

Branch Closings

Background

State member banks are required, by section 42 of the Federal Deposit Insurance Act (FDI Act) (12 USC 1831r-1), to submit a notice of any proposed branch closing to the Federal Reserve at least ninety days before the date of the proposed closing.¹ 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 those reasons.

These banks are also required to notify customers of the proposed closing, both by posting a notice at the branch proposed for closure and by mailing a notice of the closure to affected consumers. The notice provided on the branch premises must be posted in a conspicuous manner at least thirty days before the proposed closing. The mailed notice must be provided to branch customers at least ninety days before the proposed closing.

An interstate bank regulated by the Federal Reserve that proposes 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 its Reserve Bank supervisor and a statement that comments on the closing may be mailed to the Reserve Bank.² In those cases, a person from the affected area may submit a written request to the Reserve Bank relating to the proposed closing, 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 Reserve Bank, in conjunction with the Board, determines that the request is not frivolous, it must

convene a meeting of appropriate individuals, organizations, depository institutions, and Federal Reserve and other regulatory agency representatives, as determined by the Federal Reserve at its discretion, to explore the feasibility of obtaining adequate alternative facilities and services for the affected area following the closing of the branch.

Finally, each institution must adopt policies regarding closings of branches of the institution.

Applicability

The bank closure provisions apply to traditional brick-and-mortar branches or similar banking facilities at which deposits are received, checks are paid, or money is lent.³ Notice is not required for the closing of a nonbranch facility, such as an ATM, a remote service facility, a loan-production office, or a temporary branch.⁴ Nor does section 42 apply to mergers, consolidations, or other acquisitions, including branch sales, that do not result in any branch closings.

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.⁵ Branch closings that occur in the context of transactions subject to the Bank Merger Act (12 USC 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 when 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 Federal Reserve,

1. Section 42, which was added to the Federal Deposit Insurance Act by section 228 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102-242, 105 Stat. 2236), became effective in December 1991. Section 42 was amended by section 106 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 and by the Economic Growth and Regulatory Paperwork Reduction Act of 1996. This chapter is adapted from the Joint Policy Statement regarding Branch Closings issued by the Board, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, effective June 29, 1999. The statement is available at www.federalreserve.gov/boarddocs/press/boardacts/1999/19990707/r-1036.pdf.

2. An *interstate bank* is a bank that maintains branches in more than one state. A *low- or moderate-income area* is 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 the state (12 USC 1831r(d)(4)).

3. 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).

4. The 1996 amendment expressly stated that section 42 does not apply with respect to automated teller machines (Pub. L. 104208, 110 Stat. 3009).

5. See the section "Other Applicability Considerations" for information on certain branches closed in connection with emergency acquisitions or FDIC assistance or a branch subsequently transferred back to the FDIC pursuant to an acquisition agreement.

could operate the branch to complete compliance with the ninety-day requirement and would not need to give an additional notice.

Relocations and Consolidations

Section 42 does not apply when a branch is relocated or is consolidated with one or more other branches, provided that the relocation or consolidation occurs within the immediate neighborhood and does not substantially affect the nature of the business or customers served.

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, across the street, around the corner, or a block or two away. Moves of less than 1,000 feet will generally be considered 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.

Generally, 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 guidelines apply to consolidations as to relocations.

Other Applicability Considerations

A change in the services offered at a branch is not considered a branch closing, provided that the remaining facility constitutes a branch (as defined herein).⁶

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

- A temporary interruption of service caused by an event beyond the institution's control (for example, a natural catastrophe), if the insured depository institution plans to restore branching services at the site in a timely manner⁷

6. If 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.

7. 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 Federal Reserve 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 transferal back to the FDIC, pursuant to the terms of an acquisition agreement, of a branch of a failed bank operated on an interim basis in connection with the acquisition of all or part of a failed bank, as long as the transfer occurs within the option period or within an occupancy period, not to exceed 180 days, specified in the agreement
- A branch that is closed in connection with an emergency acquisition under section 11(n), 13(f), or 13(k) of the FDI Act or with any assistance provided by the FDIC under section 13(c) of the FDI Act (12 USC 182(n), 1823(f) and (k), and 1823(c))

Notice of Branch Closing to the Federal Reserve

A state member bank's notice of a proposed branch closing to the Federal Reserve must include the following:

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

If an institution believes that certain information included in the notice is confidential in nature, it should prepare that information separately and request confidential treatment. The Federal Reserve will decide whether to treat the information confidentially under the Freedom of Information Act (5 USC 552).

If a notice provided to a state supervisory agency pursuant to state law contains the information outlined above, the institution may provide a copy of that notice to the Federal Reserve, provided that the notice is filed at least ninety days prior to the date of the branch closing.

Notice of Branch Closing to Customers

Customer Allocation

For purposes of providing notice of the proposed closing to the customers of the branch, a *customer of a branch* is a patron of a state member depository institution who has been identified with a particular branch by the institution through use, in good faith, of a reasonable method of allocating customers to specific branches. An institution that allocates customers on the basis of where a customer opened his or her deposit or loan

account is presumed to have reasonably identified each customer of a branch. Although the use of this means of allocation, and perhaps others, may result in certain facilities that technically constitute branches being assigned no customers, this result is permissible so long as the means of allocation is reasonable; if such a branch is closed, notification to the Federal Reserve and posting of a notice on the branch premises will suffice. Finally, a state member institution need not change its recordkeeping system in order to make a reasonable determination of who is a customer of a branch.

An institution must include a customer notice at least ninety 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, an additional notice need not be mailed to customers (or provided to the Federal Reserve) 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 should either identify another location at which customers can obtain service after the closing or provide a telephone number that customers can call to learn about alternative sites. If a notice of branch closing provided to customers pursuant to state law contains this information, a separate notice need not be sent, provided that the notice is sent at least ninety days prior to the closing.

Low- and Moderate-Income Areas Served by Interstate Banks

If the state member bank maintains branches in more than one state and the branch to be closed is located in a low- or moderate-income area, the mailed customer notice must contain the mailing address of the appropriate Reserve Bank and a statement that comments on the proposed branch closing may be mailed to that entity. The notice should also state that the Federal Reserve does not have the authority to approve or prevent the branch closing.

Additional rules apply if the System receives a written request concerning the proposed closing from a person within a low- or moderate-income area served by the branch. In this case, if the request states specific reasons for the request, including a discussion of the adverse effect of the closing on the availability of banking services in the

affected area, and if the Federal Reserve concludes that the request is not frivolous, the Federal Reserve must convene a meeting of Federal Reserve representatives, other interested depository institution regulatory agencies, community leaders, and other appropriate individuals, organizations, and depository institutions, as determined by the Federal Reserve at its discretion. The purpose of the meeting shall be to explore the feasibility of obtaining adequate alternate 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 that will become an interstate bank prior to the closure of a branch in a 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 Federal Reserve under this provision shall affect the authority of an interstate bank to close a branch (including the timing of the closing) if the requirements of section 42(a) and (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

The on-site notice to branch customers should be posted in a conspicuous manner on the branch premises at least thirty days prior to the proposed closing. The notice should state the proposed date of closing and should identify another location where customers can obtain service after that date or provide a telephone number that customers can call to learn about alternative sites. An institution may revise the notice to extend the projected closing date without triggering a new thirty-day notice period.

Contingent Notices

In some situations, an institution, at 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 the Federal Reserve Board's approval 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, should be appropriate for the size of the institution, and should meet the needs of the institution.

The branch closing policy should include criteria for determining which branch is to be closed and which customers should be notified as well as procedures for providing the required notices.

Compliance

Compliance with the requirements to adopt a branch closing policy and provide the notices when a branch is to be closed is determined during routine compliance examinations. Failure to comply may result in adverse findings in the compliance evaluation or in an enforcement action.

Examination Tips

Workpapers

Federal Reserve System examiners review the technical aspects of section 42 during routine compliance examinations and evaluate the effect of any branch closures on low- and moderate-income communities during CRA examinations. Because

branch closure issues may be raised in bank holding company or other CRA-related applications outside the examination process, examiners should ensure that their workpapers adequately support conclusions about a bank's branch closure policy and any specific branch closures reviewed. For example, in addition to answering the questions in the examination checklist, examiners should note whether the bank has an adequate written branch closing policy in place, whether this policy was followed for any branch closings, and whether the bank adequately documented the reasons for the closure. Documentation related to the branch closure, including the dates the notice was mailed to the appropriate parties and posted on the branch premises, specific reasons for the closure, and other data used by the bank to support its decision to close the branch (such as statistical data concerning branch profitability or loss), should be included in the workpapers.

Meetings

Regulators have no authority to tell a bank that it may not close a branch. Meetings convened to discuss state member bank branch closures in low- and moderate-income areas pursuant to section 42 are generally not considered public meetings. Instead, these are more on the order of private meetings to discuss alternatives to providing banking services to the affected community. As a result, attendance at these meetings should be limited to parties invited by the Federal Reserve and may be held after the branch is closed.

Branch Closings

Examination Objectives and Procedures

EXAMINATION OBJECTIVES

1. To determine whether the institution is in compliance with the statutory requirements for branch closings, including those relating to the following:
 - a. Providing prior notification of any branch closing to its appropriate federal banking agency and to customers of the branch
 - b. Establishing internal policies for branch closings

EXAMINATION PROCEDURES

1. Determine whether the institution has any branches that would subject it to the Joint Policy Statement regarding Branch Closings and section 42 of the Federal Deposit Insurance Act.
2. Determine whether the institution has adopted a branch closing policy that ensures compliance with the policy statement regarding branch closings and section 42 of the FDI Act.
3. Determine whether the institution's procedures for closing a branch have been followed since the last examination in which compliance with the policy statement for branch closing notices and section 42 of the FDI Act was assessed.
4. For any branch closed since the last examination, determine whether the institution provided adequate notice of any branch closing to the Federal Reserve at least 90 days prior to the proposed closing.
5. For any branch closed since the last examination, determine if the institution mailed an adequate notice to its customers at least 90 days prior to the proposed closing.
6. For any branch closed since the last examination, determine if the institution posted a notice to the branch customers in a conspicuous manner on the branch premises at least 30 days prior to the proposed closing.

Branch Closings Examination Checklist

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| 1. Does the insured depository institution have any branches, as defined in the Joint Policy Statement regarding Branch Closings, that would make it subject to the policy statement and to section 42 of the Federal Deposit Insurance Act? | Yes | No |
| or | | |
| Since the last exam, has the insured depository institution closed any of its branches, making it subject to the notification requirements of the policy statement and section 42 of the FDI Act? | Yes | No |
| Note: If the answer to both questions is "no," do not proceed with this checklist. | | |
| 2. Has the institution provided written notice of any branch closing to the Federal Reserve at least 90 days in advance of the closing? (§ 42(a)(1)) | Yes | No |
| 3. Did the notice to the Federal Reserve contain | | |
| a. The identity of the branch to be closed (§ 42(a)(1)) | Yes | No |
| b. The proposed closing date (§ 42(a)(1)) | Yes | No |
| c. The specific reasons for the closure (§ 42(a)(2)(A)) | Yes | No |
| d. Statistical or other information in support of the reason(s) and consistent with the institution's written policy for branch closings (§ 42(a)(2)(B)) | Yes | No |
| 4. Did the institution provide to customers written notice of the branch closure, in a regular account statement or separate mailing, at least 90 days before the closing? (§ 42(b)(2)(B)) | Yes | No |
| 5. Did the mailed customer notice contain | | |
| a. The location of the branch to be closed (§ 42(b)(1)) | Yes | No |
| b. The proposed closing date (§ 42(b)(2)(B)) | Yes | No |
| c. A list of alternative banking locations or a phone number to call to obtain information about possible alternatives (§ 42(b)(1)) | Yes | No |
| 6. Did the institution conspicuously display a notice to customers on the premises of the branch to be closed at least 30 days before the closing? (§ 42(b)(2)(A)) | Yes | No |
| 7. Did the notice that was posted on the bank premises contain | | |
| a. The proposed closing date (§ 42(b)(2)(A)) | Yes | No |
| b. A list of alternative banking locations or a phone number to call to obtain information about possible alternatives (§ 42(b)(1)) | Yes | No |
| 8. Has the institution adopted a written branch closing policy? (§ 42(c)) | Yes | No |
| 9. Does the written branch closing policy include (§ 42(c)) | | |
| a. Factors for determining which branch to close | Yes | No |
| b. Factors for determining which customers to notify | Yes | No |
| c. Procedures for providing the required notices | Yes | No |
| 10. Pursuant to state law, did the institution provide notifications consistent with the requirements of section 42 to the customers of the branch to be closed? (See checklist items 5 and 7.) (Note: If the answer is "yes," a second notice need not be sent in order to comply with the policy statement.) | Yes | No |

11. If, pursuant to state law, the institution provided its state supervisor with a notice of a branch closing,
- a. Did the institution also provide a copy of that notice to the Federal Reserve? (§ 42(a)(1)) Yes No
 - b. Did the notice contain information consistent with the notice required by section 42? (See checklist item 3.) Yes No
 - c. Was the notice filed with the Federal Reserve at least 90 days before the date of the proposed branch closing? (§ 42(a)(1)) Yes No