

**DEPARTMENT OF THE TREASURY**  
**Office of the Comptroller of the Currency**  
[Docket No. 99-06]

**FEDERAL RESERVE SYSTEM**  
[Docket No. R-1036]

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**DEPARTMENT OF THE TREASURY**  
**Office of Thrift Supervision**  
[Docket No. 99-33]

### **Branch Closings**

**AGENCIES:** Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

**ACTION:** Joint policy statement.

**SUMMARY:** The OCC, the Board, the FDIC, and the OTS (the agencies) are revising their joint policy statement regarding branch closings by insured depository institutions. This action is needed to incorporate changes in the underlying statute made by section 106 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 and section 2213 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996. The action is intended to clarify the additional steps regarding notice and consultation for proposed branch closings by interstate banks in low- or moderate-income areas, and to clarify the status of automated teller machines, relocations and consolidations, and branch closings in connection with emergency acquisitions or assistance by the FDIC.

**EFFECTIVE DATE:** June 29, 1999.

### **FOR FURTHER INFORMATION CONTACT:**

**OCC:** Crystal Maddox, National Bank Examiner, Licensing Policy and Systems Analyst, Bank Organization and Structure Division (202/874-5060); Sue Auerbach, Senior Attorney, Bank Activities and Structure Division (202/874-5300); Beth Knickerbocker, Senior Attorney, Community and Consumer Law Division (202/874-5750); Office of the Comptroller of the Currency, 250 E Street, SW., Washington DC 20219.

Board: Rick Heyke, Senior Attorney, Legal Division (202/452-3688), Board of Governors of the Federal Reserve System, 20<sup>th</sup> and C Streets, NW., Washington, DC 20551. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Diane Jenkins (202/452-3544).

FDIC: Curtis Vaughn, Examination Specialist, Division of Supervision (202/898-6759); Gladys C. Gallagher, Counsel, Legal Division (202/898-3833); Federal Deposit Insurance Corporation, 550 17<sup>th</sup> Street, NW., Washington, DC 20429.

OTS: Larry Clark, Director of Trust Programs, Compliance Policy and Specialty Examinations (202/906-5628); Lucrecia R. Moore, Attorney (202/906-6161); Office of Thrift Supervision, 1700 G Street, NW., Washington DC 20552.

## **SUPPLEMENTARY INFORMATION:**

### **Background Information**

Section 42 of the Federal Deposit Insurance Act (12 U.S.C. 1831r-1) (FDI Act) requires an insured depository institution to give 90 days prior written notice of any branch closing to its primary Federal regulator and to branch customers, to post a notice at the branch site at least 30 days prior to closing, and to develop a policy with respect to branch closings. The notice to the regulator must include a detailed statement of the reasons for the decision to close the branch and information in support of those reasons.

On September 21, 1993 (58 FR 49083), the agencies issued a joint policy statement to provide guidance to institutions in complying with section 42 of the FDI Act. The 1993 joint policy statement defines a branch for purposes of section 42, clarifies what constitutes a branch closing, and provides guidance to institutions in identifying customers to be notified in the event of a branch closing.

On September 29, 1994, section 42 of the FDI Act was amended by section 106 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Pub. L. 103-328, 108 Stat. 2338) (Interstate Act). The Interstate Act changed section 42 of the FDI Act in two ways, both relating to proposed closings by interstate banks (banks which maintain branches in more than one state) of branches in low- or moderate-income areas: first, by providing a new notice procedure; and second, by requiring the appropriate Federal banking agency to convene a meeting of community leaders and other persons to discuss the feasibility of obtaining adequate alternative facilities and services if a person from the affected area requests such a meeting and other prescribed requirements are satisfied.

On September 30, 1996, section 42 of the FDI Act was amended by section 2213 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104-208, 110 Stat. 3009) (Regulatory Relief Act). The Regulatory Relief Act amended section 42 of the FDI Act to clarify that section 42 does not apply to: (1) an automated

teller machine; (2) the relocation of a branch or consolidation of one or more branches into another branch, if the relocation or consolidation occurs within the immediate neighborhood and does not substantially affect the nature of the business or customers served; and (3) a branch that is closed in connection with an emergency acquisition under sections 11(n), 13(f), or 13(k) of the FDI Act, or any assistance provided by the FDIC under section 13(c) of the FDI Act. (12 U.S.C. 1821(n), 1823(f) and (k), and 1823(c)).

The agencies are revising the 1993 joint policy statement to reflect the changes to section 42 of the FDI Act made by the Interstate Act and the Regulatory Relief Act. The revised policy statement incorporates the new procedure and provides for banks to inform customers in affected areas of their ability to comment on a particular branch closing. The agencies are also clarifying that main offices, remote service facilities, loan production offices, and insured branches of foreign banks are not branches for purposes of section 42. A reference to the Resolution Trust Corporation (RTC) is being eliminated since the agency ceased to exist on December 31, 1995. The agencies are also clarifying the section on allocation of customers to branches.

The text of the revised joint policy statement follows:

**POLICY STATEMENT OF  
OFFICE OF THE COMPTROLLER OF THE CURRENCY,  
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,  
FEDERAL DEPOSIT INSURANCE CORPORATION,  
AND OFFICE OF THRIFT SUPERVISION  
CONCERNING BRANCH CLOSING NOTICES AND POLICIES**

### **Purpose**

This policy statement provides guidance to each insured depository institution concerning requirements that an institution provide prior notice of any branch closing and establish internal policies for branch closings.<sup>1/</sup>

### **Background**

The Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102-242, 105 Stat. 2236) (FDICIA) was enacted on December 19, 1991. Section 228 of the FDICIA added a new section 42 to the Federal Deposit Insurance Act (12 U.S.C. 1831r-1) (FDI Act) that imposes notice requirements on insured depository institutions that intend to close branches. The provision became effective on December 19, 1991. Section 42 was amended on September 29, 1994, by section 106 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Pub. L. 103-328, 108 Stat. 2338), and on September 30, 1996, by the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104-208, 110 Stat. 3009).

The law requires an insured depository institution to submit a notice of any proposed branch closing to the appropriate Federal banking agency no later than 90 days prior to the date of the proposed branch closing. The required notice must include a detailed statement of the reasons for the decision to close the branch and statistical or other information in support of such reasons.

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<sup>1/</sup> An "insured depository institution" means any bank or savings association, as defined in Section 3 of the FDI Act (12 U.S.C. 1813), the deposits of which are insured by the FDIC.

The law also requires an insured depository institution to notify its customers of the proposed closing. The institution must mail the notice to the customers of the branch proposed to be closed at least 90 days prior to the proposed closing. The institution also must post a notice to customers in a conspicuous manner on the premises of the branch proposed to be closed at least 30 days prior to the proposed closing.

An interstate bank (defined in section 42 as a bank that maintains branches in more than one state) proposing to close a branch located in a low- or moderate-income area is required to include in its notice to customers the mailing address of the appropriate Federal banking agency and a statement that comments on the closing may be mailed to the agency.<sup>1/</sup> In those cases, a person from the affected area may submit a written request relating to the proposed closing to the agency, stating specific reasons for the request and including a discussion of the adverse effect the closing may have on the availability of banking services in the affected area. If the agency determines that the request is non-frivolous, then the agency shall convene a meeting of appropriate individuals, organizations, depository institutions, and agency representatives, as determined by the agency in its discretion, to explore the feasibility of obtaining adequate alternative facilities and services for the affected area following the closing of the branch.

Finally, the law requires each institution to adopt policies regarding closings of branches of the institution.

### **Applicability**

Section 42 of the FDI Act applies to the closing of a "branch" by an insured depository institution.<sup>1/</sup> The agencies consider a "branch" for purposes of section 42 to be a traditional brick-and-mortar branch, or any similar banking facility other than a main office, at which deposits are received or checks paid or money lent. Notice pursuant to section 42 would not be required for the closing of non-branch facilities, such as an ATM, remote service facility, or loan production office, or of a temporary branch.<sup>1/</sup> The law also does not apply to mergers, consolidations, or other acquisitions, including branch sales, that do not result in any branch closings. Institutions that are in doubt about

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<sup>2/</sup> Under section 42, this requirement does not apply when a savings association closes a branch.

<sup>3/</sup> Insured branches of foreign banks are not considered "branches" for purposes of section 42 because they are subject to separate liquidation procedures as specified in 12 CFR 28.22 (Federal branches of foreign banks) and 12 CFR 211.25(f) (state branches of foreign banks).

<sup>4/</sup> Consistent with the agencies' original interpretation, the 1996 amendment expressly stated that section 42 of the FDI Act "shall not apply with respect to automated teller machines." (Pub. L. 104-208, 110 Stat. 3009.)

the coverage of a particular closing should consult the appropriate Federal banking agency.

### Mergers

An institution must file a branch closing notice whenever it closes a branch, including when the closing occurs in the context of a merger, consolidation or other form of acquisition.<sup>4/</sup> Branch closings that occur in the context of transactions subject to the Bank Merger Act (12 U.S.C. 1828) require a branch closing notice, even if the transaction received expedited treatment under that Act. The responsibility for filing the notice lies with the acquiring or resulting institution, but either party to such a transaction may give the notice. Thus, for example, the purchaser may give the notice prior to consummation of the transaction where the purchaser intends to close a branch following consummation, or the seller may give the notice because it intends to close a branch at or prior to consummation. In the latter example, if the transaction were to close ahead of schedule, the purchaser, if authorized by the appropriate Federal banking agency, could operate the branch to complete compliance with the 90-day requirement without the need for an additional notice.

### Relocations and Consolidations

The law does not apply when a branch is relocated or consolidated with one or more other branches if the relocation or consolidation occurs within the immediate neighborhood and does not substantially affect the nature of the business or customers served. For purposes of this policy statement, a branch relocation is a movement within the same immediate neighborhood that does not substantially affect the nature of the business or customers served. Generally, relocations will be found to have occurred only when short distances are involved: for example, moves across the street, around the corner, or a block or two away. Moves of less than 1,000 feet will generally be considered to be relocations. In less densely populated areas or where neighborhoods extend farther, and a long move would not significantly affect the nature of the business or the customers served by the branch, a relocation may occur over substantially longer distances.<sup>5/</sup> Institutions that are in doubt about whether a relocation or a closing has occurred should consult the appropriate Federal banking agency.

Consolidations of branches are considered relocations for purposes of this policy statement if the branches are located within the same neighborhood and the nature

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<sup>5/</sup> See •Other• below for certain branches closed in connection with emergency acquisitions or FDIC assistance or subsequently transferred back to the FDIC.

<sup>6/</sup> OCC and OTS regulations specify distances considered short-distance relocations. See 12 CFR 5.3(l) (national banks) and 12 CFR 545.95(c) (thrifts).

of the business or customers served is not affected. Thus, for example, a consolidation of two branches on the same block following a merger would not constitute a branch closing. The same guidelines apply to consolidations as to relocations.

### Other

Changes of services at a branch are not considered a branch closing, provided that the remaining facility constitutes a branch (as defined herein).<sup>1/</sup>

Section 42 also does not apply when a branch ceases operation but is not closed by an institution. Thus, the law does not apply to:

- A temporary interruption of service caused by an event beyond the institution's control (e.g., a natural catastrophe), if the insured depository institution plans to restore branching services at the site in a timely manner;<sup>1/</sup>
- Transferring back to the FDIC, pursuant to the terms of an acquisition agreement, a branch of a failed bank or savings association operated on an interim basis in connection with the acquisition of all or part of a failed bank or savings association, so long as the transfer occurs within the option period or within an occupancy period, not to exceed 180 days, provided in the agreement.
- A branch that is closed in connection with an emergency acquisition under sections 11(n), 13(f), or 13(k) of the FDI Act, or any assistance provided by the FDIC under section 13(c) of the FDI Act. (12 U.S.C. 1821(n), 1823(f) and (k), and 1823(c)).

### **Notice of Branch Closing to the Agency**

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<sup>1/</sup> The agencies note that where, after a reduction in services, the resulting facility no longer qualifies as a branch, section 42 would apply. Thus, notices of branch closing would be required if an institution were to replace a traditional brick-and-mortar branch with an ATM.

<sup>8/</sup> Section 42 would apply, however, if the institution did not reopen the branch following the incident. Although prior notice would not be possible in such a case, the institution should notify the customers of the branch and the appropriate Federal banking agency in the manner specified by section 42 to the extent possible and as soon as possible after the decision to close the branch has been made.

The law requires an insured depository institution to give notice of any proposed branch closing to the appropriate Federal banking agency no later than 90 days prior to the date of the proposed branch closing. The required notice must include the following:

- Identification of the branch to be closed;
- The proposed date of closing;
- A detailed statement of the reasons for the decision to close the branch; and
- Statistical or other information in support of such reasons consistent with the institution's written policy for branch closings.

If an institution believes certain information included in the notice is confidential in nature, the institution should prepare such information separately and request confidential treatment. The agency will decide whether to treat such information confidentially under the Freedom of Information Act (5 U.S.C. 552).

If a notice provided to a state supervisory agency pursuant to state law contains the information outlined above, then the institution may provide a copy of that notice to the appropriate Federal banking agency in satisfaction of section 42, provided that the notice is filed at least 90 days prior to the date of the branch closing.

## **Notice of Branch Closing to Customers**

### **Customer Allocation**

The law requires an insured depository institution that proposes to close a branch to provide notice of the proposed closing to the customers of the branch. A customer of a branch is a patron of an institution who has been identified with a particular branch by such institution through use, in good faith, of a reasonable method for allocating customers to specific branches. An institution that allocates customers based on where a customer opened his or her deposit or loan account will be presumed to have reasonably identified each customer of a branch. The agencies recognize that use of this means of allocation, and perhaps others, may result in certain facilities which technically constitute branches not being assigned any customers, but believe that this result is permissible so long as the means of allocation is reasonable; if such a branch is closed, then notification to the appropriate agency and posting of a notice on the branch premises will suffice. Finally, an institution need not change its recordkeeping system in order to make a reasonable determination of who is a customer of a branch.

### **Timing**

Under section 42, an institution must include a customer notice at least 90 days in advance of the proposed closing in at least one of the regular account statements mailed to customers, or in a separate mailing. If the branch closing occurs after the proposed date of closing, no additional notice is required to be mailed to customers (or



provided to the appropriate Federal banking agency) if the institution acted in good faith in projecting the date for closing and in subsequently delaying the closing.

### Content

The mailed customer notice should state the location of the branch to be closed and the proposed date of closing, and either identify where customers may obtain service following the closing date or provide a telephone number for customers to call to determine such alternative sites. If a notice of branch closing provided to customers pursuant to state law contains this information, then a separate notice need not be sent, provided that the notice is sent at least 90 days prior to the closing.

### Low-or Moderate-Income Areas Served by Interstate Banks

If the institution is a bank that maintains branches in more than one state and the branch to be closed is located in a low- or moderate-income area,<sup>2/</sup> the notice shall contain the mailing address of the appropriate Federal banking agency and a statement that comments on the proposed branch closing may be mailed to that agency. The notice should also state that the agency does not have the authority to approve or prevent the branch closing. If the agency receives a written request by a person from the area in which the branch is located, relating to the proposed closing and stating specific reasons for the request, including a discussion of the adverse effect of such closing on the availability of banking services in the affected area, and if the agency concludes that the request is nonfrivolous, then the agency shall convene a meeting of agency representatives, other interested depository institution regulatory agencies, community leaders, and other appropriate individuals, organizations, and depository institutions, as determined by the agency in its discretion. The purpose of the meeting shall be to explore the feasibility of obtaining adequate alternative facilities and services for the affected area, including the establishment of a new branch by another depository institution, the chartering of a new depository institution, or the establishment of a community development credit union, following the closing of the branch. In the case of an institution which will become an interstate bank prior to the closure of a branch in a

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<sup>2/</sup> The term "low-or moderate-income area" means a census tract for which the median family income is: (1) less than 80 percent of the median family income for the metropolitan statistical area (as designated by the Director of the Office of Management and Budget) in which the census tract is located; or (2) in the case of a census tract that is not located in a metropolitan statistical area, less than 80 percent of the median family income for the State in which the census tract is located, as determined without taking into account family income in metropolitan statistical areas in such State. (12 U.S.C. 1831r-l(d)(4)).

low- or moderate-income area, such information must be included in the notice unless the closure will occur immediately upon consummation of the transaction that causes the institution to become interstate. No action by the appropriate Federal banking agency under this provision shall affect the authority of an interstate bank to close a branch (including the timing of such closing) if the requirements of sections 42(a) and 42(b) of the FDI Act (regarding notice to the appropriate Federal banking agency and notice to the institution's customers) have been met by such bank with respect to the branch being closed.

### **On-site Notice**

Under section 42, an institution also must post notice to branch customers in a conspicuous manner on the branch premises at least 30 days prior to the proposed closing. This notice should 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. An institution may revise the notice to extend the projected date of closing without triggering a new 30-day notice period.

### **Contingent Notices**

In some situations, an institution, in its discretion and to expedite transactions, may mail and post notices to customers of a proposed branch closing that is contingent upon an event. For example, in the case of a proposed merger or acquisition, an institution may notify customers of its intent to close a branch upon approval by the appropriate Federal banking agency of the proposed merger or acquisition.

### **Policies for branch closings**

The law requires all insured depository institutions to adopt policies for branch closings. Each institution with one or more branches must adopt such a policy. If an institution currently has no branches, it must adopt a policy for branch closing when it establishes its first branch. The policy should be in writing and meet the size and needs of the institution.

Each branch closing policy adopted pursuant to section 42 should include factors for determining which branch to close and which customers to notify, and procedures for providing the notices required by the statute.

### **Compliance**

The Federal banking agencies will examine for compliance with section 42 of the FDI Act in accordance with each agency's compliance examination procedures, to determine whether the institution has adopted a branch closing policy and whether the institution provided the required notices when it closed a branch. If an institution fails to

comply with section 42, the appropriate Federal banking agency may make adverse findings in the compliance evaluation or take appropriate enforcement action.