

Prohibition Against Use of Interstate Branches Primarily for Deposit Production¹

Introduction

The Federal Reserve Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation (“the agencies”), jointly issued a final rule, effective October 10, 1997, that adopted uniform regulations² implementing section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (IBBEA).

IBBEA allows banks to branch across state lines. Section 109, however, prohibits any bank from establishing or acquiring a branch or branches outside of its home State, pursuant to IBBEA, primarily for the purpose of deposit production. Congress enacted section 109 to ensure that interstate branches would not take deposits from a community without the bank reasonably helping to meet the credit needs of that community.

Subsequently, section 106 of the Gramm-Leach-Bliley Act of 1999 (GLBA) amended 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. Interagency regulations implementing this amendment became effective October 1, 2002.

The language of section 109 and its legislative history make clear that the agencies are to administer section 109 without imposing additional regulatory burden on banks. Consequently, the agencies’ regulations do not impose additional data reporting requirements nor do they require a bank to produce, or assist in producing, relevant data.

Coverage

Section 109 applies to any bank that has covered interstate branches. Examples of covered interstate branches can be found at the end of the Examination Procedures in this section.

Definitions

“Covered Interstate Branch”

1. Any branch of a national bank, a State member bank, or a State nonmember bank, and any Federal branch of a foreign bank, or any uninsured or 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 interstatebranching authority granted by IBBEA or by any amendment made by IBBEA 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 (i) and

2. any bank or branch of a bank controlled by an out-of-State bank holding company.

“Home State”

1. For State banks, home State means the State that chartered the bank.
2. With respect to a national bank, home State means the State in which the main office of the bank is located.
3. With respect to a bank holding company, home State means 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 holding company under the Bank Holding Company Act.
4. With respect to a foreign bank, home State means:
 - (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 USC 3103(c) and Section 211.22 of the Federal Reserve Board’s Regulations (12 CFR §211.22), Section 28.11(o)) of the OCC’s regulations (12 CFR §28.11(o), and Section 347.202(j) of the FDIC’s regulations (12 CFR §347.202(j)); 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.

“Host State” – means a State in which a covered interstate branch is established or acquired.

“Host State Loan-to-Deposit Ratio” – is the ratio of total loans in the host State to total deposits from the host State for all banks that have that State as their home State.

“Out-of-State Bank Holding Company” – means, with respect to any State, a bank holding company whose home State is another State.

“Statewide Loan-to-Deposit Ratio” – relates to an individual bank and is the ratio of the bank’s loans to its deposits in a particular State where it has one or more covered interstate branches.

The Two Step Test

Beginning no earlier than one year after a covered interstate branch is acquired or established, the agency will determine

¹ This section fully incorporates the examination procedures issued under DSC RD Memo 03-006: Interstate Banking Examination Procedures for Section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994.

² See 12 CFR 25, 12 CFR 208, and 12 CFR 369.