

# **Federal Branches and Agencies**

## **Comptroller's Licensing Manual**

**Washington, D.C.  
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# Federal Branches and Agencies

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# Federal Branches and Agencies

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## Introduction

This booklet of the *Comptroller's Licensing Manual* (manual) consolidates the Office of the Comptroller of the Currency's (OCC) policies and procedures to facilitate the corporate activities of the federally licensed offices of foreign banks — federal branches, limited federal branches, and federal agencies. This booklet contains requirements and guidance concerning the operations of federal branches and agencies. Throughout this booklet, references to federal branches and agencies also include limited federal branches, unless otherwise noted.

The booklet:

- Provides a general background on legislative developments in recent years that have affected the corporate activities of foreign banks in the United States.
- Outlines specific corporate activities of foreign banks that require approval by or notice to the OCC and provides specific filing guidance.
- Specifies filings that may receive expedited review and describes criteria for an eligible filer and a streamlined application process.

The specific corporate activities covered in this booklet comprise:

- Establishment of an initial or additional federal branch or agency.
- Establishment of a federal branch or agency by acquisition, merger, consolidation, or similar transaction involving a foreign bank that has federally licensed offices.
- Conversion of a federal agency or a limited federal branch into a federal branch or from a state to federal license.
- Relocation of a federal branch or agency.
- Fiduciary powers of federal branches and agencies.
- Voluntary liquidation of federal branches or agencies.
- Establishment of the Capital Equivalency Deposit (CED)
- Other changes in activities or operations.

Foreign banks seeking or considering federal branch activities not specifically addressed in this booklet are encouraged to contact the OCC's Northeastern District Licensing division (LIC/NE) to discuss their plans. The OCC will advise foreign banks whether they should first send written proposals regarding the proposed activities to the OCC for consideration.

Each section in this booklet contains an introduction, key policies, a summary of the process and specific requirements, and procedures. Additionally, the Glossary and References sections are at the end of the booklet.

Users of this booklet also should refer to the following booklets of the manual, as applicable:

- “General Policies and Procedures” (GPP) booklet for a discussion of general filing instructions and procedures.
- “Public Notice and Comments” booklet for guidance on publishing a notice of an application, and, if applicable, procedures for responding to comments and hearings.
- “Background Investigations” booklet for guidance on biographical and financial reports.

## Background

### General

12 CFR 5 and 28 contain the procedural and substantive rules for foreign banks seeking to conduct banking activities in the United States through federal branches and agencies. Except as otherwise provided by the International Banking Act of 1978, as amended (IBA), other federal laws or regulations, or OCC policy, a federal branch or agency generally is authorized to operate under the same rights and privileges and subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations that apply to a national bank in the same location. Consequently, the OCC’s corporate activities, policies, procedures, and regulations relevant to national banks generally are applicable to federal branches and agencies, unless the OCC has provided otherwise.

### Statutory Framework

The IBA provides a federal licensing option to allow foreign banks to establish federal branches or federal agencies. The IBA requires foreign banks seeking to establish or expand their federally licensed U.S. operations to apply and obtain OCC approval.<sup>1</sup>

#### **Comprehensive Consolidated Supervision**

The IBA requires the OCC to consider whether a foreign bank seeking to establish an interstate federal branch or agency in the United States is subject to comprehensive consolidated supervision (CCS) in its home country. The Board of Governors of the Federal Reserve System (FRB) will conduct a CCS review when a

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<sup>1</sup>In certain instances, per OCC regulations, foreign banks may provide a notice instead of an application. These instances are detailed in this booklet in the appropriate section.

foreign bank first seeks to establish a presence in the United States, and the OCC will work closely with the FRB on this review. In determining whether a foreign bank is subject to CCS, the FRB will determine whether the foreign bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank in order to allow the home country supervisor to assess the foreign bank's overall financial condition and compliance with laws and regulations. If the FRB is unable to find that a foreign bank is subject to CCS, the FRB and OCC may, approve an application by the foreign bank if the home country supervisor is actively working to establish arrangements for CCS and all other factors in the application are consistent with approval. The CCS determination is one of several factors that the OCC considers when evaluating an application to establish a federal branch or agency. These factors are discussed in the Initial and Additional Establishments section of this booklet.

### **Restrictions on Deposit Taking and Deposit Insurance**

The IBA prohibits a foreign bank from establishing any branch in the United States that would accept domestic retail deposits of less than \$100,000.<sup>2</sup> However, uninsured branches of foreign banks are permitted to accept deposits of less than \$100,000 from limited sources, such as from individuals who are not citizens or residents of the United States at the time of the initial deposit.

### **Other Factors**

When approving an application to establish a federal branch or agency, the OCC must include in its approval any conditions imposed by the FRB.

Federal Deposit Insurance Corporation (FDIC) filings or approvals may be required for grandfathered, insured federal branches.

## **Activities Requiring Approval or Notice - Rules of General Applicability**

### **Approval**

A foreign bank must file an application with LIC/NE for prior approval if it plans to:

- Establish an initial or additional<sup>3</sup> federal branch or agency.

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<sup>2</sup>However, branches with federal deposit insurance that were in operation or had applied for deposit insurance prior to Dec. 19, 1991, are grandfathered and are permitted to retain deposit insurance, subject to certain restrictions.

<sup>3</sup>A prior notice is available for the establishment of an additional intrastate federal branch or agency if certain requirements are met. See also 12 CFR 28.12(e) and the Additional Intrastate Establishments section of this booklet.

- Establish<sup>4</sup> a federal branch or agency through merger, acquisition, consolidation, or similar transaction with another foreign bank.
- Convert a state branch or agency operated by a foreign bank, or a commercial lending company controlled by a foreign bank, into a federal branch or agency.
- Convert from federal agency to limited federal branch or federal branch.
- Relocate a federal branch or agency.
- Exercise fiduciary powers at a federal branch.
- Acquire or establish an operating subsidiary of a federal branch or agency, or conduct a new activity in an existing operating subsidiary of a federal branch or agency.<sup>5</sup>

## Notice

A foreign bank operating a federal branch or agency shall notify the OCC if it changes its:

- Identity from a federal branch to a limited federal branch or federal agency or from a limited federal branch to a federal agency.
- Corporate title.
- Control.
- Mailing address.
- Home state designation.

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<sup>4</sup>An "after-the-fact" notice or approval is available for acquisition of, or merger or consolidation with, another foreign bank, provided certain procedures are followed. Such procedures, if followed, allow a foreign bank proposing to establish a federal branch or federal agency through the acquisition of, or merger or consolidation with, a foreign bank having an office in the United States to proceed with the transaction before an application to establish the federal branch or agency has been filed or acted upon. See also see 12 CFR 28.12(g) and the Acquisitions section of this booklet.

<sup>5</sup>A notice procedure may be available for well-capitalized and well-managed foreign banks. See 12 CFR 5.34(e)(5)(iv) and (v). In certain situations, an application or notice may not be required. See 12 CFR 5.34(e)(5)(vi).



A notice also is required if a foreign bank operating a federal branch or agency:

- Converts to a state-licensed branch, agency, commercial lending company, or representative office.
- Voluntarily liquidates.
- Closes some, but not all, of its federal branch or agency offices.
- Makes a noncontrolling equity investment.

### **Filing with the FRB**

Nothing in this booklet relieves a foreign bank of any requirement to obtain the approval of the FRB as may be necessary under the FRB's Regulation K, 12 CFR 211.

The OCC is aware of the potential for causing a foreign bank applicant unnecessary burden because of the dual regulatory authority contained in the IBA. To avoid such duplication in transactions where both regulatory agencies require a filing, the OCC will accept a filing made by the applicant at the FRB in lieu of the one required in this booklet. The OCC reserves the right to require additional information at any time to reach an informed decision.

## **Exceptions to Rules of General Applicability**

The rules of general applicability contained in the GPP booklet of this manual apply generally to corporate filings involving federal branches and agencies with the following exceptions:

### **Expedited Review**

An eligible foreign bank qualifies for expedited review (see the Glossary section for a description of the eligible foreign bank) for the following corporate activities:

- Relocation or establishment of an additional federal branch or agency within the same state.
- Establishment of a de novo interstate branch.
- Conversions, as defined in 12 CFR 28.11(f) (4) or (f) (6).
- Establishment of a federal branch or agency through a merger, acquisition, consolidation, or similar transaction, with another foreign bank that has an office in the United States, if, among other things, the resulting bank is an eligible foreign bank.
- Fiduciary powers.

Upon receipt of a filing, the OCC verifies the applicant's eligibility for expedited review and promptly informs the applicant of its eligibility. The OCC may remove a filing from expedited review if the proposed transaction raises a significant supervisory, compliance, legal, or policy issue.

### **Streamlined Application**

The OCC generally permits a streamlined application to establish a federal branch or federal agency if applicant is an eligible foreign bank and meets the requirements for a notice and/or expedited review procedures. The OCC may request additional information and a complete application if the proposed transaction raises a significant supervisory, compliance, legal, or policy issue.

# Federal Branches and Agencies – Initial and Additional Establishments

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## Introduction

This section should be used with Licensing Manual booklets referenced in the introductory section of this booklet. Users also should refer to the “Fiduciary Powers” booklet whenever an initial or additional federal branch or agency engages in fiduciary activities.

## Applicability

The policies and procedures in this subsection apply to requests from foreign banks to establish an initial or additional federal branch or agency.

## Key Policies

### General

To establish and operate an initial or additional federal branch or agency, a foreign bank must submit an application or notice, as appropriate, and obtain approval from the OCC. A foreign bank applicant is required to publish notice of the application in a newspaper of general circulation in the community in which the foreign bank proposes to establish the federal branch or agency. The public comment period is 30 days, and interested parties may submit written comments during this period.

### Initial Branches and Agencies

To operate a federal branch or agency, a foreign bank must receive a license from the OCC. The OCC license for a federal branch is analogous to a national bank charter. The OCC issues a license to the initial federal branch or agency through a conditional approval. Subsequent federal branches or agencies can be established under the license of the initial office, just as additional branches of national banks are established under such bank’s charter.

A foreign bank maintaining multiple federal branch and agency licenses has the option of consolidating to a single license. The foreign bank may also elect to maintain multiple licenses. In either situation, the OCC will approve the additional federal branches or agencies under an existing license.

A foreign bank seeking to establish an initial federal branch or agency will submit an application. A foreign bank seeking fiduciary powers may submit the request and applicable information with the application. Requests for fiduciary powers are considered separately. A foreign bank receiving preliminary conditional approval, in writing, from the OCC to exercise fiduciary powers may not do so until the OCC also issues the branch trust certificate. The “Fiduciary Powers” section of this booklet contains specific information on this process.

## Additional Branches and Agencies

### **Intrastate Branches and Agencies**

An eligible foreign bank with a federal license may establish additional intrastate branches by filing a written notice with the OCC at least 30 days in advance of the establishment. [See the Glossary section for the definition of an eligible foreign bank.] Public notice requirements apply. Ineligible foreign banks seeking to establish an additional intrastate branch should follow the procedures for an initial establishment.

The notice includes a streamlined application detailing identifying information, financial information, and activities to be conducted at the office. Each branch exercising fiduciary powers must receive separate approval from the OCC. If applicable, notices should also contain a request for fiduciary powers and the requisite information. The "Fiduciary Powers" section of this booklet contains specific information on this process.

During the notice period, the OCC will review the information submitted and will request additional information if needed. If approved, the conditional approval letter will be issued on the 30<sup>th</sup> day after the OCC receives the filing, or, if the public comment period has not expired, at the end of the public notice period. However, the OCC, in its discretion, may require the foreign bank to file an application if the notification raises significant policy or supervisory concerns. For example, a foreign bank applicant submitting a notice detailing activities not currently conducted by the licensed branch may be asked to file an application. Applicants are advised to contact LIC/NE prior to submitting a notice if the activities or character of the additional branch differs in any way from the licensed branch. In rare cases, the OCC may waive the 30-day period if immediate action is required.

### **Interstate Branches and Agencies**

Eligible foreign banks seeking to establish an interstate federal branch or agency that does not raise any significant supervisory, compliance, legal, or other concerns may submit a streamlined application. The OCC deems the application conditionally approved as of the latter of the 45<sup>th</sup> day after the OCC receives the filing, or, 15 days after the close of the public comment period, unless the OCC notifies the foreign bank prior to that date that the filing is not eligible for expedited review. In the event that the FRB approves the application prior to the end of the OCC review period, the OCC approval is deemed final. Federal and state law governs proposals for interstate branching to the same extent that such laws apply to interstate branching for national banks.

As part of the review process for a foreign bank seeking to establish an additional federal branch or agency outside of its home state, the OCC must consider whether a foreign bank is subject to CCS.

After the OCC approves the de novo interstate branch, the bank is considered located in that state and the foreign bank may use the intrastate notification procedures for any additional branches.

## Summary of Process

### General

In connection with a foreign bank's interest in opening either an initial federal branch or agency, or an additional federal branch or agency, the OCC's licensing process generally consists of three phases: (1) prefiling discussions; (2) filing and processing and deciding the application; and, (3) if approved, opening the federal branch or agency.

### Prefiling Discussions

LIC/NE conducts a prefiling meeting with a foreign bank applicant interested in establishing an initial or additional federal branch or agency to discuss the OCC's licensing policies and filing requirements. Upon request, the OCC may forgo the prefiling meeting for foreign bank applicants who have existing federal branches, agencies, or national bank subsidiaries and previous banking experience in the United States.

### Application Filing, Processing, and Decision

#### Filing

After the prefiling meeting, the foreign bank files the application or notice and publishes notice of the proposal.

#### Processing

In evaluating applications to open an additional federal branch or agency, the OCC will draw heavily on its own supervisory experience with the applicant foreign bank and that of other state, federal, and foreign bank supervisors.

#### Decision

In an initial or additional establishment, the OCC generally considers:

- Effect of the proposed branch or agency on competition in U.S. domestic and foreign commerce.
- Financial and managerial resources and future prospects of the applicant foreign bank and the proposed federal branch or agency.
- Convenience and needs of the community to be served.
- Compliance of the foreign bank and its U.S. affiliates with applicable laws, including interstate branching requirements.
- Submission of required information sufficient for OCC assessment.

- Representations signed by authorized parties that the foreign bank will adhere to conditions that provide assurances that the OCC will have access to information on the operations or activities of the foreign bank or any of its affiliates necessary to determine and enforce compliance with the IBA and other applicable federal banking statutes.
- Whether the foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor, or whether the FRB has determined that the home country supervisor is working actively toward CCS.
- Approval or consent from the foreign bank's home country supervisor for establishment of an initial or additional federal branch or agency.

The OCC also considers whether adequate controls for the detection of money laundering are in place in the home country and at the foreign bank.

## Opening a Federal Branch or Agency

Following preliminary conditional approval, the foreign bank establishes its banking premises and its CED account (see the Capital Equivalency Deposit section of this booklet). At least two weeks before the federal branch or agency is scheduled to open for business, the OCC conducts a pre-opening examination to verify that the federal branch or agency has met all requirements for commencing the business of banking in the United States. A license is granted if the federal branch or agency has met the requirements for opening. If the examination discloses numerous exceptions or significant deviations from the originally approved proposal, the opening may be delayed or the original preliminary conditional approval may be revoked.

## Revocation of Preliminary Conditional Approval

The OCC generally does not look favorably on a proposal or a series of proposals that would alter materially the plans set forth in an application that has received preliminary conditional approval. The OCC may revoke preliminary conditional approval if, after receipt of an approval and prior to opening an initial or additional federal branch or agency, changes occur that significantly alter the plans detailed in the application. Proposed changes that normally would require filing another application will be considered significant. The OCC will revoke preliminary approval if it discovers material violations of law, misrepresentations, or any fraudulent activity by the applicant foreign bank officers or directors.

## Specific Requirements

### Identification of Management Team

The OCC considers the selection of a qualified general manager to be one of the foreign bank applicant's most important decisions affecting the success of an initial federal branch or agency. The general manager must have experience, competence, willingness, and the ability to be active in directing the affairs of the proposed federal branch or agency in a safe, sound, and legal manner.

Provision of the name, experience, and qualifications of the proposed general manager and other officers of the proposed federal branch or agency is necessary for the OCC's evaluation of the application. The OCC will perform background investigations, as deemed appropriate, to determine if the proposed persons possess satisfactory banking experience and integrity for the positions proposed.

In most cases, applicant does not need to submit extensive management information with applications for additional branches or agencies. The OCC looks to the leadership of the existing licensed branch(es) or agency(ies) for management of the affairs of any additional branches or agencies. Exceptions to this policy are applications or notices accompanied by requests for fiduciary powers. Additional management information may be appropriate when another office seeks to engage in specialized activities or activities not currently performed or performed minimally by the licensed federal branch(es) or agency(ies).

### Field Investigations

The OCC normally does not conduct a field investigation for an additional federal branch or agency application. The OCC may conduct a field investigation for an initial federal branch or agency application from a foreign bank not known to the OCC or experienced in banking in the United States under a state license. The OCC will determine whether to conduct a field investigation on a case-by-case basis.

As part of its field investigation, the OCC may review relevant materials, interview bank management, explore matters related to the foreign bank's operations in the United States and abroad, and meet with management to discuss findings. The findings from a field investigation, if conducted, are important in the OCC's overall analysis and review of the application.

### Fiduciary Powers

Applicant must obtain specific prior OCC authorization to exercise fiduciary powers. If applicant wishes to exercise fiduciary powers at the federal branch (a federal agency is not permitted by law to exercise fiduciary powers), a letter of intent to exercise such powers must be submitted with the application (see "Fiduciary Powers" section of this booklet). Questions regarding fiduciary activities at federal branches should be directed to LIC/NE.

## CED

A federal branch is required to establish a CED account before opening for business.  
(See the Capital Equivalency Deposit section of this booklet).



## Procedures: Initial Establishments

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### Prefiling

#### Applicant

1. Requests information about establishing an initial federal branch or agency from LIC/NE.

#### LIC/NE

2. Enters inquiry into the Corporate Applications Information System (CAIS).
3. If necessary, holds exploratory meeting or conference call with applicant.
4. Forwards information about the establishment process and refers a foreign bank that requests instructions to the appropriate subsections of this booklet and to other relevant booklets of the *Comptroller's Licensing Manual*.

#### Applicant

5. Reviews information and, if necessary, requests a prefiling meeting.

#### LIC/NE

6. Schedules a prefiling meeting with representatives of the foreign bank. Invites Director of International Banking Supervision – Field Operations (hereafter referred to as Supervisory Office or SO) and District Counsel. Notifies Director of International Banking Supervision - Headquarters (IBS HQ) and the Headquarters Licensing (HQ LIC) specialist.
7. Consults with the Federal Reserve Board or respective Federal Reserve Bank, to determine if the FRB has any preliminary issues with the proposal.
8. At the meeting, provides the following general information, as applicable, to the foreign bank:
  - The OCC's and the FRB's role in the licensing of federal branches and agencies.
  - Key policies and specific requirements affecting the licensing process.
  - How to file the application and what to expect during processing from the OCC.

- Common problems associated with initial federal branch and agency applications.
  - Standard conditions for approval.
  - The OCC's ongoing supervision of federal branches and agencies.
9. In coordination with SO, solicits the following information about the foreign bank:
- Its U.S. and global operations.
  - How the proposed federal branch or agency will fit into the bank's global strategy.
  - Any potential impediments to accessing information about the foreign bank, as deemed necessary, to supervise the federal branch or agency.

## Applicant

10. Provides information about the foreign bank's condition and qualifications. Gives an overview of the proposal with particular emphasis on any unique aspects.

## LIC/NE

11. Answers questions posed by those attending the meeting. If an answer requires further research or discussion among IBS HQ, LIC/NE, SO, HQ LIC, and/or District Counsel, informs the representative that a response will be forthcoming following the meeting.
12. Prepares a memorandum of the meeting and retains it in a pending file. Forwards a copy of the memorandum to SO.
13. If the prefiling discussion reveals significant policy, legal, or supervisory issues, coordinates with HQ LIC, SO, and others, as appropriate, to discuss processing.
14. Updates CAIS.

## Filing

### Applicant

1. Submits, with return receipt requested, one original and four copies of the application with supporting information to LIC/NE. If applicant plans fiduciary powers, submit a letter of intent with the application (see the Fiduciary Powers section in this booklet).
2. Publishes a notice of the application in a newspaper of general circulation in the community in which the proposed federal branch or agency will be located. (Also refer to the "Public Notice and Comments" booklet.)

## Review

### LIC/NE

3. Initiates and enters information into CAIS.
4. Closes out the inquiry in CAIS and relates it to the new application filing.
5. Establishes the official file to maintain all original documents relating to the application.
6. Initiates background checks as appropriate (see "Background Investigations" booklet).
7. Reviews the application, relevant information about the foreign bank, including its ownership, subsidiaries, and financial condition to determine that the filing contains all information necessary to reach a decision. If the application is incomplete, requests that the information from the representative be provided by a specific due date.
8. Acknowledges receipt of the application within five business days of receipt.
9. Forwards a copy of the application or notice to District Counsel and other OCC divisions, as deemed appropriate, and requests comments to be provided within 15 days. Of specific interest are any significant legal or other issues, including interstate branching issues that would prevent the application or notice from moving forward.
10. Notifies designated IBS HQ analyst. Requests that IBS HQ analyst send notice of the filing and a request for comments to applicant's home country supervisor. Requests that the supervisor:
  - Provide a brief description of the bank regulatory system in the country of incorporation of the applicant bank.

- Discuss its powers and functions.
  - Discuss the extent to which it supervises or regulates the bank on a comprehensive consolidated basis.
  - Discuss whether the home country has or is developing a legal regime to address money laundering or is participating in multilateral efforts to combat money laundering.
  - If no information-sharing agreement is in place with the foreign supervisor, discuss procedures for sharing supervisory information with foreign supervisors and their supervisors' confidentiality policies.
- 
- Discuss the frequency and scope of direct or indirect supervisory examinations of banks in its country.
  - Discuss the functions of the central bank and its relationship to private/public banks.
  - State that applicant is duly organized and existing under local law and is authorized to transact banking business.
  - Grant permission for applicant to operate a federal branch or agency, provide a statement that such permission is not required, or recommend that the OCC not approve the application based on supervisory concerns.

If the OCC is familiar with the home country supervisor and its approach to supervision, portions of this step may be omitted.

11. Forwards a copy of the application or notice to SO and requests that it provide comments within 15 days. Of specific interest are SO's comments about potential supervisory issues or the need to conduct a field investigation.
12. Requests a field investigation and determines its scope.
13. Forwards the field investigation request to SO and requests that it assign a national bank examiner to conduct the field investigation. Also notifies the representative that it will conduct a field investigation (see Field Investigation procedures)
14. Analyzes the application or notice and assesses:
  - Effect of the proposed federal branch or agency on competition and on the U.S. domestic and foreign commerce.
  - Financial and managerial resources, proposed management, and future prospects of the applicant foreign bank and the proposed federal branch or agency.

- Convenience and needs of the community to be served.
- Legality of the proposal.
- Reasonableness of the operating plan.
- Whether the foreign bank and its U.S. affiliates comply with applicable U.S. and foreign laws.
- Whether the foreign bank has furnished to the OCC:
  - Information required to assess the application adequately.
  - Adequate assurances that the OCC will have access to necessary information on the operations or activities of the foreign bank or any of its affiliates to determine and enforce compliance with the IBA and other applicable federal banking statutes.
- Whether the foreign bank is subject to comprehensive consolidated supervision or regulation by its home country supervisor, or whether the FRB has determined that the home country supervisor is working actively toward CCS.
- Recommendation or consent of the home country supervisor.

The OCC also considers whether adequate controls for the detection of money laundering are in place in the home country and at the foreign bank.

15. If applicable, receives and reviews the field investigation report.

## **Public Comments and Hearings**

16. If copies of the application are requested, public comments filed, or a hearing requested, refers to the "Public Notice and Comments" booklet and determines whether the comments are material. Proceeds as appropriate.

## **Decision**

17. Contacts the FRB to discuss any issues about the application and any conditions contemplated by the FRB for its approval.
18. Prepares confidential memorandum and decision letter recommending a decision to the delegated official. Ensures that Director of IBS and Deputy Comptroller concur with the proposed decision.

19. After the FRB has issued its decision on the application, and all conditions contained in the FRB's Board Order have been included in the OCC's decision letter, forwards the official file to HQ LIC for decision.
20. Goes to step 25.

## HQ LIC

21. Makes CAIS entries.
22. Reviews the file and all relevant information; solicits comments from other OCC divisions, as appropriate; makes a recommendation; and forwards the official file to the appropriate official for decision.
23. Notifies LIC/NE of the decision.
24. Makes CAIS entries and returns the official file to LIC/NE.

## LIC/NE

25. In coordination with SO, notifies applicant foreign bank, IBS HQ, and the FRB by phone and letter of the decision. If applicable, sends a copy of the decision letter to any interested parties. Also, sends a letter to the secretary of the Director, Licensing Activities, for publication.
26. Forwards to SO a copy of the confidential memorandum, decision letter (including any attachments), updated CAIS comments, and any additional material highlighting supervisory or licensing concerns.
27. Makes CAIS entries.
28. If denied, reviews the file for completeness and forwards it to Central Records.

## Organization

### Applicant

29. Submits three originally signed CED agreements to LIC/NE (see the Capital Equivalency Deposit section of this booklet).

### LIC/NE

30. Reviews the original CED agreement and approves the depository bank. Executes each of three CED agreements. Returns two copies of the CED agreement for the foreign bank's and depository bank's files. Retains one copy for OCC's official file.

## Preopening Review

### Applicant

31. Informs LIC/NE at least 45 days in advance of the desired opening date.

### LIC/NE

32. Contacts SO to schedule pre-opening exam and provides SO scope memo.

### SO

33. Performs a pre-opening examination to verify that:
  - Appropriate CED is established in the approved depository bank.
  - Proper controls for detection of money laundering are in place.
  - Minimum policies and procedures have been adopted.
  - All other conditions of the preliminary approval have been satisfied and that the federal branch or agency is ready to open for business.
34. Informs the foreign bank of any matters to be resolved prior to opening the federal branch or agency.
35. Provides LIC NE with a copy of the pre-opening exam report.

## Authorization

### Applicant

36. If the OCC raised issues at the pre-opening review, notifies LIC/NE when such matters have been resolved.

### LIC/NE

37. Notifies the foreign bank by telephone and official letter that it is authorized to open. Forwards the federal branch or agency license to the foreign bank. Requests that IBS HQ send an individual notice of licensing to the bank's home country supervisor.

## Applicant

38. Notifies LIC/NE of the opening by telephone on the first day of operations.

## Close Out

### LIC/NE

39. Makes CAIS entries.
40. Reviews the file for completeness and forwards it to Central Records.



## Procedures: Initial Establishments

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### Field Investigation

#### LIC/NE

1. Requests SO to assign a national bank examiner (NBE) to conduct a field investigation.
2. Ensures that the NBE has received a copy of the application. Notes any areas highlighted by LIC/NE, IBS HQ, SO, or other OCC divisions, for particular attention.
3. Provides the Examiner-in-Charge with a scope memo and instructions.

#### NBE

4. Calls the representative to schedule the investigation and the interviews of persons identified by SO or LIC/NE.
5. Prior to conducting the investigation, reviews the application and areas noted as warranting particular attention.
6. Notifies SO and LIC/NE of the start date and determines the date for submission of the completed letter report. If a trip to the applicant foreign bank's home country is necessary, coordinates with IBS HQ and LIC/NE and factors this into the date for completion of the report.
7. Interviews the identified persons to determine each person's:
  - Proposed role (specifically) in the proposed federal branch or agency and qualifications for that role.
  - Knowledge of the proposal; that is, proposed customers and services, proposed market area, competition, and financial projections.
  - Strengths and weaknesses.
  - Knowledge of any information that might affect adversely the potential success of the proposed federal branch or agency.
  - Insight into the ownership structure and principal shareholders of the foreign bank applicant.

8. In discussing a person's qualifications and role in the proposed federal branch or agency, may discuss the following matters, or any other matters, as deemed appropriate:
- Management and business experience.
    - Number of people supervised.
    - Direct hiring/firing authority in current/previous positions.
    - Type of management reports that will be needed to keep the head office informed.
  - Credit management experience.
    - Knowledge of the elements of good lending, insider activities, and specific lending areas (for example, commercial, retail, and real estate).
    - Level of loan review and collection experience.
    - Level of loan support and review function experience.
  - Compliance experience related to lending.

If discussions indicate a person's weakness in the credit area, additional specific questions may be asked, such as the components used in calculating the annual percentage rate; important points relative to compliance with Regulation B; and when a right of rescission is required.
  - Funds management experience.
    - Knowledge of the definition of liquidity and its purpose.
    - Knowledge of the head office's strategic funding plan, including the proposed federal branch or agency's role.
    - Understanding of legal restrictions for securities purchases.
    - Understanding of net due to/from positions.
  - Marketing experience.
  - Bank Secrecy Act and Currency Transaction Reporting requirements.
9. Meets with foreign bank management representatives at the conclusion of the investigation to inform them of the findings. The meeting includes a discussion of deficiencies and appropriate suggestions but does not

render a conclusion on the likelihood of an approval of the pending application.

10. Prepares and forwards the written report to LIC/NE, copying SO, within the decided time period. The report should be in memorandum format, summarizing briefly the findings and conclusions and addressing specifically any problems or areas of concern. The report should also include a recommendation on the dollar amount of the CED if determined that it should be higher than the required minimum.
11. Does not inform anyone outside the OCC of the contents of the field investigation report.
12. Retains all investigation work papers and a copy of the written report.

## Procedures: Additional Intrastate Establishments

### Prefiling

#### Applicant

1. Requests information about establishing an additional intrastate federal branch or agency from LIC/NE.

#### LIC/NE

2. Enters inquiry into CAIS.
3. If necessary, holds exploratory meeting or conference call with applicant.
4. Forwards information about the establishment process and refers a foreign bank that requests instructions to the appropriate subsections of this booklet and to other relevant booklets of the *Comptroller's Licensing Manual*.

#### Applicant

5. Reviews information and, if necessary, requests a prefiling meeting.

#### LIC/NE

6. Schedules a prefiling meeting with representatives of the foreign bank. Invites SO and District Counsel. Notifies IBS HQ analyst and HQ LIC specialist.
7. Determines if the applicant is an eligible foreign bank.
8. Consults with FRB to determine if the FRB has any preliminary issues with the proposal.
9. At the meeting, provides the following general information, as applicable, to the foreign bank:
  - Key policies and specific requirements affecting the licensing process.
  - Whether the applicant is an eligible foreign bank and may qualify for a 30-day prior written notice (30-day notice).
  - How to file the notice and what to expect during processing from the OCC.

- Common problems associated with additional intrastate federal branch and agency applications.
  - Standard conditions for approval.
  - The OCC's ongoing supervision of federal branches.
10. In coordination with SO, solicits the following information about the foreign bank:
- Its U.S. and global operations.
  - How the proposed federal branch or agency will fit into the bank's global strategy.
  - Any potential impediments to accessing information about the foreign bank, as deemed necessary, to supervise the federal branch or agency.

## Applicant

11. Provides information about the foreign bank's condition and qualifications and an overview of the proposal with particular emphasis on any unique aspects.
12. For eligible foreign banks, if appropriate, requests permission to file a 30-day notice for an additional intrastate Federal branch. Provides written justification for the request either at the time of the meeting or shortly thereafter.
13. For eligible foreign banks, if immediate action is required, requests a waiver of the 30-day notice period to establish an additional intrastate branch.

## LIC/NE

14. Answers questions posed by those attending the meeting. If an answer requires further research or discussion among IBS HQ, LIC/NE, SO, HQ LIC, and/or District Counsel, informs the representative that a response will be forthcoming following the meeting.
15. Prepares a memorandum of the meeting and retains it in a pending file. Forwards a copy of the memorandum to SO.
16. If the pre-filing discussion reveals significant policy, legal, or supervisory issues, coordinates with HQ LIC, SO, and others, as appropriate, to discuss processing.
17. If applicable, reviews request for waiver of 30-day notice requirement for an additional branch.

18. If applicable, reviews the request for a 30-day notice for an additional Federal branch. As part of this review, analyst considers:
  - Whether the applicant is an eligible foreign bank.
  - Whether the additional branch will engage in activities or operations not currently performed by existing branches or agencies.
19. If applicable, prepares e-mail on whether a 30-day notice is acceptable or whether an emergency exists to warrant a waiver of the 30-day requirement.
20. If applicable, obtains concurrence from appropriate delegated official on acceptability of a 30-day notice or waiver of such notice.
21. Responds to the foreign bank regarding any request for a 30-day notice, forwards a copy to SO, and retains a copy in the pending file.
22. Updates CAIS.

## **Filing**

### **Applicant**

1. If applicant is an eligible foreign bank and has previously received permission from the OCC, submits one original and four copies of the notice with supporting information to LIC/NE 30 days prior to establishment. Also publishes a notice of the application in a newspaper of general circulation in the community in which the proposed federal branch or agency will be located. The applicant should publish the notice at least 30 days prior to establishment. (Also, refer to the "Public Notice and Comments" booklet.)  
  
If applicant does not qualify for a notice, follows application procedures for initial federal branches. If applicant plans to exercise fiduciary powers, submits a letter of intent with the notice.

## **Review**

### **LIC/NE**

2. Initiates and enters information in CAIS.
3. Closes out the inquiry in CAIS and relates it to the new application filing.
4. Establishes the official file to maintain all original documents relating to the application.

5. Initiates background checks as appropriate (see "Background Investigations" booklet).
6. Reviews the notice, relevant information about the foreign bank, including its ownership, subsidiaries and financial condition, to determine that the filing contains all information necessary to reach a decision. If the notice is incomplete, requests that the information from the representative be provided by a specific due date.
7. Determines that the applicant bank qualifies for a 30-day notice if such a determination was not made during the prefiling phase. If the foreign bank is not qualified to file a notice, notifies the representative that the application is being removed from expedited review and requests that an application be submitted within a specified time period.
8. Acknowledges receipt of the notice within five business days of receipt.
9. Forwards a copy of the notice to District Counsel and other OCC divisions, as deemed appropriate, and requests comments be provided within 15 days. Of specific interest is if there are any significant legal or other issues that would prevent the notice from moving forward.
10. Notifies designated IBS HQ analyst. Requests that IBS HQ analyst send notice of the filing and a request for comments to the applicant's home country supervisor. Requests that the supervisor:
  - Provide a brief description of the bank regulatory system in the country of incorporation of the applicant bank.
  - Discuss its powers and functions.
  - Discuss the extent to which it supervises or regulates the bank on a comprehensive consolidated basis.
  - Discuss whether the home country has or is developing a legal regime to address money laundering or is participating in multilateral efforts to combat money laundering.
  - If no information-sharing agreement is in place with the foreign supervisor, discuss procedures for sharing supervisory information with foreign supervisors and their supervisors' confidentiality policies.
  - Discuss the frequency and scope of direct or indirect supervisory examinations of banks in its country.
  - Discuss the functions of the central bank and its relationship to private/public banks.
  - State that the applicant is duly organized and existing under local law and is authorized to transact banking business.

- Grant permission for the applicant to operate a federal branch or agency, provide a statement that such permission is not required, or recommend that the OCC not approve the application based on supervisory concerns.

If the OCC is familiar with the home country supervisor and its approach to supervision, portions of this step may be omitted.

11. Forwards a copy of the notice to SO and requests that it provides comments within 15 days. Of specific interest are SO's comments about potential supervisory issues or the need to conduct a field investigation.
12. Decides to conduct a field investigation if any of the following apply:
  - The applicant is not known to the OCC.
  - The applicant was previously requested to terminate its activities in the United States by either the OCC or the FRB.
  - The applicant discloses in the application issues best resolved through a field investigation.
  - SO raises issues with the proposal that warrant a field investigation.
  - Proposed activities of the additional branch vary significantly from existing U.S. operations.
13. Requests a field investigation and determines its scope.
14. Forwards the field investigation request to SO and requests that it assign a national bank examiner to conduct the field investigation. Also notifies the representative that it will conduct a field investigation (see Field Investigation procedures).
15. Analyzes the notice and assesses:
  - Effect of the proposed federal branch or agency on competition and on the U.S. domestic and foreign commerce.
  - Financial and managerial resources, proposed management, and future prospects of the applicant foreign bank and the proposed federal branch or agency.
  - Convenience and needs of the community to be served.
  - Legality of the proposal.
  - Reasonableness of the operating plan.



- Whether the foreign bank and its U.S. affiliates comply with applicable U.S. and foreign laws.
- Whether the foreign bank has furnished to the OCC:
  - Information required to assess the application adequately.
  - Adequate assurances that the OCC will have access to necessary information on the operations or activities of the foreign bank or any of its affiliates to determine and enforce compliance with the IBA and other applicable federal banking statutes.
- Whether the foreign bank is subject to comprehensive consolidated supervision or regulation by its home country supervisor, or whether the FRB has determined that the home country supervisor is actively working toward CCS.
- Recommendation or consent of the home country supervisor.

The OCC also considers whether adequate controls for the detection of money laundering are in place in the home country and at the foreign bank.

16. If applicable, receives and reviews the field investigation report.
17. If supervisory issues are raised or other concerns are outstanding, notifies the applicant by phone and letter that the filing is being removed from expedited review and states the reasons for the removal. Request additional information as necessary.

## Public Comments and Hearings

18. If copies of the application are requested, public comments filed, or a hearing requested, refers to the "Public Notice and Comments" booklet and determines whether the comments are material. Proceeds as appropriate.

## Decision

19. Contacts the FRB to discuss any issues about the notice and any conditions contemplated by the FRB for its approval.
20. Prepares confidential memorandum and decision letter recommending a decision to the delegated official. Ensures that Director of IBS and Deputy Comptroller concur with the proposed decision.
21. Decides the notice within statutory time frames under delegated authority or forwards the official file to HQ LIC for decision. A notice for an additional intrastate Federal branch must be decided on the 30<sup>th</sup> day after the OCC receives the filing or on the expiration of the public comment

period, unless the OCC notifies the foreign bank prior to that date that the filing is no longer eligible for expedited review.

22. Goes to step 27.

## HQ LIC

23. Makes CAIS entries.
24. Reviews the file and all relevant information; solicits comments from other OCC divisions, as appropriate; makes a recommendation; and forwards the official file to the appropriate official for decision.
25. Notifies LIC/NE of the decision.
26. Makes CAIS entries and returns the official file to LIC/NE.

## LIC/NE

27. In coordination with SO, notifies the applicant foreign bank, IBS HQ, and the FRB by phone and letter of the decision. If applicable, sends a copy of the decision letter to any interested parties. Also, sends a letter to the secretary of the Director, Licensing Activities, for publication.
28. Forwards to SO a copy of the confidential memorandum, decision letter (including any attachments), updated CAIS comments, and any additional material highlighting supervisory or licensing concerns.
29. Makes CAIS entries.
30. If denied, reviews the file for completeness and forwards it to Central Records.

## Organization

### Applicant

31. Submits three originally signed CED agreements to LIC/NE (see the Capital Equivalency Deposit section of this booklet).

### LIC/NE

32. Reviews the original CED agreement and approves the depository bank. Executes each of three CED agreements. Returns two copies of the CED agreement for the foreign bank's and depository bank's files. Retains one copy for the OCC's official file.

## **Preopening Review**

### **Applicant**

33. Informs LIC/NE at least 45 days in advance of the desired opening date.

### **LIC/NE**

35. Contacts SO to schedule pre-opening exam and provides SO scope memo.

### **SO**

36. Performs a pre-opening examination to verify that:
  - Appropriate CED is established in the approved depository bank.
  - Proper controls for detection of money laundering are in place.
  - Minimum policies and procedures have been adopted.
  - All other conditions of the preliminary approval have been satisfied and that the federal branch or agency is ready to open for business.
37. Informs the foreign bank of any matters to be resolved prior to opening the federal branch or agency.
38. Provides LIC/NE with a copy of the pre-opening exam report.

## **Authorization**

### **Applicant**

39. If the OCC raised issues at the preopening review, notifies LIC/NE in writing when such matters have been resolved.

### **LIC/NE**

40. Notifies the foreign bank by telephone and official letter that it is authorized to open. Forwards the federal branch or agency license to the foreign bank. Requests that IBS HQ send an individual notice of licensing to the bank's home-country supervisor.

## Applicant

41. Notifies LIC/NE of the opening by telephone on the first day of operations.

## Close Out

### LIC/NE

42. Makes CAIS entries.
43. Reviews the file for completeness and forwards it to Central Records.

# Procedures: Additional Interstate Establishments

## Prefiling

### Applicant

1. Requests information about establishing an additional interstate federal branch or agency from LIC/NE.

### LIC/NE

2. Enters inquiry into CAIS.
3. If necessary, holds exploratory meeting or conference call with applicant.
4. Forwards information about the establishment process and refers a foreign bank that requests instructions to the appropriate subsections of this booklet and to other relevant booklets of the *Comptroller's Licensing Manual*.

### Applicant

5. Reviews information and, if necessary, requests a prefiling meeting.

### LIC/NE

6. Schedules a prefiling meeting with representatives of the foreign bank. Invites SO and District Counsel. Notifies IBS HQ analyst and HQ LIC specialist.
7. Determines if the applicant is an eligible foreign bank.
8. Consults with FRB to determine if the FRB has any preliminary issues with the proposal.
9. At the meeting, provides the following general information, as applicable, to the foreign bank:
  - The OCC's and the FRB's role in the licensing of federal branches and agencies.
  - Key policies and specific requirements affecting the licensing process.
  - Whether the applicant is an eligible foreign bank and qualifies for expedited approval procedures and a streamlined application.

- How to file the application and what to expect during processing from the OCC.
  - Common problems associated with additional interstate federal branch and agency applications.
  - Standard conditions for approval.
  - The OCC's ongoing supervision of federal branches.
10. In coordination with SO, solicits the following information about the foreign bank:
- Its U.S. and global operations.
  - How the proposed federal branch or agency will fit into the bank's global strategy.
  - Any potential impediments to accessing information about the foreign bank, as deemed necessary, to supervise the federal branch or agency.

## Applicant

11. Provides information about the foreign bank's condition and qualifications and an overview of the proposal with particular emphasis on any unique aspects.
12. For eligible foreign banks, if appropriate, requests permission to file a streamlined application under expedited time frames.

## LIC/NE

13. Answers questions posed by those attending the meeting. If an answer requires further research or discussion among IBS HQ, LIC/NE, SO, HQ LIC, and/or District Counsel, informs the representative that a response will be forthcoming following the meeting.
14. Prepares a memorandum of the meeting and retains it in a pending file. Forwards a copy of the memorandum to SO.
15. If the prefiling discussion reveals significant policy, legal, or supervisory issues, coordinates with HQ LIC, SO, and others, as appropriate, to discuss processing.
16. If applicable, reviews the request for streamlined application and expedited approval procedures. As part of this review, analyst considers:
- Whether the applicant is an eligible foreign bank.

- Whether the additional interstate branch will engage in activities or operations not currently performed by existing branches or agencies.
17. If applicable, prepares e-mail on whether a streamlined application and expedited approval procedures are acceptable.
  18. If applicable, obtains concurrence from Director for District Licensing on acceptability of streamlined application and expedited approval procedures.
  19. Responds to the foreign bank regarding any request for a streamlined application and expedited approval procedures, forwards a copy to SO, and retains a copy in the pending file.
  20. Updates CAIS.

## **Filing**

### **Applicant**

1. If applicant is an eligible foreign bank, submits one original and four copies of the application with supporting information at least 45 days prior to establishment. If applicant has previously received permission from the OCC, submits a streamlined application. If applicant does not qualify for expedited timeframes, the OCC will notify the applicant that the application will be processed under standard time frames. If fiduciary powers are planned, a letter of intent should be submitted with the application.
2. Publishes a notice of the application in a newspaper of general circulation in the community in which the proposed federal branch or agency will be located. (Also, refer to the "Public Notice and Comments" booklet.)

## **Review**

### **LIC/NE**

3. Initiates and enters information into CAIS.
4. Closes out the inquiry in CAIS and relates it to the new application filing.
5. Establishes the official file to maintain all original documents relating to the application.
6. Initiates background checks as appropriate (see "Background Investigations" booklet).

7. Reviews the application, relevant information about the foreign bank, including its ownership, subsidiaries and financial condition, to determine that the filing contains all information necessary to reach a decision. If the application is incomplete, requests that the information from the representative be provided by a specific due date.
8. If filed under streamlined application procedures, determines that the applicant bank qualifies if such a determination was not made during the prefiling phase. If the foreign bank is not qualified for a streamlined application, notifies the representative and requests that any omitted portions of the application be submitted within a specified time period.
9. Acknowledges receipt of the application within five business days of receipt.
10. Forwards a copy of the application or notice to District Counsel and other OCC divisions, as deemed appropriate, and requests comments be provided within 15 days. Of specific interest are any significant legal or other issues, including interstate branching issues that would prevent the application or notice from moving forward.
11. Notifies designated IBS HQ analyst. Requests that IBS HQ analyst send notice of the filing and a request for comments to the applicant's home country supervisor. Requests that the supervisor:
  - Provide a brief description of the bank regulatory system in the country of incorporation of the applicant bank.
  - Discuss its powers and functions.
  - Discuss the extent to which it supervises or regulates the bank on a comprehensive consolidated basis.
  - Discuss whether the home country has or is developing a legal regime to address money laundering or is participating in multilateral efforts to combat money laundering.
  - If no information-sharing agreement is in place with the foreign supervisor, discuss procedures for sharing supervisory information with foreign supervisors and their supervisors' confidentiality policies.
  - Discuss the frequency and scope of direct or indirect supervisory examinations of banks in its country.
  - Discuss the functions of the central bank and its relationship to private/public banks.
  - State that the applicant is duly organized and existing under local law and is authorized to transact banking business.



- Grant permission for the applicant to operate a federal branch or agency, provide a statement that such permission is not required, or recommend that the OCC not approve the application based on supervisory concerns.

If the OCC is familiar with the home country supervisor and its approach to supervision, portions of this step may be omitted.

12. Forwards a copy of the application or notice to SO and requests that it provide comments within 15 days. Of specific interest are SO's comments regarding potential supervisory issues or the need to conduct a field investigation.
13. Decides to conduct a field investigation if any of the following apply:
  - The applicant is not known to the OCC.
  - The applicant was previously requested to terminate its activities in the United States by either the OCC or the FRB.
  - The applicant discloses in the application issues best resolved through a field investigation.
  - SO raises issues with the proposal that warrant a field investigation.
  - Proposed activities of the additional branch vary significantly from existing U.S. operations.
14. Requests a field investigation and determines its scope.
15. Forwards the field investigation request to SO and requests that it assign a national bank examiner to conduct the field investigation. Also notifies the representative that it will conduct a field investigation (see Field Investigation procedures).
16. Analyzes the application or notice and assesses:
  - Effect of the proposed federal branch or agency on competition and on the U.S. domestic and foreign commerce.
  - Financial and managerial resources, proposed management, and future prospects of the applicant foreign bank and the proposed federal branch or agency.
  - Convenience and needs of the community to be served.
  - Legality of the proposal.
  - Reasonableness of the operating plan.

- Whether the foreign bank and its U.S. affiliates comply with applicable U.S. and foreign laws.
  - Whether the foreign bank has furnished to the OCC:
    - Information required to assess the application adequately.
    - Adequate assurances that the OCC will have access to necessary information on the operations or activities of the foreign bank or any of its affiliates to determine and enforce compliance with the IBA and other applicable federal banking statutes.
  - Whether the foreign bank is subject to comprehensive consolidated supervision or regulation by its home country supervisor, or whether the FRB has determined that the home country supervisor is working actively toward CCS.
  - Recommendation or consent of the home country supervisor.
- The OCC also considers whether adequate controls for the detection of money laundering are in place in the home country and at the foreign bank.

17. If applicable, receives and reviews the field investigation report.
18. If supervisory or other concerns are outstanding, notifies the applicant by phone and letter that the filing is being removed from expedited review. Request additional information as necessary.

## Public Comments and Hearings

19. If copies of the application are requested, public comments filed, or a hearing requested, refers to the "Public Notice and Comments" booklet and determines whether the comments are material. Proceeds as appropriate.

## Decision

20. Contacts the FRB to discuss any issues about the application and any conditions contemplated by the FRB for its approval.
21. Prepares confidential memorandum and decision letter recommending a decision to the delegated official. Ensures that Director of IBS and Deputy Comptroller concur with the proposed decision.
22. Decides the application within applicable time frames under delegated authority or forwards the official file to HQ LIC for decision. An expedited application for an interstate branch must be decided 15 days

after the close of the public comment period or the 45<sup>th</sup> day after the filing is received, whichever is later, unless the OCC notifies the foreign bank prior to that date that the filing is no longer eligible for expedited review.

23. Goes to step 28.

## HQ LIC

24. Makes CAIS entries.
25. Reviews the file and all relevant information; solicits comments from other OCC divisions, as appropriate; makes a recommendation; and forwards the official file to the appropriate official for decision.
26. Notifies LIC/NE of the decision.
27. Makes CAIS entries and returns the official file to LIC/NE.

## LIC/NE

28. In coordination with SO, notifies the applicant foreign bank, IBS HQ, and the FRB by phone and letter of the decision. If applicable, sends a copy of the decision letter to any interested parties. Also, sends a letter to the secretary of the Director, Licensing Activities, for publication.
29. Forwards to SO a copy of the confidential memorandum, decision letter (including any attachments), updated CAIS comments, and any additional material highlighting supervisory or licensing concerns.
30. Makes CAIS entries.
31. If denied, reviews the file for completeness and forwards it to Central Records.

## Organization

### Applicant

32. Submits three originally signed CED agreements to LIC/NE (see the Capital Equivalency Deposit section of this booklet).

### LIC/NE

33. Reviews the original CED agreement and approves the depository bank. Executes each of three CED agreements. Returns two copies of the CED agreement for the foreign bank's and depository bank's files. Retains one copy for OCC's official file.

## Preopening Review

### Applicant

34. Informs LIC/NE at least 45 days in advance of the desired opening date.

### LIC/NE

35. Contacts SO to schedule pre-opening exam and provides SO scope memo.

### SO

36. Performs a pre-opening examination to verify that:
  - Appropriate CED is established in the approved depository bank.
  - Proper controls for detection of money laundering are in place.
  - Minimum policies and procedures have been adopted.
  - All other conditions of the preliminary approval have been satisfied and that the federal branch or agency is ready to open for business.
37. Informs the foreign bank of any matters to be resolved prior to opening the federal branch or agency.
38. Provides LIC/NE with a copy of the pre-opening exam report.

## Authorization

### Applicant

39. If the OCC raised issues at the pre-opening review, notifies LIC/NE in writing when such matters have been resolved.

### LIC/NE

40. Notifies the foreign bank by telephone and official letter that it is authorized to open. Forwards the federal branch or agency license to the foreign bank. Requests that IBS HQ send an individual notice of licensing to the bank's home country bank supervisor.

## Applicant

41. Notifies LIC/NE of the opening by telephone on the first day of operations.

## Close Out

### LIC/NE

42. Makes CAIS entries.
  43. Reviews the file for completeness and forwards it to Central Records.
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# Federal Branches and Agencies – Acquisitions

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## Introduction

This section provides guidance, instructions, and procedures to a foreign bank that is considering the establishment of a federal branch or agency, directly or indirectly, through merger, acquisition, consolidation, or similar transaction. This section should be used together with other sections of this booklet and other booklets of the manual as referenced in the introductory section of this booklet.

## Applicability

Subject to OCC discretion, a foreign bank that plans to establish a federal branch or agency through the acquisition of, or merger or consolidation with, a foreign bank that has an office in the United States may file an after-the-fact application with the OCC. Subject to OCC discretion, an eligible foreign bank may provide the OCC after-the-fact notice of the transaction. This booklet provides guidance about the use of the after-the-fact approval and notice processes.

## Key Policies

### General

#### After-the-Fact Application

Unless otherwise provided by the OCC, a foreign bank that plans to establish a federal branch or agency through the acquisition of, or merger or consolidation with, a foreign bank that has an office in the United States may proceed with the proposed transaction before an application has been filed with or acted upon by the OCC. The applicant can seek after-the-fact approval of the establishment, if the foreign bank:

- Gives the OCC reasonable advance notice of the proposed transaction.
- Commits in writing, prior to consummation of the proposed transaction, to comply with the OCC's after-the-fact application procedures.
- Commits in writing to abide by the OCC's decision, including a decision to terminate the federal branch or agency activities.

#### After-the-Fact Notice

Unless otherwise provided by the OCC, an eligible foreign bank that plans to establish a federal branch or agency through the acquisition of, or merger or consolidation with, a foreign bank that has an existing U.S. bank subsidiary or a federal or state branch or agency may proceed with the transaction and provide after-the-fact notice to the OCC within 14 days of the transaction if:

- The resulting bank is an “eligible foreign bank.”
- No federal branch established by the transaction accepts FDIC deposits.

## Decision Criteria

The decision criteria used in an establishment of a federal branch or agency resulting from a merger, acquisition, consolidation, or similar transaction generally includes considering the:

- Financial and managerial resources and future prospects of the applicant foreign bank and the proposed federal branch or agency.
- Compliance of the foreign bank’s U.S. affiliates with applicable laws, including controls directed to the detection of money laundering.
- Whether the foreign bank is subject to comprehensive consolidated supervision or regulation by its home country supervisor, or whether the FRB has determined that the home country supervisor is working actively toward CCS.
- Convenience and needs of the community to be served.
- Submission of required information to allow the OCC to assess the application adequately.
- Comments from foreign and other U.S. regulators.

## Summary of Process

### General

The OCC’s licensing process is based on the type of establishment proposed. For mergers, consolidations, or similar transactions, there usually will be a prefiling phase to determine whether an after-the-fact filing is available as well as a processing and decision phase.

### Prefiling Discussions

The OCC encourages a foreign bank applicant to initiate prefiling discussions if it plans to seek an after-the-fact approval or file an after-the-fact notice related to an acquisition of a federal branch or agency, directly or indirectly, or through merger, consolidation, or similar transaction. Foreign bank applicants seeking to acquire federal branches holding FDIC-insured deposits should contact the Director for District Licensing, Northeastern District Licensing. The grandfathered status of an insured branch cannot be transferred unless the FDIC makes certain determinations. If the resulting bank is a foreign bank with an existing federal branch or agency, the OCC may waive a prefiling meeting.

## Publication Requirements

The publication requirement in 12 CFR 5.8 does not apply if the resulting federal branch is not FDIC-insured. However, the OCC has authority to require publication if it determines that public comment is appropriate. For example, the application presents widespread implications for banks or consumers or the filing presents novel or complex issues. (See the "Public Notice and Comments" booklet.)

## Streamlined Applications

An applicant that qualifies for after-the-fact application procedures may be able to file a streamlined application. In such a case, submission of detailed financial data on the resulting foreign bank may be omitted. In addition, depending on the proposed structure of the transaction, the OCC's filing requirements may be reduced further. For example, if each foreign bank that is party to an acquisition operates a federal branch or agency and will continue to do so under the same corporate form, in lieu of a streamlined application, the OCC may accept a copy of other filings required by the FRB. However, when the OCC has supervisory concerns or if the resulting bank is unknown to the OCC, a streamlined application may not be available. The applicant is encouraged to consult early with LIC/NE to determine what portions of the OCC application should be submitted.

## Specific Requirements

### Fiduciary Powers

If an existing federal branch has been authorized previously to exercise fiduciary powers and no change in the fiduciary activities is anticipated by the resulting foreign bank, then no re-authorization is necessary and the federal branch may continue to exercise its fiduciary powers. Specific prior OCC authorization must be obtained for a federal branch to exercise fiduciary powers if not previously authorized (see Fiduciary Powers section in this booklet).

### CED

The applicant foreign bank may be required to revise the federal branch's CED agreement upon consummation of the transaction. The applicant should discuss this requirement with its SO.

### Other

The applicant foreign bank also must comply with requirements of other regulatory agencies, including the FDIC (in case of insured branches).



## **Procedures: Acquisitions**

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### **Prefiling Meeting**

#### LIC/NE

1. Refers a foreign bank that requests instructions to the appropriate subsections of this booklet.
2. If necessary, holds exploratory meeting or conference call with applicant.

#### Applicant

3. Gives the OCC reasonable advance notice of pending acquisition, merger, or acquisition.
4. Requests a prefiling meeting to discuss filing procedures, including the eligible foreign bank criteria and possibility of filing an after-the-fact notice or an after-the-fact application, or requests a waiver of the prefiling meeting.

#### LIC/NE

5. Determines if the resulting bank is an eligible foreign bank.
6. Contacts the FRB to discuss any issues with the proposed filing.
7. Conducts or waives the prefiling meeting.

### **After-the-Fact Notice**

#### Applicant

1. If the proposed resulting bank is an eligible foreign bank and no federal branch established by the transaction accepts insured deposits, submits a letter to the OCC requesting permission to file a notice within 14 days after consummation of the merger, acquisition, consolidation, or similar transaction.

## LIC/NE

2. Initiates and enters information in CAIS.
3. Establishes the official file to maintain all original documents relating to the filing.
4. Reviews request for completeness and confirms that resulting bank is an eligible foreign bank and will not have federal branches that accept insured deposits.
5. Acknowledges receipt of request within five business days of receipt and advises that a letter will be sent to the applicant bank once a determination is made about the request.
6. Consults with HQ LIC, District Counsel, IBS HQ, and/or other OCC divisions, as deemed appropriate.
7. If applicant is eligible, and there are no supervisory or other concerns, prepares confidential memo and letter recommending that the OCC grant the applicant's request to file an after-the-fact notice. Or notifies applicant that the OCC will require an application prior to consummating the transaction. If an application will be required, goes to procedures for Acquisitions, Application.
8. Grants request for after-the-fact notice under delegated authority.
9. Notifies SO, the applicant foreign bank, and the FRB by phone and letter of the decision.
10. Makes CAIS entries.
11. Forwards to SO a copy of the confidential memorandum, decision letter (including any attachments), updated CAIS comments, and any additional material highlighting supervisory or licensing concerns.

## Filing the Notice

### Applicant

12. Sends one original and four copies of the notice and supporting information to LIC/NE within 14 days of consummating the transaction.

### Review

## LIC/NE

13. Updates information into CAIS.

14. Initiates background checks if management is being changed at the federal branch or agency (see "Background Investigations" booklet).
15. Reviews notice and relevant information about the resulting foreign bank, including its ownership, subsidiaries, and financial condition, to determine that the filing contains all information. If submission is incomplete, requests the information from the representative, specifying a response date.

## **Authorization**

LIC/NE

16. Once notice is deemed complete, sends applicant final authorization letter. Notifies and sends copy to SO and other interested parties as applicable.

## **Close Out**

LIC/NE

17. Makes CAIS entries.
18. Forwards notice file to Central Records.

## **Filing an Application**

### **Applicant**

1. A foreign bank may submit a letter requesting permission to proceed with the acquisition, merger, or consolidation before an application has been filed or acted upon. The letter must give the OCC reasonable advance notice of the proposed transaction and must contain the applicant's agreement to:
  - Comply with the OCC application procedures within a reasonable period of time, and
  - Abide by the OCC's decision on the application, including a decision to terminate activities of the federal branch or agency.

If the applicant is filing an application prior to the acquisition, merger, consolidation, or similar transaction, applicant may skip to step 11.

LIC/NE

2. Initiates and enters information into CAIS.
3. Establishes the official file to maintain all original documents relating to the filing.

4. Reviews request for completeness.
5. Acknowledges receipt of request within five business days of receipt and advises that a letter will be sent to the applicant bank once a determination is made with respect to the request.
6. Consults with District Counsel, IBS HQ, and/or other OCC divisions, as deemed appropriate.
7. Prepares recommendation and letter for delegated official recommending that the OCC grant the applicant's request to file an after-the-fact application. Or notifies applicant that the OCC will require an application prior to the acquisition, merger, consolidation, or similar transaction.
8. Grants request for after-the-fact application under delegated authority.
9. Notifies SO, the applicant foreign bank, and the FRB by phone and letter.
10. Makes CAIS entries.

## **Applicant**

11. Sends one original and four copies of the application and supporting information within a reasonable period of time after consummation or sends one original and four copies of the application prior to consummation. If fiduciary powers are desired and not currently exercised, submits a letter of intent with the Acquisitions application (see the Fiduciary Powers section in this booklet).
12. If branch is insured, also publishes a notice of the application in a newspaper of general circulation in the community in which the proposed federal branch or agency will be located. (Also, see the "Public Notice and Comments" booklet).

## **LIC/NE**

13. Updates CAIS.
14. Acknowledges receipt of the application within five business days of receipt.
15. Initiates background checks if management is being changed at the federal branch or agency (see "Background Investigations" booklet).
16. Reviews notice and relevant information about the resulting foreign bank, including its ownership, subsidiaries, and financial condition, to determine that the filing contains all information. If submission is incomplete, requests the information from the representative, specifying a response date.

17. If application is filed using a streamlined application, determines whether an applicant qualifies. If the foreign bank is not qualified for a streamlined application, notifies the representative and requests that any omitted portions of the application be submitted within a specified time period.
18. Solicits comments from District Counsel, IBS HQ, and/or other OCC divisions, as deemed appropriate, and requests that comments be provided within 15 days.
19. Contact IBS HQ analyst to send notice of the application and a request for comments to the applicant's home country supervisor. Requests that the supervisor:

- Provide a brief description of the bank regulatory system in the country of incorporation of the resulting foreign bank.
- Discuss its powers and functions.
- Discuss the extent to which it supervises or regulates the resulting foreign bank on a comprehensive consolidated basis.
- Discuss whether the home country has or is developing a legal regime to address money laundering or is participating in multilateral efforts to combat money laundering.
- Discuss the frequency and scope of direct or indirect supervisory examinations of banks in its country.
- Discuss the functions of the central bank and its relationship to private/public banks.
- Discuss the supervisor's policies on sharing supervisory information with the foreign supervisors and confidential treatment of any shared documents.
- State that the applicant is duly organized and existing under local law and is authorized to transact banking business.
- Grant permission for the applicant to operate a federal branch or agency, provide a statement that such permission is not required, or recommend that the OCC not approve the application based on supervisory concerns.

To the extent the OCC is familiar with the home country supervisor and its approach to supervision, portions of this step may be omitted.

20. Forwards a copy of the application to SO and requests that comments be provided within 15 days. Of specific interest are SO's comments about potential supervisory issues.

21. Analyzes the application and assesses:
- Financial and managerial resources, proposed management, and future prospects of the resulting foreign bank and its effect on the federal branch or agency.
  - Legality of the proposal.
  - If applicable, whether the resulting foreign bank and its U.S. affiliates comply with applicable U.S. and foreign laws.
  - Whether the resulting foreign bank has furnished to the OCC:
    - Information required to assess the application.
    - Adequate assurances that the OCC will have access to necessary information on the operations or activities of the foreign bank or any of its affiliates to determine and enforce compliance with the IBA and other applicable federal banking statutes.
  - Extent of regulatory supervision by the home country supervisor; that is, whether the foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor or whether the FRB has determined that the home country supervisor is actively working toward CCS.
  - Recommendation and/or consent of the home country supervisor, if applicable.

The OCC also considers whether the home country is developing a legal regime to address money laundering or is participating in multilateral efforts to combat money laundering.

## **Public Comments and Hearings**

LIC/NE

22. If a copy of the application is requested, public comments filed, or a hearing requested, refers to the "Public Notice and Comments" booklet and determines whether the comments are material. Proceeds as appropriate.

## **Decision**

LIC/NE

23. Contacts the FRB to discuss any issues about the resulting foreign bank's application.

24. Prepares a confidential memorandum and decision letter recommending a decision to the delegated official.
25. Decides the application under delegated authority or forwards the official file to HQ LIC for decision. If decided under delegated authority, goes to step 29. If referred to HQ LIC, goes to step 26.

## HQ LIC

26. Reviews the file and all relevant information; solicits comments from other OCC divisions, as appropriate; makes a recommendation; and forwards the official file to the delegated official.
27. Notifies LIC/NE of the decision. Forwards decision letter to the secretary of the Director, Licensing Activities.
28. Makes CAIS entries and returns the official file to LIC/NE.

## LIC/NE

29. Notifies SO, the resulting foreign bank, and the FRB by phone and letter of the decision. If applicable, also sends a copy of the decision letter to any interested parties. Forwards decision letter to the secretary of the Director, Licensing Activities, for publication.
30. Makes CAIS entries.
31. Forwards to SO a copy of the confidential memorandum, decision letter (including any attachments), updated CAIS comments, and any additional material highlighting supervisory or licensing concerns. If conditionally approved, goes to step 34 to continue processing.
32. If denied, makes CAIS entries, reviews the file for completeness and refers resulting foreign bank to the Voluntary Liquidation section of this booklet. Coordinates termination of the federal branch or agency license with IBS HQ and the FRB as deemed appropriate. Goes to step 37.

## Authorization

### Applicant

33. Notifies LIC/NE of the effective date and requests final authorization. If applicable, provides documents to evidence all conditions have been met.

### LIC/NE

34. Reviews the official file and determines that all requirements have been met or conditions imposed in the decision letter have been satisfied.
35. Notifies the applicant by telephone of any outstanding issues.
36. Sends applicant final authorization letter. Notifies and sends copy to SO and other interested parties as applicable.

## **Close Out**

### **LIC/NE**

37. Makes CAIS entries.
38. Forwards application file to Central Records.



# Federal Branches and Agencies — Conversion or Contraction of Operations

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## Introduction

This section describes the OCC's policies, procedures, and filing requirements for a foreign bank planning to change its U.S. operation(s) by:

- Converting from a state branch or agency operated by a foreign bank, or a commercial lending company controlled by a foreign bank into a federal branch, limited federal branch, or federal agency.
- Converting its federally licensed operation from either a federal agency into a federal branch or limited federal branch, or from a limited federal branch into a federal branch.
- Contracting the activities of its federally licensed operation from either a federal branch to a limited federal branch or a federal agency, or from a limited federal branch to a federal agency.

## Applicability

A foreign bank proposing to either convert its state-licensed operation or expand the activities of its federally licensed operation must file an application with and receive prior approval from the OCC. A foreign bank proposing to contract the activities of its federally licensed operation must provide only after-the-fact notice to the OCC.

These procedures do not apply when a foreign bank is seeking to convert its federally licensed U.S. operations to a state license. In such instance, please refer to the Other Changes in Activities or Operations section of this booklet.

## Key Policies

### General

The OCC approves conversions of an office of a foreign bank, if the approval does not violate the provisions of applicable federal and state law and the proposal satisfies OCC's decision criteria.

### State-to-Federal License Conversion

The OCC has streamlined the conversion process and affords expedited review for eligible foreign banks that wish to convert from a state license. This streamlined application process is available generally in a conversion proposal when the banking powers of the desired type of federal license are commensurate with those of the state license. A proposal for conversion to a type of federal license that involves more banking powers than those permissible under the state license will

be considered on a case-by-case basis to determine if expedited review or a streamlined filing can be afforded.

A foreign bank may satisfy the eligible foreign bank definition even if it does not have an existing federally licensed office, as long as each state branch and agency satisfies the applicable eligibility criteria.

Generally, public notice under 12 CFR 5.8 does not apply to conversions, unless the OCC determines that the application presents a significant or novel policy, supervisory, or legal issue and that a public notice is necessary.

If a conversion from a state to federally licensed operation is not consummated within six months from the date of an approval, the OCC may withdraw its approval.

## Federal Agency or Limited Federal Branch to Federal Branch Conversion

Proposals for converting an office from a federal agency to a limited federal branch or federal branch, or from a limited federal branch to a federal branch, could qualify for expedited review. Therefore, the foreign bank is encouraged to discuss its plans with LIC/NE prior to filing an application.

## Contraction of Activities

Proposals for converting an office from a federal branch to a limited federal branch or federal agency, or from a limited federal branch to a federal agency, are considered management decisions. The OCC requires written notice within 10 days after the contraction of activity.

## Decision Criteria

### General

The OCC may deny an application from a foreign bank wanting to convert its state license to a federal license or expand its federally licensed operations, if:

- Applicant's financial condition poses supervisory concern.
- Safety or soundness concerns exist.
- Proposal is inconsistent with applicable law, regulation, or OCC policy.
- Applicant is trying to escape supervisory action by its current regulator.

The OCC may impose special conditions for approvals to convert a state license to a federal license or to expand the activities of an existing federally licensed operation to protect the safety and soundness of the federal branch or agency, prevent conflict of interests, provide customer protections, ensure that approval is consistent with

the statutes and regulations, or provide for other special supervisory or policy considerations.

### **State-to-Federal License Conversion**

In an establishment resulting from a conversion from a state to a federal license, the OCC generally considers:

- Financial and managerial resources and future prospects of the applicant foreign bank and of the converting state branch or agency.
- Condition of the U.S. office(s) of the foreign bank and the history of compliance with applicable U.S. laws.
- Submission of required information to allow the OCC to assess the application adequately.
- Legality of the proposal.
- If the proposal involves an FDIC-insured institution, the institution's Community Reinvestment Act (CRA) record of performance.
- Comments from other appropriate regulatory agencies.

In evaluating a proposal to convert an existing state-licensed foreign bank office to a federal branch or agency, the OCC will draw heavily on information received from the office's current U.S. supervisor.

### **Federal Agency or Limited Federal Branch to Federal Branch Conversion**

In a conversion from a federal agency into a federal branch or limited federal branch, or from a limited federal branch into a federal branch, the OCC generally considers:

- Financial and managerial resources and future prospects of the applicant foreign bank and the federal branch or agency.
- Compliance of the foreign bank's U.S. affiliates, including the office proposing a change in status, with applicable laws.
- Submission of required information to allow the OCC to assess the application adequately.
- Comments from foreign and other U.S. regulators.

In evaluating an application to expand the activities of an existing limited federal branch or federal agency, the OCC will draw heavily on its own supervisory experience with the foreign bank.

## Summary of Process

### State-to-Federal License Conversion

The application process for a conversion from a state to a federal license generally consists of pre-filing discussions; filing, processing, and deciding the application; and consummating the proposal. The OCC application includes information on the foreign bank applicant as well as the operations of its U.S. office(s).

### Federal Agency or Limited Federal Branch to Federal Branch Conversion

The application process for a conversion from a federal agency or limited federal branch license to a federal branch license consists of filing, processing, and deciding the application.

### Contraction of Activities

Proposals for converting an office from a federal branch to a limited federal branch or federal agency, or from a limited federal branch to a federal agency only require the foreign bank to send a notice within 10 days after the contraction of operations. The notice requires the foreign bank merely to provide counsel's legal opinion on the proposed change of status and, if applicable, furnish evidence of regulatory approvals in the home country.

### Expedited Review

An application for a conversion from a state-to-federal license or expansion of activities qualifies for expedited review, if the applicant is an "eligible foreign bank" (see the Glossary section of this booklet and 12 CFR 28.12(e) and (f)). Under expedited review, such applications are deemed approved by the OCC 30 days after filing with the OCC, unless the OCC notifies the bank prior to that date that the filing is not eligible for expedited review.

A foreign bank with no federally licensed operations that desires to convert could receive expedited review and qualify for a streamlined application. To do so, each of its state-licensed operations must meet the criteria set forth under 12 CFR 28.12(f), and the filing must not present significant supervisory, compliance, legal, or policy issues.

### Standard Review

An application that does not qualify for, or is removed from, expedited review is processed under standard review procedures. After review of a complete application for a state-to-federal license conversion or an expansion of activities, the OCC decides to approve, conditionally approve, or deny the application.

## Specific Requirements

### Plans

For any conversions of an office of a foreign bank, the OCC requires that the applicant explain the reason for the desired change, any planned changes in its U.S. operations, and a statement of the legal basis for the proposed change in activity. The application requires a written legal opinion to be included. The legal opinion should address whether the proposed change is in conformance with applicable state and federal law.

### Background Investigations

If additional management is being proposed to oversee the expanded activities and LIC/NE deems it appropriate, a background investigation of the new management will be conducted (see "Background Investigations" booklet).

### Fiduciary Powers

If the institution seeking to convert from a state to federal license has existing fiduciary powers or plans to exercise them following the conversion, it must request and obtain prior OCC approval to do so (see the Fiduciary Powers section in this booklet). Similarly, if a current federal agency or limited federal branch through expansion of its activities plans to exercise fiduciary powers, it must request and obtain prior OCC approval to do so. The only exception is for a limited federal branch currently exercising fiduciary powers that plans to convert its operations to a federal branch with fiduciary powers. Such powers transfer to the converted office, and no separate request or approval is required.

### Field Investigation

#### State-to-Federal License Conversion

For conversions from a state to a federal license, the OCC may conduct a field investigation, if deemed necessary. The OCC normally does not conduct a field investigation for a conversion application accorded expedited review. If the foreign bank applicant's U.S. operation(s) is (are) in satisfactory condition, the OCC generally will not perform a field investigation. The OCC may discuss the proposal with the applicant's current regulator(s) and will accept and rely on the current banking regulator's examination rating. However, if there are supervisory concerns, the OCC may conduct a field investigation. The decision to conduct a field investigation is made on a case-by-case basis. The information obtained in the investigation may be shared with other regulators.

## **Federal Agency or Limited Federal Branch to Federal Branch Conversion**

The OCC normally does not conduct field investigations on applications involving the conversion from a federal agency to a limited federal branch or federal branch, or from a limited federal branch to a federal branch.

### **CED**

A CED will be required upon conversion from a state license to a federal license (see the Capital Equivalency Deposit section of this booklet).

### **Other**

Proposals for expansion of activities may require an application with the FRB. A foreign bank considering a contraction of activities for its insured federal branch may need to observe additional procedures and requirements promulgated by the FDIC. A foreign bank considering contracting the operations of its federal branch to a limited federal branch should seek FRB guidance prior to notifying the OCC of its proposed plan.

## **Procedures: Conversions (State to Federal License)**

### **Prefiling**

#### LIC/NE

1. Refers a foreign bank that requests instructions to the “General Policies and Procedures” booklet and this section of the “Federal Branches and Agencies” booklet of the manual.
2. Contacts the institution’s state and federal supervisors to determine if applicant meets eligible foreign bank criteria and if there are any issues associated with the proposal.
3. If the filing presents policy, legal, or novel issues, contacts District Counsel and HQ LIC, as appropriate, to discuss processing.

#### Applicant or LIC/NE

4. Requests an optional prefiling meeting to review procedures for a conversion of a foreign bank office and to discuss the factors that may influence the OCC’s review of the application.

#### LIC/NE

5. Prepares summary memorandum on all prefiling communications. Retains all pertinent information in the pending file.
6. Notifies applicant if it meets eligible foreign bank criteria and qualifies for expedited review and a streamlined application.

### **Filing the Application**

#### Applicant

7. Sends one original and four copies of the application to LIC/NE.

### **Review**

#### LIC/NE

8. Enters information in CAIS.
9. Establishes the official file to maintain all original documents.

10. Contacts the institution's state and federal supervisors by phone or letter, if deemed necessary, to:
  - Obtain their supervisory background and comments.
  - Determine whether the institution is subject to an agreement, other enforcement proceeding, or order.
  - Obtain applicant's most recent three reports of examination.
11. Reviews the application, relevant information about the foreign bank, including its ownership, subsidiaries and financial condition, to determine that the filing contains all information necessary to reach a decision. If the application is incomplete, requests that the information from the representative be provided by a specific due date.
12. Acknowledges receipt of the application within five business days of receipt.
13. If the filing presents policy, legal, or supervisory issues, contacts HQ LIC to discuss processing.
14. Within five business days of receipt, solicits comments from the District Counsel, SO, IBS HQ, and any other OCC divisions, as appropriate. Comments should be submitted within 10 days.
15. Reviews comments received from other OCC divisions and determines whether the applicant is still eligible for expedited review.
  - If so, continues processing.
  - If not, contacts the applicant immediately and notifies it by phone and letter that it is no longer qualified for expedited review. Explains the specific reason(s).
16. Reviews recent examination reports and other supervisory information pertaining to the condition of the converting institution. Determines if an OCC preconversion examination is needed and:
  - If needed, notifies SO to schedule it with the institution (normally within 60 days from date of receipt of the conversion application). Specifies matters to be considered and notifies applicant (see Field Investigation procedures following this section). Notifies applicant that it no longer qualifies as an eligible bank, if applicable.
  - If not needed, documents file with reason.



17. Analyzes the application and assesses:
  - Financial and managerial resources, and future prospects of the foreign bank and their effect on the proposed federal branch or agency.
  - Legality of the proposal.
  - If applicable, whether the foreign bank and its U.S. affiliates comply with applicable U.S. and foreign laws.
  - Whether the foreign bank has furnished to the OCC:
    - Information required to assess the application.
    - Adequate assurances that the OCC will have access to necessary information on the operations or activities of the foreign bank or any of its affiliates to determine and enforce compliance with the IBA and other applicable federal-banking statutes.
  - Information obtained from the entity's current U.S. regulator.

## Decision

18. Prepares a confidential memorandum recommending a decision to the delegated official. Drafts the decision letter.
19. Decides application under delegated authority or forwards the official file to HQ LIC for decision. Expedited applications are deemed approved as of the 30th day after the application is received, unless the application has been removed from expedited review for specific reasons.
20. If decided under delegated authority, goes to step 25.

## HQ LIC

21. Makes CAIS entries.
22. Reviews the file and all relevant information, makes a recommendation, and forwards the official file to the appropriate official for decision.
23. Notifies LIC/NE of the decision. Forwards decision letter to the secretary of the Director, Licensing Activities.
24. Makes CAIS entries and returns the official file to LIC/NE.

## LIC/NE

25. Notifies SO, the applicant foreign bank, and any interested parties of the decision.
26. Sends the applicant a decision letter and a copy to SO, and:
  - Verifies the accuracy of the spokesperson's name, address, and telephone number.
  - Makes any necessary correction in CAIS for the Communications Division to forward the OCC manuals and publications.
27. Makes CAIS entries.
28. If denied, goes to step 36.

## Authorization

### Applicant

29. Notifies LIC/NE of the effective date of conversion and (if applicable) provides documents to evidence all conditions have been met.
30. Submits three originally signed CED agreements to LIC/NE (see the Capital Equivalency Deposit section of this booklet).

## LIC/NE

31. Executes each of the three CED agreements (see the Capital Equivalency Deposit section of this booklet).
32. If applicable, forwards any documents regarding conditions and requirements to SO for review and comment.
33. Reviews the official file and determines that all requirements have been met or conditions imposed in the decision letter have been satisfied.
34. Notifies the applicant by telephone of any outstanding issues.
35. Prepares and mails an official authorization of the conversion to the applicant together with the appropriate License Certificate. Retains a copy in the official file.
36. Notifies SO.
37. Makes CAIS entries.

## Close Out

LIC/NE

38. Reviews the file for completeness and forwards it to Central Records.

## **Procedures: Conversions (Federal Agency or Limited Federal Branch to Federal Branch)**

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### **Prefiling Meeting**

LIC/NE

1. Refers a foreign bank that requests instructions to this section of the "Federal Branches and Agencies" booklet of the manual.
2. Consult with SO and the FRB to determine if there are any issues with the applicant bank or the proposal.
3. Determines if applicant is an eligible foreign bank and notifies applicant if it is eligible for expedited review and a streamlined application.

### **Applicant**

4. Determines whether a prefiling meeting is needed to discuss filing procedures.

LIC/NE

5. Conducts the prefiling meeting and discusses reasons for upgrade.
6. Prepares summary memorandum on all prefiling communications. Retains all pertinent information in the pending file.
7. Notifies applicant if it meets eligible foreign bank criteria and qualifies for expedited review and a streamlined application.

### **Filing the Application**

### **Applicant**

8. Submits one original and four copies of the application to LIC/NE.

### **Review**

LIC/NE

9. Initiates and enters information into CAIS.
10. Establishes the official file to maintain all original documents relating to the application.

11. Reviews the application to determine that the filing contains all of the information necessary to reach a decision. If the application is incomplete, requests that the information from the representative be provided by a specific due date.
12. Acknowledges receipt of the application within five business days of receipt.
13. If the proposal raises legal or other issues, solicits comments from District Counsel, and/or other OCC divisions, as deemed appropriate, and requests that comments be provided within 10 business days.
14. Contacts IBS HQ to send notice of the application and a request for comments to applicant's home country supervisor. Requests that the supervisor share any supervisory concerns they may have about the foreign bank's proposal to expand its activities in the United States.
15. Forwards a copy of the application to SO and requests that comments be provided within 10 days. Of specific interest are SO's comments on potential supervisory issues.
16. Initiates background checks if additional management is being proposed to oversee the expanded activities. (See "Background Investigations" booklet).
17. Analyzes the application and assesses:
  - Financial and managerial resources, proposed management, and future prospects of the foreign bank and its effect on the proposed limited federal branch or federal branch.
  - Legality of the proposal.
  - If applicable, whether the foreign bank and its U.S. affiliate comply with applicable U.S. and foreign laws.
  - Whether the foreign bank has furnished to the OCC:
    - Information required to assess the application.
    - Adequate assurances that the OCC will have access to necessary information on the operations or activities of the foreign bank or any of its affiliates to determine and enforce compliance with the IBA and other applicable federal banking statutes.
  - Whether the foreign bank is subject to CCS by its home country supervisor, or whether the FRB has determined that the home country supervisor is actively working toward CCS.

- Whether adequate controls for the detection of money laundering exist in the home country and at the foreign bank.
  - Recommendation and/or consent of the home country supervisor, if applicable.
18. Determines whether applicant is still eligible for expedited review.
- If so, continues processing.
  - If not, contacts applicant immediately and notifies it that it is no longer qualified for expedited review. Explains the specific reason(s).

## Decision

19. Contacts the FRB to discuss any issues on the conversion application filed with them by the foreign bank.
20. Prepares a confidential memorandum and decision letter recommending a decision to the delegated official.
21. Decides the application under delegated authority or forwards the official file to HQ LIC for decision. Expedited applications must be decided within 30 days of receipt, or the bank must be notified prior to the 30<sup>th</sup> day that the application has been removed from expedited review for specific reasons. If referred to HQ LIC, goes to step 29.
22. Notifies SO, IBS HQ, and applicant by phone and letter of the decision. Sends a copy of the decision letter to SO and the FRB. If conditional approval, also sends documents to the secretary of the Director, Licensing Activities, for publication.
23. Makes CAIS entries.
24. Forwards to SO a copy of the confidential memorandum, updated CAIS comments, and any additional material highlighting supervisory or licensing concerns. Goes to step 33.

## HQ LIC

25. Makes CAIS entries.
26. Reviews the file and all relevant information; solicits comments from other OCC divisions, as appropriate; makes a recommendation; and forwards the official file to the delegated official.
27. Notifies LIC/NE of the decision.
28. Makes appropriate entries in CAIS and returns the official file to LIC/NE. If conditional approval or denial, also sends documents for publication.

## LIC/NE

29. Notifies SO, the foreign bank's representative, and the FRB by phone and letter of the decision.
30. Forwards to SO a copy of the confidential memorandum, decision letter (including any attachments), updated CAIS comments, and any additional material highlighting supervisory or licensing concerns.
31. Makes entries in CAIS and reviews the file for completeness.

## Applicant

32. Advises LIC/NE of the effective date. If applicable, provides documents to evidence all conditions and requirements have been met.

## Close Out

### LIC/NE

33. Sends any documents to SO for feedback.
34. Reviews the official file and determines that all requirements have been met or conditions imposed in the decision letter have been satisfied.
35. Notifies applicant by telephone of any outstanding issues.
36. Prepares and mails official authorization of the conversion to applicant together with the appropriate License Certificate. Retains a copy in the official file.
37. Updates CAIS with effective date.
38. Forwards the official file to Central Records.

## Field Investigation

### Assignment and Preplanning

#### LIC/NE

1. Requests SO to assign an NBE for the field investigation.
2. Provides a field investigation request (scope) to the NBE along with relevant materials; that is, proposed license number, examination reports, copies of the application and any amendments, biographical information, and any information on areas that LIC/NE considers to warrant particular attention.

#### NBE

3. Calls spokesperson to schedule the investigation (normally completed within 60 days from date of receipt of the conversion application).
4. Notifies SO and LIC/NE of the start date and determines the date for submission of the completed report.
5. Prior to conducting the investigation:
  - Reviews conversion application and any other information forwarded with the request.
  - Schedules necessary interviews.
  - Reviews any special instructions in the request.

### Onsite Review

6. Performs the preconversion field investigation.
7. Determines the institution's condition based on judgments that:
  - Management ensures compliance with applicable federal and state banking laws, rulings, and regulations.
  - Management exhibits strategic planning skills that reflect a reasonable prospect for the successful operation of the proposed federal branch or agency.
  - Management's soundness based on the condition of the institution and on management's ability to recognize and correct problems.
  - If the institution is FDIC-insured, its record of CRA performance is at least satisfactory or not otherwise problematic.



- Institution's operations reflect sound credit skills and funds management.
  - Institution's compliance with national banking laws, regulations, and rulings will be satisfactory.
8. Schedules meeting with management (this may include management from the foreign bank's home country) at the conclusion of the visit to inform it of the findings.
  9. Discusses results of the investigation, highlighting the deficiencies, recommendations, and suggestions with senior management. Requests that management respond to major criticisms or take corrective action prior to consummating the conversion. (Institution's response should be submitted to LIC/NE.)
  10. Assigns preliminary Risk Management, Operational Controls, Compliance, and Asset Quality (ROCA) ratings and, if applicable, a CRA assessment.
    - Preliminary ratings are not disclosed to management. Composite rating will be disclosed in the preconversion field investigation report.
    - If the preconversion field investigation reveals concerns, the OCC may request additional information or clarification from the converting institution.
  11. Does not inform anyone outside of the OCC of the contents of the investigation report.

## **Report Preparation**

12. Prepares billing information in accordance with 12 CFR 8.6.
13. Prepares recommendation on the conversion and forwards the written report in memorandum format and the field investigation billing information to LIC/NE, and:
  - Briefly summarizes findings and conclusions and specifically addresses any problems or area(s) of concern.
  - Retains the conversion application information, all investigation work papers, and a copy of the written report.

# **Procedures: Contraction of Operations**

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## **Filing the Notice**

### **Foreign Bank**

1. Submits written notice within 10 days after converting the federal branch into a limited federal branch or federal agency.

## **Review**

### **LIC/NE**

2. Initiates and enters information into CAIS.
3. Establishes the official file to maintain all original documents relating to the notice.
4. Reviews the notice.
5. Advises SO of the notification.
6. Sends acknowledgment letter to the foreign bank (and a copy to SO), advising that at the next on-site examination, the OCC will verify that the operations of the limited federal branch or federal agency conform to the requested type of license.

## **Close Out**

### **LIC/NE**

7. Forwards file to Central Records.

# Federal Branches and Agencies – Relocations

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## Introduction

The policies and procedures in this section apply to foreign banks seeking to change the physical location of their federal branch or agency. Users of this booklet also should refer to the introductory section of this booklet for references to other relevant booklets.

## Applicability

A foreign bank planning to relocate its federal branch or agency must file an application with and receive prior approval from the OCC.

## Key Policies

### General

A proposal to relocate generally does not require a prefiling meeting, unless it involves a relocation from one state to another (“interstate relocation”). An application to relocate within a state (“intrastate relocation”) is filed, processed, decided, and effected within a relatively short period of time, if the foreign bank qualifies for expedited review as described under the Summary of Process subsection. The OCC decides applications for relocations by federal branches or agencies in accordance with the provisions of pertinent federal and state law.

## Decision Criteria

The OCC will decide a relocation based on:

- Submission of required information to allow the OCC to assess the application adequately.
- Any supervisory issues in connection with the federal branch or agency or with the relocation.

For an interstate relocation, applicant must comply with all understandings and commitments contained in any Approval Order issued by the FRB.

## Standard Requirements

If the OCC approves a relocation request, the federal branch or agency must relocate within 18 months from the approval date, or the approval automatically terminates, unless the OCC grants an extension. The foreign bank should advise the OCC promptly of any changes to the original application between the time of the OCC’s decision and the relocation.

## Special Conditions

The OCC may impose special conditions on its approval to protect the safety and soundness of the federal branch or agency; prevent the risk of conflict of interest; assure compliance with applicable laws; or for other supervisory, compliance, or policy considerations.

## Summary of Process

The foreign bank applicant submits an application to the OCC and publishes, on the date the application is filed or as soon as practical before or after the date of filing, a public notice containing specific information on the relocation application. The OCC reviews each application for compliance with applicable laws and regulations and considers any comments received within the comment period.

## Expedited Review

Expedited review is available for an eligible foreign bank proposing an intrastate relocation. Under expedited review, an application for an intrastate relocation is deemed approved on the seventh day after the close of the public comment period, unless the OCC:

- Notifies applicant prior to that time that the filing is not eligible for expedited treatment.
- Approves, conditionally approves, or denies the application.
- Advises applicant that the filing presents significant policy, legal, or supervisory issues and is being removed from expedited review. (See 12 CFR 5.13 and the “Public Notice and Comments” booklet of the manual for additional information on reasons for application removal from expedited review.)

The OCC notifies applicant promptly whenever it decides to remove an application from expedited review and provides a written explanation of the reasons for that decision. When an application is removed from expedited review, because of information obtained from a public comment, the OCC will also inform the commenter. The expedited review process is not available for interstate relocations.

## Short-Distance Relocations

A federal branch or agency relocating within the distance parameters outlined in the Glossary section of this booklet for a “short-distance” relocation generally will receive expedited review and a shortened publication period. The OCC decides short-distance relocations within seven days after the close of the public comment period.

## Standard Review

After the close of the public comment period, the OCC considers all appropriate information and makes a decision to approve, conditionally approve, or deny the application. A standard review means that the federal branch or agency must receive a written decision from the OCC, and the application will not be approved automatically through the passage of time.

## Specific Requirements

### General Publication Requirements

As required by 12 CFR 5.8, each foreign bank that proposes to relocate a federal branch or agency must publish notice of the application in a newspaper of general circulation in the community in which the applicant proposes to engage in business on the date of filing or as soon as practicable before or after the filing date. The comment period is 15 days for short-distance relocations and 30 days for all other relocation applications.

Applicant must mail or otherwise deliver to LIC/NE promptly after publication a statement containing the date of publication, the name and address of the newspaper that published the public notice, a copy of the public notice, and any other information that the OCC requires.

### State Law Considerations

The relocation must comply with applicable state laws, as determined by the OCC. When a foreign bank proposes to relocate a federal branch or agency outside its current designated home state, applicant foreign bank should contact LIC/NE at (212) 790-4055 for specific guidance.

### National Historic Preservation Act (NHPA) and National Environmental Policy Act (NEPA)

Applicant foreign bank must consider the implications of the NHPA and NEPA in its relocation of its federal branch or agency and certify whether the proposal will affect a historic district, site, building, structure, or object or quality of the human environment. The OCC considers historical preservation and environmental factors in deciding relocation requests for a federal branch or agency. (For a discussion of the NHPA/NEPA requirements, see the "General Policies and Procedures" booklet.)

## **Procedures: Relocation**

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### **Prefiling**

#### LIC/NE

1. Refers applicant foreign bank that requests instructions to this section of the "Federal Branches and Agencies" booklet.

#### Applicant or LIC/NE

2. Requests a prefiling meeting to review procedures for relocations of federal branches and agencies and factors that may influence the OCC's review of the application. If an interstate relocation proposal is within 30 miles of the existing location, advises applicant that an application must also be made to the FRB.

#### LIC/NE

3. If any prefiling discussions or meetings reveal significant policy, legal, or supervisory issues, immediately contacts District Counsel, HQ LIC, and SO, as appropriate, to discuss processing.
4. Prepares memorandums on all prefiling discussions. Retains memorandums and other information in a pending file.

### **Filing the Application and Publication**

#### Applicant

5. Submits, return receipt requested, one original and four copies of an application to LIC/NE requesting permission to relocate.
6. Publishes a notice within three days before or after the date of filing. The public comment period for short-distance relocations is shortened from 30 to 15 days.
7. Checks State Historic Preservation Officer's (SHPO) Web site to determine if location is listed as a historic property and requests clearance from SHPO indicating the property is not eligible for listing.

#### Review

#### LIC/NE

8. Enters information in CAIS.
9. Establishes the official file to maintain all original documents.
10. Reviews application to determine that the filing contains all information necessary to reach a decision. If application is for an interstate

relocation, determines that applicant also files with the FRB. If application is incomplete, requests information from the representative within a specific due date.

11. Determines if the foreign bank is an "eligible foreign bank" per 12 CFR 28.12(f) and qualifies for expedited review under 12 CFR 28.12(e)(6), and:
  - If not eligible, prepares and sends a letter to applicant providing notice of standard processing within five business days of receipt of the application. The letter must include the explanation of the reasons for that decision.
  - If eligible, acknowledges filing within five business days of receipt.
12. If the filing presents significant policy, legal, or supervisory issues, contacts HQ LIC to discuss processing.
13. Within five business days of receipt:
  - Notifies SO. Requests that comments from SO be submitted within 15 days (or five business days for a short-distance relocation that qualifies for expedited review).
  - If a legal issue has been identified or a legal opinion was submitted with the filing, forwards relevant materials to District Counsel with comments due within 15 calendar days (or five business days for a short-distance relocation that qualifies for expedited review).
  - Solicits comments from other OCC divisions, as appropriate, with responses due within 15 days (or five business days for a short-distance relocation that qualifies for expedited review).
  - Contacts HQ LIC if the proposal will:
    - Affect significantly the quality of the human environment.
    - Affect any district, site, building, or structure listed in, or eligible for listing in the National Register of Historic Places (see "General Policies and Procedures" booklet for NEPA/NHPA-related processing).
  - If issues are raised, informs applicant immediately in writing that it no longer qualifies for expedited review and identifies the specific reason(s). Updates CAIS and the file as appropriate.

## Public Comments and Hearings

LIC/NE

14. If a copy of the application is requested, public comments filed, or a hearing requested, refers to the "Public Notice and Comments" booklet. Public comments should be forwarded to appropriate units for evaluation and advice. If an adverse CRA comment is received, notifies HQ LIC promptly. Proceeds as appropriate.

## Decision

LIC/NE

15. After the close of the public comment period:  
  
For a federal branch or agency eligible for expedited review, before expiration of the processing period, verifies that there are no reasons for disqualification from expedited review, and:
  - If applicant remains qualified, proceeds to the next step.
  - If applicant is disqualified, immediately notifies applicant that it no longer qualifies for expedited review, identifies the specific reason(s), and requests any necessary information from applicant, specifying a response date.
16. Prepares a confidential memorandum and decision letter and forwards them to the delegated official.
17. Decides the application under delegated authority or forwards the official file to HQ LIC for decision. If non-delegated, goes to step 27. Per part 28, decision must be made by the seventh day after the public comment period ends.
18. Notifies SO, IBS HQ, and applicant of the decision. Notifies interested parties, if applicable.
19. Sends applicant a decision letter and copies SO.
20. Makes CAIS entries.
21. If application is denied, goes to step 33. Otherwise, goes to step 27.



## HQ LIC

22. Makes CAIS entries.
23. Reviews the file and all relevant information; solicits comments from other OCC divisions, as appropriate; makes a recommendation; and forwards the official file to the appropriate official for decision.
24. Notifies LIC/NE of the decision.
25. Makes CAIS entries.
26. Returns the official file to LIC/NE.

## LIC/NE

27. LIC/NE notifies SO and applicant of the decision. Sends applicant a decision letter and copies SO. Notifies interested parties, if applicable. Makes CAIS entries.
28. If denied, goes to step 33.

## Applicant

29. Notifies LIC/NE of the desired relocation date at least 10 days prior to the planned effective date.

## Authorizations

### LIC/NE

30. Reviews the official file and determines that all required actions have been completed.
31. Notifies the federal branch or agency by telephone of any remaining issues.
32. Prepares and mails an official authorization letter to the federal branch or agency on the planned relocation date. Retains a copy in the official file and forwards a copy to SO.

## Close Out

### LIC/NE

33. Makes CAIS entries.
34. Reviews the file for completeness and forwards it to Central Records.

# **Federal Branches and Agencies – Fiduciary Powers**

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## **Introduction**

This section addresses policies and procedures applicable to a foreign bank interested in exercising fiduciary (trust) powers through its federal branch. Federal agencies are not permitted by law to exercise fiduciary powers. Also discussed in this section is the revocation of fiduciary powers by the OCC and procedures for a federal branch to surrender them voluntarily. Users also should refer to other sections in this booklet for additional information as applicable and to the “Fiduciary Powers” booklet of the manual.

## **Applicability**

The OCC requires foreign banks that operate a federal branch to seek prior approval before offering fiduciary services to the public. A state branch of a foreign bank seeking to convert to a federal branch must request and obtain prior OCC approval to exercise fiduciary powers regardless of whether it currently exercises them. Additionally, a foreign bank that acquires a federal branch that does not currently exercise fiduciary powers, directly or indirectly, or through merger, acquisition, consolidation, or similar transaction, needs prior OCC approval if it desires to exercise fiduciary powers.

## **Key Policies**

### **General**

A federal branch may apply for fiduciary powers in conjunction with an establishment application or at any time after opening for business.

The OCC views the exercise of fiduciary powers primarily as a business decision of the foreign bank. The OCC generally grants permission to exercise fiduciary powers to federal branches operating in a satisfactory manner, provided:

- Proposed activities comply with applicable statutes and regulations, including federal law (12 USC 92a) and state and local statutes and regulations.
- Federal branch provides for and retains qualified fiduciary management.

The OCC requires that federal branches licensed for less than two years submit information discussing how the fiduciary powers will complement the bank’s strategy as submitted at the time the federal license was granted. The OCC may request additional information depending on the condition of the federal branch.

## Decision Criteria

When deciding whether to approve, conditionally approve, or deny an application for fiduciary powers, the OCC considers:

- Condition of the foreign bank.
- Condition of the federal branch and its history of compliance with U.S. laws, if applicable.
- Character and ability of proposed fiduciary management, including qualifications, experience, and competency.
- Needs of the community to be served (see 12 USC 92a(l)).
- Adequacy of the proposed "operating plan."

The OCC may deny a request for fiduciary powers, if federal branch activities do not comply with applicable state and federal laws (12 USC 92a and 12 CFR 9), or if the federal branch does not provide for and retain qualified fiduciary management.

## Summary of Process

A foreign bank submits an application for fiduciary powers in letter form to LIC/NE, providing specific information. The OCC sends an acknowledgment letter within five business days from receipt of the application and notifies the foreign bank in writing of its decision.

## Expedited Review

If the foreign bank is eligible and the filing qualifies for expedited review, the application will be reviewed to ensure that all information has been submitted, and there are no new or novel policy issues. The OCC will notify an eligible foreign bank of the OCC's decision within 30 days of receipt of the application. If the applicant does not receive a decision within that time period and is not otherwise notified that the processing time has been extended, automatic approval is granted 30 days after the date the OCC receives an application. A foreign bank ineligible for expedited review may not exercise fiduciary powers until notified by the OCC in writing.

## Timing of Decision

Generally, a fiduciary powers request that is filed with an application to open an initial or additional federal branch will be decided at the same time as the federal branch application. However, a fiduciary powers permit will not be issued until the federal branch opens for business. The federal branch may exercise trust powers once it receives the permit.

## Commencement of Activity

The federal branch must begin exercising fiduciary powers within 18 months of approval. It must request and receive OCC approval for any changes it wishes to make in the proposed trust management before commencing its fiduciary business.

## Surrender or Revocation of Fiduciary Powers

### Surrender

A foreign bank may discontinue and surrender voluntarily the fiduciary powers of its federal branch. To do so, it must notify and file with LIC/NE a certified copy of a resolution adopted by its senior bank management to surrender trust powers. It also must return any trust permit previously issued.

The branch or agency may be classified either as inactive, or it may surrender its fiduciary powers altogether. In either case, the board of directors must arrange for a final audit of the fiduciary accounts. In addition, the OCC may conduct a closing investigation to determine if the bank has been discharged completely from its fiduciary obligations (that is, all accounts have been properly closed and distributed or transferred to substitute fiduciaries). The appropriate supervisory office will decide whether to conduct a closing investigation.

After the OCC is assured that the federal branch is relieved of all fiduciary duties pursuant to state law and the trust permit has been returned, the OCC will issue to the foreign bank a notice certifying that the federal branch is no longer authorized to exercise fiduciary powers. (See also the Voluntary Liquidation section of this booklet.)

### Revocation

Pursuant to U.S. laws and regulations, the OCC may serve a foreign bank with a notice of its intent to revoke the authority of the federal branch to exercise the fiduciary powers. When such powers are revoked, the federal branch must surrender the trust permit previously issued by the OCC.

# Procedures: Fiduciary Powers (New Powers)

## Filing the Application

### LIC/NE

1. Refers a foreign bank that requests instructions to this section of the "Federal Branches and Agencies" booklet of the manual.

### Applicant

2. Submits to LIC/NE an application requesting permission to exercise fiduciary powers.

An expedited application must contain:

- Statement requesting full or limited powers. (Limited powers must be specified.)
- Location(s) in which the services will be offered.
- Statement that the capital and surplus of the foreign bank are not less than that required by state law for state banks, trust companies, and other corporations chartered by that state that exercise comparable fiduciary powers.
- Sufficient biographical information on the proposed trust management personnel, including educational and professional credentials and a five-year employment history, emphasizing their trust experience and discussing their ability to perform the proposed activities.

For a standard application, the following additional items are required:

- A written opinion of the bank's counsel that the proposed fiduciary activities do not violate applicable law, including citations.
- (For branches licensed less than two years) An operating plan for the trust department that contains, at a minimum, number of accounts, projected volume of assets under management, services, and target market.

## Review

### LIC/NE

3. Enters information into CAIS.
4. Establishes official file to maintain all original documents.
5. Reviews application and any other relevant information about the foreign bank.
6. Determines if the foreign bank is an eligible foreign bank and qualifies for expedited review per 12 CFR 5.3(g), and:
  - If not eligible, prepares and sends a letter to the applicant, providing notice of standard processing within five business days of receipt of the application. Includes control number and OCC contact person.
  - If eligible, acknowledges filing within five business days of receipt. Includes control number and OCC contact person.
7. Within five business days, solicits comments from SO and other OCC divisions, as appropriate. Preliminary comments should be submitted to LIC/NE within 15 days from the request.
8. Requests clarification or additional information from applicant, as necessary, and prepares the Expedited Review Form or confidential memorandum. If analyst cannot make decision within 30 days, removes application from expedited processing. Sends applicant letter stating specific reason for removal from expedited processing and informs applicant not to proceed until the OCC decides the application.

## Decision

9. For expedited review, submits completed Expedited Review Form and a decision letter to the appropriate delegated official for decision.  
  
For standard review, prepares and forwards a confidential memorandum and decision letter recommending a decision to the delegated official.
10. Decides application under delegated authority or forwards the official file to LIC/HQ for decision. If nondelegated, goes to step 19. Expedited applications must be decided within 30 days.
11. Notifies SO, IBS HQ, and applicant of the decision and sends a decision letter.

12. Makes CAIS entries.
13. If denied, goes to step 23.

## HQ LIC

14. Makes CAIS entries.
15. Reviews the file and all relevant information, makes a recommendation, and forwards the official file to the appropriate delegated official for decision.
16. Notifies LIC/NE of the decision.
17. Makes CAIS entries.
18. Returns the official file to LIC/NE.

## LIC/NE

19. Notifies SO and applicant of the decision. Sends letter to both.
20. If denied, goes to step 23.

## Applicant

21. Notifies the OCC within 10 days following the commencement of fiduciary activities.

## Close Out

### LIC/NE

22. Makes CAIS entries to indicate that fiduciary powers are effective.
23. Reviews the file for completeness and forwards it to Central Records.

## **Procedures: Fiduciary Powers (Surrender)**

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### **Submission**

#### **Applicant**

1. Arranges for a final audit of the fiduciary account.
2. Submits to LIC/NE a certified copy of a resolution adopted by senior management of the foreign bank, stating its decision to surrender the fiduciary powers of the federal branch.
3. Returns to LIC/NE the OCC's original trust permit.

### **Review**

#### **LIC/NE**

4. After ensuring that the federal branch is relieved of all fiduciary duties, issues a notice certifying that the federal branch is no longer authorized to exercise fiduciary powers.
5. Makes CAIS entries to indicate that trust powers are no longer authorized.
6. Notifies SO and consults with them to ensure that branch has satisfied all fiduciary obligations.

### **Close Out**

#### **LIC/NE**

7. Reviews the file for completeness and forwards it to Central Records.



# **Federal Branches and Agencies—Voluntary Liquidation**

## **Introduction**

This section should be used together with other sections in this booklet and other booklets of the manual as referenced in the introductory section of this booklet. Users should also refer to the Acquisitions section in this booklet if the liquidation occurs in connection with a merger, acquisition, consolidation, or other similar transaction of federal branch or agency operations in the United States.

## **Background**

The policies and procedures discussed in this section address the voluntary liquidation of a federal branch or agency. A voluntary liquidation occurs when the senior management of the foreign bank decides to discontinue operations of the federal branch or agency and proceeds with a plan of liquidation to terminate the affairs of the foreign bank office. Foreign banks closing some, but not all, of its federal branches and/or agencies should follow the branch closing requirements outlined in 12 CFR 28.23.

## **Applicability**

A federal branch or agency that proposes to close its operations and to liquidate voluntarily must comply with the requirements in 12 CFR 28.22, 12 CFR 5.48 and the manual. The federal branch or agency must file a notice with the OCC and publish a notice of its intent to cease operations.

## **Key Policies**

The OCC generally requires that the provisions of 12 USC 181 and 182 be followed in a liquidation of a federal branch or agency. A federal branch or agency in voluntary liquidation must make regular reports to the OCC until the liquidation process is completed and its operations are terminated. The OCC monitors voluntary liquidations to ensure compliance with applicable statutes. The OCC requires maintenance of a CED by the federal branch or agency until the voluntary liquidation and final dissolution of the federal branch or agency is completed.

## **Summary of Process**

Once a foreign bank decides to liquidate its federal branch or agency, it should submit a notice to LIC/NE of its intent to voluntarily liquidate and publish notice in a local newspaper with general circulation. In general, the assets of the federal branch or agency should not be distributed until after the required public notice period has ended. During a voluntary liquidation, the federal branch or agency must comply with normal OCC reporting requirements. Additionally, the federal branch or agency must make annual filings on the progress of the liquidation and a Final Report of Liquidation upon its completion. Foreign banks seeking an

expedited liquidation process, resulting from a merger, acquisition, consolidation, or similar transaction, should contact LIC/NE for specific requirements and further guidance.

Upon completion of liquidation, the foreign bank should return the federal branch or agency license, and if applicable, its trust permits to the OCC with its Final Report of Liquidation. It also must return all OCC reports of examination or certify that they have been destroyed. The OCC will notify the foreign bank when it deems that all of the requirements of voluntary liquidation have been met and the operations of the federal branch or agency are finally dissolved. The OCC will not release the CED to the foreign bank until all necessary requirements are met.

## Specific Requirements

### Expedited Liquidation

A federal branch or agency seeking an expedited liquidation process should contact LIC/NE for guidance. The OCC permits an expedited liquidation of a federal branch or agency for:

- Acquisition transactions whereby an acquiring U.S. bank purchases all the assets and assumes all the liabilities of the federal branch or agency, including all contingent liabilities.
- Consolidation of the foreign bank's offices in the United States.

These transactions allow the liquidating federal branch or agency to surrender its license and dissolve immediately after the acquisition or consolidation has been consummated.

Generally, an expedited liquidation process is available for acquisition or consolidation transactions, if:

- Foreign bank's senior managers have resolved to liquidate the operations of the federal branch or agency.
- Foreign bank has notified LIC/NE of its plans.
- Acquiring bank, or the consolidating foreign bank, certifies to the OCC that the ownership of all the assets and liabilities, including all contingent liabilities, of the liquidating federal branch or agency have been transferred.
- Federal branch or agency has published notice of the intent to dissolve the federal branch or agency after the combination or consolidation transaction (see Public Notice section below).

## Standard Voluntary Liquidation

A foreign bank that wishes to close its federal branch or agency through a voluntary liquidation may do so according to the procedures in this section. The foreign bank must file a written notice with LIC/NE that includes:

- Resolution to liquidate the federal branch or agency adopted by senior management of the foreign bank.
- Certification of senior management that states that total assets exceed total liabilities, including contingent liabilities of the federal branch or agency.
- Plan of liquidation.
- Anticipated date of closure to the public.

## CED

Generally, the OCC will release a CED to a foreign bank following the completion of a voluntary liquidation and final dissolution of the foreign bank's federal branch or agency.

The OCC will continue to monitor the branch or agency's termination process to ensure compliance with applicable statutes pertaining to voluntary liquidation and the CED. Generally, the OCC will hold the CED until all federal branch or agency liabilities have been resolved. Persons wishing to file claims, after liquidation of the federal branch or agency and return of the CED, must make them against the foreign bank in the appropriate jurisdiction.

## Disposition of Assets

The liquidating agent will liquidate the assets of the federal branch or agency for the benefit, first, of its depositors and other creditors and, then, of the foreign bank. The agent may not dispose of the assets of the federal branch or agency to favor some creditors more than others (unless entitled by law to do so). A liquidating agent may not dispose of the assets of the federal branch or agency, or transfer them to the foreign bank, until all depositors' and creditors' claims have been identified and evaluated.

## Examinations or Field Investigations

The OCC may perform regular and special examinations or field investigations of a federal branch or agency in liquidation, until the claims of all creditors have been satisfied, and the liquidation process is completed pursuant to 12 CFR 28.18 and 5.48. The foreign bank of the federal branch or agency is responsible for the cost of any regular or special examinations conducted by the OCC during the voluntary liquidation phase of the branch or agency.

## Fiduciary Responsibilities

Whenever a federal branch exercising fiduciary powers is in voluntary liquidation, the liquidating agent shall liquidate fiduciary accounts in accordance with 12 USC 92a(j) and 12 CFR 9.

## Liquidating Agent

Senior management of the foreign bank must appoint a liquidating agent and publish notice of the intent to voluntarily liquidate and close the operations of the federal branch or agency. The liquidating agent should reside in the United States during the liquidation process. Senior management of the foreign bank must continue to monitor the federal branch or agency and its liquidation through the liquidating agent.

The liquidating agent may be the general manager of the federal branch or agency, a management committee member of the federal branch or agency, or another responsible person designated by the senior management. The liquidating agent must post a bond in favor of the federal branch or agency. After considering the nature and value of the assets to be liquidated, the bond must carry an amount deemed adequate by senior management of the foreign bank. The resolution adopted by senior management of the foreign bank must specify the dollar amount to be posted as a bond for the liquidation agent.

## Offshore Shell Branches

Prior to completion of a voluntary liquidation, the management and control of any offshore shell branch activity, otherwise conducted through the federal branch or agency in liquidation, must be transferred to other units of the foreign bank or terminated. The management and control by the federal branch or agency of any offshore shell branch activity will cease upon the completion of the liquidation and final dissolution of the federal branch or agency.

## Loan Production Offices

A federal branch or agency that operates a loan production office must include it in the liquidation process of the federal branch or agency.

## Public Notice

### **Expedited Voluntary Liquidation**

The public comment period for an expedited voluntary liquidation is 30 days, unless the OCC determines a shorter period is warranted. The notice must

announce that the federal branch or agency is closing its operations and that creditors should present their claims for payment.

Notice of the application must be published in a newspaper of general circulation in the community where the federal branch or agency is located. The public notice must be published three times, at intervals spaced throughout the 30-day comment period. The first publication should be on or about the date the application is filed with the OCC, but in no event more than three days before or after the date the application is filed. The applicant should submit to the OCC confirmation of the public notice as part of the voluntary liquidation notice.

### **Standard Voluntary Liquidation**

The federal branch or agency must publish daily for two months in a local newspaper notice of the impending closure of the federal branch or agency. If only weekly publication is available, the notice must be published for nine consecutive weeks. The notice must announce that the federal branch or agency is closing its operations and that creditors should present their claims for payment. The first publication of the liquidation should appear on or before the date the liquidation begins and final publication should be prior to the date the federal branch or agency closes to the public.

## **Reports**

At the commencement of its liquidation, a federal branch or agency must submit to LIC/NE a report of its condition. This filing requirement is met by submitting to LIC/NE a Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC Form 002) and a report of all contingent liabilities as of the close of the last business day prior to the start of the liquidation. The Report of Assets and Liabilities must include a maturity schedule of all remaining liabilities, if any. The federal branch or agency in liquidation must continue to file the FFIEC Form 002, and its supplement, FFIEC Form 002S, if applicable, quarterly until the liquidation is complete.

Additionally, the liquidating agent for the federal branch or agency must submit quarterly to LIC/NE a Report of Progress of Liquidation, unless requested to file it more often, until the liquidation is complete and the federal branch or agency is dissolved finally. A copy of the report must be provided to SO.

## **Other**

Additional requirements apply if the voluntary liquidation involves an FDIC-insured federal branch. In such cases, the foreign bank should refer to 12 USC 1818(p) and (q) and 12 CFR 307. The foreign bank should contact LIC/NE for guidance and instructions. If the liquidation occurs in connection with a merger, acquisition, consolidation, or other similar transaction of federal branch or agency operations in the United States, expedited procedures may be available.

# **Procedures: Voluntary Liquidation**

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## **Inquiry**

### **LIC/NE**

1. Refers a foreign bank that requests instructions to this section of the "Federal Branches and Agencies" booklet of the manual. Provides further guidance if the liquidating federal branch:
  - Has FDIC-insured deposits.
  - Is being liquidated in connection with an acquisition or consolidation transaction when abbreviated procedures may be applicable.

## **Filing the Notice**

### **Foreign Bank**

2. Provides a written notice to LIC/NE of its intention to liquidate voluntarily and close its federal branch or agency. The notice should be signed by a senior officer of the foreign bank having the appropriate delegated authority to file such notice. The notice should include:
  - Resolution adopted by senior management of the foreign bank to liquidate the federal branch or agency and appoint a liquidating agent. Resolution must specify the dollar amount to be posted as a bond for the liquidating agent.
  - Certification by senior management of the foreign bank stating that, as of the commencement date of liquidation, the total assets of the federal branch or agency will exceed its liabilities, including contingent liabilities.
  - Acceptable plan of liquidation.
  - Anticipated date that the federal branch or agency will close to the public.

## **Public Notice**

### **Foreign Bank**

3. Publishes a notice of liquidation and submits a sealed certificate of publication to LIC/NE. For a standard liquidation, the notice must be published daily for two months. For an expedited liquidation, the notice must be published three times, at intervals during a 30-day comment period.

## **Processing the Notice**

### **LIC/NE**

4. Acknowledges receipt of the notice of liquidation and notifies SO.
5. Enters required information into CAIS. An effective date is not entered, until the final liquidation report is received.
6. Establishes the official file to maintain all original documents relating to the liquidation.
7. Reviews the proposed liquidation plan, forwards a copy to SO, and checks for compliance with 12 CFR 28.

## **Liquidation Process**

### **Liquidating Agent/Committee**

8. Posts a bond in favor of the federal branch or agency. Considering the nature and value of assets to be liquidated, the bond must carry an amount deemed adequate by senior management of the foreign bank.
9. Sends LIC/NE and SO a copy of the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) and its supplement (FFIEC 002S), if applicable, as of the close of the last business day prior to the start of liquidation. The report should include a certified maturity schedule of liabilities.
10. Carries out the liquidation process. Submits to LIC/NE and SO a copy of the quarterly liquidation progress report of the branch's assets and liabilities, including a maturity schedule of remaining liabilities. The report should include details of payments of all liabilities and the status of pending litigation or other court-ordered liabilities and be kept on file until the liquidation is complete.

## LIC/NE

11. May require an examination or field investigation at any time until the claims of all creditors have been satisfied.
12. Notifies the foreign bank or liquidating agent if a special examination or field investigation is required. If applicable, sends a request letter to the liquidating agent, specifying the issues to be considered in an examination or field investigation.

## Conclusion of Liquidation

### Foreign Bank

13. Upon completion of the liquidation process, submits to the OCC a Final Report of Liquidation and:
  - All OCC reports of examination (or certifies that all OCC reports have been destroyed or returned), the federal branch or agency License Certificate, and trust permit (if applicable).
  - Certification of senior management of the foreign bank, stating that all claims have been fully paid or settled and that the federal branch or agency has ceased operations.
  - Copy of the agreement with the landlord canceling the lease (if applicable).
  - Certification that all FDIC requirements have been met in addition to a copy of the FDIC's termination of insurance letter, if the voluntary liquidation involves an insured federal branch.

## LIC/NE

14. Enters the effective date of the Final Report of Liquidation into CAIS. Entry of the effective date of the liquidation into CAIS will cause the liquidating federal branch or agency to be placed on inactive status in the OCC's bank structure records. Publication in the Weekly Bulletin constitutes required OCC notice to other federal agencies.
15. Sends a letter to the foreign bank and a copy to SO acknowledging receipt of the Final Report of Liquidation, receipt of all required documents, and completion of the liquidation.
16. After consultation with SO and District Counsel, sends a letter to the depository bank authorizing release of the CED to the foreign bank, with a copy to the foreign bank and SO. This will usually occur within 30 days of receipt of the Final Report of Liquidation.



## **Close Out**

17. When all required steps are completed, closes out the file, and forwards it to Central Records. Informs SO to close out all supervisory files and to forward them to the Central Records.

# Federal Branches and Agencies — Capital Equivalency Deposit

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## Introduction

This section discusses the establishment of CED accounts for a federal branch, limited federal branch, or federal agency (federal branch or agency).

## Key Policies

A CED serves the public interest, protects depositors, and maintains a sound financial condition. In the event of a liquidation of a federal branch or agency, CED assets may be used to extinguish appropriate claims, if necessary. All federal branches and agencies must establish a CED account before opening for business. The CED must be maintained in accordance with the requirements set forth in this section and 12 CFR 28.15.

## Summary of Process

Subject to the OCC's discretion, 12 USC 3102(g) and 12 CFR 28.15 require a federal branch or agency to establish and maintain a CED account with a Federal Reserve System member bank ("depository bank") in an amount equal to at least of five percent of the total liabilities of the federal branch or agency, including acceptances but excluding accrued expenses, intercompany liabilities, liabilities of a international banking facility (IBF) to third parties and of a federal branch to an IBF, liabilities from repurchase agreements (on a case-by-case basis), and any amounts due to head office.<sup>6</sup>

The foreign bank must deposit its CED into an account in a bank that is in the state where the federal branch or agency is located. A member bank headquartered in another state, but operating a branch in the state where the federal branch or agency is located qualifies as a CED depository bank. A foreign bank with federal branches or agencies in more than one state may consolidate some or all of its CEDs into one such account, but the total amount of the consolidated CED will continue to be calculated on an office-by-office basis. The OCC must approve the depository bank if it is a national bank, and the FRB must concur if the depository bank is a state member bank.

The CED must consist of the following eligible assets:

- Investment securities eligible for investment by national banks.
- U.S. dollar deposits payable in the United States or any other Group of Ten country.

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<sup>6</sup> While the statute requires the CED to be in an amount greater than (1) the capital required to organize a national bank at the same location, or (2) 5 percent of the branch's or agency's total liabilities, as a practical matter only the latter criteria is relevant. There no longer is a statutory minimum capital requirement to organize a national bank in the National Bank Act.

- Certificates of deposit, payable in the United States, and banker's acceptances, provided that, in either case, the issuer or the instrument is rated investment grade by an internationally recognized rating organization and neither the issuer nor the instrument is rated lower than investment grade by any such rating organization that has rated the issuer or the instrument.
- Repurchase agreements.
- Other similar assets the OCC deems eligible.

A foreign bank applicant establishing its CED is advised to contact LIC/NE for information on any relevant developments in determining asset eligibility.

A CED agreement is required before an initial or additional federal branch or agency opens for business or a state-licensed branch or agency converts to a federal license. This agreement is entered into by the foreign bank, the depository bank, and the OCC. However, certain eligible foreign banks may no longer be required to pledge assets to the OCC or to have the depository bank as a party to the agreement. The depository bank still must be furnished with a copy of the signed agreement and acknowledge its receipt. In addition, an eligible foreign bank must continue to hold the assets segregated in a safekeeping account and free of any liens.

The OCC generally provides written notice to those foreign banks that are deemed eligible banks for purposes of establishing and maintaining their CED accounts. If the OCC does not advise foreign banks that they are eligible, the banks may make a written request to the OCC for this relief.

The CED agreement governs the operation of the account, sets forth certain conditions, and stipulates that the instruments be held for the benefit of the OCC. A federal branch or agency needs the OCC's prior approval to reduce the aggregate value of the assets in the account. Eligible foreign banks that are not required to pledge the CED to the OCC do not need prior approval to reduce the value of its CED.. Instead, these foreign banks will be responsible for managing their CED accounts and ensuring that eligible assets are deposited in the depository bank in an amount that satisfies their CED requirement.

The foreign bank collects the income on the eligible instruments and is permitted by the agreement to exchange funds or securities on a dollar-for-dollar basis without prior OCC approval.

If the OCC requires that it be a party to the agreement, an authorized officer of the foreign and depository banks should complete and sign three original CED agreements and forward them to LIC/NE. The OCC retains one original and sends the two remaining documents to the foreign bank. The foreign bank is then responsible for providing one copy of the agreement to the depository bank.

Once established, the CED must be maintained in accordance with the requirements set forth in this section and 12 CFR 28.15. Requests for CED account withdrawals, changes in depository banks, or other matters affecting the CED

account require prior notice and should be discussed with the SO responsible for supervising the branch.

## **Closing of Account**

With the OCC's prior approval, a foreign bank may close the CED account of its federal branch or agency after it voluntarily liquidates or converts from a federal to state license. The closing of the account will follow established OCC procedures (see the Voluntary Liquidation and Other Changes in Activities or Operations sections of this booklet).

## **Account Statements**

Federal branches and agencies should retain CED account statements furnished by the depository bank. OCC examiners will review such records during examinations, as appropriate. The CED agreement requires that the depository bank furnish receipts to the OCC, whenever assets are deposited or withdrawn from the account. Receipts should specify the aggregate face value of the assets being deposited or withdrawn, and, for each asset, the following information to the extent applicable: the complete title, interest rate, series, serial number, face value, maturity date, and call date. In most cases, a copy of the monthly statement routinely provided to the depositor is sufficient.

# Procedures: Capital Equivalency Deposit

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## Request

### LIC/NE

1. Refers a federal branch or agency that requests instructions to this section of the "Federal Branches and Agencies" booklet.
2. Discusses eligible bank criteria, the qualification criteria for a depository bank, and identifies issues that could affect OCC processing.

### Foreign Bank

3. Consults with LIC/NE about the proposed depository bank.
4. Submits a written request to LIC/NE, along with three CED agreements, each originally signed by the federal branch or agency and the depository bank.

## Processing the Request

### LIC/NE

5. Verifies that the proposed depository bank is a member bank of the Federal Reserve System and has an office in the same state as the federal branch or agency. If not, informs the federal branch or agency it must select a different depository bank.
6. Determines if there are any other reasons why the proposed depository bank should not be approved.
7. If the proposed depository bank is a state member bank, consults with the appropriate FRB.

## Decision

8. If the request is denied, sends letter to the federal branch or agency justifying OCC's decision. If approved, sends to the federal branch or agency two CED agreements signed by all parties. One copy should be retained by the federal branch or agency and the other forwarded by the federal branch or agency to the new depository bank. OCC retains one original signed copy for its official file.

## Close Out

### LIC/NE

9. Makes CAIS entries and files documents in the federal branch or agency files.

# Federal Branches and Agencies — Other Changes in Activities or Operations

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## Introduction

This section describes the OCC's policies and procedures not addressed elsewhere in this booklet for other changes in activities or operations of a foreign bank that owns a federal branch or agency.

## Applicability

This section pertains to the following activities of a foreign bank that owns a federal branch or agency:

Changes in:

- Corporate title.
- Mailing address of either the corporate headquarters of the foreign bank or of the federal branch or agency.
- Home state designation.
- Control of the foreign bank when the acquiring individual, group of individuals, or entity will indirectly or directly control or have the power to vote at least 25 percent of any class of securities of the foreign bank or controls in any manner the election of a majority of the directors or trustees of the foreign bank (28.11(d)).

Activities:

- Establishment of a loan production office.
- Noncontrolling equity investments.
- Establishment of an operating subsidiary of a federal branch or agency, or conduct a new activity in an existing operating subsidiary of a federal branch or agency.
- Conversion to a state branch, state agency, or representative office.

## Summary of Process

A foreign bank must provide written notice within 10 days of the effective date of changes in title, mailing address, and/or home state designation to the Director for District Licensing, Northeastern District, Office of the Comptroller of the Currency, 340 Madison Avenue, Fifth Floor, New York, NY 10017-2613. Notices for changes

in control should be sent to the same address within 14 calendar days after the foreign bank becomes aware of the change. Conversion to a state-licensed branch or agency requires prior notice to the OCC, generally, at the time the application to convert is filed with the state.

The general manager of a federal branch or agency should sign notices submitted to the OCC.

## **Specific Requirements**

### **Change in Corporate Title**

The notice of the change in the corporate title of the foreign bank must include the current and the former corporate title.

### **Change in Mailing Address**

A foreign bank must notify the OCC whenever it changes its mailing address or the mailing address of its federal branch or agency. A separate notice is not required if a change in address of a federal branch or agency results from a corporate application with the OCC, such as a relocation.

### **Change in Home State Designation**

A foreign bank changing its home state designation must give the OCC notice of the change. A foreign bank may meet this requirement by providing to the OCC a copy of a notice or application to the FRB or an FRB determination for a change in home state designation.

### **Change in Control**

When an entity or person or group or persons acquires control over a foreign bank operating a federal branch or agency, the OCC only requires a foreign branch to provide a written notice within 14 calendar days after the foreign bank becomes aware of the change, provided that after the change in control the foreign bank and its federal branch or agency continue to operate in the same corporate form as prior to the change. In such case, the acquiring entity or person needs only to provide the OCC with a copy of any filing submitted to the FRB, as may be required under 12 CFR 211.24(a)(4). The OCC may request supplemental information as deemed appropriate.

An entity, person, or group of persons proposing to acquire control of a foreign bank operating a federal branch or agency are encouraged to contact LIC/NE.



## Loan Production Office

A federal branch may establish lending offices, make credit decisions, and engage in other representational activities at a site other than a federal branch office in accordance with 12 CFR 7.1003–1005.

## Noncontrolling Equity Investments

A well-capitalized and well-managed federal branch may make noncontrolling equity investments subject to the requirements of 12 CFR 5.36. [See also “Investment in Subsidiaries and Equities” booklet.]

## Operating Subsidiaries

A federal branch or agency may acquire, establish, or maintain an operating subsidiary pursuant to the requirements in 12 CFR 5.34, as if it were a national bank. [See also “Investment in Subsidiaries and Equities” booklet.]

## Conversion to State-Licensed Operation

When a foreign bank decides to convert its federal branch or agency to a state-licensed operation, it must file written notice with the OCC prior to conversion. The notice must include a resolution from senior management of the foreign bank to surrender the federal branch or agency license and any trust powers previously granted by the OCC. The anticipated date of the conversion must also be provided.

Prior to conversion, a federal branch or agency must return the federal branch or agency license, and, if applicable, its trust permit. The federal branch or agency must also either return all reports of examination or certify that they have been destroyed.

The conversion will not be deemed final until the foreign bank obtains any appropriate regulatory approvals and returns official OCC documents. Upon conversion to a state-licensed operation and compliance with OCC’s requirements for the return to it of documents, the OCC will authorize the release of the CED to the foreign bank.

## **Procedures: Other Changes in Activities or Operations (Change in Corporate Title, Mailing Address, or Home State Designation)**

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### **LIC/NE**

1. Refers a foreign bank that requests instructions to this section of the "Federal Branches and Agencies" booklet of the manual.

### **Foreign Bank**

2. Submits to LIC/NE within 10 days of the effective date, a notice of the change, including the effective date. The OCC accepts a copy of any notice or application to the FRB or state supervisors.

### **Processing the Notice**

#### **LIC/NE**

3. Establishes an official file that contains all original documents.
4. Sends a letter to the foreign bank acknowledging receipt and copies SO.
5. Makes CAIS entries.

### **Close Out**

6. Sends official file to Central Records.

## **Procedures: Other Changes in Activities or Operations (Change in Control)**

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### **LIC/NE**

1. Refers a foreign bank that requests instructions to this section of the "Federal Branches and Agencies" booklet of the manual.

### **Foreign Bank**

2. Submits to LIC/NE within 14 calendar days after the foreign bank becomes aware of the change in control, a notice of a change in its control (see Notice in the Documents section). The OCC accepts a copy of any notice or application to the FRB. If available, a copy of the FRB's decision for the change in control or ownership should be attached to the notice.

### **Processing the Notice**

#### **LIC/NE**

3. Establishes an official file that contains all original documents.
4. Makes CAIS entries.
5. Reviews the material submitted and determines whether the new controlling owner has the financial capacity and integrity required by the OCC of an owner of a federal branch or agency. Performs background checks as deemed appropriate (see "Background Investigations" booklet of the manual).
6. Forwards any pertinent material submitted to SO, District Counsel, IBS HQ, Enforcement and Compliance, and the FRB, as appropriate. Discusses with them any concerns, as appropriate.
7. Requests additional information, if necessary, to understand fully the operations and structure of the new owner. Sometimes, multiple-tier ownership structures may necessitate obtaining financial and structure information on other legal entities.
8. Sends a letter to the foreign bank acknowledging receipt and copies SO.

### **Close Out**

9. Sends official file to Central Records.

# Procedures: Operating Subsidiary and Noncontrolling Investments

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## After-the-fact Notice

### Prefiling

#### LIC/NE

1. Refers a federal branch that requests instructions to the "Investment in Subsidiaries and Equities" booklet and this section of the "Federal Branches and Agencies" booklet of the manual.
2. For an operating subsidiary, consults with the FRB to determine if the FRB has any issues with the proposed operating subsidiary and with the federal branch filing an after-the-fact notice.

### Filing the Notice

#### Federal Branch

3. Submits a complete after-the-fact notice for an operating subsidiary or noncontrolling investments to LIC/NE. The notice must provide the information required in the operating subsidiary and noncontrolling investments procedures sections of the "Investment in Subsidiaries and Equities" booklet.
4. In the notice, a federal branch must certify that it is "well capitalized" and "well managed" pursuant to 12 CFR 4.7(b)(1)(iii) and 5.34(d)(3)(ii) (see Glossary).

### Review

#### LIC/NE

5. Initiates and enters information into CAIS.
6. Establishes the official file to maintain all original documents.
7. Reviews the notice and verifies that:
  - Federal branch is "well capitalized" and "well managed."
  - For an operating subsidiary, the description of the activity meets the regulatory criteria under 12 CFR 5.34(e)(5)(v) and the

Operating Subsidiary Guidelines in the Appendix section of the "Investment in Subsidiaries and Equities" booklet. For noncontrolling investments, the description of the activity meets the regulatory criteria of 12 CFR 5.34(e)(5)(v) and 5.36(e).

- It contains all the required notice criteria in step 3 and from the "Investment in Subsidiaries and Equities" booklet.
- If activity raised any question of permissibility, forwards a copy of the notice to District Counsel.

8. If the notice is sufficient, sends an acknowledgment letter to the federal branch, providing a copy to IBS SO.

If the notice relates to an investment in a company engaged in insurance activities (including a broker dealer selling annuities that are considered insurance under state law), prepares a cover letter and forwards a copy of the notice to the insurance commissioner of the state in which the company holds a resident license or charter, as applicable.

Proceeds to step 11.

9. If the notice is insufficient or filed incorrectly, contacts the federal branch for clarification or the missing information.

10. Reviews any additional information. If the notice is sufficient, sends an acknowledgment letter to the federal branch, providing a copy to IBS SO.

If the notice relates to an investment in a company engaged in insurance activities (including a broker dealer selling annuities that are considered insurance under state law), prepares a cover letter and forwards a copy of the notice to the insurance commissioner of the state in which the company holds a resident license or charter, as applicable.

## Close Out

### LIC/NE

11. Makes CAIS entries.
12. Reviews the file for completeness and forwards the file to Central Records.

# Procedures: Operating Subsidiary and Noncontrolling Investments

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## Application

### Prefiling

#### LIC/NE

1. Refers a federal branch that requests instructions to the "Investment in Subsidiaries and Equities" booklet and this section of the "Federal Branches and Agencies" booklet of the manual.
2. Arranges a prefiling meeting with representatives of the federal branch, if appropriate. Invites IBS SO, District Counsel, and HQ LIC.
3. If any prefiling discussions or meetings reveal policy, legal, supervisory, or other novel issues, contacts HQ LIC to decide:
  - If the application should be filed with HQ LIC (broad policy or legal issues),
  - If specific issues should be separated from the application to be handled by HQ LIC, while the application continues to be processed by LIC/NE, or
  - When the filing should be forwarded to HQ LIC.
4. For a proposed operating subsidiary, consults with the FRB to determine if the FRB has any preliminary issues with the proposal.
5. Prepares a memorandum of policy or legal issues identified during the meeting and retains it in a pending file.

### Filing the Application

#### Applicant

6. Submits a complete operating subsidiary or noncontrolling investments application to LIC/NE. The application must provide the information required in the operating subsidiary and noncontrolling investments procedures sections of the "Investment in Subsidiaries and Equities" booklet.

## **Review**

### LIC/NE

7. Initiates and enters information into CAIS.
8. Establishes the official file to maintain all original documents.
9. Sends a letter within five business days of receipt, notifying the federal branch that its filing will be processed under the standard review process and that the activity cannot begin until the OCC provides written approval for the operating subsidiary or noncontrolling investments.
10. Reviews the filing and any other relevant information about the federal branch. If the filing presents novel, legal or policy issues, repeats step 3 and forwards a memo to HQ LIC.
11. Within five business days of receipt, notifies IBS SO, District Counsel, and other OCC divisions, as appropriate, of the filing and solicits comments with a preliminary response required within 15 days after the filing date.
12. Requires the federal branch to submit additional information or legal analysis, including a specific date for reply, if the activity of the proposed subsidiary or noncontrolling investments is unclear, the legality is in doubt, or if additional information is necessary to make a decision about the permissibility of the proposed investment.

## **Decision**

### LIC/NE

13. For a proposed operating subsidiary, contacts the FRB to discuss any issues about the application and any conditions contemplated by the FRB for its approval.
14. Prepares the confidential memorandum and decision letter, recommending a decision to the delegated official.
15. Decides application under delegated authority or forwards the official file to HQ LIC for decision. If referred to HQ LIC, proceeds to step 19.
16. Notifies the federal branch's representative and the FRB (for an operating subsidiary) by telephone after the decision and sends the federal branch a decision letter, with a copy to IBS SO and the FRB (for an operating subsidiary). (Decision letter, if applicable, will include any written conditions or supervisory concerns.)

17. If the application relates to an investment in a company engaging in insurance activities, including a broker or dealer selling annuities that are considered insurance under state law, forwards a copy of the notice with a brief cover letter to the insurance commissioner of the state in which the company holds a resident license or charter, as applicable.
18. If denied, proceeds to step 25.

## HQ LIC

19. Reviews the file and all relevant information and solicits comments from other OCC divisions, as appropriate.
20. Prepares and sends the confidential memorandum and decision letter, recommending a decision to the delegated official.
21. After decision, notifies LIC/NE, the federal branch's representative and the FRB (for an operating subsidiary) by telephone of the decision and sends the federal branch a decision letter, with a copy to IBS SO and the FRB (for an operating subsidiary). (Decision letter, if applicable, will include any written conditions or supervisory concerns.)
22. Makes CAIS entries.
23. For approved and conditionally approved filings, returns the official file to LIC/NE for additional processing.
24. If denied, proceeds to step 25.

## Close Out

### LIC/NE

25. Makes CAIS entries to close filing.
26. Reviews the file for completeness and forwards it to Central Records.



# Procedures: Other Changes in Activities or Operations (Conversion to a State-Licensed Operation)

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## Inquiry

### LIC/NE

1. Refers a foreign bank that requests instructions to this section of the "Federal Branches and Agencies" booklet of the manual. Promptly advises appropriate SO about the foreign bank's inquiry.

## Filing the Notice

### Foreign Bank

2. Submits to LIC/NE a notice of its intent to convert the federal branch or agency to a state-licensed operation and the anticipated date of the conversion. The notice must be filed in advance of the conversion and signed by a senior officer of the foreign bank having the appropriate authority to file such a notice. The notice should include:
  - A resolution adopted by senior management of the foreign bank that agrees to surrender the federal branch or agency license, trust permit, if applicable, and reports of examination (or certification that the reports have been destroyed).
  - A copy of the application to convert filed with the state.
  - Reason(s) for the conversion and the proposed effective date.

## Processing the Notice

### LIC/NE

3. Establishes the official file to maintain all original documents.
4. Sends a letter to the foreign bank acknowledging receipt and copies SO.
5. Makes CAIS entries.

### Foreign Bank

6. Upon approval from the state to convert, submits to the OCC:
  - Copy of the approval letter from the state to convert.

- All OCC reports of examination (or certifies that all OCC reports have been destroyed), the federal branch or agency license certificate, and trust permit (if applicable).
- Effective date of the conversion.
- Request for release of the CED.

## **Close Out**

### LIC/NE

7. Enters the effective date of the conversion into CAIS.
8. Sends a letter to the foreign bank and a copy to SO acknowledging receipt of other regulatory approvals and the return of required documents.
9. Sends a letter to the depository bank authorizing the release of the CED to the foreign bank, with a copy of the letter to the foreign bank.
10. Sends official file to Central Records. Informs SO to close out all supervisory files and forward them to Central Records.

## Glossary

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**Capital Equivalency Deposits (CED)** are deposits required for both federal branches and agencies pursuant to Section 4 of the IBA (12 USC 3102(g)) and 12 CFR 28.15. The OCC looks at CEDs primarily as a limited source of good quality assets, which during a liquidation of a federal branch or agency may be sold, if necessary, to pay third party claims. Upon the opening of a federal branch or agency, a foreign bank must have U.S. dollar deposits or investment grade securities on deposit with a member bank in the state where the federal branch or agency is located. A member bank headquartered in another state, but operating a branch located in the state in which the federal branch or agency is located, qualifies as a CED depository institution.

The deposit arrangements and, if applicable, any subsequent reductions must be approved in advance by the OCC. The aggregate amount of deposited U.S. dollars and investment grade securities for each federal branch or agency must be five percent of the total third-party liabilities of the federal branch or agency.

In individual cases, the OCC may also require, for prudential or supervisory reasons, that a foreign bank increase its CED above the minimum amount. Funds deposited and investment grade securities placed in safekeeping at the depository institution to satisfy the capital equivalency requirements of the foreign bank may be required to be pledged to the OCC.

**Commercial lending company** means any organization, other than a bank or an organization operating under section 25 of the Federal Reserve Act (12 USC 601-604a), organized under the laws of any state, that maintains credit balances permissible for an agency and engages in the business of making commercial loans (including any company chartered under Article XII of the banking law of the state of New York).

**Comprehensive supervision on a consolidated basis (CCS)** means whether, after considering various factors, a foreign bank is supervised or regulated in a manner so that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank to assess the foreign bank's overall financial condition and compliance with laws and regulations.

**Control** is indirect or direct control or power to vote 25 percent or more of any class of voting securities of another entity or control in any manner of the election of a majority of the directors or trustees of another entity.

**Conversion** means to take one of the following actions:

- Convert a state branch or state agency operated by a foreign bank, or a commercial lending company controlled by a foreign bank, into a federal branch, limited federal branch, or federal agency.
- Convert a federal agency to a federal branch or limited federal branch, a federal branch to a limited federal branch or federal agency, or a limited federal branch to a federal branch or federal agency.

**Edge Act Corporation** means a corporation organized under section 25A of the Federal Reserve Act, 12 USC 611-631.

A foreign bank is an **eligible foreign bank**, as defined in 12 CFR 28.12(f), if each federal branch and agency of the foreign bank in the United States or, if the foreign bank has no federal branches or agencies and is engaging in an establishment of a federal branch or agency as defined in 12 CFR 28.11(f)(4), each state branch and agency:

- Has a composite rating of "1" or "2" under the interagency rating system for U.S. branches and agencies of foreign banks (see the "ROCA" definition).
- Is not subject to a cease and desist order, consent order, formal written agreement, prompt corrective action directive or, if subject to such an order, agreement, or directive, is informed in writing by the OCC that the federal branch or agency may be treated as an "eligible foreign bank."
- Has, if applicable, a CRA rating of "outstanding" or "satisfactory."

To **establish a federal branch or agency** means to take one of the following actions:

- Open and conduct business through an initial or additional federal branch or agency.
- Acquire directly or indirectly through merger, acquisition, consolidation, or similar transaction with another foreign bank, the operations of a federal branch or agency that is open and conducting business.
- Acquire a federal branch or agency through the acquisition of a foreign bank subsidiary that will cease to operate in the same corporate form following the acquisition.
- Convert a state branch or agency operated by a foreign bank, or a commercial lending company controlled by a foreign bank, into a federal branch or agency.
- Relocate a federal branch or agency within a state or from one state to another.
- Convert a federal agency or a limited federal branch into a federal branch.

A **federal agency** is an office or place of business, licensed by the OCC and operated by a foreign bank in any state that may engage in the business of banking, including maintaining credit balances, cashing checks, and lending money, but may not accept deposits from citizens or residents of the United States.

A **federal branch** is an office or place of business, licensed by the OCC and operated by a foreign bank in any state, that may engage in the business of banking, including accepting deposits, and that is not a federal agency.

A **foreign bank** is an organization organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, and that engages directly in the business of banking in a foreign country.

**Home state** of a foreign bank is the state in which the foreign bank has a branch, agency, subsidiary commercial lending company, or subsidiary bank. If a foreign bank has an office in more than one state, the home state of the foreign bank is the state selected to be the home state by the foreign bank, or, in default of such selection, the state selected by the FRB.

A **limited federal branch** is a federal branch that accepts only those deposits permissible for an Edge Act Corporation to receive.

**ROCA** is the rating system used by U.S. bank regulators to rate U.S. branches and agencies of foreign banking organizations. The (R) stands for risk management, (O) for operational controls, (C) for compliance, and (A) for asset quality. The individual components and the overall or composite ROCA rating are based on a scale from one through five in ascending order of supervisory concern. Thus, one represents the lowest level of concern and five, the highest.

A **short-distance relocation** means moving the federal branch or agency within:

- A 1,000-foot radius of the site if the office is located within a **central city** of a Metropolitan Statistical Area (MSA) designated by the Office of Management and Budget.
- A one-mile radius of the site, if not located within a central city, but if located within an MSA.
- A two-mile radius of the site if not located within an MSA.

## References

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<b>Bank Secrecy Act</b>	
Law	31 USC 5318
Regulation	31 CFR Part 103, et seq.
<b>Capital Equivalency Deposit</b>	
Law	12 USC 3102 (g)
Regulation	12 CFR 28.15
<b>Capital Requirements</b>	
Law	12 USC 3102
Regulations	12 CFR 3, 28.14, and 28.20
<b>Change in Corporate Title</b>	
Laws	12 USC 3102
Regulation	12 CFR 28.17(a)
<b>Change in Home State Designation</b>	
Law	12 USC 3103( c)
Regulation	12 CFR 28.11(n) and 28.17(d)
<b>Change in Location—Policy and Procedures</b>	
Laws	12 USC 30(b) 3102
Regulations	12 CFR 5.30, 5.40 and, 28.12(e)(1)
<b>Change in Mailing Address</b>	
Law	12 USC 3101 et seq.
Regulation	12 CFR 28.17(b)
<b>Change in Ownership or Control</b>	
Laws	12 USC 3102, 3105, and 3108(a)
Regulations	12 CFR 28.11(d), 28.25
<b>Conversion to State-Licensed Branch, Agency, or Representative Office</b>	
Laws	12 USC 3101 et seq. and state law
Regulations	12 CFR 5.70 and 28.17( c)
<b>Corporate Powers and Investment Securities</b>	
Laws	12 USC 24, 3102
Regulations	12 CFR 1 and 28.13(a)
<b>Establish a Federal Agency or Branch</b>	
Law	12 USC 3102
Regulations	12 CFR 5.70, 28.11(f), and 28.12

<b>Examinations</b>	
Laws	12 USC 161, 3102(b) and 3108(a)
Regulation	12 CFR 7.4000 and 28.18(c)
<b>Expedited Review</b>	
Laws	12 USC 3101 et seq.
Regulations	12 CFR 5.13 and 28.12(e)
<b>Failing to File Progress Reports</b>	
Laws	12 USC 164 and 3101 et seq.
Regulations	12 CFR 28.18 and 28.19
<b>Federal Branches and Agencies of Foreign Banks</b>	
Laws	12 USC 3101-3111
Regulations	12 CFR 5.70 and Part 28
<b>Fiduciary Powers</b>	
Laws	12 USC 92a and 3102
Regulations	12 CFR 5.26, 28.12(e)(5), and Part 9
<b>Fiduciary Powers of Liquidating Agent</b>	
Laws	12 USC 92(a)(i) and 3101 et seq.
Regulations	12 CFR Part 9
<b>Fraudulent Statements</b>	
Law	18 USC 1001
<b>Independent External Audit</b>	
Laws	12 USC 1831m and 15 USC 78m
Regulations	12 CFR 11, 363, and 17 CFR 210
<b>International Banking Act</b>	
Laws	12 USC 3101 et seq.
Regulations	12 CFR 5.70 and part 28
<b>Interstate Branching</b>	
Laws	12 USC 3102(h) and 3103
Regulation	12 CFR 28.12
<b>Liquidation Reports</b>	
Laws	12 USC 181 and 3102
Regulations	12 CFR 5.48 and 28.22
<b>National Environmental Policy Act</b>	
Law	42 USC 4321
<b>National Historic Preservation Act</b>	
Law	16 USC 470f

**Notice of Filing**

Laws

12 USC 93a and 3101 et seq.

Regulations

12 CFR 5.8 and 5.70

**Public Comments and Hearings**

Regulations

12 CFR 5.10 and 5.11

**Requirements and Procedures for Liquidation and Dissolution**

Laws

12 USC 181, 182, and 3101 et seq.

Regulations

12 CFR 5.48, 9.16 and 28.22

**Termination of Insurance**

Law

12 USC 1828(a), (q)

Regulation

12 CFR 28.16

**Theft, Embezzlement, or Misapplication**

Laws

18 USC 656

Regulation

12 CFR part 19