

**FEDERAL RESERVE BANK
OF NEW YORK**

[Circular No. **10589**]
October 26, 1992]

**PROPOSED POLICY STATEMENT
REGARDING BRANCH CLOSINGS BY STATE MEMBER BANKS**

Comments Invited by December 4, 1992

*To All State Member Banks, and Others
Concerned, in the Second Federal Reserve District:*

Following is the text of a statement issued by the Board of Governors of the Federal Reserve System:

The Federal Reserve Board has issued for public comment a proposed policy statement regarding branch closings by State member banks.

Comments should be received by December 4, 1992.

The proposed policy statement provides guidance concerning the branch closing provisions of Section 228 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), specifically the requirements that depository institutions, including State member banks, adopt policies for branch closings and provide notice before closing any branch.

Printed on the following pages is the text of the Board's proposed policy statement, which has been reprinted from the *Federal Register* of October 7. Comments thereon should be submitted by December 4, and may be sent to the Board of Governors, as specified in the notice, or to our Banking Applications Department.

E. GERALD CORRIGAN,
President.

FEDERAL RESERVE SYSTEM

[Docket No. R-0777]

Branch Closings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed policy statement.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is seeking comment on a proposed policy statement regarding branch closings by state member banks. The proposed policy statement provides guidance concerning the branch closing provisions of section 228 of the Federal Deposit Insurance Corporation Improvement Act (FDICIA), specifically the requirements that insured depository institutions, including state member banks, adopt policies for branch closings and provide notice before closing any branch.

DATES: Comments must be submitted on or before December 4, 1992.

ADDRESSES: Comments, which should refer to Docket No. R-0777, may be mailed to Mr. William Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue NW., Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room B-1122 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Oliver I. Ireland, Associate General Counsel (202/452-3625), Gregory A. Baer, Senior Attorney (202/452-3236), Legal Division; Glenn E. Loney, Assistant Director (202/452-3585), Beverly C. Smith, Review Examiner (202/452-3946), Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background Information

Section 228 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) added a new section 39 to the Federal Deposit Insurance Act (FDI Act).¹ New section 39 took effect upon enactment of FDICIA on December 19, 1991. The law requires each insured depository institution, including state member banks, to give 90 days prior written notice of any branch closing to its federal regulator and to branch customers, to post 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.

The Board has developed a proposed policy statement applying section 39 to state member banks, and the Board is seeking public comment on that proposal. Because section 39 applies to all insured depository institutions, each of the Federal banking agencies will be required to monitor compliance with its requirements. Accordingly the Board has worked with the other Federal banking agencies to develop a consistent approach to section 39, and these efforts will continue in developing a final policy statement. At the same time, however, each agency also has existing rules, regulations, and policies that are affected by section 39, and the policies of the agencies will differ accordingly.

Issues for Specific Comment

The Board seeks comments on all aspects of its proposed policy statement. In addition, the Board invites comments on the following specific issues:

1. *Definition of "branch."* Section 39 requires any insured depository institution that proposes to close a branch to provide prior notice to its Federal banking agency and the customers of the branch. The proposed policy statement defines "branch" in the same manner as the FDI Act defines "domestic branch," thereby including

¹ Due to an error in drafting, section 132 of FDICIA also adds a new section 39 to the FDI Act. The section 39 of the FDI Act added by section 228 of FDICIA is codified at 12 U.S.C. 1831p.

any domestic facility of a state member bank, other than its main office, where deposits are received, checks are paid, or money is lent. In addition to traditional brick and mortar branches, the Board believes that the law applies to closings of other types of domestic facilities that constitute branches, including ATMs, drive-in facilities, and mobile branches.

2. *Branch relocations.* Because section 39 applies only to plans to "close" a branch, the Board is not interpreting section 39 to require notice in case of a branch relocation. The Board's regulations currently provide that an application to establish a branch need not be filed in the case of a "mere relocation of an existing branch in the immediate neighborhood without affecting the nature of its business or customers served." See 12 CFR 208.9(b)(7); see also F.R.R.S. 3-419. The Board is proposing to adopt the same test for relocation for purposes of branch closings as it currently employs for applications to establish branches. Thus, if a branch relocation occurs under circumstances such that no application to establish a branch would be required, then no branch closing notice would be required.

3. *Operation of branches during option period.* Under the standard agreements of the FDIC and RTC, an acquirer that assumes some or all of the assets and liabilities of an institution placed into conservatorship or receivership may also operate one or more of the branches of the failed institution temporarily until it decides, during an option period (generally 90-180 days), whether to purchase or lease the branch or to transfer it back to the FDIC or RTC.

The question has arisen whether an acquirer that decides not to exercise such an option has closed a branch for purposes of section 39. The language of the statute is ambiguous on this point, and application of the notice requirement in such cases would appear to defeat rather than serve the purposes of the statute. The RTC and FDIC encourage an acquirer to occupy temporarily any branch that the acquirer is unsure about acquiring permanently; this temporary arrangement not only may lead the acquirer eventually to decide to take the branch, it also serves as a convenience to customers. However, if section 39 were interpreted to require an acquirer to remain in the

branch 90 days after a decision that it does not wish to acquire the branch, then acquirers would be more reluctant to occupy a branch temporarily, or would reprice their bids (at a cost to the government) to reflect the additional cost imposed by the notice requirement.

Under the proposed policy statement, the 90-day notice requirement does not apply when an acquiring state member bank operates branches of a failed institution on an interim basis, so long as the branches are closed prior to expiration of the acquirer's branch acquisition option period. If a state member bank were to exercise its branch acquisition option and acquire such a branch, the bank would be required to comply with the statutory notice requirements if it later decided to close the branch.

4. Identifying customers of the branch. The proposed policy statement permits each state member bank to determine which of its patrons will be identified as customers of a particular branch. The proposed policy statement requires a good faith determination using a reasonable method developed by the bank. One reasonable method that a state member bank could use is to allocate a customer to a branch based on where the customer opened his or her deposit or loan account.

Proposed Policy Statement for State Member Banks Concerning Branch Closing Notices and Policies

Purpose

This policy statement provides guidance to state member banks concerning the statutory requirements that a bank provide prior notice of any branch closing and establish internal policies for branch closings.

Background

The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) was enacted on December 19, 1991. Section 228 of the FDICIA adds a new section 39 to the Federal Deposit Insurance Act (FDI Act) and imposes notice requirements on insured depository institutions² that propose branch closings. The provision became effective on December 19, 1991. As the federal banking agency that supervises state member banks, the Board is charged with administering section 39 for those institutions.

² An insured depository institution means any bank or savings association, as defined in Section 3 of the FDI Act, the deposits of which are insured by the Federal Deposit Insurance Corporation (FDIC). The term includes state member banks.

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.

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.

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

Applicability

Under section 3 of the FDI Act, a "branch" is defined as any domestic facility of an insured depository institution, other than its main office, where deposits are received, checks are paid, or money is lent. Thus, in addition to a traditional brick and mortar branch, section 39 of FDICIA applies to the closing of any facility that constitutes a branch, including an automated teller machine (ATM), drive-in facility, and mobile branch.

A state member bank must file a branch closing notice for a branch closing occurring in the context of a merger, consolidation or other form of acquisition, whether or not such transaction is subject to expedited approval under the Bank Merger Act (12 U.S.C. 1828). The parties to such a transaction should determine which party will 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 Board, could operate the branch to complete compliance with the 90-day requirement without the need for an additional notice.

Section 39 would not apply to an interruption of service caused by an

event beyond the institution's control (e.g., act of God, fire), as the state member bank would not have closed the branch. Section 39 would apply, however, if the state member bank were to decide to close or not reopen the branch following the incident. Although prior notice would not be possible in such a case, the bank should notify the customers of the branch and the Board in the manner specified by section 39 as soon as possible after the decision to close the branch has been made.

The law does not apply where a branch undergoes a change in name, location, or services but continues to meet the definition of branch and any change in location is within the same immediate neighborhood and does not affect the nature of the business or customers served. Thus, the law does not apply to:

- Mergers, consolidations, or other acquisitions, including branch sales, which will not result in any branch closings;
- Change of services at a branch so long as the remaining facility constitutes a branch, such as where loan services are removed from a branch that will continue to offer deposit services, or where a traditional brick and mortar branch is converted to an ATM;
- A branch relocation, within the meaning of the Board's existing regulation, 12 CFR 208.9(b)(7).

In addition, section 39 does not apply when a branch ceases operation but is not closed by a state member bank. Thus, the law does not apply to:

- A temporary interruption of service caused by an event beyond the institution's control, if the insured depository institution plans to restore branching services at the site in a timely manner;
- Transferring back to the FDIC or Resolution Trust Corporation, 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.

Notice of Branch Closing to the Board

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

Notice of Branch Closing to Customers

The law requires a state member bank 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 a state member bank 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. A state member bank that allocates customers to its branches 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. A state member bank need not change its recordkeeping system in order to make a reasonable determination of who is a customer of a branch. If a state member bank cannot reasonably identify the customers of a particular branch using its current recordkeeping system, it may satisfy the requirements of section 39 by notifying all of its deposit and loan customers.

Under section 39, the bank 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 Board) if the state member bank acted in good faith in projecting the date for closing and in subsequently delaying the closing.

The mailed customer notice should state the location of the branch to be closed, 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.

Under section 39, a bank 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. A bank may revise the notice to extend the projected date of closing without triggering a new 30-day notice period.

In some situations, a bank, 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, a bank 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 state member bank with one or more branches must adopt such a policy. If a bank currently has no branches, it must adopt a policy for branch closing before it establishes its first branch. The policy should be in writing and meet the size and needs of the state member bank.

Each branch closing policy adopted pursuant to section 39 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

As part of each Community Reinvestment Act (CRA) examination, the Board will examine for compliance with section 39 of FDICIA to determine whether the state member bank has adopted a branch closing policy and whether the state member bank provided the required notices when it closed a branch. If a state member bank fails to comply with section 39, the Board may make adverse findings in the CRA evaluation or take appropriate enforcement action.

Board of Governors of the Federal Reserve System, October 1, 1992.

William W. Wiles,
Secretary of the Board.

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