to
the record.

(8) The presiding officer shall make
recommendations to the Board of Di-
rectors or its designee, where possible,
within fifteen days after the last day
for the parties to submit additions to
the record.

(9) The presiding officer shall forward
his or her recommendation to the Ex-
ecutive Secretary who shall promptly
certify the entire record, including the
recommendation to the Board of Direc-
tors or its designee. The Executive Sec-
retary’s certification shall close the
record.

(d) *Written submissions in lieu of hear-
ing.* The petitioner may in writing
waive a hearing and elect to have the
matter determined on the basis of writ-
ten submissions.

(e) *Failure to request or appear at hear-
ing.* Failure to request a hearing shall
constitute a waiver of the opportunity
for a hearing. Failure to appear at a
hearing in person or through an au-
thorized representative shall con-
stitute a waiver of hearing. If a hearing
is waived, the order shall be final and
unappealable, and shall remain in full
force and effect.

(f) *Decision by Board of Directors or its
designee.* Within 45 days following the
Executive Secretary’s certification of
the record to the Board of Directors or
its designee, the Board of Directors or
its designee shall notify the affected
individual whether the denial of the
notice will be continued, terminated,
or otherwise modified. The notification
shall state the basis for any decision of
the Board of Directors or its designee
that is adverse to the petitioner. The
Board of Directors or its designee shall
promptly rescind or modify the denial
where the decision is favorable to the
petitioner.

[56 FR 37975, Aug. 9, 1991, as amended at 64
FR 62101, Nov. 16, 1999]