

These revisions will reduce regulatory burden by providing foreign banks with greater flexibility in complying with the CED requirements.

While the location of a national bank varies from statute to statute and may be different for different purposes, 12 U.S.C. 81 provides that the general business of each national banking association shall be transacted at its main office and its branch or branches. Under the proposal, the term "located" in the statutory language describing a CED depository bank is construed, consistently with § 81, to mean the state in which the depository bank has its main office or a branch. However, because a Federal branch or agency is not a separate corporate entity, it does not have a main office or branches. As a result and by analogy to 12 U.S.C. 81 and consistent with national treatment, the proposal provides that a Federal branch or agency is located in the state in which it is licensed and in the parent foreign bank's home state for purposes of maintaining a CED account.

If the change in the licensing procedures described above is adopted, all Federal branches and agencies of a foreign bank may, under certain conditions, be licensed in only one state, which may be different from the foreign bank's home state. In such a situation, the proposal would provide foreign banks with more flexibility in determining where to deposit the consolidated CED if the foreign bank elects to consolidate some or all of these deposits.

In providing for a consolidated CED account, the proposal is consistent with existing provisions of part 28. For example, § 28.15(a)(2) already permits a foreign bank to combine the CEDs of its federally licensed offices in the same state into one account at the depository bank. Part 28 further requires that a "foreign bank with more than one Federal branch or agency in a state shall designate one of those offices to maintain consolidated asset, liability, and capital equivalency accounts for all Federal branches or agencies in that state." 12 CFR 28.18(c)(2). This proposal is also consistent with the national treatment purpose of the IBA and serves to reduce regulatory burden. Permitting a foreign bank to consolidate its CED accounts should provide foreign banks with more flexibility in structuring their U.S. operations and would reduce unnecessary costs in maintaining multiple accounts.

The aggregate amount of the CED for all of the foreign bank's Federal branches and agencies would not change under the proposal and, thus, there would be no diminution in the

foreign bank's combined amount of CED assets that it is required by law to maintain. Moreover, the OCC's authority to require an increase in the CED for a particular Federal branch or agency would not be affected.

To ensure that creditors are protected,⁷ a corresponding change would be made to § 28.18 (described below) to require that a foreign bank that consolidates its CEDs in accordance with this new paragraph § 28.12(d)(2) must designate a Federal branch or agency to maintain consolidated asset, liability, and capital equivalency account information for all of the Federal branches and agencies that are covered by the consolidated deposit. This is similar to the requirement in § 28.18(c)(2) that applies to consolidated CED accounts in one state. This approach also is consistent with other provisions in part 28 requiring a foreign bank to "designate one Federal branch or agency office in the United States to maintain consolidated information so that the OCC can monitor compliance." See 12 CFR 28.14(c).

The OCC invites comment on the CED proposals and specifically seeks comments on possible ways for ensuring that a consolidated CED account contains sufficient assets to cover the operations of all participating Federal branches and agencies. Should the account contain segregated assets to cover specific offices, or would it be sufficient for the account to contain a consolidated amount large enough to cover the operations of all the individual offices?

The OCC invites comments on other ways in which the CED requirement could be modified to further reduce regulatory burden consistent with maintaining the safe and sound operations of Federal branches and agencies in the United States.

11. Deposit-taking by an Uninsured Federal Branch (revised § 28.16(b)(8))

The proposed rule makes a technical correction to paragraph (b)(8) to correct the citation to the FRB's Regulation K.

⁷ The legislative history of the IBA does not expressly explain the CED requirement, but it indicates that one reason for including such a provision was a concern about the availability of assets for local creditors in the event that a foreign bank became insolvent. See International Banking Act of 1978, Hearings on HR 10899 Before the Subcommittee on Financial Institutions Supervision of the Committee on Banking, Housing and Urban Affairs, 95th Cong., 1st Sess. 118-19 (1977) (statement of Hon. Stephen S. Garner, Vice Chairman, Board of Governors of the Federal Reserve System and Proposed Amendments to H.R. 7325, the International Banking Act of 1977).

12. Maintenance of Accounts, Books, and Records (new § 28.18(c)(3))

As described above, the proposed new § 28.18(c)(3) requires a foreign bank that has interstate Federal branches or agencies and combines its CEDs into one account to designate one of its Federal offices to maintain consolidated information about the Federal branches and agencies covered by the CEDs.

13. Maintenance of Assets (revised § 28.20(a)(2))

The OCC may impose asset maintenance requirements on a foreign bank to hold certain assets in the state in which its Federal branch or agency is located if necessary for prudential, supervisory, or enforcement reasons. 12 CFR 28.20(a)(1). These requirements are in addition to the CED requirements but, in determining compliance with any asset maintenance requirements imposed by the OCC, the OCC must give credit to the amount of assets held in the CED and other reserves or assets required under the IBA. 12 U.S.C. 3102(g)(4).

The proposed revision of § 28.20(a)(2) deletes the requirement that, if the OCC requires asset maintenance, the amount of assets held by the foreign bank cannot be less than 105% of the aggregate amount of liabilities of the Federal branch or agency, payable at or through the Federal branch or agency. Under the proposed rule, the amount of assets would be prescribed by the OCC and there would be no set minimum. This change would give the OCC more discretion to apply its asset maintenance authority on a risk-based basis to ensure the safe and sound operations of Federal branches and agencies.

14. Voluntary Liquidation (revised § 28.22(a) and (b))

The voluntary liquidation provisions of part 28 currently cross-reference part 5 and the Comptroller's Licensing Manual and impose certain specific requirements. The proposed revisions to § 28.22 retain the current procedures and cross references (with specific reference to the Licensing Manual's qualifications and procedures for a voluntary expedited liquidation of an insured Federal branch) for voluntary liquidations if the Federal branches and agencies being liquidated are the foreign bank's only Federal branches and agencies in the United States. The proposal eliminates the additional unnecessary requirements currently in the regulation but retains the requirement that a foreign bank publish notice of the impending closure. The