

**FEDERAL RESERVE BANK  
OF NEW YORK**

[ Circular No. **10658** ]  
October 8, 1993 ]

**Interagency Policy Statement Regarding Branch Closings  
by Insured Depository Institutions**

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

The following is from the text of a statement issued by the Board of Governors of the Federal Reserve System announcing the adoption of a joint interagency policy statement concerning branch closings by insured depository institutions:

The policy statement provides guidance concerning the branch closing provisions of section 42 of the Federal Deposit Insurance Act, specifically the requirements that insured depository institutions adopt policies for branch closings and provide notices before closing any branch.

The statement:

- defines a "branch" for purposes of section 42 as a traditional brick-and-mortar branch at which deposits are received, checks are paid, or money is lent, thereby excluding the closing of ATMs and temporary branches from section 42's notice requirements;
- provides that the relocation or consolidation of a branch is not a closing;
- provides that a temporary interruption of service is not a closing;
- makes clear that as long as a branch continues to meet the definition of "branch" under section 42, a downgrading of the services is not a closing;
- allows each insured depository institution to devise a means of allocating customers among branches and provides guidance on how this can be done, instead of defining who is a customer of a branch and who must be notified of a proposed closing;
- identifies the information to be included in the notice to customers and in the notice posting at the branch; and,
- provides that no branch closing has occurred when an acquiring institution operates a branch temporarily under an option agreement with the Federal Deposit Insurance Corporation ("FDIC") or Resolution Trust Corporation ("RTC"), if the acquiring institution decides not to exercise the option and refers the branch to the FDIC or RTC.

The policy statement was developed in consultation with the Office of the Comptroller of the Currency, the FDIC, and the Office of Thrift Supervision.

Printed on the following pages is the text of the Interagency Statement. Questions regarding this matter may be directed to Janice A. Oser, Supervising Examiner, Compliance Examinations Department (Tel. No. 212-720-8136) or Jay B. Bernstein, Staff Director, Domestic Banking Applications Division (Tel. No. 212-720-5861). Notices filed pursuant to Section 42 of the Federal Deposit Insurance Act should be directed to the Domestic Banking Applications Division.

WILLIAM J. McDONOUGH,  
*President.*

**DEPARTMENT OF THE TREASURY****Office of the Comptroller of the Currency**

[93-16]

**FEDERAL RESERVE SYSTEM**

[Docket No. R-0777]

**FEDERAL DEPOSIT INSURANCE CORPORATION**

RIN 3063-AA53

**DEPARTMENT OF THE TREASURY****Office of Thrift Supervision**

[Docket No. 93-157]

**Branch Closings**

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

**ACTION:** Joint policy statement.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board of Governors), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively "the agencies") have adopted a joint policy statement regarding branch closings by insured depository institutions. The policy statement provides guidance concerning the branch closing provisions of section 42 of the Federal Deposit Insurance Act (FDI Act), specifically the requirements that insured depository institutions adopt policies for branch closings and provide notices before closing any branch.

**DATES:** Effective September 21, 1993.

**FOR FURTHER INFORMATION CONTACT:**

Board of Governors: 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, Manager-Applications (202/452-3946), Diane Jackins, Senior 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.

OCC: Cindy L. Hausch-Booth, Licensing Policy and Systems Analyst,

Bank Organization and Structure Division (202/874-5060), Sue Auerbach, Senior Attorney, Corporate Organization and Resolutions Division (202/874-5300), Letty Ann Shapiro, Community Development Specialist, Community Development Division (202/874-4930), Office of the Comptroller of the Currency.

FDIC: Robert F. Mialovich, Associate Director, Division of Supervision (202/898-6918), Curtis L. Vaughn, Examination Specialist, Division of Supervision (202/898-6759), Joseph A. DiNuzzo, Senior Attorney, Legal Division (202/898-7349).

OTS: Larry Clark, Program Manager, Compliance and Trust (202/906-5628), Supervision Policy; Kevin A. Corcoran, Assistant Chief Counsel, Corporate and Securities Division (202/906-6962), Chief Counsel's Office; Jackie Durham, Project Manager, Corporate Analysis (202/906-6712) Supervisory Operations, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:****Background Information**

Section 228 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102-242, 105 Stat. 2236) (FDICIA) added a new section 42 to the Federal Deposit Insurance Act (FDI Act).<sup>1</sup> Section 42 took effect upon enactment of FDICIA on December 19, 1991. The law requires each 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.

The Board of Governors (57 FR 46168, October 7, 1992), OCC (57 FR 40249, September 2, 1992), FDIC (57 FR 47657 October 19, 1992), and OTS (57 FR 44226, September 24, 1992) each proposed for comment a policy statement interpreting section 42. The agencies worked together in preparing their proposed policy statements, and the statements were therefore substantially similar. Although each of the agencies issued a separate Federal Register notice on its proposed policy

<sup>1</sup> Due to an error in drafting, both section 228 and section 132 of FDICIA added a new section 39 to the FDI Act. The section 39 of the FDI Act added by section 228 of FDICIA was redesignated as section 42 of the FDI Act by section 1602 of the Housing and Community Development Act of 1992, 106 Stat. 3672, and is codified at 12 U.S.C. 1831r-1.

statement, the final policy statement is a joint document.

**Summary of Final Policy Statement**

The agencies are issuing a joint final policy statement to provide guidance to institutions in complying with section 42 of the FDI Act. Similar to the agencies' proposals, the 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.

**Summary of Comments**

The agencies received a combined total of 129 comment letters on the proposed policy statements.<sup>2</sup> Forty-nine letters were from FDIC-insured banks and savings associations, 39 from bank and thrift holding companies, 32 from bank and thrift industry trade groups, four from state bank supervisors, two from a trade group for state bank supervisors, one from another Federal agency, one from a city government, and one from an individual. Overall, the comments supported the proposed policy statement and the agencies' efforts to implement the branch closing statute with the least possible burden on the banking industry.

The majority of the comments focused on four areas about which the agencies had sought specific comment: the proper definition of "branch" under section 42, particularly on whether an automatic teller machine, remote service facility, or customer-bank communications terminal (collectively, an "ATM") constitutes a branch; whether relocations should be considered branch closings for purposes of section 42; whether an acquiring institution's decision not to purchase a branch from the FDIC or Resolution Trust Corporation after temporary operation of such branch during an option period should constitute a branch closing under section 42; and how customers of a branch should be identified. A description of the comments is included in the discussion of these areas below.

**Discussion****1. Definition of "Branch"**

The majority of comments received by the agencies focused on whether ATMs should be deemed outside the scope of the branch closing statute. Each of these

<sup>2</sup> In many situations persons provided the same written comment to more than one of the agencies. This total includes all comments received by all the agencies, including the same comment(s) provided by one person to more than one agency.

comments opposed subjecting the closing of ATMs to the requirements of section 42. Commenters argued that Congress could not have intended to require notice of the closing of ATMs because ATM closings do not have an adverse effect on the community; moreover, commenters argued, coverage of ATMs would discourage institutions from locating ATMs in lower income areas on an experimental basis. Commenters also stated that providing notices for ATMs would be difficult, as ATMs are frequently located in areas, such as grocery stores, over which an institution has no control; thus, commenters argued that if the owner of the property were to order the ATM closed, the institution would be unable to comply with section 42.

Several commenters noted that section 42 provides for inclusion of a notice in "regular account statements mailed to customers of the branch proposed to be closed." Assuming that each person is the customer of one branch, these commenters argued that the requirement of section 42 that notices be mailed to the customers of the branch to be closed could not have been meant to include ATMs within the definition of branch, since customer accounts are not assigned to ATMs. If, on the other hand, anyone who uses an ATM is to be considered a "customer" of the ATM, commenters noted that the bank would be required to notify persons who were not even customers of the bank, but had merely used the ATM.

Other commenters provided a further reason why an interpretation of branch that excludes ATMs would better reflect the statutory intent. If ATMs were included within the definition of branch, then converting a full service brick-and-mortar branch to an ATM, and thereby depriving the neighborhood of significant banking services, would not constitute a branch closing, since there would continue to be a "branch." If ATMs were not considered branches, such an action would constitute a branch closing and section 42 would apply.

As to what definition of "branch" should be used, one commenter stated that the common meaning of "branch" is an office where employees of the bank may be found and banking business is handled by a natural person. Several commenters noted that by using the phrase "premises of the branch" in requiring a posted notice, Congress clearly intended to cover only traditional brick-and-mortar branches, that is, those with premises. As one commenter noted, the dictionary definition of "premises" defines the term as "a tract of land with building

thereon or as a building or a part of a building usually with its appurtenances (as grounds)." The commenter argued that an ATM is a fixture, and not a building. Along similar lines, a trade group recommended defining a branch as a detached, full-service facility staffed by employees.

The agencies have concluded that the appropriate definition of "branch" for purposes of section 42 is a traditional brick-and-mortar branch, and any similar banking facility, at which deposits are received or checks paid or money lent. Thus, for example, notice pursuant to section 42 would not be required for the closing of an ATM or temporary branch. Institutions that are in doubt about the coverage of a particular closing should consult the appropriate Federal banking agency.

The agencies believe that this interpretation is consistent with the intent and plain language of section 42. In enacting section 42, Congress appears to have been interested in protecting customers from the loss of full service facilities. See S. Rep. 102-167, 102d Cong., 1st Sess. 113 (1991) ("The threat of a branch closure is particularly common and pronounced in underserved, lower-income neighborhoods. Without full banking services, it is difficult for a community to attract new business and economic activity.")

An interpretation of "branch" as including only traditional brick-and-mortar branches excludes temporary branches and ATMs and thereby avoids problems with a broader definition that could not have been intended by Congress. For example, if temporary branches were to be included within the definition of "branch," costly notifications that serve no purpose would be required. As one commenter pointed out, an institution that established a temporary branch at a fair, convention, college registration or similar event would be required to remain at the (possibly vacant) site for 90 days after the event ended. In the case of such facilities, it is obvious to the institution's customers that the facility is temporary. No customer is likely to be surprised by the disappearance of such facilities, and Congress could not have intended to require a 90 day notice for institutions that were never to be opened for 90 days.

As noted in the comments, ATMs also present problems with an expansive definition, as those who use ATMs frequently do not bank with the institution that operates the ATM. Furthermore, the agencies are particularly concerned that under an interpretation that included ATMs

within the definition of "branch," an institution could downgrade a brick-and-mortar branch to an ATM and not have closed a branch for purposes of section 42. Such a result would appear to be at odds with the purpose of section 42.

Interpreting section 42 to cover traditional brick-and-mortar branches is also consistent with the plain language of section 42. As noted by the commenters, the term "branch" is undefined in section 42, and is not defined elsewhere in the FDI Act. Although section 3(o) of the FDI Act does define the term "domestic branch,"<sup>3</sup> Congress chose not to use that term in section 42.<sup>4</sup> An indication of Congressional intent in the language of section 42 can be found in section 42(b)(2)(A), which requires the posting of a notice on "the premises of the branch to be closed." Thus, for purposes of section 42, a branch is something that has "premises." As noted by the commenters, premise is defined for this purpose as "a tract of land with the buildings thereon."<sup>5</sup> The use of this term indicates that in using the term "branch," Congress intended section 42 to apply to traditional brick-and-mortar branches—those that have "premises."

## 2. Relocations

The regulations of the Board of Governors and OTS each provide that an institution that proposes to relocate a branch or main office only a short distance need not submit an application seeking approval of the relocation. The two agencies' regulations and standards differ, but both rely on some consideration of the distance of the move. See 12 CFR 208.9 (Board); 12 CFR 545.95 (OTS).

On the other hand, neither the FDIC nor the OCC has a short-distance exception to its application requirements for branch relocation

<sup>3</sup> Section 3(o) of the FDI Act states that a "domestic branch" includes "any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State of the United States or in any Territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands at which deposits are received or checks paid or money lent." 12 U.S.C. 1813(o).

<sup>4</sup> This is in contrast to at least one other provision of the FDI Act where Congress used the term "domestic branch" in requiring FDIC approval for certain applications. 12 U.S.C. 1828(d). Although the proposed policy statements of the Board of Governors, the OCC and the FDIC proposed that the definition of "domestic branch" be used as the definition of "branch" in section 42, the agencies believe that it is more in keeping with the language and legislative intent of the statute to use the foregoing definition of branch to implement the requirements of section 42.

<sup>5</sup> See Webster's Ninth New Collegiate Dictionary 928 (1988).

applications. As discussed in the proposals, section 18(d) of the FDI Act requires state nonmember banks to obtain FDIC approval before relocating a branch. Section 36 of the National Bank Act requires OCC approval before a national bank relocates a branch.

In their notices, the agencies proposed that a short-distance relocation not be considered a branch closing for purposes of section 42. All the comments received on the issue agreed that branch relocations should be deemed outside the scope of the branch closing statute. Several persons commented that relocations in the same service area or community should not be considered to be a closing. Comments received by the OCC and FDIC noted that those agencies' existing application and notice requirements for branch relocations satisfy the underlying purpose of the branch closing statute and argued that deeming the branch closing notice requirements to apply to branch relocations would be redundant with the requirements of existing law and regulations.

The final policy statement contains a common method of determining if a "relocation" has occurred for purposes of section 42 and makes clear that a relocation does not constitute a branch closing. A relocation is distinguished from the contemporaneous closing of one branch and opening of another. Under the policy statement a relocation has occurred if the new branch and the closed branch are within the same immediate neighborhood and the nature of the business and the customers served by the branch are substantially unaffected by the move. 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 1000 feet will generally be considered to be relocations. In less densely populated areas, where "neighborhoods" extend farther and a longer move would not substantially affect the nature of the business or the customers served by the branch, a relocation may occur over significantly longer distances. Institutions that are in doubt about whether a relocation or closing has occurred should consult the appropriate federal banking agency.

The agencies have also concluded that a consolidation of branches can be treated as a relocation, as opposed to a branch closing, for purposes of section 42. Consolidation can be expected to occur after a merger, where the acquiring institution and the institution being acquired maintained branches a short distance apart.

The agencies believe that if a consolidation of branches meets the test for relocation, then the branch may be treated as having been relocated rather than closed for purposes of section 42. The agencies believe that customers have not been deprived of banking services in these situations. One commenter noted that such a consolidation would not affect the nature of the business or the customers served. Moreover, as another commenter noted, such an interpretation would avoid penalizing an institution for eliminating a costly duplication of services.

One commenter suggested that the agencies review branch relocations for institutions with less than satisfactory CRA ratings, and two commenters suggested that branch closings be subject to an application process with an opportunity for public comment. The agencies do not believe such review or comment is required by section 42.

### *3. Occupation of Branch During an Option Period*

Section 42 applies only to branch closings by insured depository institutions. The agencies stated in their proposed policy statements that when an acquiring institution declines to exercise an option to purchase a branch and that branch is subsequently closed, the closing is, in effect, attributable to the FDIC or RTC acting as receiver and not to the institution. Thus, the agencies' proposed policy statements provided that declining to exercise an option to purchase a branch from the government during an option period does not constitute a branch closing, and this position is unchanged in the final policy statement.<sup>6</sup>

The agencies received 36 comments on whether the section 42 requirements should apply in this context. All supported the agencies' position that branch closing provisions should not apply in such situations involving failed depository institutions.

One issue regarding the mechanics of such options was raised by two commenters that had recently experienced mergers. They criticized the proposal because it only allowed the institution to remain in the branch during the option period, which they said was generally 30 to 90 days. These commenters pointed out that contracts

<sup>6</sup> Pursuant to a typical acquisition agreement with the FDIC or RTC, the acquirer of a failed institution may temporarily operate one or more branches of the failed institution during the acquirer's option period—that is, during the period the acquirer has to decide whether it will purchase or lease the branch. (Typically, option periods under FDIC and RTC contracts range between 90 and 180 days.)

with the FDIC and RTC allow the acquiring institution to remain in the branch for a period of time after the option period; this extra time allows an institution that decides not to acquire a branch to wind down its operations in an orderly way. This occupancy period generally lasts for 180 days. The joint final policy statement provides that an acquiring institution that occupies but declines to exercise an option to purchase a branch may remain in the branch during the occupancy period prescribed by the RTC or FDIC in connection with the option, up to a maximum of 180 days from the date of the failure of the bank or the expiration of the option period, whichever is later, without triggering the notice requirements in section 42.

One commenter argued that section 42 should not apply to the closing of a branch after the sale of a bank under a divestiture order issued by an agency pursuant to the prompt corrective action regime of section 38 of the FDI Act. The commenter felt that the delay in closing occasioned by section 42 could jeopardize the transaction. Another commenter asked that the agencies not apply section 42 when an institution acquires a bank in government conservatorship and closes branches in connection with the transaction. However, the agencies believe that because, in these cases, an insured depository institution and not the government (in its role as receiver of a failed institution) is closing the branches, the closing is attributable to the institution, and the agencies do not have the authority to relieve the closing institution of its obligations under section 42.

The agencies also believe that branches closed in connection with transactions involving failing institutions (including expedited mergers) are not attributable to the government. Thus, the exception explained above for branch closings in the context of a failed institution cannot be used in the failing institution context. The fact that a consolidation of branches over a short distance may be found to be a relocation and not a branch closing, however, should reduce regulatory burden with regard to failing institution transactions. That is, acquiring institutions may consolidate existing branches with branches acquired from the failing institution without having to comply with the requirements of section 42 as long as the consolidation meets the test for a relocation set forth in the policy statement.

#### 4. Determining Customers of a Branch

The commenters generally supported the agencies' proposal to permit each institution to identify a given branch's customers based on a good faith system of allocating customers among branches, and to indicate that one reasonable means of allocating customers is by where they opened their deposit or loan accounts. One commenter noted that banks have historically determined each branch's customer base by the accounts opened at the office. The final policy statement continues to allow each institution to allocate customers in a reasonable way, and further clarifies that, in certain cases, such an allocation may result in a branch not having any customers to notify in the event of a closing. In that event, only the notice to the appropriate agency and the posting of a notice on the premises would be required.

A few commenters sought further guidance in this area, but the agencies believe that each institution should be responsible for identifying customers.

#### 5. Branch Closings as a Result of Merger, Consolidation, or Other Form of Acquisition

The agencies proposed that either party to a transaction such as a merger or consolidation could provide the notices required by section 42. Several commenters questioned who would be responsible if no notice were given. To avoid confusion and a resultant failure to provide the required notice, the final policy statement clarifies that the acquiring or resulting institution is ultimately responsible for ensuring that the required notices are given.

#### 6. Regulatory Burden

Several letters complained about the financial and other compliance burdens imposed upon depository institutions by the requirements of section 42. The agencies are very sympathetic to this concern and, thus, have attempted to produce a policy statement that is consistent with the intent of the branch closing statute and minimizes burden to the industry. The agencies note that depository institutions are bound to comply with the explicit requirements of section 42.

#### 7. Interruption of Service

The agencies proposed that section 42 would not apply to an interruption of service caused by an event beyond the institution's control (e.g., natural catastrophe), unless the institution closed or did not reopen the branch following the incident. A few commenters argued that the posting of the notice in cases where the branch

would not reopen could mean—and would have meant in the case of branches destroyed by Hurricane Andrew—that an institution would have to post a notice amid a pile of rubble. The agencies believe that the notice should be posted whenever feasible, but acknowledge that there will be times when the posting on the premises is not practical.

Other commenters asked that the agencies find a broader range of causes of branch closing to be beyond an institution's control and thus not requiring a notice under section 42. Specifically, commenters asked that the loss of a lease be found to be beyond the institution's control. The agencies have decided not to expand the list of examples of what constitutes a condition beyond an institution's control. The agencies believe that the terms of a lease are a factor that is within an institution's control.<sup>7</sup>

#### 8. Relationship to State Law

A state bankers association pointed out that state law may require branch closing notices and policies, and asked that the agencies determine that compliance with state law would satisfy section 42. The agencies do not believe that it is appropriate to analyze various state laws for this purpose, but the agencies have amended the policy statement to note: (1) If a notice provided to customers pursuant to state law contains the information required by section 42 and is provided with prior notice that is consistent with the requirements of section 42, then a second notice need not be sent; and (2) if a notice sent to a state supervisor contains the information required by section 42 and provides prior notice that is consistent with the requirements of section 42, then the institution may provide a copy of that notice to its federal regulator in lieu of a separate notice.

#### 9. Reduction of Services

The final policy statement continues to provide that a change in services at a branch will not be considered a branch closing as long as the facility continues to constitute a branch for purposes of section 42. In this context, the agencies note that a branch that reduces its services to that of an ATM would be deemed to have closed the branch for purposes of section 42. This is because, as discussed above, for

<sup>7</sup> The agencies recognized that institutions that entered into leases prior to enactment of FDICIA would not have been able to take the provisions of section 42 into consideration, and the agencies issued interim guidance.

purposes of the branch closing statutes an ATM is not considered a branch.

#### 10. Branch Closing Policy

The agencies' proposals differed with respect to their provisions regarding branch closing policies. The OCC and OTS included in their proposed policy statements a list of items that an institution might want to consider including in its policy statement; the goal was to provide guidance to institutions in adopting their policies. The Board of Governors and the FDIC did not include such a list. Because section 42 does not prescribe the contents of a branch closing policy and does not delegate to the agencies that authority, all the agencies have decided to omit any list of suggested items. Thus, the final policy statement retains the requirement of a written policy appropriate to the size and needs of the institution, but does not prescribe any suggested contents of that policy.

#### Policy Statement of Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, and Office of Thrift Supervision Concerning Branch Closing Notices and Policies

##### Purpose

This policy statement provides guidance to insured depository institutions concerning requirements that an institution provide prior notice of any branch closing and establish internal policies for branch closings.

##### 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 adds a new section 42 to the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1831r-1) that imposes notice requirements on insured depository institutions that intend to close branches.<sup>1</sup> The provision became effective on December 19, 1991.

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

<sup>1</sup> 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 FDIC.

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

Section 42 applies to the closing of a "branch" by an insured depository institution. The agencies consider a "branch" for purposes of section 42 to be a traditional brick-and-mortar branch, or any similar banking facility, at which deposits are received or checks paid or money lent. Thus, for example, notice pursuant to section 42 would not be required for the closing of an ATM or temporary branch. Institutions that are in doubt about the coverage of a particular closing should consult the appropriate Federal banking agency.

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. Transactions subject to expedited approval under the Bank Merger Act (12 U.S.C. 1828) must also file a branch closing notice. 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.

The law does not apply to mergers, consolidations, or other acquisitions, including branch sales, that do not result in any branch closings. In addition, the law does not apply where a branch is relocated. 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 1000 feet will generally be considered to be relocations. In less densely populated areas, 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. Institutions that are in doubt about whether a relocation or closing has occurred should consult the appropriate Federal banking agency.

Consolidations of branches are considered relocations if the branches are located within the same neighborhood and the nature 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 standards apply to consolidations as to relocations.

Changes of services at a branch are not considered a branch closing, provided that the remaining facility constitutes a branch (as defined herein).<sup>2</sup>

In addition, section 42 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>3</sup>
- 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, so long as the transfer occurs within the option period or within an occupancy period, not to

<sup>2</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>3</sup> Section 42 would apply, however, if the institution were closed or 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.

exceed 180 days, provided in the agreement.

#### Notice of Branch Closing to the Agency

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

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 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. The agencies recognize that use of this means of allocation, and perhaps others, may result in certain 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.

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.

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.

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.

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 before 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*

As part of each Community Reinvestment Act (CRA) examination, the Federal banking agencies will examine for compliance with section 42 of FDICIA 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 CRA evaluation or take appropriate enforcement action.

By order of the Board of Governors of the Federal Reserve System.

Dated: September 9, 1993.

**William W. Wiles,**  
*Secretary of the Board.*

Dated: September 8, 1993.

**Eugene A. Ludwig,**  
*Comptroller of the Currency.*

Dated: August 10, 1993.

**Hoyle L. Robinson,**  
*Executive Secretary, Federal Deposit Insurance Corporation.*

By the Office of Thrift Supervision,

Dated: August 11, 1993.

**Jonathan L. Fiechter,**  
*Acting Director.*

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