

NCUA's authority, in consultation with the host country, to examine and take mutually agreeable enforcement action with regard to that branch office." One commenter stated that it recognizes that NCUA is not seeking exclusive authority over the branch and anticipates the host country also will be in a position to exercise regulatory authority under its own regulatory framework and believes this should be stated in the rule. Another commenter believes NCUA should regulate the foreign branches of credit unions jointly with the foreign banking regulators. One commenter believes an enforcement conflict might occur if a host country requires the branch to have host country deposit insurance.

The NCUA Board believes, for safety and soundness reasons, it is critical for a credit union to obtain host country approval and recognition of NCUA's authority. To require less would pose an undue risk to the NCUSIF. The Board is not requiring exclusive authority over a foreign branch and recognizes that a host country also will have some regulatory authority over a foreign branch office. NCUA, however, must have the right to examine a foreign branch and take any necessary enforcement actions. Finally, NCUA does not have the legal authority to engage in discussions or enter into agreements with foreign governments on the establishment of branches. The Board believes the proper party to obtain host country approval is the credit union seeking NCUA's approval. Credit unions wishing to engage in this activity also might want to obtain the assistance of their trade associations and state leagues in communicating with foreign governments.

Second, under the proposal, a credit union must develop a detailed business plan that addresses the following: (1) Analysis of market conditions in the area where the branch is to be established; (2) the credit union's plan for addressing foreign currency risk; (3) operating facilities, including office space, equipment and supplies; (4) safeguarding of assets, insurance coverage, and records preservation; (5) written policies regarding the branch (shares, lending, capital, charge-offs, collections); (6) the field of membership or portion of the field of membership to be served through the foreign branch and the financial needs of the members to be served and services and products to be provided; (7) detailed *pro forma* financial statements for branch operations (balance sheet and income and expense projections) for the first and second year, including assumptions; (8) internal controls,

including cash disbursement procedures for shares and loans at the branch; (9) accounting procedures used to identify branch activity and performance; and (10) foreign income taxation.

Four commenters agreed with the business plan requirement. Four commenters stated that the services offered through the foreign branch should be limited to those approved by NCUA. Two commenters that believe all assets of a foreign branch should be required to be denominated in U.S. dollars stated that, if all the assets of the foreign branch were U.S. dollar denominated, there would be no need to address currency risk in the business plan. The Board is not mandating that all assets be denominated in U.S. dollars to provide flexibility in establishing a branch; however, as discussed below, if a credit union wants federal share insurance for the deposits in a foreign branch, then assets must be denominated in U.S. dollars.

One commenter stated the business plan requirement should only be for federal credit unions. Four commenters believe the business plan requirements are excessive and suggested that it be streamlined. Another commenter also believes the business plan is excessive and should only consider the overall strength of the credit union (CAMEL 1 or CAMEL 2) and the competency of the credit union's management. Two commenters stated that field of membership should not be addressed in the business plan. One commenter would delete the requirement for a market analysis. A few commenters suggested that regional directors should be encouraged to consider relevant employment laws of the host country and whether an applicant credit union is fully aware of the impact of such laws.

The NCUA Board believes that the business plan requirements are prudent and the minimum a credit union should consider before establishing a foreign branch. The Board agrees that knowledge of foreign employment laws is also an important component in determining whether to establish a foreign branch and has added that to the business plan. The Board also clarified in the final rule that credit unions need to address the issue of bond coverage in the business plan.

Third, under the proposal, a state-chartered credit union must submit documentation showing state regulator approval. One commenter supported this requirement. Four commenters believe that NCUA should not be involved in the approval process for state-chartered credit unions. Three of these commenters believe NCUA should

not approve a branch, but only approve insurance coverage for a branch. They believe that, once NCUA has approved a country for federal insurance, then no further NCUA approval should be necessary for federally insured state-chartered credit unions.

A foreign branch poses significantly greater risk to the NCUSIF than a domestic branch. Although this rule minimizes risk, it certainly does not eliminate it. Therefore, whether a credit union is state-chartered or federally-chartered, the risk to the NCUSIF is the same, and NCUA must have the final authority to approve or disapprove a foreign branch.

Under the proposal, the regional director has 60 days to approve the application, but may extend the time period for good cause. The regional director may revoke approval of a foreign branch office for failure to follow the business plan in any material respect or for substantive and documented safety and soundness reasons. If the credit union wants to make a material deviation from its previously approved business plan, it must submit a new business plan for approval. If the regional director revokes the approval, a credit union has six months from the date of the revocation letter to terminate the operations of the branch. The credit union can appeal this revocation directly to the NCUA Board. One commenter fully supported the revocation process.

Four commenters requested that the central office, not the regional directors, process the approval and revocation of foreign branches because they believe central office staff will be more knowledgeable about the issues. Two commenters request that NCUA state that the six-month revocation period starts to run only after the regional director decision or after a decision on an appeal to the NCUA Board has been rendered, whichever is later.

The NCUA Board is retaining in the final rule the revocation process as proposed. It is anticipated that regional offices will consult with central office staff when they believe it is necessary. The Board is not changing the six-month time frame for the closing of a branch while a decision is under appeal because of safety and soundness considerations. If a credit union files an appeal after receiving a notice of revocation from a regional director, it must continue to plan on closing the branch within six months. Filing an appeal will not toll the running of the six-month period for closure of a foreign branch. The Board believes it will be able to consider appeals of a revocation expeditiously and notes that a credit