



Office of Thrift Supervision
Department of the Treasury

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RESCINDED

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MEMORANDUM FOR: Chief Executive Officer
Savings Institutions

FROM:  Jonathan L. Fiechter
Deputy Director for Washington Operations

SUBJECT: Branch Closings

Section 228 of the Federal Deposit Insurance Corporation Improvement Act of 1991 added a new section relating to branch closings. This provision took effect immediately upon enactment on December 19, 1991.

The law requires all insured depository institutions, including savings associations, that are closing a branch to give 90 days written notice 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 statement of the reasons for the decision to close the branch and information in support of those reasons.

The OTS has developed a proposed policy statement to inform savings associations and the public about its guidance with respect to the law's requirements. The proposed policy addresses the questions raised in connection with the implementation of the law, discusses the effect of the law on existing OTS regulations, and reminds savings associations of the need to develop and implement effective written policies for branch closings.

The attached Federal Register notice requests comments on the proposed policy statement during the 60 day comment period. We seek comment on all aspects of this proposed guidance.

Attachment

Office of Thrift Supervision**[No. 92-388]****Branch Closings****AGENCY:** Office of Thrift Supervision, Treasury.**ACTION:** Notice of proposed policy and request for comment.

SUMMARY: The Office of Thrift Supervision (OTS) is today publishing for comment a proposed policy that provides information and guidance with regard to statutory requirements for branch closings. Those requirements are contained in section 39 of the Federal Deposit Insurance Act, as amended by section 228 of the Federal Deposit Insurance Corporation Improvement Act of 1991. The proposed policy also discusses the need for savings associations to develop and implement effective policies to minimize any adverse effect that a branch closing may have on a savings association's community, and remedies the OTS may consider if an association fails to comply with the statutory requirements. The full text of the proposed policy is provided in this notice.

The OTS will consider the comments received from the public in evaluating whether changes to the policies as drafted in the proposed policy are required.

DATE: Comments requested must be received on or before November 23, 1992.**ADDRESSES:** Send comments to: Director, Information Services, Office of Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC, 20552, Attention: Docket No. 92-388. These submissions may be hand delivered to 1700 G Street,

NW. from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906-7753 or (202) 906-5755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed, or misidentified submissions will not be considered. Comments will be available for public inspection at 1776 G Street, NW., Street Level.

FOR FURTHER INFORMATION CONTACT: Larry A. Clark, Program Manager, Specialized Programs, (202) 906-5828; Kevin A. Corcoran, Assistant Chief Counsel, Corporate and Securities Division, (202) 906-6962; or Jackie Durham, Project Manager, Corporate Analysis, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

Section 228 of the Federal Deposit Insurance Corporation Improvement Act of 1991 added section 39 (codified at 12 U.S.C. 1831p) to the Federal Deposit Insurance Act (FDI Act), effective December 19, 1991. The law requires an insured depository institution to:

- Submit notice of any proposed branch closing to its appropriate Federal banking agency no later than 90 days prior to the date of the proposed 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 those reasons.

- Notify its customers of the proposed closing. This notice must be mailed to the customers of the branch proposed to be closed at least 90 days in advance of the proposed closing. A notice to customers must also be posted in a conspicuous manner on the premises of the branch proposed to be closed at least 30 days prior to the proposed closing.

- Adopt policies for branch closings. 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 and federal savings associations.

Because the requirements of section 39 apply to all insured depository institutions, and in order to provide a uniform and consistent approach, the Federal banking agencies (Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, FDIC, and the OTS) have developed positions substantially similar to those discussed in this

proposed policy statement. At the same time, however, each agency also has existing rules, regulations and policies that are affected by section 39; consequently, there may be some procedural differences between the agencies' policies.

The proposed policies provide guidance to address the questions raised in connection with the implementation of section 39, discuss the effect of that section on existing OTS regulations, and remind savings associations of the need to develop and implement effective written policies and procedures for branch closings.

Request for Comment

The OTS invites comments on all aspects of its proposed policies. The implementation of the statutory provisions raises a number of issues that generally involve questions of what constitutes a "branch" and a "closing". Therefore, commenters are specifically requested to address the following issues:

1. What is the appropriate definition of "branch" to apply in connection with a branch closing under section 39?

The law applies to all "branch" closings. OTS regulations (12 CFR 545.92(a)) define a "branch" as any office of a Federal savings association, other than its home office, agency office, data processing or administrative office, or a remote service unit. In addition to a traditional brick and mortar branch, OTS believes the law applies to any other type of domestic facility that constitutes a branch, including a drive-in facility and mobile branch. Other definitions could be utilized, e.g., the definition of "domestic branch" contained in section 3(o) of the FDI Act. If this definition were applied, one effect would be to include remote service units (ATMs).

2. Should the proposed policy apply to a branch relocation?

OTS regulations (12 CFR 545.95) require a Federal savings association to file either an application or a notice with the OTS prior to relocating a branch office, depending upon whether it qualifies for expedited or standard treatment based on its financial and managerial strengths, and statutory and regulatory compliance records. An association may, however, relocate a branch without applying for approval if the site is within the market and short-distance relocation area (as defined in 12 CFR 545.95(c)) of the existing branch.

Thus, prior approval is required if the effect of the relocation of a branch from one location to another is to establish a new branch, but no prior approval is required if a branch is relocated in the

immediate market area. The primary distinction between the two requirements is the extent to which financial services in the community are, or are not, affected by the relocation.

The OTS believes the notice requirements in section 39 are designed to protect against the adverse effects of sudden or unexpected branch closings, particularly in underserved or lower-income communities. Additionally, if the branch is moved a significant distance from its present location, the effect of the relocation may be considered to be the functional equivalent of a closing. For these reasons and to be consistent with the intent of existing regulations, the OTS therefore proposes to apply section 39 to a branch relocation, unless the relocation satisfies the regulatory criteria for a short-distance relocation in 12 CFR 545.95(c). The OTS does not propose to apply section 39 to closings or consolidations of existing branches that are within the regulatory criteria for a short-distance relocation.

3. Should the proposed policy apply to government-assisted transactions?

The OTS believes that section 39 applies to a branch closing initiated by an institution, not to situations where the institution is failing and the closing is part of the government's resolution process. Interpreting section 39 as applying to branches operated on a temporary basis by an acquiror in a transaction assisted by the FDIC or Resolution Trust Corporation (RTC) would appear to have results that are contrary to the statute's purpose.

In a typical situation, when an acquiror assumes some or all of the assets and liabilities of an institution placed into conservatorship or receivership, it operates one or more branches temporarily until it decides, during an option period (generally 80-180 days), whether to purchase or lease the branch, or transfer it back to the FDIC or RTC. If an acquiror is initially uncertain as to whether the branch will remain open, and if the acquiror is required to operate the branch for 90 days from the time it decides to close the branch, then the acquiror may decide to close the branch immediately, rather than operate it on an interim basis as an accommodation to the branch's customers.

Accordingly, the OTS believes that section 39 does not apply to closings of branches of an institution that has been placed in conservatorship or receivership by the OTS, so long as the branches are closed prior to expiration of an acquiror's branch acquisition option period. Section 39 would apply, however, if the acquiror purchases or

leases a branch, but later decides to close the branch. Section 39 would also apply when an acquirer closes a branch from its pre-acquisition branch network in a consolidation of offices acquired in connection with an RTC acquisition, unless the distance between the two branches is so close that it would satisfy the applicable distance standard for a short-distance relocation pursuant to 12 CFR 545.95(c).

Regardless of the applicability of section 39, a savings association that operates branches transferred from the RTC or the FDIC on an interim basis should, upon deciding not to permanently acquire a branch, use its best efforts to provide advance notice to both its customers and the OTS of the proposed branch closing.

4. How can an association best identify the customers of a branch?

The proposed policy permits each savings association to determine which of its patrons will be identified as customers of a particular branch. The proposed policy requires a good faith determination based on a reasonable method developed by the association to allocate a customer to a branch. One example of a reasonable method that an association could use is to allocate a customer to a branch based on where the customer opened his or her deposit or loan account.

Proposed Policy Statement

Purpose

This policy statement provides guidance to all savings associations with respect to the statutory requirements that each association provide prior notice of branch closings and establish internal policies for branch closings.

Background

The Federal Deposit Insurance Corporation Improvement Act of 1991 was enacted on December 19, 1991. Section 228 adds a new section 39 (codified at 12 U.S.C. 1831p) to the Federal Deposit Insurance Act (FDI Act) and imposes notice requirements on insured depository institutions that propose branch closings. 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 and federal savings associations. Section 39 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 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 must also 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 insured depository institution to adopt policies regarding closings of branches of the institution.

As the Federal banking agency that supervises savings associations, the OTS is charged with administering section 39 for those institutions.

Applicability

Under OTS regulations, a "branch" is defined as any office of a Federal savings association, other than its home office, agency office, data processing or administrative office, or a remote service unit (12 CFR 545.92(a)). Thus, in addition to a traditional brick and mortar branch, other types of domestic facilities that constitute a branch, including a drive-in facility or mobile branch, are covered.

A savings association must file a branch closing notice for a branch closing that occurs in the context of a merger, consolidation or other form of acquisition, whether or not such transaction is subject to expedited approval under the Bank Merger Act (12 U.S.C. 1828). The parties to such a transaction should determine which party will 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 OTS, 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 a temporary interruption of service caused by an "Act of God" (e.g., fire, earthquake) if the savings association plans to restore branching services at

the site in a timely manner, as the association would not have closed the branch. The law does apply, however, if the association decided to close or not reopen the branch following the incident. Although prior notice would not be possible in such a case, the association should mail and, if practicable, post the required notices to customers and the OTS as soon as possible after the decision to close the branch has been made.

The law does not apply where a branch undergoes a change in name, location, or services but continues to meet the definition of branch and serve the same customers. Thus, the law does not apply to:

- Mergers, consolidations, or other acquisitions, including branch sales, that will not result in any branch closings;

- A change of services at a branch so long as the remaining facility constitutes a branch, such as where loan services are removed from a branch that will continue to offer deposit services;

- Branches that are closed at one location in connection with a branch relocation that qualifies as a "short-distance" relocation pursuant to 12 CFR 545.95(c), or closings or consolidations of existing branches that satisfy the short-distance criteria; and

- Branch offices temporarily operated in connection with government-assisted transactions that are closed prior to the expiration of a buyer's branch acquisition option period.

Notice of Branch Closing to the OTS

The law requires insured depository institutions to submit 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 law requires that the notice to the OTS 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 association's written policy for branch closings.

If an association believes certain information included in the required notice is confidential in nature, the association should prepare such information separately and request confidential treatment. The OTS 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 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 a savings association 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 association 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. An association need not change its recordkeeping system in order to make a reasonable determination of who is a customer of a branch. If an association 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, an association that proposes to close a branch 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 if the association acted in good faith in projecting the date for closing and in subsequently delaying the closing.

To satisfy the mailed customer notice requirements of the law, the mailed notice should include 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 the law, an association 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 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. An association may revise the notice to extend the projected date of closing without triggering a new 30-day notice period.

In some situations, an association, in its discretion and to expedite transactions, may mail and post notices to customers of proposed branch closings that are contingent upon an

event. For example, in the case of a proposed merger or acquisition, an association may notify customers of its intent to close a branch upon approval by the appropriate Federal banking agency of the proposed merger or acquisition.

For purposes of examinations, an association must be able to demonstrate compliance with the law.

Policies for Branch closings

The law requires all insured depository institutions to adopt policies for branch closings. Each savings association with one or more branches must adopt such a policy. If an association currently has no branches, it must adopt a policy for branch closings before it establishes its first branch. The policy should be in writing and should meet the size and needs of the association.

Closing a branch may have adverse effects on the community and its residents, particularly low- and moderate-income neighborhoods. A branch closing may also affect local economic development and inconvenience businesses and residents, particularly those residents with limited mobility.

Each branch closing policy adopted pursuant to section 39 should include procedures for determining objectively which branch to close and which customers to notify, and methods for providing the notices required by the statute.

As association may also wish to consider including in its written policy factors such as:

- Profits generated by the association's branch system and the profitability of the targeted branch;
- Actions taken to make the targeted branch viable; for example, adjusting hours, changing services, upgrading facilities, and increasing automation;
- The presence in the neighborhood of other financial institutions, and their accessibility and services;
- Actions to advise the community of the planned branch closing; for example, advance meetings with key neighborhood and political leaders;
- Actions to minimize the impact of a branch closing on the neighborhood; for example, providing special services, check cashing, and night deposits, and providing additional services at other sites;
- A review and approval procedure to arrive at a closing decision, including the standards (e.g., profit and loss, number of customers, amount of deposit or loan accounts) used to make the decision, and appropriate follow-up actions to be taken; and

- Any other considerations the association may wish to include.

Compliance

The OTS will examine for compliance with section 39 to determine whether an association has adopted a branch closing policy and whether the association provided the required notices when it closed a branch. If an association fails to comply with section 39, the OTS may make adverse findings in the CRA portion of an examination or take appropriate enforcement action, including the imposition of civil money penalties where statutory requirements are not satisfied.

During the CRA portion of an examination, the OTS assesses an association's record of helping to meet the credit needs of its community. Factors the OTS considers in making its assessment include the association's record of opening and closing offices and providing services at such offices. The reasons for closing a branch and the statistical or other information included in a branch closing notice submitted to the OTS will be reviewed under these assessment factors in the CRA portion of an examination.

Dated: August 13, 1992.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

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