

DEPARTMENT OF THE TREASURY
Office of the Comptroller of the Currency
12 CFR Part 25
[Docket No. 01-06]
RIN 1557-AB95

FEDERAL RESERVE SYSTEM
12 CFR Part 208
[Regulation H; Docket No. R-1099]

FEDERAL DEPOSIT INSURANCE CORPORATION
12 CFR Part 369
RIN 3064-AC36

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: Notice of proposed rulemaking.

SUMMARY: The OCC, the Board, and the FDIC (collectively, the "Agencies") propose to amend the uniform regulations implementing section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act) to effectuate the amendment to section 109 contained in the Gramm-Leach-Bliley Act of 1999. Section 109 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. Section 106 of the Gramm-Leach-Bliley Act of 1999 expanded the coverage of section 109 of the Interstate Act to include any branch of a bank controlled by an out-of-State bank holding company. This proposal amends the regulatory prohibition against branches being used as deposit production offices to include any bank or branch of a bank controlled by an out-of-State bank holding company, including a bank consisting only of a main office.

DATES: Comments must be received on or before June 8, 2001.

ADDRESSES: Comments should be directed to:

OCC: Public Information Room, Office of the Comptroller of the Currency, 250 E Street, SW, Mailstop 1-5, Washington, DC 20219, Attention: Docket No. 01-06. Comments will be available for public inspection and photocopying at the same location. You can make an appointment to inspect the comments by calling (202) 874-5043. In

addition, you may send comments by fax to (202) 874-4448, or by electronic mail to regs.comments@occ.treas.gov.

Board: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551 or mailed electronically to regs.comments@federalreserve.gov. Comments should refer to docket number R-1099. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW, Washington, DC. Comments may be inspected in room MP-500 between 9:00 a.m. and 5:00 p.m., except as provided in Sec. 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14.

FDIC: Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429. Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. FAX number: (202) 898-3838. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, DC, between 9:00 a.m. and 4:30 p.m. on business days. Comments may be submitted to the FDIC electronically over the Internet at www.fdic.gov. Further information concerning this option may be found at "FDIC's New Electronic Public Comment Site." Comments also may be submitted electronically to comments@fdic.gov. We may post comments at the FDIC's web site.

FOR FURTHER INFORMATION CONTACT:

OCC: Karen Tucker, National Bank Examiner, Community and Consumer Policy (202) 874-4428; Kathryn Ray, Senior Attorney, Community and Consumer Law Division (202) 874-5750; Patrick T. Tierney, Attorney, Legislative and Regulatory Activities Division (202) 874-5090; or with respect to foreign banks, Maureen Cooney, Senior Attorney, Legislative and Regulatory Activities Division (202) 874-5090.

Board: Michael J. O'Rourke, Counsel, Legal Division (202) 452-3288; Shawn McNulty, Assistant Director, Division of Consumer and Community Affairs (202) 452-3946; or with respect to foreign banks, Sandra L. Richardson, Assistant General Counsel, Legal Division (202) 452-6406.

FDIC: Louise Kotoshirodo Kramer, Review Examiner, Division of Compliance and Consumer Affairs, (202) 942-3599; or Marc J. Goldstrom, Counsel, Regulations and Legislation Section (202) 898-8807.

SUPPLEMENTARY INFORMATION:

The contents of this preamble are listed in the following outline:

- I. Background
- II. Overview of the Proposed Rule
 - A. Bank Locations Subject to Section 109 As Amended
 - 1. Coverage of Banks' Main Offices
 - 2. Coverage of Interstate and Intrastate Branches
 - B. Multi-Tier Bank Holding Companies
 - C. Definition of "Home State" for a Bank Holding Company
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 - C. OCC Executive Order 12866 Determination
 - D. OCC Unfunded Mandates Reform Act of 1995 Determination
 - E. The Treasury and General Government Appropriations Act, 1999 -- Assessment of Impact of Federal Regulation on Families

I. Background

The Interstate Act¹ 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. Section 109 of the Interstate Act requires the Agencies to prescribe uniform rules that prohibit the use of the Act's interstate branching authority primarily for the purpose of deposit production.² 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).

As required by section 109, the agencies issued a joint final rule implementing section 109. 62 FR 47728 (September 10, 1997). This rule provides that, beginning no earlier than one year after a bank establishes or acquires a covered interstate branch, the appropriate agency will determine whether the bank satisfies a loan-to-deposit ratio screen that has been established by section 109.

The loan-to-deposit ratio screen compares a bank's loan-to-deposit ratio within the State where the bank's covered interstate branches are located (statewide loan-to-deposit ratio) with the loan-to-deposit ratio of all banks chartered or headquartered in that

¹ Pub. L. 103-328, 108 Stat. 2338.

² 12 U.S.C. 1835a.

State (host State loan-to-deposit ratio).³ If the bank's statewide loan-to-deposit ratio is at least 50 percent of the host State loan-to-deposit ratio, no further analysis is required. If, however, the appropriate agency determines that the bank's statewide loan-to-deposit ratio is less than 50 percent of the host State loan-to-deposit ratio, then the agency must perform a credit needs determination. A credit needs determination would also be performed if the appropriate agency determines that reasonably available data does not exist that permits the agency to determine the bank's statewide loan-to-deposit ratio. Under the credit needs determination, the appropriate agency reviews the activities of the bank, such as its lending activity and its performance under the Community Reinvestment Act (CRA), and determines whether the bank is reasonably helping to meet the credit needs of the communities served by the bank in the host State.

A bank that fails the loan-to-deposit ratio screen and that receives a determination that it is not reasonably helping to meet the credit needs of the communities served by the bank's interstate branches could be subject to sanctions under section 109.

Section 106 of the Gramm-Leach-Bliley Act of 1999 (GLBA), Pub. L. 106-102, 113 Stat. 1338 (November 12, 1999), amends section 109 by changing the definition of an interstate branch to include any branch of a bank controlled by an out-of-State bank holding company (as defined in section 2(o)(7) of the Bank Holding Company Act of 1956 (BHC Act)). Any branch of a bank controlled by an out-of-State bank holding company is an "interstate branch" for purposes of section 109. The agencies are proposing to conform their uniform regulations made to this amendment by the GLBA.

II. Overview of the Proposed Rule

As discussed in the Background section, section 109 prohibits the use of the interstate banking and branching authority granted by the Interstate Act to engage in interstate branching primarily for the purpose of deposit production. Prior to the GLBA, this prohibition 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. In accordance with the amendments to section 109 adopted by the GLBA, the proposed rule broadens this prohibition to apply not only to branches established pursuant to the Interstate Act, but also to any bank or branch of a bank controlled by an out-of-State bank holding company. Thus, the definition of the term "covered interstate branch" would be revised to include any bank or branch of a bank controlled by an out-of-State bank holding company. We further propose to make conforming changes to our regulations⁴ to revise the definition of "host state" and to clarify that the loan-to-deposit ratio screen will be applied to a bank, or branch of a bank, controlled by an out-of-State bank holding company in the same manner as the screen is applied to a covered interstate branch under the current rule.

³ Host State loan-to-deposit ratios, based on reasonably available data, are jointly published by the agencies every year.

⁴ See 12 CFR 25.62(e) and 25.63(a) (OCC); 12 CFR 208.7(b)(4) and 208.7(c)(1) (Federal Reserve); 12 CFR 369.2(d) and 369.3(a) (FDIC).

A. *Bank Locations Subject to Section 109 As Amended*

Prior to the GLBA, section 109's deposit production office prohibition applied only to an interstate branch in a host State that is acquired or established by an out-of-State bank pursuant to the Interstate Act or any amendment made by the Interstate Act. As amended, it now also applies to any branch of a bank controlled by an out-of-State bank holding company. The legislative history of this amendment indicates that Congress intended that this amendment would expand the scope of section 109 to cover any bank or branch of a bank controlled by an out-of-State bank holding company, as discussed below.

1. *Coverage of Banks' Main Offices*

Coverage under the proposed rule extends to banks controlled by out-of-State bank holding companies, including banks consisting only of a main office. The amendment to section 109 includes banks consisting of only a main office because the purpose of the legislation is to prevent out-of-State bank holding companies from taking deposits out of a community without helping to meet the credit needs of that community. See 145 Cong. Rec. H11529 (daily ed. Nov. 4, 1999); 145 Cong. Rec. H5217 (daily ed. July 1, 1999); 144 Cong. Rec. H3133 (daily ed. May 13, 1998). The purpose of the legislation would be negated if banks consisting only of a main office were excluded. For example, out-of-State bank holding companies could take deposits from a host State simply by establishing separately chartered, single-office banks in a host State. Therefore, we have proposed that banks consisting only of a main office and controlled by an out-of-State bank holding company be subject to the joint rule.

2. *Coverage of Interstate and Intrastate Branches*

The amendment to section 109 expands the scope of the rule to include all branches of a bank that is controlled by an out-of-State bank holding company. Indeed, Congress intended to apply the section 109 rule to "all branches of a bank owned by an out-of-State holding company," not just to previously exempt branches owned by such banks. See H.R. Rep. No. 106-74, pt. 1 at 128 (1999) (emphasis added). Thus, the proposed rule applies to all branches of a bank when the bank and its controlling bank holding company have different home states.

B. *Multi-Tier Bank Holding Companies*

Section 106 of the GLBA expands the definition of interstate branch to any branch of a bank controlled by an out-of-State bank holding company incorporating by reference the BHC Act definition of an "out-of-State bank holding company." 12 U.S.C. 1841(o)(7). We will use the BHC Act definition of control to determine the controlling bank holding company. This is the top tier bank holding company in a multi-tier bank holding company structure.

C. Definition of “Home State” for a Bank Holding Company

The BHC Act defines “home State” with respect to a bank holding company as the State where total deposits of all banking subsidiaries are the greatest as of the later of July 1, 1966 or the date on which a company becomes a bank holding company. 12 U.S.C. 1841(o)(4). To determine the home State of a bank holding company, the agencies will determine, from sources available at the agencies, the State where the total deposits of all the banking subsidiaries were the greatest as of the later of July 1, 1966 or the date the bank holding company was formed. We recognize that, in certain cases, the State where the total deposits of all of a bank holding company's subsidiary banks were greatest on July 1, 1966 or at the date of formation of the bank holding company may not be the same State as where the bank holding company subsidiary banks hold the greatest amount of deposits now or at a future date. However, the amendment to section 109 made by the GLBA adopts the BHC Act definition of “out-of-State bank holding company,” and the BHC Act definition of “home State” is incorporated into that definition.

D. Foreign Banks and Branches

Section 106 of the GLBA also necessitates an amendment to the definition of “home state” for foreign banks with banking operations in the United States. Under U.S. banking law and regulation, foreign banks may be treated as banking institutions, bank holding companies, or both, depending on the nature of their operations in the United States. For purposes of determining whether a U.S. branch of a foreign bank is a covered interstate branch, a foreign bank’s home state is determined under section 5 of the International Banking Act of 1978 (12 U.S.C. 3103) and section 211.22 of the Federal Reserve’s Regulation K (12 CFR 211.22). For purposes of determining whether a branch of a U.S. bank controlled by a foreign bank is a covered interstate branch, a foreign bank’s home state is determined in accordance with 12 U.S.C. 1841(o)(4) as discussed above in section II C. of this preamble regarding U.S. bank holding companies. A foreign bank may have different home states with respect to direct offices and subsidiary banks.

E. Impact of the Rule

The proposed rule is unlikely to have any impact on the vast majority of banks. Consistent with section 109 when it was first enacted, the proposed rule does not impose any new record keeping requirements on affected institutions. We use existing data to determine the loan-to-deposit ratio screen.

Moreover, there is no additional burden imposed as a result of the credit needs determination. In order to make that determination, the appropriate agency will review the activities of the bank, such as its lending activity and its performance under the

CRA,⁵ and evaluate whether the bank is reasonably helping to meet the credit needs of the communities served by the bank in the host State.

The only circumstance in which the proposed rule would impose a burden on banks is if the bank fails both the loan-to-deposit ratio screen and the credit needs determination. Accordingly, while the statutory amendment and this proposed rule extend the scope of the DPO rule, this extended scope is unlikely to affect most institutions.

F. Request for Comment

We invite public comment on all aspects of the proposed rule. In particular, we request comment on the coverage of main offices and interstate and intrastate branches, the treatment of multi-tier bank holding companies, the definition of "home state" for an out-of-state bank holding company, and the treatment of foreign banks and branches. Each of these issues is discussed elsewhere in this preamble, and we invite comment on the views expressed therein.

The Agencies also seek comments on the impact of this proposal on community banks. Community banks operate with more limited resources than larger institutions and may present a different risk profile. We believe that this rule will not have a significant impact on community banks. Nevertheless we specifically request comment on the impact of the proposal on community banks' current resources and available personnel with the requisite expertise, and whether the goals of the proposed regulation could be achieved, for community banks, through an alternative approach.

G. Plain Language

Section 722 of the GLBA (12 U.S.C. 4809) requires each federal banking agency to use plain language in all proposed and final rules published after January 1, 2000. To this end, we invite your comments on how to make the changes proposed by this rulemaking easier to understand.

⁵ Some entities that could be subject to section 109, including certain special purpose banks and uninsured branches of foreign banks, are not evaluated for CRA performance by the Agencies. For such entities, we will continue to use the CRA regulations as guidelines in making a credit needs determination. The CRA regulations provide only guidance to assess whether activities identified by these institutions help to meet the community's credit needs, and do not obligate the institutions to have a record of performance under the CRA or require that the institutions pass any performance tests in the CRA regulations. We also will continue 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. This approach 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. See Prohibition Against use of Interstate Branches Primarily for Deposit Production, 62 FR 47728, 47732-33 (September 10, 1997) (codified at 12 CFR parts 25, 208, 211, 369).

III. FDIC's Electronic Public Comment Site

The FDIC has included a page on its web site to facilitate the submission of electronic comments in response to this general solicitation (the EPC site). The EPC site provides an alternative to the written letter and may be a more convenient way for you to submit your comments. Commenting through the EPC site helps the FDIC more accurately and efficiently analyze comments submitted electronically. If you submit your comments through the EPC site your comments will receive the same consideration that they would receive if submitted in hard copy to the FDIC's street address. Information provided through the EPC site will be used by the FDIC only to assist in its analysis of the proposed regulation. The FDIC will not use an individual's name or any other personal identifier of an individual to retrieve records or information submitted through the EPC site. Like comments submitted in hard copy to the FDIC's street address, EPC site comments will be made available in their entirety (including the commenter's name and address if the commenter chooses to provide them) for public inspection.

The EPC site will be available on the FDIC's home page at <http://www.fdic.gov>. You will be able to provide comments directly on any of the sections of the proposed regulation. You will also be able to view the regulation and Supplementary Information sections that relate to your comments directly on the site. The FDIC encourages you to provide written comments in the spaces provided. Written comments enable the FDIC to thoughtfully consider possible changes to the proposed regulation.

The FDIC is also interested in your feedback on the EPC site. We have provided a space for you to comment on the site itself. Answers to this question will help the FDIC evaluate the EPC site for use in future rulemaking.

At the conclusion of the EPC site, you will have an opportunity to provide us with your name, indicate whether you are an individual, bank, trade association, or government agency, and provide the name of the organization you represent, if applicable. Whether you choose to respond to these questions is entirely up to you. Any responses received may help the FDIC to better understand the public comments it receives.

IV. Regulatory Analysis

A. Paperwork Reduction Act

The agencies have determined that this proposal does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

B. Regulatory Flexibility Act

OCC: Pursuant to section 605(b) of the Regulatory Flexibility Act, the OCC certifies that this proposal will not have a significant economic impact on a substantial number of small entities. Section 109 requires that the agencies use only available information to conduct their analyses. Consistent with this requirement, this proposal does not impose any additional paperwork or regulatory reporting requirements.

BOARD: Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Review for compliance with section 109 is conducted at the same time that the Community Reinvestment Act review is performed. Consistent with the requirement that the agencies use only available information to conduct a section 109 review, the proposed rule does not impose any additional regulatory burden on banks beyond what is required by statute. The burden to conduct the review and use only available data is on the banking regulatory agencies. Thus, the proposed rule will not have a significant economic impact on a substantial number of small entities.

FDIC: Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. The rule would extend coverage of section 109 to some additional institutions, including small entities. However, based on previous examination experience, we estimate that one or fewer institutions per year will experience any cost in connection with complying with the rule. Thus, the proposed rule will not have a significant economic impact on a substantial number of small entities.

C. OCC Executive Order 12866 Determination

The OCC has determined that its portion of the proposed rulemaking is not a significant regulatory action under Executive Order 12866.

D. OCC Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of \$100 million or more. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

E. The Treasury and General Government Appropriations Act, 1999 -- Assessment of Impact of Federal Regulation on Families

The FDIC has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681.

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 369

Banks, banking, Community development.

Department of the Treasury

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 proposes to amend 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 authority citation for part 25 continues 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.

2. Amend § 25.62 by:

A. Revising paragraphs (b), (d) and (e);

B. Redesignating paragraphs (g) and (h) as paragraphs (h) and (i), respectively;

and

C. Adding a new paragraph (g) to read as follows:

§ 25.62 Definitions.

* * * * *

(b) Covered interstate branch means:

(1) Any branch of a national bank, and any Federal branch of a foreign bank, 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)(1)(i) of this section; or

(2) Any bank or branch of a bank controlled by an out-of state bank holding company.

* * * * *

(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;

(3) With respect to a bank holding company, the state in which the total deposits of all banking subsidiaries of such company are the largest on the later of:

(i) July 1, 1966; or

(ii) The date on which the company becomes a bank holding company under the Bank Holding Company Act;

(4) With respect to a foreign bank:

(i) For purposes of determining whether a U.S. branch of a foreign bank is a covered interstate branch, the home state of the foreign bank as determined in accordance with 12 U.S.C. 3103(c) and 12 CFR 211.22; and

(ii) For purposes of determining whether a branch of a U.S. bank controlled by a foreign bank is a covered interstate branch, the state in which the total deposits of all banking subsidiaries of such foreign bank are the largest on the later of:

(A) July 1, 1966; or

(B) The date on which the foreign bank becomes a bank holding company under the Bank Holding Company Act.

(e) Host state means a state in which a covered interstate branch is established or acquired.

* * * * *

(g) Out-of-state bank holding company means, with respect to any state, a bank holding company whose home state is another state.

* * * * *

3. In § 25.63, paragraph (a) is revised to read as follows:

§ 25.63 Loan-to-deposit ratio screen

(a) Application of screen. Beginning no earlier than one year after a covered interstate branch is acquired or established, 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.

Dated: March 29, 2001

(signed) John D. Hawke, Jr.

John D. Hawke, Jr.,
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 proposes to amend part 208 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 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321-338a, 371d, 461, 481-486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p-1, 1831r-1, 1831w, 1835a, 1882, 2901-2907, 3105, 3310, 3331-3351, and 3906-3909; 15 U.S.C. 78b, 781(b), 781(g), 781(i), 78o-4(c)(5), 78q, 78q-1, and 78w; 31 U.S.C. 5318, 42 U.S.C. 4012a, 4104a, 4104b, 4106 and 4128.

2. In § 208.7, redesignate existing paragraphs (b)(6) and (b)(7) as (b)(7) and (b)(8), respectively, revise paragraphs (b)(2), (b)(3), (b)(4) and (c)(1), and add new paragraph (b)(6) to read as follows:

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

* * * * *

(b) * * *

(2) Covered interstate branch means:

(i) Any branch of a state member bank, and any uninsured branch of a foreign bank licensed by a state, that:

(A) 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

(B) 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; or

(ii) Any bank or branch of a bank controlled by an out-of-state bank holding company.

(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;

(iii) With respect to a bank holding company, the state in which the total deposits of all banking subsidiaries of such company are the largest on the later of:

(A) July 1, 1966; or

(B) The date on which the company becomes a bank holding company under the Bank Holding Company Act.

(iv) With respect to a foreign bank:

(A) For purposes of determining whether a U.S. branch of a foreign bank is a covered interstate branch, the home state of the foreign bank as determined in accordance with 12 U.S.C. 3103(c) and 12 CFR 211.22; and

(B) For purposes of determining whether a branch of a U.S. bank controlled by a foreign bank is a covered interstate branch, the state in which the total deposits of all banking subsidiaries of such foreign bank are the largest on the later of:

(1) July 1, 1966; or

(2) The date on which the foreign bank becomes a bank holding company under the Bank Holding Company Act.

(4) Host state means a state in which a covered interstate branch is established or acquired.

* * * * *

(6) Out-of-state bank holding company means, with respect to any state, a bank holding company whose home state is another state.

* * * * *

(c)(1) Application of screen. Beginning no earlier than one year after a covered interstate branch is acquired or established, 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.

By order of the Board of Governors of the Federal Reserve System, March 30, 2001.

(signed) Robert deV. Frierson

Robert deV. Frierson,
Associate 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 proposes to amend part 369 of 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

1. The authority citation for part 369 continues to read as follows:

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

2. In § 369.2, redesignate paragraphs (f) and (g) as (g) and (h), respectively; revise paragraphs (b), (c) and (d); and add new paragraph (f) to read as follows.

§ 369.2 Definitions.

* * * * *

(b) Covered interstate branch means:

(1) Any branch of a state nonmember bank, and any insured 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)(1)(i) of this section; or

(2) Any bank or branch of a bank controlled by an out-of-state bank holding company.

(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;

(3) With respect to a bank holding company, the state in which the total deposits of all banking subsidiaries of such company are the largest on the later of:

(i) July 1, 1966; or

(ii) The date on which the company becomes a bank holding company under the Bank Holding Company Act;

(4) With respect to a foreign bank:

(i) For purposes of determining whether a U.S. branch of a foreign bank is a covered interstate branch, the home state of the foreign bank as determined in accordance with 12 U.S.C. 3103(c) and 12 CFR 211.22; and

(ii) For purposes of determining whether a branch of a U.S. bank controlled by a foreign bank is a covered interstate branch, the state in which the total deposits of all banking subsidiaries of such foreign bank are the largest on the later of:

(A) July 1, 1966; or

(B) The date on which the foreign bank becomes a bank holding company under the Bank Holding Company Act.

(d) Host state means a state in which a covered interstate branch is established or acquired.

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(f) Out-of-state bank holding company means, with respect to any state, a bank holding company whose home state is another state.

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3. In § 369.3, revise paragraph (a) to read as follows:

§ 369.3 Loan-to-deposit ratio screen.

(a) Application of screen. Beginning no earlier than one year after a covered interstate branch is acquired or established, 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.

By order of the Board of Directors.

Dated at Washington, D.C., this 26th day of March, 2001.

FEDERAL DEPOSIT INSURANCE CORPORATION

(signed) Robert E. Feldman
Robert E. Feldman
Executive Secretary