

assessment of the risks presented by the particular institutions.¹³ The additional changes proposed in the NPRM further reduce unnecessary burden and simplify compliance with the CED requirements.

The proposal amended § 28.15(a)(1) to clarify the types of assets eligible to be deposited in a CED. Currently, a CED must consist of bank-eligible securities, dollar deposits payable in the United States, certificates of deposit payable in the United States, and other assets permitted by the OCC. The proposal included dollar deposits payable in any Group of Ten (G-10) country and added repurchase agreements to the list of permissible CED assets. The proposal also clarified that the OCC's authority to permit other assets to qualify for the CED is limited to other assets that are "similar" to those expressly included in the statute.

In addition, the proposal clarified the OCC's current policy to exclude liabilities of an international banking facility to third parties, and of a Federal branch to an international banking facility, when calculating the required amount of a CED. Also, the proposed rule permitted the OCC, like some other regulators, to exclude liabilities from repurchase agreements on a case-by-case basis.

One commenter generally supported the OCC's efforts to alleviate burden associated with the CED requirements and specifically supported these changes to part 28. Consequently, the OCC is adopting this amendment as proposed.

11. Capital Equivalency Deposits (Revised § 28.15(e))

In the NPRM, we proposed to clarify the meaning of the term "located" in the context of the location of a depository bank that holds a CED deposit, relative to a Federal branch or agency subject to the CED requirement. Under the IBA, for purposes of the CED requirement, a *depository bank* must be *located* in the state where the branch or agency is *located*. 12 U.S.C. 3102(g)(1). The proposal provided that a depository bank is "located" in the state where it has its main office or a branch and a Federal branch or agency is "located" in the state in which it is licensed or in the state that is its parent foreign bank's home state. The proposal further clarified that a foreign bank with interstate offices has the discretion to consolidate all or some of its CEDs into one depository bank. We specifically requested comments on whether such a consolidated account should provide for

segregated assets for specific offices or whether it would be sufficient for the account to contain a consolidated amount large enough to cover the CEDs of all of the individual offices.

One commenter supported the proposed changes in the NPRM with respect to CEDs, particularly the proposal to allow multiple Federal branches and agencies to maintain a single consolidated CED at a U.S. depository bank. The commenter expressed its view that it would not be necessary for the consolidated CED account to contain segregated assets to cover specific offices; instead, the commenter said that maintaining a consolidated account large enough to cover the operations of all of the individual offices would be sufficient.

Another commenter opposed the proposed changes, contending first that the NPRM should have stated that a Federal branch or agency is located in each state in which it maintains an office under the plain meaning of the term "located." Second, the commenter stated that the legislative history of the CED requirement "demonstrates Congressional concern that assets be available to local creditors in the event that a foreign bank becomes insolvent." The commenter added that segregated accounts promote efficient liquidations by minimizing the need for local creditors to pursue remedies in other states. Segregated accounts, according to the commenter, would better protect local creditors in situations where the foreign bank operated both Federal and state branches or agencies.¹⁴

The OCC agrees that in order to be eligible to hold a foreign bank's CED for its Federal branches and agencies, a depository bank's main office or a branch must be located in the state in which the Federal branch or agency's foreign bank parent has its home office or in any state in which a Federal branch or agency office is maintained. In the latter case, the state may not necessarily be the state in which the

¹⁴ Three commenters criticized the proposed definition of where a Federal branch or agency is "located" on the basis that the proposed definition would be inconsistent with Congressional intent and would "administratively overturn" language included in pending legislation in the House of Representatives in the 108th Congress—section 107 of H.R. 1375, the proposed "Financial Services Regulatory Relief Act of 2003."

As explained above, our proposed definition of "located" is an interpretation of current law for purposes of determining which depository banks are eligible to hold a foreign bank's CED deposit for its Federal branch or agency. It does not affect the amount of the CED that is required, or the determination of where a branch or agency is located, for purposes of any future standard that keys a CED requirement to the requirements of the state in which a branch or agency is "located."

Federal branch or agency is licensed under the single-licensing approach described above but may be any state in which the foreign bank has a Federal branch or agency office.

This interpretation of the term "located" is reasonable and consistent with national treatment and the intent of the IBA. As one commenter agrees, the CED statute does not define the term "located." Thus, by analogy to national banking law,¹⁵ the OCC has determined that a U.S. depository bank holding a foreign bank's CED is located in the state in which the depository bank has its main office or a branch and the final rule clarifies this interpretation.

Under the IBA, the OCC has the authority to establish limitations and conditions for the CED and its administration. 12 U.S.C. 3102(g)(1). Section 3102(g)(3) further extends this authority, stating that "[t]he deposit shall be maintained with any such member bank pursuant to a deposit agreement in such form and containing such limitations and conditions as the Comptroller may provide." This very specific authority is enhanced by the IBA's general grant of authority to the OCC to issue rules, regulations, and orders pertaining to the establishment and administration of Federal branches. 12 U.S.C. 3102(b). Moreover, the legislative history of the IBA recognized that, while the objective of Federal regulation under the IBA is to achieve equal treatment between foreign and domestic banks, some discretion was necessary to develop a regulatory framework that is appropriate to the actual operations of foreign banking institutions.¹⁶

With regard to requiring foreign banks to segregate assets in a consolidated CED account, we have considered the comments received and have decided that foreign banks with multiple branches and/or agencies that consolidate their CED deposits should maintain book entry segregation of assets for each office. We are clarifying new § 28.18(c)(3) to add such a requirement. This will help to promote orderly liquidations and will help to ensure that local creditors of each office of a foreign bank are protected. In addition, we are revising new § 28.15(e) to clarify that the total amount of the CED will continue to be calculated on an office-by-office basis to ensure that there are sufficient assets available for each individual office.

¹⁵ See 12 U.S.C. 81.

¹⁶ See *supra* note 4 (and accompanying text).

¹³ 67 FR 41619 (June 19, 2002)