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.
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). 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 FDIC Act defines “domestic branch,” thereby including 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. 5-419. 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
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 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.

**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 institutions 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.
• 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.


William W. Wiles,
Secretary of the Board.