DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

[Docket No. 97–16]

RIN 1557–AB50

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 211

[Regulations H and K; Docket No. R–0962]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 369

RIN 3064–AB97

Prohibition Against use of Interstate Branches Primarily for Deposit Production

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

ACTION: Joint final rule.

SUMMARY: The OCC, Board, and FDIC (collectively, agencies) are adopting uniform regulations to implement section 109 (section 109) of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act). The final rule reflects comments received on the proposal and further internal consideration by the agencies.

As required by section 109, the final rule prohibits any bank from establishing or acquiring a branch or branches outside of its home state under the Interstate Act primarily for the purpose of deposit production, and provides guidelines for determining whether such bank is reasonably helping to meet the credit needs of the communities served by these branches.

EFFECTIVE DATE: October 10, 1997.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Background

The Interstate Act [1] provides expanded authority for a domestic or foreign bank to establish or acquire a branch in a state other than the bank's home state (host state). Section 109 requires the agencies to prescribe uniform rules that prohibit the use of the authority under the Interstate Act to engage in interstate branching primarily for the purpose of deposit production.[2] The agencies must also provide guidelines to ensure that banks that operate such branches are reasonably helping to meet the credit needs of the communities served by the branches. Congress enacted section 109 to ensure that the new interstate branching authority provided by the Interstate Act would not result in the taking of deposits from a community without banks reasonably helping to meet the credit needs of that community. See H.R. Conf. Rep. No. 103–651, at 62 (1994).

Overview of Proposed Rule and Comments

The agencies published a joint notice of proposed rulemaking on March 17, 1997 (62 FR 12730). The proposed rule applied to any bank that established or acquired, directly or indirectly, a branch under the authority of the Interstate Act or amendments to any other provision of law made by the Interstate Act. These branches were referred to as ''covered interstate branches.'' The proposed rule provided that, beginning no earlier than one year after a bank established or acquired a covered interstate branch, the appropriate agency would determine whether the bank satisfied a ''loan-to-deposit ratio screen'' based on reasonably available data.

The loan-to-deposit ratio screen compared the bank's loan-to-deposit ratio within the state where the bank's covered interstate branches were located (the bank's statewide loan-to-deposit ratio) [3] with the loan-to-deposit ratio of banks whose home state was that state (host state loan-to-deposit ratio). If the loan-to-deposit ratio screen indicated that the bank's statewide loan-to-deposit ratio was at least 50 percent of the host state loan-to-deposit ratio, no further analysis would be required. If, however, the appropriate agency determined that the bank's statewide loan-to-deposit ratio was less than 50 percent of the host state loan-to-deposit ratio, or determined that reasonably available data did not exist that permitted the agency to determine the bank's statewide loan-to-deposit ratio, the agency would perform a ''credit needs determination.''

Under the credit needs determination, the appropriate agency would review the loan portfolio of the bank and determine whether the bank was reasonably helping to meet the credit needs of the communities served by the bank in the host state. Consistent with section 109, the agencies would consider the following in making a credit needs determination: (1) Whether the covered interstate branches were formerly part of a failed or failing depository institution; (2) whether the covered interstate branches were acquired under circumstances where there was a low loan-to-deposit ratio because of the nature of the acquired institution's business; (3) whether the covered interstate branches have a higher concentration of commercial or credit card lending, trust services, or other specialized activities; (4) the ratings received by the bank under the Community Reinvestment Act of 1977 (CRA); [4] (5) economic conditions, including the level of loan demand, within the communities served by the covered interstate branches; and (6) the safe and sound operation and condition of the bank.

A bank that failed the loan-to-deposit ratio screen and that received a determination that it was not reasonably helping to meet the credit needs of the communities served by the bank's interstate branches could be subject to section 109's sanctions after a hearing under section 8(h) of the Federal Deposit Insurance Act.[5]

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[1] Pub. L. No. 103–328, 108 Stat. 2338.

[2] 12 U.S.C. 1835a.

[3] The proposed rule designated this ratio as the ''covered interstate branch loan-to-deposit ratio.'' The agencies changed the term because some commenters mistakenly interpreted the proposed rule as requiring each covered interstate branch to be tested under section 109's loan-to-deposit ratio screen. Section 109 requires consideration of a bank's statewide lending and deposit taking as determined by the appropriate agency.

[4] 12 U.S.C. 2901 *et seq.*

[5] 12 U.S.C. 1818(h).

The proposed rule also recognized that data necessary to perform the calculations required by the loan-to-deposit ratio screen may not be reasonably available without imposing additional regulatory burdens on banks. As discussed in the proposal, data that are currently reported have limited use in showing the geographic location of depositors and borrowers that is necessary for calculating the host state loan-to-deposit ratio. In addition, data storage practices vary widely from bank to bank, thereby making it difficult to determine how many multistate banks would have reasonably available data relevant to calculating the bank's statewide loan-to-deposit ratio in each state in which the bank has branches. The agencies requested comment on the data availability issues raised by section 109, including possible sources of relevant data that would be reasonably available to the agencies and appropriate methods of calculating the ratios. The agencies also requested comment on the proposed rule's approach of conducting a credit needs determination before applying the loan-to-deposit ratio screen, if data sufficient to calculate the bank's statewide loan-to-deposit ratio were not reasonably available.

Collectively, the agencies received 54 comments on the proposal. Comments were received from bank holding companies (11), individual banks (17), banking industry representatives (8), state bank commissioners and an association of state bank commissioners (7), consumer and community representatives (9), a nonbanking company (1), and an individual (1). Commenters supporting the proposal noted that the agencies were limited by section 109's prohibition against imposing new burdens on banks. Commenters opposing the proposal generally disagreed with the statutory scheme rather than its proposed implementation. Other commenters suggested modifications to the proposal. In developing the final rule, the agencies have carefully considered all comments in light of the language and legislative intent of section 109. For the reasons discussed in detail below, the agencies have adopted the rule substantially as proposed.

Analysis of Comments and Final Rule

Interstate Branches Covered

Several commenters raised a threshold issue based on a statement in the proposed rule concerning its coverage. The proposed rule stated that domestic banks may have branches located outside a bank's home state that are not within the scope of section 109 because they were not established or acquired pursuant to authority in the Interstate Act.[6] Several commenters disputed this statement, especially as applied to any bank not grandfathered under the McFadden Act of 1927.[7] These commenters cited, in particular, pending litigation challenging the legality of branches established under the main office relocation provision in the National Bank Act.[8] Commenters also stated that ''thousands'' of branches retained in transactions involving the relocation of a national bank's main office across state lines before June 1, 1997 (retained branches), may be among the bank branches deemed to be outside the coverage of section 109.

The coverage of the final rule coincides with the coverage of the Interstate Act thereby ensuring that the agencies will apply section 109 consistent with the Interstate Act. Consistent with section 109, and as stated in the proposed rule, the final rule applies to any branch (1) established or acquired outside a bank's home state pursuant to the Interstate Act or any amendment made by the Interstate Act to any other provision of law, or (2) that could not have been established or acquired outside a bank's home state but for the previous establishment or acquisition of a branch established pursuant to the Interstate Act.

The issue of the applicability of section 109 to branches in connection with a relocation under the National Bank Act is an issue within the jurisdiction of the OCC. The OCC notes that a Federal court of appeals recently issued an opinion in one pending case involving relocations under the National Bank Act.[9] The OCC believes that the commenters significantly overestimated the potential number of affected branches. The OCC estimates that by mid-1998, as banks establish or acquire branches pursuant to the Interstate Act, at most only a few hundred retained branches, owned by a small number of community or mid-sized banks, would remain and expects that the number of these retained branches will continue to decrease as the banks engage in transactions pursuant to the Interstate Act.

Data Availability

Commenters described in detail the shortcomings of reported data for calculating the host state loan-to-deposit ratio.[10] Other commenters described the significant limitations on currently available data for providing the geographic location of a depositor or borrower that is necessary to calculate the bank's statewide loan-to-deposit ratio. A number of commenters also noted that sampling loan files to calculate this ratio could significantly increase regulatory burden by extending the duration of an examination and by requiring a bank to devote additional resources to the examination process.[11] Some commenters recommended, however, that the agencies require banks to report publicly additional data on the geographic locations of their loans and deposits, and requested that the agencies obtain sufficient data to calculate the bank's statewide loan-to-deposit ratio in all cases regardless of the regulatory burdens imposed.

The language of section 109 and its legislative history make clear that the agencies are to administer section 109 without imposing additional regulatory burdens on banks. Section 109 directs the agencies to calculate the bank's statewide loan-to-deposit ratio from reasonably available information, including an agency's sampling of the bank's loan files during an examination, or other available data. The agencies also are required to calculate the host state loan-to-deposit ratio as determinable from relevant sources. The House Conference Report states that ''[t]he Conferees do not intend that section 109 create any additional regulatory or paperwork burdens for any institution.'' H.R. Conf. Rep. No. 103–651, at 62 (1994). Therefore, consistent with the language and intent of section 109, the final rule does not impose additional data reporting requirements

[6] As noted in the proposed rule, limited branches (*i.e.*, offices that only accept internationally-related deposits permissible for an Edge Act corporation to accept) and agencies operated by foreign banks outside their home state are not subject to section 109.

[7] 12 U.S.C. 36.

[8] 12 U.S.C. 30.

[9] *See Ghiglieri* v. *Sun World Nat'l Ass'n*, Nos. 96–50847 and 96–50948 (5th Cir. July 22, 1997).

[10] The agencies have also reviewed a report by the Comptroller General of the United States entitled ''Bank Data: Material Loss of Oversight Information From Interstate Banking Is Unlikely'' (GAO/GGD/97049) (March 26, 1997).

[11] The commenters also confirmed the agencies' supervisory experience that sampling at a particular branch would not always produce reliable data because of wide variations in data collection practices. For example, a bank may book loans or deposits at locations outside the state where the borrowers or depositors are located. Many domestic and foreign institutions often consolidate commercial loans and deposits at a bank's main office, while mortgage lending may be booked at a mortgage lending subsidiary. Although the loans may have been made through a bank's covered interstate branch, they might not be booked at that branch.

nor does it generally require a bank to produce, or assist in producing, relevant data.

When data sufficient to calculate a bank's statewide loan-to-deposit ratio are not reasonably available, the agencies will conduct a credit needs determination as discussed below. The agencies believe that this approach accomplishes the purpose of section 109 without imposing additional burdens on the bank.

Two-Step Analysis

Commenters generally supported the approach of the appropriate agency conducting a credit needs determination if reasonably available data are insufficient to calculate the bank's statewide loan-to-deposit ratio. Some commenters, however, suggested that a bank should be allowed to request a credit needs determination before the application of the loan-to-deposit ratio screen in a section 109 review. Other commenters stated that the credit needs determination should be abandoned in favor of testing only with the loan-to-deposit ratio screen.

After carefully considering the comments received on this point, the agencies have concluded that the Interstate Act requires the agencies to conduct a loan-to-deposit ratio screen—or to determine that sufficient data are not reasonably available—before making a credit needs determination.

Section 109 provides a two-step analysis to confirm a bank's compliance with its prohibition against deposit production offices. The first step attempts to measure compliance with the prescribed loan-to-deposit ratio screen, and the agencies will take into account all reasonably available data relevant to calculating the bank's statewide loan-to-deposit ratio on a case-by-case basis in order to determine whether that ratio can be calculated from such data.

Relevant data are data that, for example, geocode loans or that can be used to sort borrowers by zip codes. The agencies also will consider data that are reasonably determinable from available information, which would include the agency's sampling of the bank's loan files during an examination, or data that would be otherwise available from the bank, such as data currently required to be reported by the bank. In determining whether to sample a bank's loan files for the purposes of section 109 during an examination, the agencies will consider the regulatory burden imposed within the context of the examination. For example, an undue regulatory burden could result if a bank were required to expend resources that materially exceeded the resources required to produce data for sampling for other examination purposes. Similarly, sampling for the purpose of section 109 that would require a substantial extension of the scope or duration of the examination could also produce an undue regulatory burden on the bank. In such cases, the language and legislative intent of section 109 support proceeding to the second step in the two-step analysis.

If the appropriate agency determines that data relevant to calculating the bank's statewide loan-to-deposit ratio are not reasonably available without imposing an undue regulatory burden, or if the bank fails the loan-to-deposit ratio screen based on reasonably available data, in the second step the appropriate agency will look at the bank's activities through a credit needs determination. A credit needs determination therefore will be made in all cases in which the appropriate agency is unable to readily verify compliance with the section 109 loan-to-deposit ratio screen. Banks may provide the agencies with any relevant information, including loan data, if a credit needs determination is required.

If the appropriate agency has not determined the bank's statewide loan-to-deposit ratio and the bank subsequently receives an adverse credit needs determination, the agency will then apply the loan-to-deposit ratio screen. Applying the loan-to-deposit screen at this stage in the process is consistent with the agencies' statutory duty to determine a bank's compliance with section 109 and to seek sanctions against a bank that fails to comply, as appropriate. Since a bank must fail both the loan-to-deposit screen and the credit needs determination in order to be out of compliance with section 109, the agencies have an obligation to apply the loan-to-deposit screen before seeking sanctions. Obtaining sufficient data to calculate the bank's statewide loan-to-deposit ratio may require the appropriate agency to expand the scope and duration of its examination and may require the bank to assist the appropriate agency in producing data that may not be reasonably available. The agencies conclude that their statutory responsibility to ensure compliance with the statute after an adverse credit needs determination must outweigh consideration of regulatory burden that may be imposed on a bank in order to carry out the legislative purpose of section 109.

Section 109 Loan-to-Deposit Ratios

A. Host State Loan-to-Deposit Ratio

Relevant Data

The agencies will use the annual Summary of Deposits (prepared as of June 30) as the most reasonably available source of reported data on deposits. The agencies also will use quarterly Consolidated Reports of Condition and Income (Call Reports), which provide loan data for banks, as the most readily available source of reported data on loans.

The agencies recognize that Summary of Deposits and Call Report data do not provide precise information on the geographic location of depositors and borrowers for all the reasons detailed in the proposed rule and the comments. However, these data are the most useful data that are reasonably available at this time.

Method of Calculating

Some commenters suggested alternative ways of calculating the host state loan-to-deposit ratio. One commenter suggested using the unweighted average loan-to-deposit ratio [12] for all of the home state banks in the host state. Another commenter recommended using the average daily balance for loans instead of the actual amount of loans held at the end of the reporting period. One commenter suggested using third-quarter data for states with large rural and agricultural areas to capture the highest loan-to-deposit ratio. The agencies have also considered using peer group ratios based on the Uniform Bank Performance Reports, and separating the peer groups into quintiles so that the banks in the quintiles with unusually high or low loan-to-deposit ratios could be eliminated.

The agencies have determined to adopt the methodology discussed below which uses a weighted average loan-to-deposit ratio and second-quarter loan data generally. An unweighted average loan-to-deposit ratio for home state banks in the host state would fail to account for the greater lending and deposit-taking activities of the larger banks. In addition, third-quarter data for loans would not be appropriate because the Summary of Deposits data are only as of June 30, and loan and deposit data should be as of the same date. Moreover, available data are insufficient to

[12] The unweighted average loan-to-deposit ratio is calculated by adding the individual banks' loan-to-deposit ratios and dividing the result by the number of banks. A weighted average loan-to-deposit ratio is calculated by separately summing loans and deposits for all of the banks and then dividing the sum of loans by the sum of deposits.

calculate the average daily balance for all loan categories reported in the Call Reports, and there is no indication that the purpose of the section 109 screen was to capture the highest loan-to-deposit ratio of host state banks. Finally, methodologies based on peer groups require a sufficient number of institutions in each peer group, and it is likely that some states would not have sufficiently large peer groups, particularly for larger banks, to make a methodology using peer groups and quintiles feasible.

Several commenters raised concerns that data for specialized banks, which do not engage in traditional deposit taking or lending, would distort the host state loan-to-deposit ratio. As noted in the proposed rule, limited purpose banks, such as credit card banks, and wholesale banks could have very large loan portfolios, but few, if any, deposits. The agencies will therefore exclude data from banks designated as limited purpose or wholesale banks under the CRA regulations of the appropriate agency in calculating the loan-to-deposit ratio for the host state.[13]

In addition, certain lending activities of banks with foreign branches could distort the ratio. The agencies will use a measure of domestic loans that excludes loans to non-U.S. addressees and loans in foreign offices to the extent that these adjustments can be made to data in the Call Reports. A measure of domestic deposits from the Summary of Deposits does not include foreign deposits so that, to the maximum extent possible, domestic loans will be divided by domestic deposits.

Consideration of Multistate Banks

As discussed in the proposal, banks with branches outside their home state (multistate banks), in light of the data limitations imposed by section 109, pose particular problems for purposes of calculating host state loan-to-deposit ratios. Loan and deposit data from those banks could distort substantially the host state loan-to-deposit ratios, unless the data are adjusted to account for the banks' out-of-state branches' lending and deposit-taking activities. Because the Summary of Deposits contains data on a branch-by-branch basis, the agencies can account for the deposit-taking activities of out-of-state branches of multistate banks by using the aggregate deposit-taking activities of a multistate banks' home state branches only.

Accounting for the lending activities of out-of-state branches of multistate banks is more difficult. Neither the Call Report nor any other source of loan data contain data on a branch-by-branch or state-by-state basis. Thus, unless a bank maintains loan data on a state-by-state basis, there are no reasonably available data to calculate a multistate bank's home state lending activities.

In the proposal, the agencies suggested excluding multistate banks that have more than 50 percent of their branches outside their home state from the host state loan-to-deposit ratio. Recognizing the limitations in this approach, the agencies requested comment on this approach and on any approach that would more accurately reflect a multistate bank's home state activities.

In response to the agencies' request for comment, one commenter supported the exclusion of large multistate banks from the host state loan-to-deposit ratio because larger banks can maintain higher than average loan-to-deposit ratios by funding loans without using deposits. Another commenter suggested using a bank's deposits reported in its home state and a proportionate amount of the bank's loans based on the percentage of its total deposits that are reported in the bank's home state. A third commenter suggested that deposit and loan proration be based on the number of home state branches as a percentage of the bank's total number of branches.

On further consideration of this issue, the agencies have concluded that the host state loan-to-deposit ratio could be distorted substantially if multistate banks with 50 percent or more of their branches outside their home state are excluded, or if large multistate banks are excluded altogether. As interstate branching becomes more prevalent, some host states could eventually be left with few, if any, eligible host state banks[14] to include in the ratio. Moreover, including all loans and deposits of any multistate bank in calculating the host state loan-to-deposit ratio for its home state would give too much weight to that bank's lending and deposit-taking activities, and excluding all its loans and deposits would give no weight at all.

After carefully considering all comments, and given the statutory limitation on additional data collection, the agencies believe the best available approach requires assuming that a multistate bank's lending and deposit-taking activities in its home state correspond to its total lending and deposit-taking activities (*i.e.*, the percentage of its total loans that are in-state is the same as the percentage of its total deposits that are in-state). In particular, the agencies will calculate the percentage of a multistate bank's deposits that are attributable to in-state branches (as determined from the Summary of Deposits), and apply that percentage to the bank's total domestic loans (as determined from the Call Report) in order to determine a proxy for the bank's domestic loans attributable to that state. The agencies believe that this approach is preferable to including or excluding all loans and deposits of a multistate bank.

The agencies recognize that this method for calculating the host state loan-to-deposit ratio makes certain assumptions that may not be universally true. For example, intrastate banks do not necessarily make loans only to in-state borrowers. In addition, there is not necessarily a one-to-one correlation between in-state deposits and in-state loans for a multistate bank. Nevertheless, the data limitations imposed by section 109 necessitate these assumptions. The agencies will adjust this method as appropriate to account for changes in reporting requirements or additional sources of relevant data. The agencies also will continue to review ways to improve the calculation of the host state loan-to-deposit ratio. The agencies will make each state's host state loan-to-deposit ratio, and any changes in the way the ratio is calculated, publicly available.

B. A Bank's Statewide Loan-to-Deposit Ratio

Relevant Data

Several commenters suggested that a ''loan'' under the final rule should be defined more expansively than that term is defined in the Call Reports and should include, for example, loans originated and sold, securitized loans, investments in mortgage-backed securities and municipal bonds secured by loans, outstanding letters of credit, and loans booked through a bank's affiliates. Since banks generally do not report these data, or do not report them in a format that would provide a differentiation between in-state quantities and out-of-state quantities, the data could not be used in calculating the host state loan-to-deposit ratios. Using such data for a particular bank's statewide loan-to-deposit ratio, and not for the corresponding host state loan-to-deposit ratio, would distort the loan-to-deposit ratio screen. Consequently, the agencies will not consider these data in applying the loan-to-deposit ratio screen. However, the agencies may

[13] *See* 12 CFR 25.25 (OCC); 12 CFR 228.25 (Board); and 12 CFR 345.25 (FDIC).

[14] Host state banks are banks in a host state that have that state as their home state.

consider such data as appropriate in making a credit needs determination.

Credit Needs Determination

Consideration of CRA Rating

Some commenters maintained that a satisfactory or better CRA rating in a host state should provide a ''safe harbor'' from evaluation under section 109 in that state. Other commenters, however, believed that little, if any, reliance should be placed on CRA ratings because these commenters viewed CRA ratings as inflated and often out-of-date. One commenter suggested that a less than satisfactory CRA rating should automatically warrant an adverse credit needs determination.

The agencies believe that it is consistent with the language and intent of section 109 to carefully weigh the CRA rating of the bank in making a credit needs determination under the factors enumerated in section 109. Section 109 specifies the bank's CRA rating as a factor to be considered, and most of the other factors listed in section 109 are taken into account as part of the performance context evaluation pursuant to the agencies' CRA regulations.[15]

Moreover, section 110 of the Interstate Act (section 110)[16] requires the following separate written evaluations and CRA ratings of the institution's CRA performance (1) as a whole, (2) in each state in which it maintains a branch, and (3) in any multistate metropolitan area in which it maintains a branch in two or more states. In addition, the statewide written evaluation of a multistate bank must contain separate discussions of the institution's performance in any metropolitan area in the state in which it maintains a branch, as well as in the nonmetropolitan area of the state if a branch is maintained there. Accordingly, information from a CRA performance evaluation is particularly relevant in determining compliance with section 109 because it directly evaluates a bank's performance in helping to meet the credit needs of the communities it serves in a host state. As discussed below, the agencies expect to conduct the section 109 review in connection with an evaluation of the bank's CRA performance in the host state under section 110, as the appropriate agency deems necessary, thereby ensuring that the section 109 review will be based on current information.

In this light, the agencies expect that a credit needs determination for a bank with CRA performance ratings of ''satisfactory'' or ''outstanding'' in the host state (including any multistate metropolitan area) would be favorable. The agencies also expect that a credit needs determination for a bank with less than satisfactory ratings for CRA performance in the host state (including any multistate metropolitan area) would be adverse unless mitigated by the other factors enumerated in section 109.

Commenters requested that a credit needs determination only consider the lending component of a large bank's CRA rating, or that the lending component be given extra weight. The CRA rating for a large retail bank already weighs lending performance so that a bank may not receive an overall ''satisfactory'' CRA performance rating unless its lending performance component is rated at least ''satisfactory.'' Accordingly, the agencies are not adopting the suggested change.

Other Factors

Commenters also discussed other factors that section 109 requires the agencies to consider in making a credit needs determination. Some commenters suggested that, in considering economic conditions, the agencies should grant multistate banks greater leeway to anticipate economic trends in the host state and, if these trends are adverse, to reduce their efforts in helping to meet community credit needs. Another commenter suggested eliminating all factors that could be used to mitigate a poor CRA performance record. There also were requests for more guidance in the regulation on how the statutory factors would be considered in a credit needs determination.

The final rule incorporates the statutory factors as they are set forth in section 109. The agencies intend to apply these factors consistent with the plain meaning of the language used in section 109, as discussed above. With respect to institutions designated as wholesale or limited purpose banks under the CRA regulations, the agencies will consider the CRA performance for these banks under the special CRA performance test provided in the CRA regulations and the banks' specialized operations.

Banks Not Subject to CRA

Some entities that could be subject to section 109, including certain special purpose banks and uninsured branches of foreign banks,[17] are not evaluated for CRA performance by the agencies. Several commenters maintained that, in making a credit needs determination for such institutions, the agencies should apply the same standards that are applied to CRA-rated institutions. As discussed in the proposed rule, neither the language nor the legislative history of section 109 supports applying the CRA to these institutions. The agencies intend to use the CRA regulations as guidelines in making a credit needs determination for these institutions. The CRA regulations would provide only guidance to assess whether activities identified by the institution help to meet the community's credit needs, and would not obligate the institution to have a record of performance under the CRA or require that the institution pass any performance tests in the CRA regulations.

The agencies also intend, as proposed, to give substantial weight to the factor relating to specialized activities in making a credit needs determination for institutions not evaluated under the CRA. For example, most branches of foreign banks derive substantially all their deposits from wholesale deposit markets, which are generally national or international in scope.[18] This approach

[15] The CRA regulations specify that the agencies will evaluate a bank's performance in the context of a number of considerations, including the nature of the bank's product offerings and business strategy, the lending opportunities within a bank's assessment area, and any constraints on the bank such as the financial condition of the bank, the economic climate (national, regional and local), and safety and soundness limitations. See 12 CFR 25.21(b) (OCC); 12 CFR 228.21(b) (Board); and 12 CFR 345.21(b) (FDIC).

[16] 12 U.S.C. 2906(b) and (d).

[17] A special purpose bank that does not perform commercial or retail banking services by granting credit to the public in the ordinary course of business is not evaluated for CRA performance by the agencies. See 12 CFR 25.11(c)(3) (OCC); 12 CFR 228.11(c)(3) (Board); and 12 CFR 345.11(c)(3) (FDIC). In addition, the CRA does not apply to the branch of a foreign bank unless the branch is insured or results from an acquisition described in section 5(a)(8) of the International Banking Act (12 U.S.C. 3103(a)(8)) (IBA, 12 U.S.C. 3101 *et seq.*). See 12 CFR 25.11(c)(2) (OCC); 12 CFR 228.11(c)(2) (Board); and 12 CFR 345.11(c)(1) (FDIC).

[18] U.S. branches of foreign banks generally accept only uninsured wholesale deposits, and are not established primarily to gather deposits in their host state. In 1991, the Federal Deposit Insurance Corporation Improvement Act amended the IBA to prohibit U.S. branches of foreign banks from taking deposits in amounts of less than $100,000, other than through the relatively few branches that were already insured by the FDIC in 1991, or to the extent the OCC or the FDIC determine that the branch is not engaged in domestic retail deposit taking activities requiring deposit insurance protection. 12 U.S.C. 3104. Congress reaffirmed this prohibition in the Interstate Act, directing the OCC and the FDIC to revise their regulations to reduce further the opportunities for retail deposit-taking available to these branches.

See section 107(b) of the Interstate Act (12 U.S.C. 3104, Historical and Statutory Notes). As a general matter, interstate branches of foreign banks established under the Interstate Act therefore cannot take retail deposits or draw a significant level of deposits from retail-oriented deposit markets where the branches are located.

is consistent with section 109's overall purpose of preventing banks from using the Interstate Act to establish branches primarily to gather deposits in their host state without reasonably helping to meet the credit needs of the communities served by the bank in the host state.

Other Comments

Several commenters requested that the public, including representatives of community organizations and state bank commissioners, participate in a credit needs determination. Information provided to examiners through contacts with community representatives during a CRA examination or through other activities, and the bank's public comment file provide the agencies substantial information to assess the views of community organizations, government officials, and other interested persons. In addition, the agencies encourage written comments from the public about a bank's CRA performance at any time and publicly announce their CRA examination schedules. The agencies will carefully review information provided to examiners from community contacts or through other activities, and the public comment file in making a credit needs determination.

State bank commissioners also requested that the agencies consider compliance with state CRA laws in making a credit needs determination. The agencies will take into account state CRA compliance evaluations in a credit needs determination, as appropriate.

Some commenters requested the agencies to consider affiliate lending activities in making a credit needs determination while other commenters cautioned against giving too much consideration to affiliate lending activities. The agencies' CRA regulations permit a bank's affiliate lending to be considered as part of its CRA performance evaluation. Affiliate lending, therefore, would be relevant to a section 109 review to the extent that such lending is reflected in the bank's overall CRA performance rating.

Sanctions

Application of Loan-to-Deposit Ratio Screen

Before a bank could be sanctioned under section 109, the appropriate agency would be required to demonstrate that the bank failed to comply with the section 109 loan-to-deposit ratio screen and failed to reasonably help in meeting the credit needs of the bank's communities in the host state. Accordingly, the proposed rule required the agencies to determine a bank's compliance with the loan-to-deposit ratio screen. Some commenters suggested that the agencies could impose sanctions on a bank without verifying noncompliance with the loan-to-deposit ratio screen and other commenters contended that requiring such a verification would impose significant regulatory burdens. As previously discussed, the agencies have concluded that the two-step compliance analysis in section 109 requires the agencies to verify noncompliance with both steps before imposing sanctions, and that the agencies' responsibility to ensure compliance with section 109 after an adverse credit needs determination outweighs potential regulatory burdens associated with such a verification.

Consultation and Public Comment

If a bank fails both steps in the analysis, section 109's sanctions (1) allow the appropriate agency to order the closing of a covered interstate branch in the host state unless the bank provides reasonable assurances to the satisfaction of the agency that it has an acceptable plan that will reasonably help to meet the credit needs of the communities served by the bank, and (2) prohibit the bank from opening a new branch in the host state unless the bank provides reasonable assurances to the satisfaction of the agency that the bank will reasonably meet the credit needs of the community to be served by the new branch.[19]

State banking commissioners requested consultation before the agencies ordered a branch closing. Informal consultations with state banking regulators may assist the agencies in assessing the impact of branch closures, or a prohibition against new branches, on a state bank's ability to comply with state CRA laws. Informal consultations may also assist in assessing the bank's assurances to help meet credit needs in light of its record with state banking regulators for addressing supervisory concerns. Accordingly, the agencies intend to consult with state banking authorities before imposing sanctions, as appropriate.

Other commenters requested that the agencies solicit public comment on any plan proposed by the bank for meeting the credit needs of the community to avoid a branch closing order. The agencies will review any proposal by the bank in light of all comments from the public in the bank's community contacts portion of the CRA examination or through other activities, and the bank's public comment file. In addition, the agencies intend to provide an opportunity for public comment on nonconfidential portions of the bank's proposal.

Timing of Review

Some commenters stated that section 109 reviews and CRA performance examinations should be conducted at the same time. One commenter requested clarification that section 109 reviews would be conducted more than once, another commenter requested that section 109 reviews be conducted annually, and a third commenter recommended a two-year grace period before conducting the reviews.

As previously noted, the agencies intend to conduct section 109 reviews in connection with an evaluation of a multistate bank's CRA performance in a host state under section 110 of the Interstate Act. The appropriate agency will conduct a section 109 review of a multistate bank during the section 110 review, and a section 109 review of banks not subject to CRA, when the agency deems such a review to be necessary. The agencies will also coordinate with state banking authorities in applying section 109 to state-chartered branches of foreign banks that may be subject to section 109.

Other Comments

The agencies also received several recommendations that are inconsistent with section 109. These suggestions include: (1) Increasing the loan-to-deposit screen to more than 50 percent; (2) excluding a covered interstate branch if it does not solicit deposits from the public, or if it has a loan-to-deposit ratio in the host state comparable to the bank's overall loan-to-deposit ratio; (3) applying section 109 to all the bank's interstate branches in a host state rather than to ''covered interstate branches''; (4) applying the loan-to-deposit ratio to partial but geographically specific lending data (for example, home mortgages); and (5) exempting a bank that primarily lends in a particular state from compliance with the loan-to-deposit ratio screen and from the calculation of the host state loan-to-deposit ratio. The agencies believe that it would be inappropriate to implement these recommendations because they are inconsistent with the agencies' understanding of the language of section 109 and, accordingly, are not adopting them in the final rule.

[19] Section 109 requires the appropriate agency to issue a notice of intent to close a covered interstate branch to the bank and schedule a hearing in accordance with section 8(h) of the Federal Deposit Insurance Act (12 U.S.C. 1818(h)) before a branch can be closed.

Regulatory Flexibility Act Analysis

Consistent with the requirement that the agencies use only available information to conduct a section 109 review, the final rule does not impose any additional regulatory burden on banks beyond what is required by statute. In particular, the final rule does not impose any additional paperwork or reporting requirements. Thus, the final rule will not have a significant economic impact on a substantial number of small entities consistent with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Moreover, the final rule affects only banks that have branches in more than one state, which are primarily larger banks. However, the agencies note that some institutions with covered interstate branches may be subject to more extensive examinations or requests for information necessary to obtain the relevant data if the agencies determine to impose sanctions. As noted above, the agencies believe that this information is required by the two-step analysis under section 109 before sanctions can be imposed, and that there are no feasible alternatives to mitigate this potential burden.

Paperwork Reduction Act

The agencies have determined that the final rule would not increase the regulatory paperwork burden of banking organizations pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Title II, Pub. L. 104–121) provides generally for agencies to report rules to Congress and the General Accounting Office (GAO) for review. The reporting requirement is triggered when a federal agency issues a final rule. The agencies will file the appropriate reports with Congress and the GAO as required by SBREFA.

Because the Office of Management and Budget has determined that the uniform rule promulgated by the agencies does not constitute a ''major rule'' as defined by SBREFA, the final rule will take effect 30 days from publication in the **Federal Register**.

OCC Executive Order 12866 Determination

The OCC has determined that this final rule is not a significant regulatory action.

OCC Unfunded Mandates Reform Act of 1995 Determination

The OCC has determined that the final rule would not result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

List of Subjects

12 CFR Part 25

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

12 CFR Part 369

Banks, banking, Community development.

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the joint preamble, the Office of the Comptroller of the Currency amends part 25 of chapter I of title 12 of the Code of Federal Regulations as follows:

PART 25—COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS

1. The part heading for part 25 is revised to read as set forth above.

2. The authority citation for part 25 is revised to read as follows:

Authority: 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1828(c), 1835a, 2901 through 2907, and 3101 through 3111.

3. Section 25.11 is amended by revising paragraph (a)(1) to read as follows:

§ 25.11 Authority, purpose, and scope.

(a) *Authority and OMB control number*—(1) *Authority.* The authority for subparts A, B, C, D, and E is 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1828(c), 1835a, 2901 through 2907, and 3101 through 3111.

* * * * *

4. Part 25 is amended by adding a new subpart E to read as follows:

Subpart E—Prohibition Against Use of Interstate Branches Primarily for Deposit Production

Sec.
25.61 Purpose and scope.
25.62 Definitions.
25.63 Loan-to-deposit ratio screen.
25.64 Credit needs determination.
25.65 Sanctions.

Subpart E—Prohibition Against Use of Interstate Branches Primarily for Deposit Production

§ 25.61 Purpose and scope.

(a) *Purpose.* The purpose of this subpart is to implement section 109 (12 U.S.C. 1835a) of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act).

(b) *Scope.* (1) This subpart applies to any national bank that has operated a covered interstate branch for a period of at least one year, and any foreign bank that has operated a covered interstate branch that is a Federal branch for a period of at least one year.

(2) This subpart describes the requirements imposed under 12 U.S.C. 1835a, which requires the appropriate Federal banking agencies (the OCC, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation) to prescribe uniform rules that prohibit a bank from using any authority to engage in interstate branching pursuant to the Interstate Act, or any amendment made by the Interstate Act to any other provision of law, primarily for the purpose of deposit production.

§ 25.62 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Bank* means, unless the context indicates otherwise:

(1) A national bank; and

(2) A foreign bank as that term is defined in 12 U.S.C. 3101(7) and 12 CFR 28.11(j).

(b) *Covered interstate branch* means any branch of a national bank, and any Federal branch of a foreign bank, that:

(1) Is established or acquired outside the bank's home state pursuant to the interstate branching authority granted by the Interstate Act or by any amendment made by the Interstate Act to any other provision of law; or

(2) Could not have been established or acquired outside of the bank's home

state but for the establishment or acquisition of a branch described in paragraph (b)(1) of this section.

(c) *Federal branch* means Federal branch as that term is defined in 12 U.S.C. 3101(6) and 12 CFR 28.11(i).

(d) *Home state* means:

(1) With respect to a state bank, the state that chartered the bank;

(2) With respect to a national bank, the state in which the main office of the bank is located; and

(3) With respect to a foreign bank, the home state of the foreign bank as determined in accordance with 12 U.S.C. 3103(c) and 12 CFR 28.11(o).

(e) *Host state* means a state in which a bank establishes or acquires a covered interstate branch.

(f) *Host state loan-to-deposit ratio* generally means, with respect to a particular host state, the ratio of total loans in the host state relative to total deposits from the host state for all banks (including institutions covered under the definition of ''bank'' in 12 U.S.C. 1813(a)(1)) that have that state as their home state, as determined and updated periodically by the appropriate Federal banking agencies and made available to the public.

(g) *State* means state as that term is defined in 12 U.S.C. 1813(a)(3).

(h) *Statewide loan-to-deposit ratio* means, with respect to a bank, the ratio of the bank's loans to its deposits in a state in which the bank has one or more covered interstate branches, as determined by the OCC.

§ 25.63 Loan-to-deposit ratio screen.

(a) *Application of screen.* Beginning no earlier than one year after a bank establishes or acquires a covered interstate branch, the OCC will consider whether the bank's statewide loan-to-deposit ratio is less than 50 percent of the relevant host state loan-to-deposit ratio.

(b) *Results of screen.* (1) If the OCC determines that the bank's statewide loan-to-deposit ratio is 50 percent or more of the host state loan-to-deposit ratio, no further consideration under this subpart is required.

(2) If the OCC determines that the bank's statewide loan-to-deposit ratio is less than 50 percent of the host state loan-to-deposit ratio, or if reasonably available data are insufficient to calculate the bank's statewide loan-to-deposit ratio, the OCC will make a credit needs determination for the bank as provided in § 25.64.

§ 25.64 Credit needs determination.

(a) *In general.* The OCC will review the loan portfolio of the bank and determine whether the bank is reasonably helping to meet the credit needs of the communities in the host state that are served by the bank.

(b) *Guidelines.* The OCC will use the following considerations as guidelines when making the determination pursuant to paragraph (a) of this section:

(1) Whether covered interstate branches were formerly part of a failed or failing depository institution;

(2) Whether covered interstate branches were acquired under circumstances where there was a low loan-to-deposit ratio because of the nature of the acquired institution's business or loan portfolio;

(3) Whether covered interstate branches have a high concentration of commercial or credit card lending, trust services, or other specialized activities, including the extent to which the covered interstate branches accept deposits in the host state;

(4) The CRA ratings received by the bank, if any;

(5) Economic conditions, including the level of loan demand, within the communities served by the covered interstate branches;

(6) The safe and sound operation and condition of the bank; and

(7) The OCC's CRA regulations (subparts A through D of this part) and interpretations of those regulations.

§ 25.65 Sanctions.

(a) *In general.* If the OCC determines that a bank is not reasonably helping to meet the credit needs of the communities served by the bank in the host state, and that the bank's statewide loan-to-deposit ratio is less than 50 percent of the host state loan-to-deposit ratio, the OCC:

(1) May order that a bank's covered interstate branch or branches be closed unless the bank provides reasonable assurances to the satisfaction of the OCC, after an opportunity for public comment, that the bank has an acceptable plan under which the bank will reasonably help to meet the credit needs of the communities served by the bank in the host state; and

(2) Will not permit the bank to open a new branch in the host state that would be considered to be a covered interstate branch unless the bank provides reasonable assurances to the satisfaction of the OCC, after an opportunity for public comment, that the bank will reasonably help to meet the credit needs of the community that the new branch will serve.

(b) *Notice prior to closure of a covered interstate branch.* Before exercising the OCC's authority to order the bank to close a covered interstate branch, the OCC will issue to the bank a notice of the OCC's intent to order the closure and will schedule a hearing within 60 days of issuing the notice.

(c) *Hearing.* The OCC will conduct a hearing scheduled under paragraph (b) of this section in accordance with the provisions of 12 U.S.C. 1818(h) and 12 CFR part 19.

Dated: September 4, 1997.

Eugene A. Ludwig,

Comptroller of the Currency.

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Governors of the Federal Reserve System amends parts 208 and 211 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 is revised to read as follows:

Authority: 12 U.S.C. 24, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1820(d)(9), 1823(j), 1828(o), 1831o, 1831p–1, 1835a, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318.

2. A new § 208.28 is added to subpart A to read as follows:

§ 208.28 Prohibition against use of interstate branches primarily for deposit production.

(a) *Purpose and scope*—(1) *Purpose.* The purpose of this section is to implement section 109 (12 U.S.C. 1835a) of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act).

(2) *Scope.* (i) This section applies to any State member bank that has operated a covered interstate branch for a period of at least one year, and any foreign bank that has operated a covered interstate branch licensed by a State for a period of at least one year.

(ii) This section describes the requirements imposed under 12 U.S.C. 1835a, which requires the appropriate Federal banking agencies (the Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation) to prescribe uniform rules that prohibit a bank from using any authority to engage in interstate branching pursuant to the Interstate Act, or any amendment made by the Interstate Act to any other

provision of law, primarily for the purpose of deposit production.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Bank* means, unless the context indicates otherwise:

(i) A State member bank as that term is defined in 12 U.S.C. 1813(d)(2); and

(ii) A foreign bank as that term is defined in 12 U.S.C. 3101(7) and 12 CFR 211.21.

(2) *Covered interstate branch* means any branch of a State member bank, and any uninsured branch of a foreign bank licensed by a State, that:

(i) Is established or acquired outside the bank's home state pursuant to the interstate branching authority granted by the Interstate Act or by any amendment made by the Interstate Act to any other provision of law; or

(ii) Could not have been established or acquired outside of the bank's home state but for the establishment or acquisition of a branch described in paragraph (b)(2)(i) of this section.

(3) *Home state* means:

(i) With respect to a state bank, the state that chartered the bank;

(ii) With respect to a national bank, the state in which the main office of the bank is located; and

(iii) With respect to a foreign bank, the home state of the foreign bank as determined in accordance with 12 U.S.C. 3103(c) and 12 CFR 211.22.

(4) *Host state* means a state in which a bank establishes or acquires a covered interstate branch.

(5) *Host state loan-to-deposit ratio* generally means, with respect to a particular host state, the ratio of total loans in the host state relative to total deposits from the host state for all banks (including institutions covered under the definition of ''bank'' in 12 U.S.C. 1813(a)(1)) that have that state as their home state, as determined and updated periodically by the appropriate Federal banking agencies and made available to the public.

(6) *State* means state as that term is defined in 12 U.S.C. 1813(a)(3).

(7) *Statewide loan-to-deposit ratio* means, with respect to a bank, the ratio of the bank's loans to its deposits in a state in which the bank has one or more covered interstate branches, as determined by the Board.

(c) *Loan-to-deposit ratio screen*—(1) *Application of screen.* Beginning no earlier than one year after a bank establishes or acquires a covered interstate branch, the Board will consider whether the bank's statewide loan-to-deposit ratio is less than 50 percent of the relevant host state loan-to-deposit ratio.

(2) *Results of screen.* (i) If the Board determines that the bank's statewide loan-to-deposit ratio is 50 percent or more of the host state loan-to-deposit ratio, no further consideration under this section is required.

(ii) If the Board determines that the bank's statewide loan-to-deposit ratio is less than 50 percent of the host state loan-to-deposit ratio, or if reasonably available data are insufficient to calculate the bank's statewide loan-to-deposit ratio, the Board will make a credit needs determination for the bank as provided in paragraph (d) of this section.

(d) *Credit needs determination*—(1) *In general.* The Board will review the loan portfolio of the bank and determine whether the bank is reasonably helping to meet the credit needs of the communities in the host state that are served by the bank.

(2) *Guidelines.* The Board will use the following considerations as guidelines when making the determination pursuant to paragraph (d)(1) of this section:

(i) Whether covered interstate branches were formerly part of a failed or failing depository institution;

(ii) Whether covered interstate branches were acquired under circumstances where there was a low loan-to-deposit ratio because of the nature of the acquired institution's business or loan portfolio;

(iii) Whether covered interstate branches have a high concentration of commercial or credit card lending, trust services, or other specialized activities, including the extent to which the covered interstate branches accept deposits in the host state;

(iv) The Community Reinvestment Act ratings received by the bank, if any, under 12 U.S.C. 2901 *et seq.*;

(v) Economic conditions, including the level of loan demand, within the communities served by the covered interstate branches;

(vi) The safe and sound operation and condition of the bank; and

(vii) The Board's Regulation BB—Community Reinvestment (12 CFR Part 228) and interpretations of that regulation.

(e) *Sanctions*—(1) *In general.* If the Board determines that a bank is not reasonably helping to meet the credit needs of the communities served by the bank in the host state, and that the bank's statewide loan-to-deposit ratio is less than 50 percent of the host state loan-to-deposit ratio, the Board:

(i) May order that a bank's covered interstate branch or branches be closed unless the bank provides reasonable assurances to the satisfaction of the Board, after an opportunity for public comment, that the bank has an acceptable plan under which the bank will reasonably help to meet the credit needs of the communities served by the bank in the host state; and

(ii) Will not permit the bank to open a new branch in the host state that would be considered to be a covered interstate branch unless the bank provides reasonable assurances to the satisfaction of the Board, after an opportunity for public comment, that the bank will reasonably help to meet the credit needs of the community that the new branch will serve.

(2) *Notice prior to closure of a covered interstate branch.* Before exercising the Board's authority to order the bank to close a covered interstate branch, the Board will issue to the bank a notice of the Board's intent to order the closure and will schedule a hearing within 60 days of issuing the notice.

(3) *Hearing.* The Board will conduct a hearing scheduled under paragraph (e)(2) of this section in accordance with the provisions of 12 U.S.C. 1818(h) and 12 CFR part 263.

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

1. The authority citation for part 211 is revised to read as follows:

Authority: 12 U.S.C. 221 *et seq.*, 1818, 1835a, 1841 *et seq.*, 3101 *et seq.*, and 3901 *et seq.*

2. In § 211.22, a new paragraph (d) is added to read as follows:

§ 211.22 Interstate banking operations of foreign banking organizations

* * * * *

(d) *Prohibition against interstate deposit production offices.* A covered interstate branch of a foreign bank may not be used as a deposit production office in accordance with the provisions in § 208.28 of the Board's Regulation H (12 CFR 208.28).

By order of the Board of Governors of the Federal Reserve System, September 4, 1997.

William W. Wiles,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Directors of the Federal Deposit Insurance Corporation adds part 369 to chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 369—PROHIBITION AGAINST USE OF INTERSTATE BRANCHES PRIMARILY FOR DEPOSIT PRODUCTION

Sec.
369.1 Purpose and scope.
369.2 Definitions.
369.3 Loan-to-deposit ratio screen.
369.4 Credit needs determination.
369.5 Sanctions.

Authority: 12 U.S.C. 1819 (Tenth) and 1835a.

§ 369.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to implement section 109 (12 U.S.C. 1835a) of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act).

(b) *Scope*—(1) This part applies to any State nonmember bank that has operated a covered interstate branch for a period of at least one year.

(2) This part describes the requirements imposed under 12 U.S.C. 1835a, which requires the appropriate Federal banking agencies (the FDIC, the Office of the Comptroller of the Currency, and the Board of Governors of the Federal Reserve System) to prescribe uniform rules that prohibit a bank from using any authority to engage in interstate branching pursuant to the Interstate Act, or any amendment made by the Interstate Act to any other provision of law, primarily for the purpose of deposit production.

§ 369.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Bank* means, unless the context indicates otherwise:

(1) A State nonmember bank; and

(2) A foreign bank as that term is defined in 12 U.S.C. 3101(7) and 12 CFR 346.1(a).

(b) *Covered interstate branch* means any branch of a State nonmember bank, and any insured branch of a foreign bank licensed by a State, that:

(1) Is established or acquired outside the bank's home state pursuant to the interstate branching authority granted by the Interstate Act or by any amendment made by the Interstate Act to any other provision of law; or

(2) Could not have been established or acquired outside of the bank's home state but for the establishment or acquisition of a branch described in paragraph (b)(1) of this section.

(c) *Home state* means:

(1) With respect to a state bank, the state that chartered the bank;

(2) With respect to a national bank, the state in which the main office of the bank is located; and

(3) With respect to a foreign bank, the home state of the foreign bank as determined in accordance with 12 U.S.C. 3103(c) and 12 CFR 346.1(j).

(d) *Host state* means a state in which a bank establishes or acquires a covered interstate branch.

(e) *Host state loan-to-deposit ratio* generally means, with respect to a particular host state, the ratio of total loans in the host state relative to total deposits from the host state for all banks (including institutions covered under the definition of ''bank'' in 12 U.S.C. 1813(a)(1)) that have that state as their home state, as determined and updated periodically by the appropriate Federal banking agencies and made available to the public.

(f) *State* means state as that term is defined in 12 U.S.C. 1813(a)(3).

(g) *Statewide loan-to-deposit ratio* means, with respect to a bank, the ratio of the bank's loans to its deposits in a state in which the bank has one or more covered interstate branches, as determined by the FDIC.

§ 369.3 Loan-to-deposit ratio screen.

(a) *Application of screen.* Beginning no earlier than one year after a bank establishes or acquires a covered interstate branch, the FDIC will consider whether the bank's statewide loan-to-deposit ratio is less than 50 percent of the relevant host state loan-to-deposit ratio.

(b) *Results of screen.* (1) If the FDIC determines that the bank's statewide loan-to-deposit ratio is 50 percent or more of the host state loan-to-deposit ratio, no further consideration under this part is required.

(2) If the FDIC determines that the bank's statewide loan-to-deposit ratio is less than 50 percent of the host state loan-to-deposit ratio, or if reasonably available data are insufficient to calculate the bank's statewide loan-to-deposit ratio, the FDIC will make a credit needs determination for the bank as provided in § 369.4.

§ 369.4 Credit needs determination.

(a) *In general.* The FDIC will review the loan portfolio of the bank and determine whether the bank is reasonably helping to meet the credit needs of the communities in the host state that are served by the bank.

(b) *Guidelines.* The FDIC will use the following considerations as guidelines when making the determination pursuant to paragraph (a) of this section:

(1) Whether covered interstate branches were formerly part of a failed or failing depository institution;

(2) Whether covered interstate branches were acquired under circumstances where there was a low loan-to-deposit ratio because of the nature of the acquired institution's business or loan portfolio;

(3) Whether covered interstate branches have a high concentration of commercial or credit card lending, trust services, or other specialized activities, including the extent to which the covered interstate branches accept deposits in the host state;

(4) The Community Reinvestment Act (CRA) ratings received by the bank, if any, under 12 U.S.C. 2901 *et seq.*;

(5) Economic conditions, including the level of loan demand, within the communities served by the covered interstate branches;

(6) The safe and sound operation and condition of the bank; and

(7) The FDIC's Community Reinvestment regulations (12 CFR Part 345) and interpretations of those regulations.

§ 369.5 Sanctions.

(a) *In general.* If the FDIC determines that a bank is not reasonably helping to meet the credit needs of the communities served by the bank in the host state, and that the bank's statewide loan-to-deposit ratio is less than 50 percent of the host state loan-to-deposit ratio, the FDIC:

(1) May order that a bank's covered interstate branch or branches be closed unless the bank provides reasonable assurances to the satisfaction of the FDIC, after an opportunity for public comment, that the bank has an acceptable plan under which the bank will reasonably help to meet the credit needs of the communities served by the bank in the host state; and

(2) Will not permit the bank to open a new branch in the host state that would be considered to be a covered interstate branch unless the bank provides reasonable assurances to the satisfaction of the FDIC, after an opportunity for public comment, that the bank will reasonably help to meet the credit needs of the community that the new branch will serve.

(b) *Notice prior to closure of a covered interstate branch.* Before exercising the FDIC's authority to order the bank to close a covered interstate branch, the FDIC will issue to the bank a notice of the FDIC's intent to order the closure and will schedule a hearing within 60 days of issuing the notice.

(c) *Hearing.* The FDIC will conduct a hearing scheduled under paragraph (b) of this section in accordance with the provisions of 12 U.S.C. 1818(h) and 12 CFR part 308.

By order of the Board of Directors.

Dated at Washington, D.C., this 26th day of August, 1997.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

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