

Considerations When Contemplating a Branch Consolidation and/or Closure Initiative

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Prior to the COVID-19 pandemic, many combined factors pushed the banking industry toward consolidation, greater efficiency, and in many instances, smaller branch footprints. When COVID-19 forced banks to close branch lobbies during the spring and summer of 2020, many banks immediately increased investments in online and mobile channels and were forced to reduce reliance on physical branch networks. Banks saw significant improvements in online and mobile banking adoption, including among first-time users and older customers. Branch closures and consolidations accelerated shortly thereafter.

We expect banks of all sizes to continue to consider potential branch closures during 2021. Before implementing a branch consolidation and/or closure initiative, your institution should consider the following:

1.

Consolidation vs. Closure: The federal banking regulators distinguish branch consolidations from branch closures. If branches to be consolidated are in the same immediate neighborhood and the branch consolidation does not significantly affect the nature of the business or the customers served by the branches, the consolidation is not subject to branch closure requirements. If, however, the branch consolidation involves branches not located within the same immediate neighborhood or the consolidation significantly affects the nature of the business or the customers served by the branches, such consolidation would constitute a branch closing, and the requirements summarized below would apply.

2.

Follow Your Adopted Policy: Federal banking regulators require each FDIC-insured bank to adopt a branch closure policy. If your institution is considering a branch closure, it is critical that your institution follow its adopted branch closing policy.

3.

Notify Your Regulators: In the case of a branch closure, you will need to notify the appropriate federal banking regulator no later than 90 days prior to the proposed branch closing date. Also, state-chartered banks typically must provide notice to their state regulator. The required notices must include a detailed statement of the reasons for closing the branch and statistical or other information supporting such reasons. If, however, you are

consolidating branches not constituting a branch closure (due to the factors described above), branch closing notices will not generally be required. We strongly recommend reviewing all branch consolidation and closure plans with your institution's regulators in advance, and even where branch closure requirements do not apply, your institution should send a post-consolidation notice to the FDIC and other regulators so that branch databases can be appropriately updated.

4.

Notify Your Customers: Banks must communicate regularly with customers impacted by a branch consolidation or closure, including conveying information about key dates and events that will impact customer-facing operations. In the case of a branch closure, federal law also requires that you notify customers by mailing a notice at least 90 days prior to the proposed closing and by posting 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. State law may also require customer notices by state-chartered banks. Plans by an interstate institution to close a branch in a low- or moderate-income census tract may face additional notice requirements. In this scenario, notices sent to customers must include the address of your institution's primary federal regulator with a statement that comments from customers regarding the closing may be mailed to such agency. While federal regulatory agencies do not have the authority to prevent an institution from closing a branch, comments regarding adverse community impact may cause the relevant federal regulator to require the institution to meet with impacted stakeholders.

5.

Make Appropriate Public Disclosure: Most banks will choose to publicly announce a branch consolidation and/or closure initiative; in the current environment, investors often react favorably to branch consolidation or closure announcements due to the promise of cost savings. Publicly traded banks and holding companies that issue reports under the Securities Exchange Act of 1934 will need to analyze the materiality of a branch closure or consolidation initiative. Public disclosure of a branch consolidation or closure initiative may be required by Item 2.05 of Form 8-K if an institution expects to incur material charges or exit costs under GAAP, or under Item 8.01 of Form 8-K if the consolidation or closure initiative is material and the bank or holding company is actively offering its securities for sale.^[1]

6.

Evaluate the Impact on CRA and Fair Lending Compliance: Banks must also consider the effect of a branch consolidation and/or closure initiative on the Community Reinvestment Act (CRA) and fair lending assessment areas. Fewer branches in low- or moderate-income areas could negatively impact a bank's CRA rating and could limit interactions with community organizations located in those areas, which could lead to missed community development opportunities. Furthermore, if branch closures or consolidations disproportionately impact urban branches or minority communities, a bank could inadvertently increase its fair lending and redlining risk. One easy test is whether your bank's post-consolidation branch footprint begins to resemble a donut hole or horseshoe, with limited coverage for urban markets or minority communities in the middle.^[2] If so, you must balance increased legal and compliance risks related to CRA and fair lending against the economic benefits of closing or combining branches.

Consider and Address Social and Community Implications: Brick and mortar branches house employees and serve communities, and institutions may be hesitant to close a branch due to these factors. Banks can proactively manage local perceptions by engaging with community leaders and emphasizing how the bank will continue serving local customers. You should plan to inform your customers of how they can bank virtually or at other branches and make sure your loan officers dedicate resources to the affected community, particularly in advance of the planned closure to invest in your most important customer relationships.

The foregoing factors are important considerations involving a branch consolidation and/or closure initiative. We encourage readers contemplating such an initiative to reach out to Troutman Pepper's financial services attorneys for more information.

[1] Such an active securities offering could include activity under a dividend reinvestment program or an employee stock purchase program, or pursuant to a resale registration statement on behalf of selling shareholders, in addition to more traditional forms of public and private securities offerings.

[2] As a reminder, fair lending or CRA issues can have significant consequences on a bank after a branch consolidation or closure is complete, including by delaying merger transactions or increasing regulatory scrutiny during examinations resulting in formal investigation or enforcement activity or leading to increased fair lending claims and litigation by consumers.

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