

## I. INTRODUCTION

Section 42 of the Federal Deposit Insurance (FDI) Act requires each insured depository institution opening one or more branches to:

1. Adopt a policy on branch closings;
2. Provide its primary federal regulator with a 90-day advance notice of a proposed branch closing;
3. Mail a notice to customers of a branch closing at least 90 days before the scheduled closing; and
4. Place a conspicuous notice at the affected branch at least 30 days prior to the scheduled closing.

The federal banking agencies adopted the *Interagency Policy Statement Concerning Branch Closing Notices and Policies* (Policy Statement) in June 1999. Among other things, the Policy Statement defines a branch for the purposes of Section 42, clarifies what constitutes a branch closing, and guides institutions in identifying customers to notify in the event of a branch closing.

The agencies consider a “branch” for purposes of Section 42 to be a traditional brick-and-mortar branch, or any similar banking facility other than a main office, at which deposits are received, checks paid, or money lent. Section 42 does not apply to the closing of non-branch facilities, such as an automated teller machine, remote service facility, or loan production office, or the closing of a temporary branch.

Moves within the same immediate neighborhood that do not substantially affect the nature of the business or customers to be served are generally considered to be branch relocations, rather than branch closings. Such transactions are, therefore, not subject to the requirements of Section 42. See section on “Relocations” below.

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

- A temporary interruption of service caused by an event beyond the institution's control (e.g., a natural disaster), if the institution plans to restore branching services at the site in a timely manner;
- Transferring back to the FDIC, pursuant to the terms of an acquisition agreement, a branch of a failed bank or savings association operated on an interim basis in connection with the acquisition of all or part of a failed bank or savings association, so long as the transfer occurs within the option period or within an occupancy period, not to exceed 180 days, as provided in the agreement with the Division of Resolutions and Receiverships (DRR); and
- A branch that is closed in connection with an emergency acquisition under Sections 11(n) Bridge Institutions, 13(f) Assisted Emergency Interstate Acquisitions, or 13(k) Emergency Acquisitions of the FDI Act, or any assistance provided by the FDIC under Section 13(c) of the FDI Act.

### Interstate Bank Branch Closings

For an interstate bank (defined in Section 42 as a bank that maintains branches in more than one state), the Regional Office (RO) must ensure that, if the branch to be closed is located in a low- or moderate-income area, the customer notice includes the mailing address of the appropriate Primary Federal Regulator (PFR) and a statement that comments on the proposed closing may be mailed to

the PFR. The notice should also state that the agency does not have the authority to approve or prevent the branch closing.

To validate the income category of the census tract for a proposed branch closing, visit the FFIEC's website, <http://www.ffiec.gov>, through the following steps:

- Select Geocoding/Mapping System under Consumer Compliance;
- Enter address of branch and select Search;
- Select Census Demographic Data; and
- Tract Income Level will be displayed (low, moderate, middle, upper).

If the subject branch is in a low- or moderate-income census tract, the customer notification letter should be reviewed to ensure that it includes the additional disclosures referenced above. If not included, the bank should be instructed to send a new letter, and inform the institution the 90-day timeframe should be reset to reflect the date of the revised notification letter. Include the appropriate Division of Depositor and Consumer Protection (DCP) Review Examiner and RO Community Affairs Officer in the appropriate document distribution database for any correspondence related to an interstate bank branch closing that is located in low- or moderate-income census tract. Refer to Section 42(d) of the FDI Act for additional information.

If the FDIC receives a written request by a person from the area in which the branch to be closed is located, and the comments include a discussion of the adverse effect of the closing on the availability of banking services in the area affected, the FDIC must review the substance of these comments. The comments will be reviewed and, if appropriate, DCP personnel in consultation with Division of Risk Management Supervision (RMS) personnel will:

- Convene a meeting of the representatives of the FDIC and other depository institution regulatory agencies, community leaders, and other relevant parties as appropriate; and
- Explore the feasibility of establishing adequate alternative facilities and services for the affected area, as specified in Section 42(d).

No action taken as a result of the meeting convened shall affect the authority of the interstate bank to close a branch, if the other requirements of Section 42 have been met with respect to the branch being closed. DCP staff will document the results of the meeting and will follow-up with interested parties concerning any commitments made at the meeting.

If written comments are received from a person residing in a low- or moderate-income census tract where the branch to be closed is located, and those comments do not include a discussion of the adverse effect of the closing on the availability of banking services in the area affected, the Regional Director or appropriate delegate should notify the party(ies) submitting the comments in writing that no further action will be taken based upon the comments presented.

### Relocations

After reviewing the necessary documentation from the institution, the Case Manager must determine if a proposed branch move constitutes either (a) a branch relocation or (b) a branch establishment and a branch closing. The Policy Statement and Section 303.41(b) of the FDIC Rules and Regulations indicate that a relocation occurs when moves of relatively short distances are involved. For example, moves across the street, around the corner or a block or two away will be considered to be relocations. Moves of less than 1,000 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. The Policy Statement is designed to provide flexibility, as long as the nature of the business or the customers served by the branch are not significantly affected. Branch relocations, though not subject to the requirements of Section 42, are subject to FDIC approval under Section 18(d) of the FDI Act. Refer to *Move a Domestic Main Office or Relocate a Branch*, Section 8 of these Procedures, for additional information.

### Mergers

An institution must file a branch closing notice whenever it closes a branch in the context of a merger, consolidation, or other form of acquisition. Transactions subject to expedited approval under the Bank Merger Act must also file a branch closing notice. The responsibility for filing the notice typically lies with the acquiring or resulting institution; however, either party to such a transaction may give the notice. For example, the purchaser may give the notice prior to consummation of the transaction, if 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 PFR, could operate the branch to complete compliance with the 90-day notice requirement without the need for an additional notice.

### Consolidation of Branches

To determine if the branch closing provisions apply to branch consolidations, Case Managers should use the same criteria as is used for relocations. That is, if the consolidated branches are in the same neighborhood and the consolidation does not significantly affect the nature of the business or the customers served by the branches consolidated, a branch closing notice will generally not be required.

### State Savings Associations

Case Managers must consult with the Washington Office on any application or notice related to a state savings association to ensure that the appropriate procedures and timelines are followed. Refer to Applications Overview, Section 1.1 of these Procedures, for information regarding filings involving state savings associations.

## II. PROCESSING PROCEDURES

1. Review the notice for completeness and ensure that the notice is dated at least 90 days in advance of the proposed branch closing. While the notice is not a “covered application,” Case Managers should notify their DCP counterparts when a notice is received, as DCP has a shared supervisory interest in branch closings.
  - (a) Ensure the proposed closing meets the definition of a branch closing. For example, remote service facility closings and relocations within the same immediate neighborhood **are not** covered by Section 42. Note that a closing in connection with a merger, consolidation, or other form of acquisition, **is** covered by Section 42 requirements. For merger and acquisition transactions, a notice contingent on approval by the PFR of an application is allowed. If the acquiring party will close the branch, the Case Manager should ensure branch notices are provided timely and that the acquirer has addressed all post consummation requirements. If the branch will be closed by the target or seller, ensure appropriate notification is completed prior to consummation. Consult with RO management and Legal on questions regarding joint submissions.

- (b) The notice should include:
    - (1) an identification of the branch(es) to be closed;
    - (2) the proposed date of the closing;
    - (3) a detailed statement of the reasons for the decision to close the branch; and
    - (4) statistical or other information that supports the reasons and that is consistent with the institution's written policy for branch closings.
  - (c) Review the institution's customer notification and details regarding its release and posting to ensure it was, or will be, provided 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. The notification should:
    - (1) state the location of the branch to be closed;
    - (2) state the proposed date of closing; and
    - (3) identify either the location where customers can obtain service following the closing, or provide a telephone number for customers to call to determine alternative sites.
  - (d) For the closing of a branch of an interstate bank located in a low- or moderate-income area, the notice should also include:
    - (1) the mailing address of the PFR;
    - (2) a statement that comments on the proposed branch closing may be mailed to the PFR; and
    - (3) a statement that the PFR is not authorized to approve or prevent the closing.
  - (e) Ensure a notice providing information similar to the customer notice has been or will be posted in a conspicuous manner on the premises of the branch to be closed at least 30 days prior to the proposed closing.
  - (f) Review the census tract income data for any proposed branch closings if involving an interstate bank, and follow the procedures noted above, if applicable.
2. If the advance notice is in compliance with Section 42 and the Policy Statement, send the institution a letter acknowledging receipt of the notice and requesting notification when the branch has been closed, and make appropriate distribution.

A record should not be established. The notification and any documentation should be routed through the appropriate document distribution database to the bank file, appropriate field office, and state authority. When notice has been received that the branch has been closed, the Case Manager should ensure that the Structure Information Management System database is updated.

### III. REFERENCES

*Federal Deposit Insurance Act Sections 3, 18(d), and 42*

*Parts 303 and 390 of the FDIC Rules and Regulations*

*Interagency Policy Statement Concerning Branch Closing Notices and Policies*