Section 42 of the Federal Deposit Insurance (FDI) Act—Branch Closings

Introduction

Section 42 of the Federal Deposit Insurance (FDI) Act (12 USC §1831r) sets forth guidelines for financial institutions to notify the FDIC and its customers regarding proposals to close a branch. Financial institutions are also required to adopt policies for closings of branches, with special content requirements for closing notices relating to branches in low- or moderate-income areas.

Statutory Overview

For purposes of Section 42, a branch is considered to be a traditional brick-and-mortar branch, or any similar banking facility other than a main office, at which deposits are received or checks paid or money lent. Section 42 does not apply to the following:

- An ATM, a remote service facility, a loan production office, or a temporary branch;
- The relocation of a branch or consolidation of one or more branches into another branch, if the relocation or consolidation:
  - Occurs within the immediate neighborhood; and
  - Does not substantially affect the nature of the business or customers served; or
- A branch that is closed in connection with an emergency acquisition.

Examination Objectives

The objectives are to determine whether the institution is in compliance with the statutory requirements for branch closings, including those relating to the following:

- Providing prior notification of any branch closing to its appropriate Federal banking agency and customers of the branch.
- Establishing internal policies for branch closings.

Examination Procedures

1. Determine whether the institution has adopted a branch closing policy that ensures compliance with the Interagency Policy Statement Concerning Branch Closing Notices and Policies, regarding branch closing notices and Section 42 of the FDI Act. (Section 42(c))
2. Determine whether the institution's procedures for closing a branch have been followed since the latter of December 19, 1991, or the last examination in which compliance was assessed with the Policy Statement concerning branch closing notices and Section 42 of the FDI Act.
3. Determine whether the institution provided adequate notice of all branch closings to the FDIC at least 90 days prior to the proposed closing of any branch closed on or after December 19, 1991. (Section 42(a))
   - The notice must include:
     - A detailed statement of the reasons, and
     - Statistical or other information in support of such reasons.
4. Determine that the institution provided adequate notice of the proposed closing to its customers at least 90 days prior to the proposed closing of the branch. (Section 42(b))

   The institution must:
   - Post a notice in a conspicuous manner on the premises of the proposed branch for a period of not less than 30 days ending on the date proposed for that closing, and
   - Include a notice in:
     - At least one regular account statement mailed to customers of the branch proposed to be closed, or
     - A separate mailing.

NOTE: In the case of an interstate bank which proposes to close any branch in a low- or moderate-income area, the notice required shall also contain the mailing address of the FDIC and a statement that comments on the proposed closing may be mailed to the FDIC. (Section 42(c))

5. Determine if the institution has posted a notice to branch customers in a conspicuous manner on the branch premises at least 30 days prior to the proposed closing of any branch closed on or after December 19, 1991.

References

Section 42 of the FDI Act: Notice of Branch Closure

Interagency Policy Statement Concerning Branch Closing Notices and Policies