DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

[Docket No. 97–04]

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 notice of proposed rulemaking.

SUMMARY: The OCC, Board, and FDIC (collectively, agencies) propose to adopt uniform regulations to implement section 109 (section 109) of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act). As required by section 109, the proposed rule would prohibit 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 would provide guidelines for determining whether such bank is reasonably helping to meet the credit needs of the communities served by the interstate branches.

DATES: Comments must be received on or before May 2, 1997.

ADDRESSES:

OCC: Comments should be directed to Docket No. 97–04, Communications Division, First Floor, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. Comments will be available for inspection and photocopying at that address. In addition, comments may be sent by facsimile transmission to FAX number (202) 874–5274, or by electronic mail to REGS.COMMENTS@OCC.TREAS.GOV.

Board: Comments should refer to Docket No. R–0962, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments also may be delivered to the Board's mail room between 8:45 and 5:15 p.m. on weekdays, and to the security control room at all other times. The mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW., Comments may be inspected in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's Rules Regarding Availability of Information.

FDIC: Written comments should be directed to Jerry L. Langley, Executive Secretary, Attention: Room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand delivered to Room F–400, 1776 F Street NW., Washington, DC 20429 on business days between 8:30 a.m. and 5 p.m. (Fax number (202) 898–3838; Internet address: comments@fdic.gov). Comments will be available for inspection and photocopying in Room 7118, 550 17th Street, NW., Washington, DC 20429, between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT:

OCC: Neil M. Robinson, Senior Attorney, or Kevin L. Lee, Senior Attorney, Community & Consumer Law Division (202) 874–5750; or Andrew T. Gutierrez, Attorney, Legislative and Regulatory Activities Division (202) 874–5090.

Board: Diane Koonjy, Senior Attorney, (202) 452–3274, Lawranne Stewart, Senior Attorney, (202) 452–3513, or, with respect to foreign banks, Christopher Clubb, Senior Attorney, (202) 452–3778, Legal Division; or Shawn McNulty, Assistant Director, (202) 452–3946, Division of Consumer and Community Affairs.

FDIC: Louise Kotoshirodo, Review Examiner, Division of Consumer Affairs (202) 942–3599; Doris L. Marsh, Examination Specialist, Division of Supervision (202) 898–8905; or Gladys Cruz Gallagher, Counsel, Legal Division (202) 898–3833.

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 concern for the credit needs of that community. See H.R. Rep. No. 651, 103d Cong., 2d Sess. 62 (1994).

The agencies' proposed uniform rules apply to any bank that establishes or acquires, directly or indirectly, a branch under the authority of the Interstate Act or amendments made by the Interstate Act. These branches are referred to as ''covered interstate branches.'' The proposed rules provide that, beginning no earlier than one year after a bank establishes or acquires a covered interstate branch, the appropriate agency will determine whether reasonably available data exist that will enable the agency to perform a ''loan-to-deposit ratio screen.''

The loan-to-deposit ratio screen compares the bank's loan-to-deposit ratio within the state where the bank's covered interstate branch is located (covered interstate branch loan-to-deposit ratio) with the loan-to-deposit ratio of banks whose home state is that state (host state loan-to-deposit ratio). If the loan-to deposit ratio screen indicates that the bank's covered interstate branch loan-to-deposit ratio is at least 50 percent of the host state loan-to-deposit ratio, no further analysis is required. However, if the appropriate agency determines that the bank's covered interstate branch loan-to-deposit ratio is less than 50 percent of the host state loan-to-deposit ratio, or determines that reasonably available data do not exist that will permit the agency to determine the bank's covered interstate branch

[1] Pub. L. 103–328, 108 Stat. 2338, 12 U.S.C. 1835a.

[2] Before the Interstate Act, foreign banks were permitted to establish agencies and limited branches outside their home state under the International Banking Act (IBA) (12 U.S.C. 3101 *et seq.*). Since this authority was not conferred by the Interstate Act, or any amendment by the Interstate Act to any other provision of law, banks that only establish interstate agencies and limited branches under the IBA are not covered by section 109. Domestic banks may also have branches located outside a bank's home state that are not within the scope of section 109 because they are not established or acquired pursuant to authority in the Interstate Act. For example, domestic banks may have branches grandfathered under the McFadden Act (12 U.S.C. 36) and branches retained following an interstate relocation under 12 U.S.C. 30.

loan-to-deposit ratio, the agency will perform a ''credit needs determination.''

Under the credit needs determination, the appropriate agency will review the loan portfolio of the bank and determine whether the bank is reasonably helping to meet the credit needs of the communities served by the bank in the host state. Consistent with section 109, the agencies will 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)(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; and (6) the safe and sound operation and condition of the bank.

If the appropriate agency concludes after taking these considerations into account that the bank is not reasonably helping to meet the credit needs of the communities served by the bank in the host state: (1) The appropriate agency may order that covered interstate branches in the host state be closed unless the bank provides reasonable assurances to the satisfaction of the appropriate agency that the bank has an acceptable plan that will reasonably help to meet the credit needs of the communities served by the bank in the host state; and (2) the bank may not open a new covered interstate branch in the host state unless the bank provides reasonable assurances to the satisfaction of the appropriate agency that the bank will reasonably help to meet the credit needs of the community that the new branch will serve.

Before exercising the authority to order closure of branches, the agencies will issue a notice of intent to close covered interstate branches to the bank and schedule a hearing under the provisions of section 8(h) of the Federal Deposit Insurance Act (12 U.S.C. 1818(h)).

Regulatory Burden and Limitations on Available Data

The language of section 109 and its legislative history indicate that Congress intended that the provision not impose any additional regulatory or paperwork burdens on any institution. See H. Rep. No. 651, 103d Cong., 2nd Sess. 62 (1994). Section 109 directs the agencies to calculate the covered interstate branch loan-to-deposit ratio from available information, including an agency's sampling of the bank's loan files during an examination, or such data as are otherwise available. The agencies are also required by section 109 to calculate the host state loan-to-deposit ratio as determinable from relevant sources.

As discussed in greater detail later, data that are currently required to be reported by banks have significant limitations for purposes of making the calculations described in section 109. In addition, the agencies' supervisory experience indicates that data collection and availability vary substantially from bank to bank. Although sampling during an examination may produce relevant data, the extent and duration of an examination to gather complete information could impose significant regulatory burdens on the bank.

To address these concerns in a manner consistent with section 109's intent not to impose additional regulatory burdens on banks, the agencies propose to determine the covered interstate branch loan-to-deposit ratio by reviewing the relevant data reasonably available for each bank covered by the proposed rule. These data would include deposit and loan data that are readily available and provided by the bank, and data already required to be reported by the bank or reasonably available to the agencies during an examination. If these data are sufficient to determine that a bank's covered interstate branch 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 covered interstate branch loan-to-deposit ratio, the agencies would make a credit needs determination for the bank. During the credit needs determination, the bank may provide the agencies with any relevant information, including deposit and loan data.

The agencies believe that this approach will accomplish the purpose of section 109 while minimizing regulatory burden on the bank to produce or to assist the agencies in obtaining data to calculate the bank's covered interstate branch loan-to-deposit ratio. In this regard, the ratios required to be calculated provide a screen to identify when the appropriate agency is required to make a more comprehensive credit needs determination under section 109. The proposed rule ensures that the credit needs determination will be made in all cases in which the appropriate agency is unable to readily verify compliance by means of the section 109 loan-to-deposit ratio screen.

The agencies seek comment on all aspects of the proposal, particularly data availability issues as they relate to the required calculations of the loan-to-deposit ratios for banks with covered interstate branches and the host states, and the agencies' proposed resolutions of these issues. The agencies also seek comment on all other aspects of the proposed rule.

Available Deposit and Loan Data

The most relevant data for calculating the ratios required under section 109 are data that provide the geographic location of the depositor or borrower. As discussed later, currently available data have significant limitations with respect to depositor or borrower location.

Deposit Data

Domestic banks report deposit data to the agencies primarily through three submissions: (1) The annual Summary of Deposits, (2) the quarterly Consolidated Reports of Condition and Income (Call Reports), and (3) the Report of Transaction Accounts, Other Deposits, and Vault Cash (FR 2900). The Summary of Deposits collects deposit data on a branch-by-branch basis and can be aggregated by state or other geographical region. The data in this report reflect the location where deposits are booked, however, and not the location of the depositor. Deposits may be booked at centralized locations and may include deposits from sources in other states. The Summary of Deposits therefore has limitations as a source of deposit data for calculating loan-to-deposit ratios in a particular area or state. The Call Report and the FR 2900 also provide deposit data that are of limited value in making the necessary calculations. The data in these reports are collected for each institution on a consolidated basis and are not segregated by geographic area.

The data reported by foreign banks have similar limitations. The principal source of deposit data for U.S. branches of foreign banks is the Report of Assets and Liabilities of United States Branches and Agencies of a Foreign Bank (FFIEC 002). While this form separately identifies U.S. and non-U.S. depositors, it does not otherwise segregate depositors by location. Moreover, since foreign banks generally compete in wholesale deposit markets, the location where deposits are booked is likely to bear little relation to the

location of the depositors. Other sources of deposit data for foreign banks are the FDIC's Summary of Deposits (for insured U.S. branches of foreign banks, which are relatively few in number) and the FR 2900—Report of Transaction Accounts, Other Deposits, and Vault Cash (for U.S. branches of foreign banks with consolidated worldwide assets in excess of $1 billion) which, for the reasons previously discussed, are of limited use in the loan-to-deposit calculations required under section 109.

Loan data

The quarterly Call Reports provide information about the lending activity of domestic banks on a consolidated basis and do not require this information to be segregated by state or branch. Moreover, the Call Reports reflect only those loans actually held on the books of the bank as of the end of the reporting period, and do not reflect loans that have been originated and sold or that have been booked through affiliates.

Certain types of loans by domestic banks are required to be reported under the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*) (HMDA) and the new CRA regulations promulgated by the Federal financial supervisory agencies (60 FR 22156). An institution that is subject to HMDA reporting requirements must report annually the number of home-purchase and home-improvement loans originated or purchased, and refinancings of both, by geographic location of the property subject to the mortgage.[3] Additionally, large institutions are required under the new CRA regulations to report the following information annually on loans to small businesses and small farms, aggregated for each census tract or block numbering area: (1) Number and amount of loans with an original amount of $100,000 or less, more than $100,000 and less than or equal to $250,000, and more than $250,000; and (2) number and amount of loans to small businesses and small farms with gross annual revenues of $1 million or less (using the revenues the institution considered in making the credit decision).[4] While these sources contain lending data broken down by geographical location, the limited nature of the types of loans reported and of the lenders required to report significantly limit the usefulness of these data for purposes of calculating the ratios required under section 109.

Loan data for U.S. branches of foreign banks are also reported on an aggregate basis in the FFIEC 002, which distinguishes only between U.S. and non-U.S. borrowers for some types of loans. These branches typically make very few loans that are subject to HMDA reporting requirements.

The Section 109 Loan-to-Deposit Ratio Screen

Covered Interstate Branch Loan-to-Deposit Ratio

Section 109 indicates that in calculating the covered interstate branch loan-to-deposit ratio, the agencies should consider available information, including information from the agency's sampling of the bank's loan files during an examination. As discussed later, sampling loan files to calculate this loan-to-deposit ratio could result in significantly increased regulatory burden.

Sampling at a particular branch could produce unreliable data if a bank books loans or deposits at locations outside the state where the borrowers or depositors are located. In this regard, many domestic and foreign institutions consolidate certain types of business at the main office or other location. For example, commercial loans and deposits may be consolidated 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 would not be booked at that branch. Sampling of loan files also would not provide information on loans that have been sold. Since practices regarding loan sales differ from bank to bank, there may be large variations in the loan-to-deposit ratios for individual banks over time that do not reflect underlying lending activity. If loans were booked at the covered interstate branch closest to the borrower, the agencies would have to expand significantly the extent and duration of their current examinations in order to obtain this information through sampling of loan files at the bank's covered interstate branches.

Under the proposed rule, the agencies would take into account all reasonably available data relevant to calculating the covered interstate branch loan-to-deposit ratio on a case-by-case basis. The agencies would consider any deposit and loan data that are readily available and provided by the bank, and data reasonably available to the agencies through currently required reports and the examination process. In determining whether to sample a bank's loan and deposit records, the agencies would consider whether the information would accurately reflect the bank's activities in a host state, and whether the information could be obtained without imposing an undue regulatory burden on the bank. As previously noted, the agencies would conduct a credit needs determination in all cases where the agencies concluded that sufficient data were not available without imposing an additional regulatory burden on the bank to calculate the covered interstate branch loan-to-deposit ratio.

The agencies seek comment on this approach and alternative approaches for accomplishing the purpose of section 109 without imposing regulatory burden. In particular, the agencies seek comment on the availability of deposit and lending data broken down by geographical area, and banking practices for allocating deposits and loans to branches or particular states. The agencies also seek comment on the regulatory burden associated with providing data, or permitting the agencies to obtain data through sampling in the examination process, that would be necessary to calculate a bank's covered interstate branch loan-to-deposit ratio.

Host State Loan-to-Deposit Ratio

The agencies anticipate that the host state loan-to-deposit ratio would be calculated jointly by the agencies from the data reported by banks in the Call Reports by dividing the total dollar amount of outstanding loans held by home state banks by the total dollar amount of deposits held by such banks. The ratio, which would be periodically updated, and the methodology used to calculate the ratio would be made available to the public. Determining the appropriate method of calculating a ratio that accurately reflects the deposit taking and lending activities of home state banks raises several issues discussed later.

Data for specialized banks that do not engage in traditional deposit taking or lending may distort the host state loan-to-deposit ratio. Limited purpose banks,

[3] HMDA imposes reporting requirements on federally insured depository institutions that in any year make at least one first-lien home-purchase loan secured by a one- to four-family dwelling, other than institutions that did not have a home or branch office in an MSA or that had assets of $28 million or less at the end of the previous calendar year. The reporting requirements also are imposed on certain mortgage lending subsidiaries and affiliates of depository institutions and independent mortgage companies, unless the subsidiary, affiliate, or independent company did not have a home or branch office in an MSA at the end of the previous calendar year, or had, together with its parent, assets of $28 million or less and originated less than 100 mortgages in the previous calendar year.

[4] These reporting requirements do not apply to a bank that, as of December 31 of either of the prior two calendar years, had total assets of less than $250 million and was independent or an affiliate of a holding company that, as of December 31 of either of the prior two calendar years, had total banking and thrift assets of less than $1 billion.

such as credit card banks and wholesale banks, could have very large loan portfolios, but few, if any deposits. In addition, certain loan and deposit data reported on the Call Report relate to international banking activities that are not attributable to any state. These data include loans to banks in foreign countries, commercial and industrial loans to non-U.S. addresses, loans to foreign governments and official institutions, deposits from banks in foreign countries, and deposits from foreign governments and official institutions. The agencies anticipate that the host state loan-to-deposit ratio would exclude data from the types of limited purpose banks and the categories of Call Report data discussed earlier.

The deposit taking and lending activities of multistate banks also could distort the host state loan-to-deposit ratio of their home states. Accounting for these activities, however, is difficult because consolidated reporting does not allow assignment of a multistate bank's loans and deposits to particular states. Attributing all loans and deposits from banks with operations in more than one state to its home state could materially distort the host state loan-to-deposit ratio, particularly since multistate banks, which are likely to be large institutions, generally maintain higher loan-to-deposit ratios than smaller institutions.[5] On the other hand, excluding multistate banks completely also could distort the host state loan-to-deposit ratio.

Multistate banks that have more than 50 percent of their branches outside their home state could be excluded from the host state loan-to-deposit ratio calculation since these institutions would be more likely to have more than 50 percent of their deposits and loans originated outside the host state under consideration. However, any methodology that excludes multistate banks could eventually result in a host state with few, if any, banks eligible for calculating the host state loan-to-deposit ratio as interstate branching becomes more prevalent. Under these circumstances, the agencies may need to include multistate banks.

The agencies seek comment on the approaches to resolving the issues discussed earlier, and on any methodology that, using available data, would most accurately reflect the deposit taking and lending activities of retail banks in a host state. Commenters should also consider the extent to which a methodology could calculate a host state loan-to-deposit ratio that would be roughly comparable to the calculation of the bank's covered interstate branch loan-to-deposit ratio. In addition, the agencies anticipate that any methodology used to calculate the host state loan-to-deposit ratio could be adjusted in the future to take into account changes in reporting requirements or additional sources of relevant data. In this light, the agencies have not included the methodology for calculating the host state loan-to-deposit ratio in the regulation and seek comment on this approach.

Credit Needs Determination

As discussed earlier, the proposed rule would require the appropriate agency to review the loan portfolio of a bank and determine whether the bank is reasonably helping to meet the credit needs of the communities served by the bank in the host state if the bank's covered interstate branch 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 covered interstate branch loan-to-deposit ratio.

In making a credit needs determination, the appropriate agency will consider all of the factors specified in section 109, including the circumstances under which the branches were acquired, the nature of the branches' business, economic conditions, safety and soundness considerations, and the CRA rating of the bank. The agencies also would consider any information provided by the bank, including loan and deposit data.

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 considerations listed in section 109 are taken into account under the new CRA regulations as part of the performance context used to rate a bank's CRA performance.[6]

For a bank with interstate branches, section 110 of the Interstate Act requires separate written evaluations of the institution's CRA performance: as a whole; in each state in which it maintains a branch; and in any multistate metropolitan area in which it maintains a branch in two or more states. Section 110 also requires that 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. Data considered in evaluating the bank's CRA performance in a particular state would include information that contains the geographical location of housing-related, small business and small farm loans that are required to be reported under HMDA and the new CRA regulations. Accordingly, the agencies believe that information from a CRA performance examination is particularly relevant in determining compliance with section 109 because it directly evaluates a bank's efforts to assist in meeting the credit needs of its communities.

The agencies would expect that a credit needs determination for a bank with satisfactory or better ratings for CRA performance in the host state would be favorable. The agencies would also expect that a credit needs determination for a bank with less than satisfactory ratings for CRA performance in the host state would be adverse unless mitigated by the other factors enumerated in section 109. If the section 109 review is not performed in connection with the bank's CRA performance examination, the agencies would also consider any available information that would indicate an improvement or weakening in a bank's CRA performance since its most recent performance rating.

Some entities that could be subject to section 109, including special purpose banks and uninsured branches of foreign banks,[7] are not evaluated for CRA performance by the agencies. For these institutions, the agencies propose to use the new CRA regulations as guidelines in making a credit needs

[5] See Profit and Balance Sheet Developments at U.S. Commercial Banks in 1995, Federal Reserve Bulletin, June 1996, table A.2, pgs. 496–505.

[6] The new CRA regulations permit the agencies to 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).

[7] A special purpose bank does not perform commercial or retail banking services by granting credit to the public in the ordinary course of business, and 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). An uninsured branch of a foreign bank also is not evaluated for CRA performance unless it results from an acquisition described in section 5(a)(8) of the IBA (12 U.S.C. 3103(a)(8)). See 12 CFR 25.11(c)(2) (OCC); 12 CFR 228.11(c)(2) (Board); and 12 CFR 345.11(c)(1) (FDIC).

determination. However, the new CRA regulations would provide guidance only for determining the relevance of a particular activity to the credit needs determination, and would not obligate the institution to have a record of performance under the CRA or require that the bank pass any performance tests in the new CRA regulations.

The agencies also intend to give substantial weight to the factor in section 109 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 of their deposits from the wholesale deposit markets that are generally national or international in scope.[8] The agencies believe that 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 engaging in activities designed to reasonably help meet the credit needs of the communities served by the bank in the host state.

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 as well as failed to reasonably help in meeting the credit needs of the communities served by the bank in the host state. Accordingly, the proposed rule would require the agencies to determine a bank's compliance with the section 109 loan-to-deposit ratio screen, even if the agencies previously determined that the data are not reasonably available.

The agencies seek comment on the proposed approach for making credit needs determinations, particularly the proposal to make credit needs determinations when data are insufficient to calculate the covered interstate branch loan-to-deposit ratio, and alternative approaches for accomplishing the purpose of section 109 without imposing regulatory burden. The agencies also solicit comments on whether the agencies should carefully weigh the extent to which banks receive deposits from the host state if they are evaluated by the agencies under the CRA but engage in specialized activities.

Timing of Review and Agency Consultation

The agencies anticipate that they will conduct a review under section 109 for all banks evaluated for CRA performance when the agencies initially rate the CRA performance of an interstate bank in a particular state as required by section 110 of the Interstate Act. Subsequent reviews, and reviews of banks not subject to CRA evaluations, would be conducted as deemed appropriate by the agencies. The agencies also intend to coordinate and consult in applying section 109 to banks that are subject to regulation by more than one agency. The agencies seek comment on these proposals for conducting section 109 reviews.

Regulatory Flexibility Act Analysis

Consistent with the requirement in section 109 that the agencies use only available information to conduct the relevant analyses, the proposed rule does not impose any burden on banks beyond what is required by statute. Thus, the agencies reasonably believe that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. However, in light of the issues discussed previously in the preamble to the proposed rule relating to data availability, the agencies seek the views of interested parties on whether they believe that the proposed rule would have a significant impact on a substantial number of small business entities in accord with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The agencies note that the proposal affects only banks that have branches in more than one state, which are likely to be primarily larger banks. Consistent with Congressional intent, the proposal would not require any additional paperwork or regulatory reporting. As discussed earlier, however, the agencies are concerned that the proposal would create additional regulatory burden for some institutions with covered interstate branches, as some institutions may be subject to more extensive examinations or requests for information necessary to obtain the data required under the proposed rule. In practice, institutions subject to the rule may need to provide additional data to examiners to avoid prolonged examinations. The agencies have requested comment on alternatives for reducing regulatory burden under the proposed rule.

Paperwork Reduction Act

The agencies have determined that this proposal 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.*).

OCC Executive Order 12866 Determination

The Office of Management and Budget has concurred with the OCC's determination that this proposal is not a significant regulatory action under Executive Order 12866.

OCC Unfunded Mandates Reform Act of 1995 Determination

The OCC has determined that this proposal 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 proposes to amend part 25 of chapter I of title 12 of the Code of Federal Regulations as follows:

[8] U.S. branches of foreign banks generally accept only uninsured wholesale deposits. 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. 12 U.S.C. 3104(d). 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. As a result, interstate branches of foreign banks established under the Interstate Act cannot take retail deposits or draw a significant level of deposits from the community, retail-oriented deposit markets where the branches are located.

PART 25—COMMUNITY REINVESTMENT ACT REGULATIONS

1. 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.

2. 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 Authority, 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 Authority, purpose, and scope.

(a) *Authority.* The authority for this part 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.

(b) *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 (Pub. L. 103–328, 108 Stat. 2338) (Interstate Act).

(c) *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 prohibits 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 under the interstate branching authority granted by the Interstate Act, or 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) *Covered interstate branch loan-to-deposit ratio* means the ratio of a bank's loans to its deposits in a state in which the bank has a covered interstate branch, as determined by the OCC.

(d) *Federal branch* means federal branch as that term is defined in 12 U.S.C. 3101(7) and 12 CFR 28.11(i).

(e) *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).

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

(g) *Host state loan-to-deposit ratio* 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 all institutions covered under the definition of ''bank'' in 12 U.S.C. 1813(a)(1)) that have that state as their home state, as updated periodically and made available to the public.

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

§ 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 covered interstate branch 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 covered interstate branch 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 covered interstate branch 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 covered interstate branch 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 served by the bank in the host state.

(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, and if the credit needs determination is not made concurrently with a CRA evaluation, available information that would indicate an improvement or weakening in the bank's CRA performance since its most recent CRA evaluation;

(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 Community Reinvestment Act 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 covered interstate branch 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 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 interstate branch in the host state that would be considered to be a covered interstate branch under § 25.62(b) unless the bank provides

reasonable assurances to the satisfaction of the OCC that the bank will reasonably help to meet the credit needs of the community that the new interstate branch will serve.

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

(c) *Hearing.* A hearing scheduled under paragraph (b) of this section will be conducted under the provisions of 12 U.S.C. 1818(h) and 12 CFR part 19.

Dated: March 11, 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 proposes to amend 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, 781(b), 781(g), 781(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 (Pub. L. 103–328, 108 Stat. 2338) (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 prohibits 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 branch of a foreign bank licensed by a State, that:

(i) Is established or acquired outside the bank's home state under the interstate branching authority granted by the Interstate Act, or 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* 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 all institutions covered under the definition of ''bank'' in 12 U.S.C. 1813(a)(1)) that have that state as their home state, as updated periodically and made available to the public.

(6) *Covered interstate branch loan-to-deposit ratio* means the ratio of a bank's loans to its deposits in a state in which the bank has a covered interstate branch, as determined by the Board.

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

(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 covered interstate branch 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 covered interstate branch 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 covered interstate branch 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 covered interstate branch 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 served by the bank in the host state.

(2) *Guidelines.* The Board will use the following considerations as guidelines when making the determination pursuant to paragraph (a) 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 (CRA) ratings received by the bank, if any, under 12 U.S.C. 2901 *et seq.* and, if the credit needs determination is not made concurrently with a CRA evaluation, available information that would indicate an improvement or weakening in the bank's CRA performance since its most recent CRA evaluation;

(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 covered interstate branch 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 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 interstate branch in the host state that would be considered to be a covered interstate branch under paragraph (b)(2) of this section unless the bank provides reasonable assurances to the satisfaction of the Board that the bank will reasonably help to meet the credit needs of the community that the new interstate branch will serve.

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

(3) *Hearing.* A hearing scheduled under paragraph (e)(2) of this section will be conducted under 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, March 11, 1997.

Jennifer J. Johnson,

Deputy 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 add 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.

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 (Pub. L. 103–328, 108 Stat. 2338) (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 prohibits 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, a State nonmember bank.

(b) *Covered interstate branch* means any branch of a State nonmember bank, that:

(1) Is established or acquired outside the bank's home state under the interstate branching authority granted by the Interstate Act, or 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) *Covered interstate branch loan-to-deposit ratio* means the ratio of a bank's loans to its deposits in a state in which the bank has a covered interstate branch, as determined by the FDIC.

(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).

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

(f) *Host state loan-to-deposit ratio* 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 all institutions covered under the definition of ''bank'' in 12 U.S.C. 1813(a)(1)) that have that state as their home state, as updated periodically and made available to the public.

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

§ 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 covered interstate branch 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 covered interstate branch 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 covered interstate branch 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 covered interstate branch 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 served by the bank in the host state.

(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.* and, if the credit needs determination is not made concurrently with a CRA evaluation, available information that would indicate an improvement or weakening in the bank's CRA performance since its most recent CRA evaluation;

(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 Act 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 covered interstate branch 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 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 interstate branch in the host state that would be considered to be a covered interstate branch under § 369.2(b) unless the bank provides reasonable assurances to the satisfaction of the FDIC that the bank will reasonably help to meet the credit needs of the community that the new interstate branch will serve.

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

(c) *Hearing.* A hearing scheduled under paragraph (b) of this section will be conducted under 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 11th day of March, 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 97–6599 Filed 3–14–97; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P