In the attached joint policy statement, the Office of Thrift Supervision (OTS) and the other federal banking agencies have updated guidance on prior notice that institutions must give before closing branches.

The policy statement reflects changes to the Federal Deposit Insurance Act adopted by Congress in 1994 and 1996. The Act requires insured depository institutions to give 90 days’ prior written notice to their federal regulator and customers before closing a branch.

The policy statement notes that the legislative changes clarified that the notification requirements do not apply to an automated teller machine, the relocation or consolidation of a branch within the immediate neighborhood, or a branch closing that results from an emergency acquisition.

The statement also states that main offices, remote service facilities, loan production offices, and insured branches of foreign banks are not subject to the notification requirements.

The statement was issued by OTS, the Comptroller of the Currency, Federal Reserve System and the Federal Deposit Insurance Corporation.

The policy statement was published in the June 29, 1999, edition of the Federal Register, Vol. 64, No.124, pp. 34844-34847.

For further information contact:

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national bank's honorary or advisory directors (who act in advisory capacities without voting power or the power of final decision in matters concerning bank business) must distinguish between them and the bank's board of directors, or indicate their advisory status.

12 CFR 7.2014(b) (Indemnification of institution-affiliated parties in administrative proceedings or civil actions not initiated by a federal banking agency): A national bank shall designate in its bylaws the body of law selected for making indemnification payments in administrative proceedings or civil actions not initiated by a federal banking agency.

National banks use the information to ensure their compliance with applicable federal banking law and regulations. Further, the collections of information evidence bank compliance with various regulatory requirements. This information assists bank management in the safe and sound operation of the bank. The OCC uses the information in the conduct of bank examinations and as an audit tool to verify bank compliance with law and regulations.

Type of Review: Extension, without change, of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 2,430.

Estimated Total Annual Responses: 2,430.

Frequency of Response: Recordkeeping.

Estimated Total Annual Burden: 4,156 burden hours.

**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

[Docket No. 99–06]

**FEDERAL RESERVE SYSTEM**

[Docket No. R–1036]

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**DEPARTMENT OF THE TREASURY**

**Office of Thrift Supervision**

[Docket No. 99–33]

**Branch Closings**

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

**ACTION:** Joint policy statement.

**SUMMARY:** The OCC, the Board, the FDIC, and the OTS (the agencies) are revising their joint policy statement regarding branch closings by insured depository institutions. This action is needed to incorporate changes in the underlying statute made by section 106 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 and section 2213 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996. The action is intended to clarify the additional steps regarding notice and consultation for proposed branch closings by interstate banks in low- or moderate-income areas, and to clarify the status of automated teller machines, relocations and consolidations, and branch closings in connection with emergency acquisitions or assistance by the FDIC.

**EFFECTIVE DATE:** June 29, 1999.

**FOR FURTHER INFORMATION CONTACT:**


Board: Rick Heyké, Senior Attorney, Legal Division (202/452–3688), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Diane Jenkins (202/452– 3544).

FDIC: Curtis Vaughn, Examination Specialist, Division of Supervision (202/898–6759); Gladys C. Gallagher, Counsel, Legal Division (202/898–3833); Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Larry Clark, Director of Trust Programs, Compliance Policy and Specialty Examinations (202/906–5628); Lucrecia R. Moore, Attorney (202/906–6161); Office of Thrift Supervision, 1700 G Street, NW., Washington DC 20552.

**SUPPLEMENTARY INFORMATION:**

**Background Information**

Section 42 of the Federal Deposit Insurance Act (12 U.S.C. 1831r–1) (FDI Act) requires an insured depository institution to give 90 days prior written notice of any branch closing to its primary Federal regulator and to branch customers, to post a 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.

On September 21, 1993 (58 FR 49083), the agencies issued a joint policy statement to provide guidance to institutions in complying with section 42 of the FDI Act. The 1993 joint policy statement defines a branch for purposes of section 42, clarifies what constitutes a branch closing, and provides guidance to institutions in identifying customers to be notified in the event of a branch closing.

On September 29, 1994, section 42 of the FDI Act was amended by section 106 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Pub. L. 103–328, 108 Stat. 2338) (Interstate Act). The Interstate Act changed section 42 of the FDI Act in two ways, both relating to proposed closings by interstate banks (banks which maintain branches in more than one state) of branches in low- or moderate-income areas: First, by providing a new notice procedure; and second, by requiring the appropriate Federal banking agency to convene a meeting of community leaders and other...
persons to discuss the feasibility of obtaining adequate alternative facilities and services if a person from the affected area requests such a meeting and other prescribed requirements are satisfied.

On September 30, 1996, section 42 of the FDIC Act was amended by section 2213 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104–208, 110 Stat. 3009) (Regulatory Relief Act). The Regulatory Relief Act amended section 42 of the FDIC Act to clarify that section 42 does not apply to: (1) An automated teller machine; (2) 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; and (3) a branch that is closed in connection with an emergency acquisition under sections 11(n), 13(f), or 13(k) of the FDIC Act, or any assistance provided by the FDIC under section 13(c) of the FDIC Act. The agencies are revising the 1993 joint policy statement to reflect the changes to section 42 of the FDIC Act made by the Interstate Act and the Regulatory Relief Act. The revised policy statement incorporates the new procedure and provides for banks to inform customers in affected areas of their ability to comment on a particular branch closing. The agencies are also clarifying that main offices, remote service facilities, loan production offices, and insured branches of foreign banks are not branches for purposes of section 42. A reference to the Resolution Trust Corporation (RTC) is being eliminated since the agency ceased to exist on December 31, 1995. The agencies are also clarifying the section on allocation of customers to branches.

The text of the revised joint policy statement follows:


Purpose

This policy statement provides guidance to each insured depository institution concerning requirements that an institution provide prior notice of any branch closing and establishment of internal policies for branch closings.


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 also must post a notice to customers in a conspicuous manner on the premises of the branch proposed to be closed. The notice and other information must be mailed to the appropriate Federal banking agency and a statement that comments on the closing may be mailed to the agency. In those cases, a person from the affected area may submit a written request relating to the proposed closing to the agency, 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 agency determines that the request is nonfrivolous, then the agency shall convene a meeting of appropriate individual, organizations, depository institutions, and agency representatives, as determined by the agency in its discretion, to explore the feasibility of obtaining adequate alternative facilities and services for the affected area following the closing of the branch.

Finally, the law requires each institution to adopt policies regarding closings of branches of the institution.

Applicability

Section 42 of the FDI Act applies to the closing of a "branch" by an insured depository institution. 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 or checks paid or money lent. Notice pursuant to section 42 would not be required for the closing of non-branch facilities, such as an ATM, remote service facility, or loan production office, or of a temporary branch. The law also does not apply to mergers, consolidations, or other acquisitions, including branch sales, that do not result in any branch closings. Institutions that are in doubt about the coverage of a particular closing should consult the appropriate Federal banking agency.

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. Branch closings that occur in the context of transactions subject to the Bank Merger Act (12 U.S.C. 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 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

1. An "insured depository institution" means any bank or savings association, as defined in Section 3 of the FDI Act (12 U.S.C. 1813), the deposits of which are insured by the FDIC.

2. Under section 42, this requirement does not apply when a savings association closes a branch.

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. Consistent with the agencies' original interpretation, the 1996 amendment expressly stated that section 42 of the FDI Act "shall not apply with respect to automated teller machines." (Pub. L. 104–208, 110 Stat. 3009.)

5. See "Other" below for certain branches closed in connection with emergency acquisitions or FDIC assistance or subsequently transferred back to the FDIC.
were to close ahead of schedule, the purchaser, if authorized by the appropriate Federal banking agency, could operate the branch to complete compliance with the 90-day requirement without the need for an additional notice.

Relocations and Consolidations

The law does not apply when a branch is relocated or consolidated with one or more other branches if the relocation or consolidation occurs within the immediate neighborhood and does not substantially affect the nature of the business or customers served. For purposes of this policy statement, 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, moves across the street, around the corner, or a block or two away. Moves of less than 1,000 feet will generally be considered to be relocations. In less densely populated areas or 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. \(^6\) Institutions that are in doubt about whether a relocation or a closing has occurred should consult the appropriate Federal banking agency.

Consolidations of branches are considered relocations for purposes of this policy statement 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

Changes of services at a branch are not considered a branch closing, provided that the remaining facility constitutes a branch (as defined herein). \(^7\)

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

- A temporary interruption of service caused by an event beyond the institution's control (e.g., a natural catastrophe), if the insured depository 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, provided in the agreement.
- A branch that is closed in connection with an emergency acquisition under sections 11(n), 13(f), or 13(k) of the FDI Act, or any assistance provided by the FDIC under section 13(c) of the FDI Act. (12 U.S.C. 1821(n), 1823(f) and (k), and 1823(c)).

Notice of Branch Closing to the Agency

The law requires an insured depository institution to give 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 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 institution's written policy for branch closings.

If an institution believes certain information included in the notice is confidential in nature, the institution should prepare such information separately and request confidential treatment. The agency will decide whether to treat such information confidentially under the Freedom of Information Act (5 U.S.C. 552).

If a notice provided to a state supervisory agency pursuant to state law contains the information outlined above, then the institution may provide a copy of that notice to the appropriate Federal banking agency in satisfaction of section 42, provided that the notice is filed at least 90 days prior to the date of the branch closing.

Customer Allocation

If the institution is a bank that maintains branches in more than one bank, notice of the branch closing must be given to each branch in the institution's control (e.g., a natural catastrophe), if the insured depository institution plans to restore branching services at the site in a timely manner; 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 appropriate Federal banking agency 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.

Note of Branch Closing to Customers

The low or moderate-income areas served by Interstate Banks

The agencies note that where, 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.

\(^6\) OCC and OTS regulations specify distances considered short-distance relocations. See 12 CFR 5.3(i) (national banks) and 12 CFR 545.95(c) (thrifts).

\(^7\) The agencies note that where, 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.
state and the branch to be closed is located in a low-or moderate-income area, the notice shall contain the mailing address of the appropriate Federal banking agency and a statement that comments on the proposed branch closing may be mailed to that agency. The notice should also state that the agency does not have the authority to approve or prevent the branch closing. If the agency receives a written request by a person from the area in which the branch is located, relating to the proposed closing and stating specific reasons for the request, including a discussion of the adverse effect of such closing on the availability of banking services in the affected area, and if the agency concludes that the request is nonfrivolous, then the agency shall convene a meeting of agency representatives, other interested depository institution regulatory agencies, community leaders, and other appropriate individuals, organizations, and depository institutions, as determined by the agency in its discretion. The purpose of the meeting shall be to explore the feasibility of obtaining adequate alternative 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 which will become an interstate bank prior to the closing 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 appropriate Federal banking agency under this provision shall affect the authority of an interstate bank to close a branch (including the timing of such closing) if the requirements of sections 42(a) and 42(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

Under section 42, an institution 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. An institution may revise the notice to extend the projected date of closing without triggering a new 30-day notice period.

Contingent Notices

In some situations, an institution, 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, an institution 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 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 when it establishes its first branch. The policy should be in writing and meet the size and needs of the institution.

Each branch closing policy adopted pursuant to section 42 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

The Federal banking agencies will examine for compliance with section 42 of the FDI Act in accordance with each agency’s compliance examination procedures, to determine whether the institution has adopted a branch closing policy and whether the institution provided the required notices when it closed a branch. If an institution fails to comply with section 42, the appropriate Federal banking agency may make adverse findings in the compliance evaluation or take appropriate enforcement action.

DEPARTMENT OF THE TREASURY

Customs Service

Procedures if the Generalized System of Preferences Program Expires

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: The Generalized System of Preferences (GSP) is a renewable preferential trade program that allows the eligible products of designated developing countries to directly enter the United States free of duty. The GSP is currently scheduled to expire at midnight on June 30, 1999, unless its provisions are extended by Congress. This document provides notice to importers that claims for duty-free treatment under the GSP will not be processed by Customs for merchandise entered or withdrawn from a warehouse for consumption on or after July 1, 1999, if the program is not extended before that date. This document also sets forth the mechanisms that will facilitate refunds, should the GSP be renewed with retroactive effect.

DATES: The plan set forth in this document will become effective as of July 1, 1999, if Congress does not extend the GSP program before that date.


SUPPLEMENTARY INFORMATION: