

COMPTROLLER'S LICENSING MANUAL

Federal Branches and Agencies



September 2020

Contents

| | |
|--|-----------|
| Introduction | 1 |
| Background | 2 |
| Activities Requiring Approval or Notice—Rules of General Applicability | 4 |
| Summary of Process | 6 |
| Initial and Additional Establishments | 9 |
| Processing Requirements | 9 |
| Summary of Process | 11 |
| Specific Requirements | 12 |
| Acquisitions | 15 |
| Processing Requirements | 15 |
| Summary of Process | 16 |
| Specific Requirements | 18 |
| Conversion or Contraction of Operations | 20 |
| Processing Requirements | 20 |
| Summary of Process | 21 |
| Specific Requirements | 24 |
| Relocations | 26 |
| Processing Requirements | 26 |
| Summary of Process | 26 |
| Specific Requirements | 27 |
| Fiduciary Powers | 29 |
| Processing Requirements | 29 |
| Summary of Process | 30 |
| Specific Requirements | 31 |
| Voluntary Liquidation | 33 |
| Processing Requirements | 33 |
| Summary of Process | 33 |
| Specific Requirements | 35 |
| Capital Equivalency Deposit | 39 |
| Summary of Process | 39 |
| Closing an Account | 40 |
| Other Changes in Activities or Operations | 41 |
| Summary of Process | 41 |
| Specific Requirements | 41 |
| Glossary | 44 |
| References | 48 |
| Table of Updates Since Publication | 51 |

Introduction

This booklet of the *Comptroller's Licensing Manual* consolidates the Office of the Comptroller of the Currency's (OCC) policies and processes regarding the establishment, operations, and other corporate activities of federally licensed offices of foreign banks, which include federal branches, limited federal branches, and federal agencies. This booklet does not cover subsidiaries for foreign banks, which is covered in the "Related Organizations" booklet of the *Comptroller's Handbook*. Throughout this booklet, references to federal branches and agencies also include limited federal branches, unless otherwise noted. In addition, this booklet

- provides a general background on legislative developments that affect the corporate activities of foreign banks in the United States;
- outlines which corporate activities of foreign banks require approval from or notice to the OCC and provides specific filing guidance; and
- specifies which filings may receive expedited review, lists the criteria for a foreign bank to be considered an eligible filer, and describes the streamlined application process.

Foreign banks seeking or considering federal branch activities not specifically addressed in this booklet are encouraged to consult the OCC's Northeastern District Licensing Division (LIC/NE). The OCC advises foreign banks on whether they should first send written proposals to the OCC for consideration regarding the proposed activities.

This booklet contains the following sections:

- "Introduction"
- "Initial and Additional Establishments"
- "Acquisitions"
- "Conversion or Contraction of Operations"
- "Relocations"
- "Fiduciary Powers"
- "Voluntary Liquidation"
- "Capital Equivalency Deposit"
- "Other Changes in Activities or Operations"

"Glossary" and "References" sections appear at the end of the booklet. Refer to other booklets of the *Comptroller's Licensing Manual*, as applicable:

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

Background

General

12 CFR 5 and 28 contain the procedural and substantive regulations for foreign banks seeking to conduct banking activities in the United States through federal branches and agencies. 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 International Banking Act (IBA) of 1978, as amended, provides a federal licensing option that allows foreign banks to establish federal branches or federal agencies supervised by the OCC. The IBA requires foreign banks seeking to establish or expand their federally licensed U.S. operations to apply for and obtain OCC approval.¹ Except as otherwise provided by the IBA, other federal laws or regulations, or OCC policy, federal branches and agencies generally have the same rights and responsibilities as national banks operating at the same location and are subject to the same laws, regulations, policies, and procedures that apply to national banks.² A federal branch, for example, may conduct a full range of banking activities, including trading and investment activities, accepting wholesale and foreign deposits, granting credit, and acting as a fiduciary. There are important differences, however, between a federal branch or agency and a full-service bank. A federal branch or agency is a banking office of a foreign bank that does not maintain its own capital base. Also, federal branches and agencies generally cannot accept retail deposits below the Federal Deposit Insurance Corporation's (FDIC) deposit insurance maximum, as discussed further in the "Restrictions on Deposits and Deposit Insurance" section.

Comprehensive Consolidated Supervision

The Board of Governors of the Federal Reserve System (FRB) conducts a Comprehensive Consolidated Supervision (CCS) review when a foreign bank first seeks to establish a presence in the United States or when a CCS determination has not been made for a foreign bank seeking to establish an additional office in the United States.³

In deciding whether a foreign bank is subject to CCS, the FRB determines whether the foreign bank's home country supervisor receives sufficient information on the worldwide

¹ 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 sections. This booklet likewise notes in other sections that foreign banks may need to submit regulatory filings to other banking agencies.

² Refer to 12 USC 3102(b) and 12 CFR 28.13(a)(1).

³ Refer to 12 USC 3105(d)(2)(A) and 12 CFR 211.24(a)(2), (a)(3), and (c)(1).

operations of the foreign bank.⁴ The information must allow the home country supervisor to assess the foreign bank's overall financial condition and compliance with laws and regulations.⁵ If the FRB concludes that a foreign bank is not subject to CCS, the FRB and the 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.⁶

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 working toward CCS in the foreign bank's home country.⁷ For other types of requests, the OCC may consider CCS as one of the factors the agency evaluates as part of the OCC's review.⁸

Restrictions on Deposits and Deposit Insurance

The IBA prohibits a foreign bank from establishing any branch in the United States that accepts domestic retail deposits of less than the FDIC's "standard maximum deposit insurance amount" (SMDIA), unless (1) the branch is an insured branch as defined in section 3(s) of the Federal Deposit Insurance Act or (2) the OCC determines by order or regulation that the branch is not engaged in domestic retail deposit activities requiring deposit insurance protection, taking account of the size and nature of depositors and deposit accounts.⁹ The amount of the SMDIA is equivalent to the maximum amount of deposit insurance for accounts in banks insured by the FDIC.¹⁰ Uninsured branches of foreign banks are permitted, however, to accept deposits of less than the SMDIA from limited sources, such as from individuals who are not citizens or residents of the United States at the time of the initial deposit.¹¹

⁴ Refer to 12 CFR 211.24(c)(1)(ii).

⁵ Ibid.

⁶ Refer to 12 USC 3105(d)(6)(A); 12 CFR 28.12(b) and (c); and 12 CFR 211.24(c)(1)(iii).

⁷ Refer to 12 USC 3103(a)(3).

⁸ Refer to 12 CFR 28.12(b)(5) and (c).

⁹ Branches with federal deposit insurance that were in operation or had applied for deposit insurance before December 19, 1991, are grandfathered and are permitted to retain deposit insurance, subject to certain restrictions.

¹⁰ Refer to 12 USC 1821(a)(1)(E).

¹¹ Refer to 12 CFR 28.16(b).

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's approval order issued in connection with the establishment.¹²

Additionally, FDIC filings or approval 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 additional¹³ federal branch or agency;
- establish¹⁴ 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 a federal agency or limited federal branch into a federal branch;
- relocate a federal branch or agency;
- exercise fiduciary powers at a federal branch; or
- 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.

Notice

A foreign bank operating a federal branch or agency must provide notice to LIC/NE if

- it voluntarily liquidates U.S. operations;¹⁵

¹² Refer to 12 USC 3102(a)(2).

¹³ A prior notice is available for the establishment of an additional intrastate federal branch or agency if certain requirements are met. (Refer to 12 CFR 28.12(e) and the “Additional Branches and Agencies” section of this booklet.)

¹⁴ An after-the-fact notice or approval is available for acquisition of, or merger or consolidation with, a foreign bank that has an office in the United States, provided certain procedures are followed. Such procedures, if followed, allow a foreign bank to proceed with the transaction before an application to establish the federal branch or agency has been filed or acted on, or to provide an after-the-fact notice within 14 days of the transaction. (Refer to 12 CFR 28.12(g) and (h) and the “Acquisitions” section of this booklet.)

¹⁵ Refer to 12 CFR 28.22.

- it closes some, but not all, of its federal branches or agency offices;¹⁶
- its ownership/control of the foreign bank changes;¹⁷
- it contracts the operations of its federal branch into a limited federal branch or agency;¹⁸
- it establishes an operating subsidiary or makes a non-controlling equity investment subject to the notice requirements under 12 CFR 5.34 and 5.36.

A federal branch or agency must submit notice¹⁹ to LIC/NE if

- it changes its corporate title;
- it changes its mailing address;
- it converts to a state branch, state agency, or representative office; or
- the parent foreign bank changes the designation of its home state.

The aforementioned illustrates the application and notice filing requirements for some of the more common transactions pertaining to federal branch or agency operations. There may be circumstances not listed where the OCC may require a filing pursuant to 12 CFR 5. The foreign bank or federal branch or agency should contact LIC/NE with any questions on whether a filing may be required for a planned activity.

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 federal regulatory authority contained in the IBA. To reduce the burden, the OCC may on a case-by-case basis accept filing materials that the applicant made to the FRB. In these instances, the applicant must still complete the OCC application or notice, respond to OCC questions, and comply with OCC representation and assurance requirements. Please contact LIC/NE to discuss the use of this option. The OCC also reserves the right to require additional information as needed to reach an informed decision.

With the exception of applications eligible for expedited review, the rules of general applicability contained in the "General Policies and Procedures" booklet of the *Comptroller's Licensing Manual* apply generally to corporate filings involving federal branches and agencies.

¹⁶ Refer to 12 CFR 28.23.

¹⁷ Refer to 12 CFR 28.25.

¹⁸ Refer to 12 CFR 28.12(i).

¹⁹ Refer to 12 CFR 28.17.

Summary of Process

Application Process

The OCC encourages foreign bank applicants to review its [website](#) for additional information about the application process. The website provides information on the policy matters that the OCC considers before making a decision on an application. The website also contains opinions and legal interpretations on a variety of permissible activities and the manner in which the activities may be established and conducted.

The OCC encourages each foreign bank, before filing an application, to contact the Director for LIC/NE to discuss its proposal. Each foreign bank should include requests for confidential treatment under the Freedom of Information Act with each submission of materials for which it seeks confidentiality. Refer to the “General Policies and Procedures” booklet of the *Comptroller’s Licensing Manual* for further discussion about confidential treatment.

Exploratory Calls or Meetings

A foreign bank’s contact person may call the LIC/NE staff at any time to ask for further information or assistance. As the foreign bank’s representatives develop key ideas, the contact person may request an exploratory conference call or meeting to ask questions, clarify concerns, and become acquainted with the regulatory environment. The LIC/NE staff will coordinate an initial meeting or conference call for the contact person and other key people associated with the proposal to discuss issues with appropriate OCC staff.

Prefiling Meeting

The OCC typically requires a prefiling meeting with the foreign bank’s representatives before the bank files an application. The foreign bank’s management should be familiar with the OCC’s policy and procedural requirements before the prefiling meeting. The prefiling meeting will typically be held in the LIC/NE office where the application will be filed, but it may be held at another location at the request of the applicant.

Before this meeting, the foreign bank’s representatives should submit briefing materials to the OCC, including

- a brief description of the proposal, including a listing of planned activities.
- identification of the general manager (GM).
- biographical information on the GM and other management officials of the federal branch or agency.
- a summary of discussions with the home country supervisor and the FRB.
- the proposed amount of capital equivalency deposit (CED).

The OCC rarely waives the prefiling meeting for applications that are accorded standard review.

Review Process

The OCC's review process consists of two types of reviews: standard and expedited.

Standard Review

A well-researched and well-prepared application helps the OCC render a timely decision. Under the standard review process, the OCC seeks to render a decision within 120 days after the application's receipt or as soon as possible thereafter. Proposals that receive standard review are not approved automatically.

The following application types are processed under standard review:

- Initial establishments of a federal branch or agency.²⁰
- Applications from foreign banks or countries that are not subject to CCS.
- Establishment of a federal branch or agency through a merger, acquisition, consolidation, or similar transaction in which the target foreign bank has as an office in the United States,²¹ but the acquiring bank/resulting bank does not.
- Applications from a foreign bank that is not an eligible foreign bank.

Expedited Review

An eligible foreign bank qualifies for expedited review of the following corporate activities (see the "Glossary" section of this booklet for the definition of an eligible foreign bank):

- Intrastate relocation of a federal branch or agency.²²
- Establishment of an additional intrastate federal branch or agency.²³
- Establishment of a de novo interstate federal branch or agency.²⁴
- Conversions, as defined in 12 CFR 28.11(f)(4) or 28.11(f)(6).²⁵

²⁰ Refer to 12 CFR 5.70(d)(2)(i) and 28.12(a)(1)(i).

²¹ Refer to 12 CFR 28.11(f)(2) and 28.12. However, a process for after-the-fact approval (12 CFR 28.12(g)) or after-the-fact notice for an eligible foreign bank (12 CFR 28.12(h)) is available if certain requirements and conditions are met. Refer to the "Acquisitions" section of this booklet for additional information.

²² Refer to 12 CFR 28.12(e)(1).

²³ Refer to 12 CFR 28.12(e)(2).

²⁴ Refer to 12 CFR 28.12(e)(3).

²⁵ Refer to 12 CFR 28.12(e)(4).

- 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.²⁶
- Fiduciary powers.²⁷

Upon receipt of a filing, the OCC determines the applicant's eligibility for expedited review and promptly informs the applicant whether it is eligible. The OCC may remove a filing from expedited review if the proposed transaction raises a significant supervisory, compliance, legal, or policy issue. (See 12 CFR 5.13 and the "Public Notice and Comments" booklet of the *Comptroller's Licensing Manual* for additional information on reasons why an application may not be eligible for expedited review.)

Eligible foreign banks are generally permitted to use a streamlined application to establish a federal branch or federal agency. A streamlined application allows an applicant to omit certain questions. The OCC may request additional information and a complete application if the proposed transaction raises a significant supervisory, compliance, legal, or policy issue.

²⁶ Refer to 12 CFR 28.12(h).

²⁷ Refer to 12 CFR 28.12(e)(5).

Initial and Additional Establishments

The policies and processing requirements in this section apply to requests from foreign banks seeking to establish initial or additional federal branches or agencies.

This section should be used in conjunction with the *Comptroller's Licensing Manual* booklets referenced in the "Introduction" section of this booklet. Also refer to the "Fiduciary Powers" booklet of the *Comptroller's Licensing Manual* whenever an initial or additional federal branch plans to engage in fiduciary activities.

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.²⁸ The foreign bank applicant must 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.²⁹ The public comment period is generally 30 days and interested parties may submit written comments during this time period.³⁰

Processing Requirements

Initial Branches and Agencies

A foreign bank seeking to establish an initial federal branch or agency must submit an application for and obtain prior approval from the OCC for a license.³¹ This license is similar to a national bank charter. The OCC licenses the initial federal branch or agency through a conditional approval.³²

Applications for fiduciary powers at the federal branch or agency are considered separately,³³ but a foreign bank seeking to exercise fiduciary powers may submit the request and applicable information with its application.³⁴ 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 more specific information on this process.

²⁸ Refer to 12 CFR 28.12(e).

²⁹ Refer to 12 CFR 5.8 and 5.70(d)(1).

³⁰ Refer to 12 CFR 5.8.

³¹ Refer to 12 CFR 28.12(e).

³² Refer to 12 CFR 5.20(d)(8) and 28.12(e)(3).

³³ Refer to 12 CFR 28.12(a)(1)(ii).

³⁴ Ibid. Also refer to 12 CFR 5.26 and 9.3.

Additional Branches and Agencies

Intrastate Branches and Agencies

An eligible foreign bank with a federal branch license may establish additional intrastate branches or agencies by filing a written notice with the OCC at least 30 days in advance of the establishment.³⁵ Public notice requirements apply.³⁶ An ineligible foreign bank seeking to establish an additional intrastate branch or agency should follow the application process for an initial establishment.

The notice should include, but not be limited to, identifying information for the additional branch, information about the activities to be conducted at the office, staffing, and financial projections for the proposed activities. Each federal branch exercising fiduciary powers must receive separate approval from the OCC.³⁷ If applicable, the notice should contain a request for fiduciary powers and the required information. The “Fiduciary Powers” section of this booklet contains specific information on this process.

During the notice period, the OCC reviews the information submitted and requests additional information, if needed. If approved, the conditional approval letter is issued on the 30th day after the OCC receives the filing or, if the public comment period has not expired, at the end of that period. The OCC may, however, require the foreign bank to file an application if the notification raises significant supervisory, compliance, legal, or policy issues.³⁸ For example, a foreign bank applicant submitting a notice detailing activities not currently conducted by a licensed branch may be asked to file an application. Applicants are advised to contact LIC/NE before submitting a notice to discuss the activities or character of the proposed additional branch. In rare cases, the OCC may waive the 30-day period if immediate action is required.

Interstate Branches and Agencies

An eligible foreign bank 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.³⁹ The OCC deems the application conditionally approved as of the 45th day after the OCC receives the filing or 15 days after the close of the public comment period, whichever is later, unless the OCC notifies the foreign bank before that date that the filing is not eligible for expedited review. If the FRB approves its related application before

³⁵ Refer to 12 CFR 28.12(e)(1).

³⁶ Refer to 12 CFR 5.8 and 5.70(d)(1).

³⁷ Refer to 12 CFR 28.12(a)(1)(ii).

³⁸ Refer to 12 CFR 28.12(e)(2)(ii).

³⁹ Refer to 12 CFR 28.12(e)(3).

the end of the OCC review period, the OCC approval is deemed final.⁴⁰ Generally, federal laws provide the authority for interstate branching by foreign banks to the same extent that the laws permit such branching for national banks;⁴¹ foreign banks, however, may also establish interstate branches or agencies pursuant to 12 USC 3103(a)(7).

As part of the review process, the OCC considers whether a foreign bank seeking to establish an additional federal branch or agency outside of its home state is subject to CCS.⁴²

After the OCC approves a de novo interstate branch or agency, the foreign bank is considered located in that state and may use the intrastate notification procedures thereafter for additional federal branches or agencies in that state.

Summary of Process

The OCC's licensing process for a foreign bank that seeks to open an initial or additional federal branch or agency generally consists of three phases: (1) exploratory and prefiling discussions; (2) filing, processing, and deciding the application or notice; and (3) if approved, the opening of the federal branch or agency.

Exploratory and Prefiling Discussions

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

Standard Review

Applications to establish an initial or an additional federal branch or agency by a foreign bank entering the U.S. banking system or a foreign bank that is not an eligible foreign bank are processed under the standard review process.

Expedited Review

Applications to establish an additional federal branch or agency from an eligible foreign bank are processed under the expedited review process.

⁴⁰ Refer to 12 CFR 28.12(e)(3).

⁴¹ Refer to 12 USC 3102(b).

⁴² Refer to 12 CFR 28.12(b)(5).

Filing

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

Processing

In evaluating an application to establish an initial or additional federal branch or agency, the OCC relies heavily on the agency's supervisory experience with the applicant foreign bank and the experiences of other state, federal, and foreign bank supervisors. A field investigation is typically conducted as part of the evaluation of the application for initial establishments. Background checks, if required, are also conducted during this phase.

Decision Criteria

In an initial or additional establishment, the OCC generally considers

- the financial and managerial resources and future prospects of the applicant foreign bank and the proposed federal branch or agency.
- whether the foreign bank has provided the OCC with information to adequately assess the application and assurances that all information on the operations and activities of the foreign bank and any of its affiliates the OCC deems necessary to enforce compliance with the IBA and other applicable federal banking statutes will be made available to the OCC.
- whether the foreign bank and its U.S. affiliates are in compliance with applicable U.S. laws.
- the convenience and needs of the community to be served.
- the effect of the proposed branch or agency on competition in U.S. domestic and foreign commerce.
- 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 working actively toward CCS.
- whether the foreign bank's home country supervisor approved or consented to the establishment of the federal branch or agency.⁴³

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

Specific Requirements

General Publication Requirements and Comment Period

Pursuant to 12 CFR 5.8, each foreign bank that proposes to establish an initial or additional federal branch or agency must publish a notice of the application in a newspaper of general

⁴³ Refer to 12 CFR 28.12(b).

circulation in the community in which the applicant proposes to engage in business on the date of filing or as soon as feasible before or after the filing date. The comment period is 30 days for all establishments.

Opening a Federal Branch or Agency

Following preliminary conditional approval, the foreign bank is permitted to organize the federal branch or agency and establish its CED account. (See the “Capital Equivalency Deposit” section of this booklet.) The OCC conducts a preopening examination at least two weeks before the federal branch or agency is scheduled to open for business to verify that the federal branch or agency has met all requirements for commencing the business of banking in the United States. If the federal branch or agency has met the requirements for opening, the OCC issues the final approval letter and provides a license certificate. If the examination discloses numerous exceptions or significant deviations from the originally approved proposal, the opening may be delayed, or the preliminary conditional approval may be revoked.

Revocation of Preliminary Conditional Approval

The OCC generally does not look favorably on proposals that materially alter the plans set forth in an application that has received preliminary conditional approval. The OCC may revoke preliminary conditional approval if the foreign bank makes changes that significantly alter the business plan detailed in the application or notice after the preliminary conditional approval and before opening the initial or additional federal branch or agency. Proposed changes that normally require filing another application are considered significant. Furthermore, the OCC can revoke preliminary conditional approval if it discovers material violations of law, misrepresentations, or any fraudulent activity by the applicant foreign bank’s officers or directors.

Identification of Management Team

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

The names, experience, and qualifications of the proposed GM and other senior officers of the proposed federal branch or agency are necessary for the OCC’s evaluation of the application. The OCC performs background investigations as deemed appropriate to determine if the proposed senior officers possess satisfactory banking experience and integrity for the positions proposed.

In most cases, an applicant does not need to submit extensive management information with applications for additional branches or agencies. The OCC looks to the leadership of existing licensed federal branches or agencies for sound management of the affairs of any additional federal branches or agencies. An exception to this policy is an application or notice

accompanied by a request for fiduciary powers from an applicant whose licensed federal branches or agencies currently engage in little or no exercise of fiduciary activities. In this case, additional information on management of the fiduciary activities is appropriate.

Business Plan

The foreign bank must provide a copy of the federal branch or agency's proposed business plan. The Business Plan Guidelines (from the Interagency Charter and Federal Deposit Insurance Application) are available for your use.

The business plan should be a comprehensive plan covering three years of operations that is the result of in-depth planning by the federal branch or agency and the foreign bank's management. It should establish the foreign bank's goals and objectives. It should realistically forecast market demand, customer base, competition, and economic conditions. The plan must reflect sound banking principles and demonstrate realistic assessment of risk in light of economic and competitive conditions in the market to be served.

Field Investigations

The OCC decides on a case-by-case basis whether to conduct a field investigation.⁴⁴ The OCC typically conducts a field investigation for an initial federal branch or agency application from a foreign bank not known to the OCC or operating in the United States under a state license. The OCC normally does not conduct a field investigation for an additional federal branch or agency application.

In conducting the field investigation, the OCC reviews relevant materials, interviews bank management, explores matters related to the foreign bank's operations in the United States and abroad, and meets 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.

CED

A federal branch or agency is required to establish a CED account before opening for business. (See the "Capital Equivalency Deposit" section of this booklet.)⁴⁵

⁴⁴ Refer to 12 CFR 5.7 and 5.70(d)(1).

⁴⁵ Refer to 12 USC 3102(g) and 12 CFR 28.15.

Acquisitions

The policies and processing requirements in this section apply 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 *Comptroller's Licensing Manual* as referenced in the "Introduction" section of this booklet.

A foreign bank that is proposing to establish a federal branch or agency through acquiring, merging with, consolidating with, or making a similar transaction with another foreign bank should consult with the OCC on the filing requirements. The filing requirements for new entrants into the U.S. banking system, a foreign bank that is not an eligible foreign bank, or a foreign bank that is not subject to CCS are processed under standard processing.

Subject to OCC discretion, 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, depending on the transaction, file an after-the-fact application or an after-the-fact notice with the OCC.⁴⁶ This booklet provides guidance about the use of the after-the-fact approval and notice processes. Changes in control for foreign banking offices are discussed in the "Change in Control" subsection of the "Other Changes in Activities or Operations" section of this booklet.

Processing Requirements

New Entrants/Acquiring Foreign Banks With No Presence in the United States (Standard Processing)

An acquiring bank that is a new entrant to the United States banking system should consult the OCC and FRB regarding the filing requirements. The OCC will hold exploratory and pre-filing discussions before filing. The foreign bank will be required to file an application for an initial establishment. In addition, the FRB will need to make a CCS determination. The acquiring bank may not consummate the acquisition in the foreign country until the OCC and FRB have made a favorable decision on the bank's establishment of the federal branch or agency. Applicants should review the "Initial and Additional Establishments" section of this booklet for more details.

Foreign Banks That Are Not Eligible Banks (Standard Processing)

A foreign bank that is not an eligible foreign bank must consult with the OCC and FRB regarding the filing requirements. Based on the condition of the foreign bank and its U.S. operations, subject to OCC discretion, a foreign bank that is not an eligible foreign bank will

⁴⁶ Refer to 12 CFR 28.12(g) and (h).

be required to file either an application or an after-the-fact application to establish the federal branch or agency.

A foreign bank that is not an eligible foreign bank may proceed with the transaction before filing an application to establish the federal branch or agency or before OCC action on the application if the applicant

- provides the OCC with reasonable advance notice of the proposed acquisition, merger, or consolidation and the OCC approves the filing of an after-the fact application;
- commits in writing, before consummation of the acquisition, merger, or consolidation, to comply with the OCC application procedures within a reasonable time or has already submitted an application; and
- commits in writing to abide by the OCC’s decision on the application, including a decision to terminate activities of the federal branch or agency.⁴⁷

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; and
- no federal branch established by the transaction accepts FDIC-insured deposits.⁴⁸

Summary of Process

The OCC’s licensing process for a foreign bank that seeks to retain an existing branch or agency through the acquisition of another foreign bank generally consists of three phases: (1) exploratory and prefiling discussions; (2) filing, processing, and deciding the application, after-the-fact application, or after-the-fact notice; and (3) if approved, the transfer of the federal branch or agency to the resulting foreign bank from the acquisition, merger, or consolidation.

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

⁴⁷ Refer to 12 CFR 28.12(g).

⁴⁸ Refer to 12 CFR 28.12(h).

If a foreign bank plans to significantly change the operations of the federal branch or agency, or introduce new products and services, the OCC will require the submission of a revised business plan.

Exploratory and Prefiling Discussions

The OCC normally requires a foreign bank applicant to initiate exploratory or 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 LIC/NE office. 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.

Standard Review

Applications to retain a federal branch or agency of another foreign bank by a foreign bank that does not have any presence in the United States are processed under standard processing. Applicants should review the section of this booklet that deals with initial establishments of a federal branch or agency.

Decision Criteria

The decision criteria used in establishing a federal branch or agency resulting from a merger, acquisition, consolidation, or similar transaction generally consider

- the financial and managerial resources and future prospects of the applicant foreign bank and the proposed federal branch or agency;
- whether the foreign bank has provided the OCC with information to adequately assess the application and assurances that all information on the operations and activities of the foreign bank and any of its affiliates the OCC deems necessary to enforce compliance with the IBA and other applicable federal banking statutes will be made available to the OCC;
- whether the foreign bank and its U.S. affiliates are in compliance with applicable U.S. laws;
- the convenience and needs of the community to be served;
- the effect of the proposed branch or agency on competition in U.S. domestic and foreign commerce;

- 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 working actively toward CCS; and
- whether the foreign bank’s home country supervisor approved or consented to the establishment of the federal branch or agency.⁴⁹

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

Specific Requirements

General Publication Requirements and Comment Period

Pursuant to 12 CFR 5.8, each foreign bank that proposes to establish an initial or additional federal branch or agency as a result of an acquisition in the foreign country must publish a notice of the application in a newspaper of general circulation in the community in which the federal branch or agency engages in business on the date of filing or as soon as feasible before or after the filing date. The comment period is 30 days for all establishments.

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. When the OCC has supervisory concerns or if the resulting bank is unknown to the OCC, however, a streamlined application may not be acceptable. The applicant is encouraged to consult early with LIC/NE to determine what portions of the OCC application should be submitted.

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, no reauthorization is necessary, and the federal branch may continue to exercise its fiduciary powers. Specific prior OCC approval must be obtained for a federal branch to exercise fiduciary powers if the OCC has not previously authorized such powers for that branch. (See the “Fiduciary Powers” section of this booklet.)

⁴⁹ Refer to 12 CFR 28.12(b).

CED

The applicant foreign bank may be required to revise the resulting federal branch or agency's CED agreement upon consummation of the transaction. The applicant should discuss this requirement with LIC/NE.

Other

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

Conversion or Contraction of Operations

This section describes the OCC’s policies, processes, 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 from a limited federal branch into a federal branch; or
- contracting the activities of its federally licensed operation from a federal branch to either a limited federal branch or a federal agency.⁵⁰

Processing Requirements

A foreign bank proposing either to convert its state-licensed operation⁵¹ or to expand the activities of its federally licensed operation⁵² 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 an after-the-fact notice to the OCC.⁵³

This process does not apply when a foreign bank is seeking to convert its federally licensed U.S. operations to a state license.⁵⁴ In such instance, refer to the “Other Changes in Activities or Operations” section of this booklet.

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 the OCC’s decision criteria. Applicants should contact the FDIC about the insured status of any grandfathered branch as part of a conversion.

⁵⁰ The OCC requires that an applicant provide notice of contraction from a limited federal branch to a federal agency. Refer to 12 CFR 28.11(f) and 28.12(i).

⁵¹ Refer to 12 CFR 28.11(f)(4) and 28.12(a).

⁵² Refer to 12 CFR 28.11(f) and 28.12(a) and (e), and 12 USC 3103.

⁵³ Refer to 12 CFR 28.12(i).

⁵⁴ Under 12 CFR 28.17(c), a federal branch or agency shall provide notice to the OCC if it converts to a state branch, state agency, or representative office.

Contraction of Activities

Proposals for converting an office from a federal branch to a limited federal branch or federal agency only require the foreign bank to send a notice within 10 days after the contraction of operations.⁵⁵

Summary of Process

State-to-Federal License Conversion

The application process for a conversion from a state to a federal license or expansion of a foreign bank's federally licensed operations generally consists of exploratory and 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).

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 28.12(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 before that date that the filing is not eligible for expedited review.

A foreign bank without federally licensed operations that is seeking to convert a state-licensed branch or agency to a federal license could receive expedited review and qualify for a streamlined application.⁵⁶ 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.

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. Proposals for conversion to a type of federal license that involves more banking powers than those permissible under the state license are considered on a case-by-case basis to determine if expedited review or a streamlined filing can be permitted.

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.⁵⁷

⁵⁵ Refer to 12 CFR 28.12(i).

⁵⁶ Refer to 12 CFR 28.12(e)(4).

⁵⁷ Refer to 12 CFR 28.12(f).

Proposals for converting an office from a federal agency to a limited federal branch or to a federal branch or from a limited federal branch to a federal branch could qualify for expedited review.⁵⁸ Therefore, the foreign bank is encouraged to discuss its plans with LIC/NE before filing an application.

Standard Review

An application for a conversion from a state to federal license or expansion of activities from a foreign bank that is not an eligible foreign bank does not qualify for expedited processing.

A state branch or agency considering a license conversion that is subject to an outstanding enforcement action or has notice of a pending enforcement action by its current federal or state supervisor, should discuss its conversion proposal with the OCC before submitting an application. Generally, the OCC will not consider a conversion application submitted while a material enforcement action is pending.⁵⁹

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.

Decision Criteria

In a conversion from a state to a federal license or expansion of a foreign bank's federally licensed operations, the OCC generally considers

- the financial and managerial resources and future prospects of the applicant foreign bank and the proposed federal branch or agency.
- whether the foreign bank has provided the OCC with information to adequately assess the application and assurances that all information on the operations and activities of the foreign bank and any of its affiliates that the OCC deems necessary to enforce compliance with the IBA and other federal banking statutes will be made available to the OCC.
- whether the foreign bank and its U.S. affiliates are in compliance with applicable U.S. laws.
- the convenience and needs of the community to be served.⁶⁰
- the effect of the proposed branch or agency on competition in U.S. domestic and foreign commerce.
- 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 working actively toward CCS.

⁵⁸ Refer to 12 CFR 28.11(f)(6) and 28.12(e)(4).

⁵⁹ An action is considered "pending" if, before the branch or agency files its conversion application with the OCC, the branch regulator has commenced and notified the branch of—but not finalized—the action.

⁶⁰ If the state branch is FDIC insured and subject to the Community Reinvestment Act (CRA), the OCC will consider the state branch's performance under the CRA in evaluating the application.

- whether the foreign bank’s home country supervisor approved or consented to the conversion of its state license branch or agency to a federal license or the expansion of the foreign bank’s federally licensed operations.⁶¹

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

Notwithstanding the general principles outlined in this booklet, depending on the facts and circumstances of a particular application, the OCC may consider additional factors that it deems relevant, such as the interests or policies of the home country regulator with respect to the proposed conversion (including, for example, the potential effects of the conversion on resolution planning), the presence of exceptional or exigent circumstances, or an unusual transaction.⁶²

Denial Criteria

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

- the applicant’s financial condition poses supervisory concern;
- safety or soundness concerns exist;
- the proposal is inconsistent with applicable law, regulation, or OCC policy; or
- the applicant is trying to escape supervisory action by its current regulator.⁶³

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 conflicts of interest, provide customer protections, ensure that approval is consistent with the statutes and regulations, or provide for other special supervisory or policy considerations.⁶⁴

In evaluating a proposal to convert an existing state-licensed foreign bank office to a federal branch or agency, the OCC relies heavily on information received from the office’s current U.S. supervisor and other confidential and supervisory information available to the OCC. The OCC consults with the converting entity’s current U.S. supervisor to obtain information on the current condition of the converting entity and any corrective programs instituted by the supervisor.

⁶¹ Refer to 12 CFR 28.12(b).

⁶² Refer to 12 CFR 5.2(b). In the case of exceptional or exigent circumstances or unusual transactions, it may be necessary for the OCC to license activities on an emergency basis relying on the record before it. The OCC may condition an approval issued in the case of such circumstances to require the foreign bank to adhere to the terms of the condition in the decision letter, which may require the bank to wind down the operations of the converted branch and surrender its license.

⁶³ Refer to 12 CFR 28.12(f).

⁶⁴ Refer to 12 CFR 28.12(d).

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

Specific Requirements

Business Plan

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

The foreign bank should provide a copy of the federal branch's business plan. The Business Plan Guidelines (from the Interagency Charter and Federal Deposit Insurance Application) are available for your use.

At a minimum, the business plan should address or include

- any anticipated changes in operations, strategy, market area, funding, loan composition, portfolio, products, or services.
- future business objectives of the resulting federal branch or agency.
- projected financial statements for a period of three years that reflect the effects of conversion, along with any adjusting entries that result from the conversion.

Background Investigations

If additional management is being proposed to oversee the changed or expanded activities and LIC/NE deems it appropriate, a background investigation of the new management may be conducted. (See the “Background Investigations” booklet of the *Comptroller’s Licensing Manual*.)

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 of this booklet.) Similarly, if a current federal agency or limited federal branch does not have fiduciary powers but plans to exercise fiduciary powers after converting to a federal branch, it must apply for such powers 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. In that case, such powers transfer to the converted office, and no separate request or approval is required.

Preconversion Examination

State-to-Federal License Conversion

For conversions from a state license to a federal license, the OCC may conduct a preconversion examination, if deemed necessary. The OCC normally does not conduct a preconversion examination for a conversion application accorded expedited review. If the foreign bank applicant's U.S. operations are in satisfactory condition, the OCC generally does not perform a preconversion examination. The OCC may discuss the proposal with the applicant's current regulator(s) and accept and rely on the current banking regulator's examination rating. If there are supervisory concerns, however, the OCC may conduct a preconversion examination. The decision to conduct a preconversion examination 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 preconversion examinations on applications involving the conversion from a federal agency or a limited federal branch to a federal branch.

CED

Per the IBA requirements and OCC regulations, a CED is required upon conversion from a state license to a federal license.⁶⁵ (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 before notifying the OCC of its proposed plan.

⁶⁵ Refer to 12 USC 3102(g) and 12 CFR 28.15.

Relocations

The policies and processing requirements in this section apply to foreign banks seeking to change the physical location of their federal branch or agency. A foreign bank planning to relocate its federal branch or agency must file an application with, and receive prior approval from, the OCC.⁶⁶

Federal branch and agency relocations may qualify as a short-distance relocation if the relocation falls within the distance parameters outlined in the definition of short-distance relocation in the “Glossary” section of this booklet.

Processing Requirements

A proposal to relocate generally does not require a prefiling meeting unless it involves novel issues, or, the OCC has supervisory concerns with the federal branch or agency. An application to relocate is filed, processed, decided, and effected within a relatively short period of time if the foreign bank qualifies for expedited review as described below. The OCC decides applications for relocations by federal branches or agencies in accordance with the provisions of pertinent federal and state law.

Summary of Process

Expedited Review

Expedited review is available for an eligible foreign bank.⁶⁷ Under expedited review, an application for a relocation is deemed approved on the seventh day after the close of the public comment period unless the OCC

- notifies the applicant before that time that the filing is not eligible for expedited review;
- approves, conditionally approves, or denies the application; or
- advises the applicant that the filing presents significant policy, legal, or supervisory issues and is being removed from expedited review.

The OCC notifies the applicant promptly and provides a written explanation whenever it decides to remove an application from expedited review. When an application is removed from expedited review because of information obtained from a public comment, the OCC also informs the commenter.

⁶⁶ Refer to 12 CFR 28.11(f)(5) and 28.12(a)(1)(i).

⁶⁷ Refer to 12 CFR 28.12(e)(1).

Standard Review

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 a specified amount of time. 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.

Decision Criteria

The OCC evaluates a relocation under the standards of approval set forth for initial and additional federal branch establishments under 12 CFR 28.12(b). In applying the standards of approval, the OCC principally considers

- the financial and managerial resources and future prospects of the applicant foreign bank and the proposed federal branch or agency;
- whether the foreign bank has provided the OCC with information to adequately assess the application and assurances that all information on the operations and activities of the foreign bank and any of its affiliates the OCC deems necessary to enforce compliance with the IBA and other applicable federal banking statutes will be made available to the OCC;
- whether the foreign bank and its U.S. affiliates are in compliance with applicable U.S. laws.
- the convenience and needs of the community to be served;
- the effect of the proposed branch or agency on competition in U.S. domestic and foreign commerce;
- 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 working actively toward CCS; and
- whether the foreign bank's home country supervisor approved or consented to the relocation of the federal branch or agency.⁶⁸

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

Specific Requirements

General Publication Requirements

Pursuant to 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

⁶⁸ Refer to 12 CFR 28.12(b).

soon as feasible before or after the filing date. The comment period is 15 days for short-distance relocations and 30 days for all other relocation applications.

The applicant must provide promptly to LIC/NE 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 the OCC requires as provided by 12 CFR 5.8(c).

Consummation Guidance

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 if conditions are needed to protect the safety and soundness of the federal branch or agency, prevent the risk of conflicts of interest, or assure compliance with applicable laws, or for other supervisory, compliance, or policy considerations.

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, the applicant foreign bank should contact LIC/NE for specific guidance.

Fiduciary Powers

The policies and processing requirements in this section apply 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.⁶⁹ Also discussed in this section is the revocation of fiduciary powers by the OCC and the process for a federal branch to surrender them voluntarily.

This section should be used in conjunction with the *Comptroller's Licensing Manual* booklets referenced in the "Introduction" section of this booklet and the "Fiduciary Powers" booklet of the *Comptroller's Licensing Manual*.

Processing Requirements

Applicability

The OCC requires foreign banks that operate a federal branch to file an application and seek prior approval before offering fiduciary services to the public.⁷⁰ OCC approval under 12 CFR 5.26 and 28.12(a)(ii) to exercise fiduciary powers is required when

- a foreign bank that establishes a new federal branch must receive approval for the new branch to exercise fiduciary powers. A federal branch may apply for fiduciary powers in conjunction with an establishment application or at any time after opening for business.
- 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.
- a foreign bank that acquires a federal branch that does not currently exercise fiduciary powers, directly or indirectly, needs prior OCC approval before exercising fiduciary powers.
- a federal branch that currently exercises limited fiduciary powers seeks to expand and offer additional fiduciary services or products beyond those previously approved.
- a foreign bank that operates more than one branch must apply for each branch to exercise fiduciary powers.

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.

⁶⁹ Refer to 12 USC 3102(d).

⁷⁰ Refer to 12 CFR 28.12(a)(ii).

When a foreign branch wishes to offer fiduciary services, it submits an application in letter form to LIC/NE, providing specific information for review.⁷¹ The application should contain the following:

- A statement that the federal branch is requesting full or limited trust powers, and if limited powers, which specific powers are requested.
- A statement that the capital and surplus of the foreign bank is not less than the capital and surplus required by state law of state banks, trust companies, and other corporations exercising comparable fiduciary powers.
- Sufficient biographical information on 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.
- A description of the locations where the foreign branch will conduct fiduciary activities. If requested by the OCC, an opinion of counsel that the proposed activities do not violate applicable federal or state law, including citations to state law.
- Any other information necessary to address the factors the OCC must evaluate as noted in the “Decision Criteria” section on the following page.

If the foreign branch is not in satisfactory condition, has a history of poor earnings, or has been open for business less than two years, the OCC may require that the foreign branch submit a [fiduciary activities plan](#) for the trust department that demonstrates the projected financial impact the commencement of trust services may have on the federal branch. The OCC may request additional information depending upon the federal branch’s condition. The sample [Fiduciary Business Plan](#) outlines the type of information that the OCC may request.

Summary of Process

Expedited Review

If the foreign bank is eligible and its filing qualifies for expedited review per 12 CFR 28.12(e)(5), the application is reviewed to ensure that all information has been submitted and that there are no new or novel policy issues. The OCC notifies 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.

⁷¹ A sample form, [“Application Letter-Fiduciary Powers.”](#) can be found on the OCC website’s “Licensing Filing Forms” page in the Fiduciary Powers section for the “Federal Branches and Agencies” booklet.

Standard Review

If the foreign bank is not an eligible bank, the filing does not qualify for expedited review and the filing will be processed under standard review. The foreign bank ineligible for expedited review may not exercise fiduciary powers until notified by the OCC in writing.

Decision Criteria

The OCC views the exercise of fiduciary powers or expansion from limited fiduciary powers to exercise of full powers primarily as a business decision of the foreign bank. The OCC generally grants permission to exercise fiduciary powers to federal branches after considering the following factors:

- The financial condition of the federal branch and foreign bank;
- The adequacy of the foreign bank's capital and surplus and whether it is sufficient and not less than the capital and surplus required by state law or state banks, trust companies, and corporations exercising comparable fiduciary powers;
- The character and ability of proposed trust management, including qualifications, experience and competency;
- The adequacy of the proposed business plan;
- The needs of the community to be served; and,
- Any other factors or circumstances that the OCC considers proper.⁷²

The proposed activities must comply with applicable statutes and regulation, including federal law (12 USC 92a) and state and local statutes and regulations.

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.

Specific Requirements

Generally, a fiduciary powers request that is filed with an application to open an initial or additional federal branch is decided at the same time as the federal branch application. The federal branch may exercise fiduciary powers once it receives OCC approval.

Commencement of Activity

The federal branch must begin exercising fiduciary powers within 18 months of approval.⁷³ It must request and receive OCC approval for any changes it wishes to make in the proposed trust management before commencing its fiduciary business.

⁷² Refer to 12 CFR 5.26(e)(2)(iii).

⁷³ Refer to 12 CFR 5.26(e)(8).

Surrender or Revocation of Fiduciary Powers

Surrender

A foreign bank may discontinue and surrender voluntarily the fiduciary powers of its federal branch.⁷⁴ To do so, it must notify LIC/NE and file a certified copy of a resolution adopted by its senior bank management to surrender trust powers.

The federal branch may be classified 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 federal branch has been discharged completely from its fiduciary obligations; that is, all accounts have been properly closed and distributed or transferred to substitute fiduciaries.

After the OCC is assured that the federal branch is relieved of all fiduciary duties pursuant to state law, the OCC issues to the foreign bank a notice certifying that the federal branch is no longer authorized to exercise fiduciary powers. (See the “Voluntary Liquidation” section of this booklet.)

Revocation

If the OCC determines that a federal branch has exercised its fiduciary powers unlawfully or unsoundly, or has failed to exercise fiduciary powers for five consecutive years, the agency may revoke those powers.⁷⁵ As part of this process, the OCC may serve a foreign bank with a notice of its intent to revoke the authority of the federal branch to exercise fiduciary powers, outlining the reasons why the OCC is considering such action.

⁷⁴ Refer to 12 CFR 9.17.

⁷⁵ Refer to 12 USC 92a(k) and 12 CFR 9.17(b).

Voluntary Liquidation

The policies and processes in this section apply to foreign banks seeking to close their federally licensed operations and liquidate voluntarily. A voluntary liquidation occurs when the senior management of the foreign bank decides to discontinue the operations of all of its federal branches or agencies and proceeds with a plan of liquidation to terminate the activities of the foreign bank's U.S. offices. A foreign bank that proposes to liquidate voluntarily must comply with the requirements in 12 CFR 28.22, 12 CFR 5.48, and this booklet. The foreign bank must file a notice with the OCC and publish a notice of its intent to cease operations in accordance with 12 USC 182.

Processing Requirements

This section should be used together with other sections of this booklet and other booklets of the *Comptroller's Licensing Manual* as referenced in the "Introduction" section of this booklet. Users should also refer to the "Acquisitions" section of this booklet if the liquidation occurs in connection with a merger, acquisition, consolidation, or similar transaction. A foreign bank closing some, but not all, of its federal branches or agencies should follow the branch closing requirements outlined in 12 CFR 28.23. See the "Branch Closings" booklet of the *Comptroller's Licensing Manual* for guidance and procedures on closing a federal branch or agency.

The OCC generally requires that the provisions of 12 USC 181 and 182 be followed in a liquidation of a foreign bank's federal branches or agencies. 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 all of its federal branches or agencies, it should submit a notice of intent to voluntary liquidate to LIC/NE and publish notice in a newspaper of general circulation. For standard voluntary liquidations, the foreign bank must receive prior OCC non-objection to its liquidation plan before it can begin to dispose of its assets and liabilities. During a voluntary liquidation, the federal branch or agency must comply with normal OCC reporting requirements. The federal branch or agency should maintain its books and records in accordance with generally accepted accounting principles. Additionally, the federal branch or agency must make annual filings on the progress of the liquidation and submit a "Liquidation—Final Report" 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 the liquidation, the foreign bank should return the federal branch or agency license(s) to the OCC with its “Liquidation—Final Report.” It also must return all OCC reports of examination or certify that they have been destroyed.⁷⁶ The OCC notifies the foreign bank when it deems that all of the requirements of a voluntary liquidation have been met and the operations of all of its federal branches or agencies are finally dissolved. The OCC does not release the CED to the foreign bank until all necessary requirements are met.

Standard Voluntary Liquidation

A foreign bank that wishes to close all of its federal branches or agencies through a standard voluntary liquidation may do so according to the processes described in this section. The foreign bank must file a written notice with LIC/NE that includes

- a resolution, adopted by senior management of the foreign bank, to liquidate the federal branches or agencies;
- certification from senior management that states that total assets exceed total liabilities, including contingent liabilities of the federal branches or agencies;
- a plan of liquidation; and
- the anticipated date of closure to the public.

Expedited Voluntary Liquidation

A foreign bank seeking an expedited liquidation process should contact LIC/NE for guidance. The OCC permits expedited liquidation of a foreign bank’s federal branches or agencies for

- acquisition transactions whereby an acquiring U.S. bank purchases all the assets and assumes all the liabilities of the foreign bank’s federal branches or agencies, including all contingent liabilities; or
- consolidation of the foreign bank’s offices in the United States.⁷⁷

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 acquisitions or consolidations if

- the foreign bank’s senior management has resolved to liquidate the operations of the federal branches or agencies;
- the foreign bank has notified LIC/NE of its plans;
- the acquiring bank or consolidating foreign bank certifies to the OCC that the ownership of all the assets and liabilities, including all contingent liabilities, of the liquidating foreign bank’s federal branches or agencies have been transferred; and

⁷⁶ Refer to 12 CFR 28.22.

⁷⁷ Refer to 12 CFR 5.48(f) and 28.22(a).

- the foreign bank has published notice of the intent to dissolve the federal branches or agencies after the acquisition or consolidation. (See the “Public Notice” section of this booklet for more information.)

Specific Requirements

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 in which the federal branch or agency is located.⁷⁸ 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 foreign bank must publish notice of the impending closure of the federal branch or agency daily for two months in a local newspaper. 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 notice should appear on or before the date the liquidation begins, and final publication should be before the date the federal branch or agency closes to the public.

Liquidation Plan

After filing the preliminary notice of liquidation with the OCC, if the foreign bank decides to proceed with the liquidation, it shall file a proposed liquidation plan with LIC/NE. The OCC generally expects the plan to address the following:

- The reason for proposing the liquidation.
- Alternatives to the voluntary liquidation considered by the senior management of the foreign bank, including a discussion of any contact with potential acquirers.
- The feasibility of completing the liquidation on a solvent basis.

⁷⁸ Refer to 12 CFR 28.22(b).

- An assessment of realizable value of the federal branch or agency’s assets, generally on a liquidation basis and not on a “going concern” basis.
- The identity of all known and probable creditors, including contingent liabilities; whether they are secured or unsecured creditors; and the potential amounts due, including any potential early termination payments.
- Any outstanding or possible litigation and a plan for resolution of that litigation, including allocation of sufficient funds to cover attorney fees, costs, and potential judgments.
- Ongoing expenses during the liquidation phase, including those from operations, gains, or losses from sales of assets and liabilities, payments to terminate employees, and costs to terminate contracts and business arrangements.
- The liquidation strategy and timeline, including what transactions (such as asset sales or transfers of deposits) will occur before the formal liquidation officially commences, what transactions will occur during formal liquidation, how long the liquidation is likely to take, and plans for the final winding up of the federal branch or agency’s affairs.
- Plans to obtain required foreign bank’s shareholder or senior management approvals of the liquidation.
- The status of employees during the liquidation and any retention bonuses to be paid to employees.
- If applicable, transfer of trust accounts to a successor fiduciary.
- For insured federal branches, termination of FDIC insurance.
- Application for and receipt of any other required regulatory approvals.
- Provisions for maintenance of federal branch or agency records after the liquidation, including OCC access to those records.

The liquidation plan should also include pro forma balance sheets for each material step of the liquidation process and the assumptions used to prepare the financial projections. In evaluating the liquidation plan, the OCC considers the purpose of the liquidation, the impact on the federal branch or agency’s safety and soundness, and whether the transaction is in conformance with applicable laws and regulations. The OCC evaluates the effect of the transaction on the foreign branch or agency’s depositors, other creditors, and customers. A final liquidation plan that addresses any OCC concerns should be submitted before commencement of liquidation. The foreign bank must receive the OCC’s non-objection to the final liquidation plan before commencing the liquidation of its federal branches or agencies.

Liquidating Agent

Senior management of the foreign bank must appoint a liquidating agent⁷⁹ and publish notice of the intent to voluntarily liquidate and close the operations of all of its federal branches or agencies, in accordance with 12 CFR 28.22(b) and 12 USC 182. The liquidating agent should reside in the United States during the liquidation process. Senior management of the foreign bank must continue to monitor each federal branch or agency and its liquidation through the liquidating agent.

⁷⁹ Refer to 12 USC 181.

The liquidating agent may be the GM of a federal branch or agency, a management committee member of a federal branch or agency, or another responsible person designated by senior management. When applicable, the liquidating agent must post a bond in favor of all of the federal branches or agencies.⁸⁰ 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 liquidating agent.

Disposition of Assets

The liquidating agent liquidates the assets of all of the federal branches or agencies for the benefit, first, of its depositors and other creditors or claimants, and then of the foreign bank. The agent may not dispose of the assets of the federal branches or agencies to favor some creditors over 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.

Reports

At the commencement of its liquidation, a federal branch or agency must submit to LIC/NE a report on 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" (Federal Financial Institutions Examination Council [FFIEC] Form 002) and a report of all contingent liabilities as of the close of the last business day before the start of the liquidation. The "Report of Assets and Liabilities" must include a certified maturity schedule of all remaining liabilities, if any. The federal branch or agency in liquidation must continue to file 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 "Liquidation—Interim Progress Report," unless requested to file it more often, until the liquidation is complete, and the federal branch or agency is fully dissolved.

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 28.22 and 5.48. The foreign bank 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.

⁸⁰ Refer to 12 USC 181.

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.

Offshore Shell Branches

Before 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 ceases upon the completion of the liquidation and final dissolution of the federal branch or agency.

Loan Production Offices

A federal branch that operates a loan production office (LPO) must include it in the liquidation process of the federal branch.

CED

Generally, the OCC authorizes the release of the CED to a foreign bank following the completion of a voluntary liquidation and final dissolution of the foreign bank's federal branches or agencies.

The OCC monitors each federal branch or agency's termination process to ensure compliance with applicable statutes pertaining to voluntary liquidation and the CED. Generally, the CED is held on deposit until all of the federal branches' or agencies' liabilities have been resolved. Persons wishing to file claims after liquidation of all of the federal branches or agencies and return of the CED must make them against the foreign bank in the appropriate jurisdiction.

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(a)(6) 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.

Capital Equivalency Deposit

The policies and processes in this section apply to the establishment of CED accounts for a federal branch or agency.

A CED serves the public interest, protects depositors, and helps maintain the federal branch or agency's sound financial condition. If a federal branch or agency is liquidated, CED assets may be used to pay appropriate claims, if necessary. The IBA requires all federal branches and agencies to establish a CED account before opening for business.⁸¹ The CED must be maintained in accordance with the requirements set forth in this section and 12 CFR 28.15.

Summary of Process

Per 12 USC 3102(g) and 12 CFR 28.15, a federal branch or agency is required to establish and maintain a CED account with a Federal Reserve System member bank (depository bank) in an amount equal to at least 5 percent of the total liabilities of the federal branch or agency, including acceptances but excluding accrued expenses, intercompany liabilities, liabilities of an 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 the head office. The OCC may require, in individual cases or otherwise, that a foreign bank establish and maintain a CED above the 5 percent minimum amount.

The foreign bank must deposit its CED into an account in a bank that is located in the state in which the federal branch or agency is located. A member bank headquartered in another state but operating a branch in the state in which 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 continues 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 approve if the depository bank is a state member bank.

The CED must consist of any 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 10 country.
- Certificates of deposit, payable in the United States, and bankers' acceptances. The issuer of the certificate of deposit or banker's acceptance must have an adequate capacity to meet financial commitments for the projected life of the asset or exposure.
- Repurchase agreements.
- Similar assets the OCC deems eligible.

⁸¹ Refer to 12 USC 3102(g).

A foreign bank applicant establishing its CED is advised to contact LIC/NE for information on any relevant changes in the types of assets considered eligible for inclusion in the CED.

A CED agreement must be in place before an initial or additional federal branch or agency opens for business or before a state-licensed branch or agency converts to a federal license.⁸² This agreement is generally entered into by the foreign bank, the depository bank, and the OCC.

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. Assets held in a depository bank for CED purposes must be segregated in a safekeeping account and free of any liens. The foreign bank can collect 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.

The authorized officers 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 may require prior notice and should be discussed with the OCC supervisory office responsible for supervision of the federal branch or agency.

Closing an 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 a state license. The closing of the account should follow established OCC processes. (See the "Voluntary Liquidation" and "Other Changes in Activities or Operations" sections of this booklet.)

⁸² Refer to 12 USC 3102(g).

Other Changes in Activities or Operations

This section describes the OCC's policies and processes not addressed elsewhere in this booklet for the following changes in activities or operations of a foreign bank operating a federal branch or agency:

- Changes in operations:
 - Corporate title.
 - Mailing address of the federal branch or agency.
 - Home state designation of the foreign bank.
 - Change in control of the foreign bank.
- Changes in activities:
 - Establishment of an LPO.
 - Noncontrolling equity investment.
 - Acquisition or establishment of an operating subsidiary of a federal branch or agency, or conducting 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, or home state designation to LIC/NE.⁸³ Notices for changes in control should be sent to LIC/NE 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.⁸⁴

The GM 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 former corporate titles.

Change in Mailing Address

A foreign bank must notify the OCC whenever it changes the mailing address of its federal branch or agency. The OCC also requires that the foreign bank notify them when it changes

⁸³ Refer to 12 CFR 28.17.

⁸⁴ Ibid.

the mailing address of its corporate headquarters.⁸⁵ 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.⁸⁶ A foreign bank may meet this requirement by providing the OCC with a copy of a notice or application to the FRB or an FRB determination for a change in home state designation.

Change in Control

A foreign bank is required to provide a written notice to the OCC within 14 calendar days after the foreign bank becomes aware of the change in control, provided that after the change in control the foreign bank and its federal branches or agencies continue to operate in the same corporate form.⁸⁷ A change in control notice is required when the acquiring entity, person, or group of entities or persons acting in concert would (1) directly or indirectly control or have the power to vote at least 25 percent of any class of voting securities of the foreign bank or (2) controls in any manner the election of a majority of the directors or trustees of the foreign bank. In such case, the foreign bank needs only to provide the OCC with a copy of any filing submitted to the FRB, as provided in 12 CFR 28.12(k). 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 is 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 and 28.26.

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 the [“Subsidiaries and Equity Investments”](#) booklet of the *Comptroller’s Licensing Manual*.)

⁸⁵ Refer to 12 CFR 5.52.

⁸⁶ Refer to 12 CFR 28.17(d).

⁸⁷ Refer to 12 CFR 28.25.

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 the [“Subsidiaries and Equity Investments”](#) booklet of the *Comptroller’s Licensing Manual*.)

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 before conversion.⁸⁸ 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. Before conversion, a federal branch or agency must return the federal branch or agency license. The federal branch or agency must also either return all reports of examination or certify that they have been destroyed.

The conversion is not 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 the OCC’s requirements for the return of documents, the OCC will authorize the release of the CED to the foreign bank.

⁸⁸ Refer to 12 CFR 28.17(c).

Glossary

Capital equivalency deposit (CED): A deposit required for a federal branch or agency pursuant to section 4 of the IBA (12 USC 3102(g)) and 12 CFR 28.15. A CED serves the public interest, protects depositors, and helps maintain the federal branch or agency's sound financial condition. If a federal branch or agency is liquidated, CED assets may be used to pay 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. 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 Federal Reserve System member bank in the state in which 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. A foreign bank operating federal branches or agencies in more than one state may consolidate some or all of its CEDs into one account.

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

Comprehensive consolidated supervision (CCS): Supervision of a foreign bank in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank. In deciding whether a foreign bank is subject to CCS, the FRB determines whether the information received allows the home country supervisor to assess the foreign bank's overall financial condition and compliance with laws and regulations.

Control: 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: One of the following actions:

- Conversion of 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.
- Conversion of a federal agency or a limited federal branch to a federal branch.

Edge Corporation: A corporation organized under section 25A of the Federal Reserve Act, 12 USC 611-631, to engage in activities incidental to international business. Edge Corporations may accept deposits from foreign states, foreign persons, and certain other sources.

Eligible foreign bank: As described in 12 CFR 28.12(f), a federal branch and agency of the foreign bank, that

- 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 in this “Glossary” section).
- is not subject to a cease-and-desist order, consent order, formal written agreement, or 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.”

Enhanced Prudential Standards: As described in 12 CFR 252, bank holding companies and foreign banking organizations (FBO) with total consolidated assets of \$50 billion or more will establish certain standards for liquidity, risk management, and capital. 12 CFR 252 also requires an FBO with a significant U.S. presence to establish an intermediate holding company over its U.S. subsidiaries (excludes a federal branch or agency).

Establish a federal branch or agency: One of the following actions, per 12 CFR 28.11(f):

- Open and conduct business through an initial or additional federal branch or agency.
- Acquire, directly or indirectly through merger, 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 would 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.

Federal agency: 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 or exercise fiduciary powers. A federal agency primarily makes commercial loans and finances international transactions.

Federal branch: 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 domestic nonretail deposits.

Foreign bank: An organization organized under the laws of a foreign country, or a territory of the United States (Puerto Rico, Guam, American Samoa, or the Virgin Islands), that engages directly in the business of banking in a foreign country.

Foreign banking organization (FBO): A foreign bank that: (1) operates a branch, agency, or commercial lending company subsidiary in the United States; (2) controls a bank in the United States; (3) controls an Edge corporation acquired after March 5, 1987; or (4) is a company of which the foreign bank is a subsidiary.

Group of 10 (G-10): Group of countries that have agreed to participate in the General Arrangements to Borrow. Member banks coordinate banking industry supervision through the Bank for International Settlements and monetary policy through the International Monetary Fund. Founding members are Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Sweden, the United Kingdom, and the United States. Switzerland has joined as a member.

Home state: The state in which a 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 is selected by the foreign bank, or, in default of such selection, the state is selected by the FRB.

Limited federal branch: A limited federal branch can accept only those deposits permissible for which an Edge Corporation can receive. It cannot accept deposits from U.S. citizens or corporations. A limited federal branch can exercise fiduciary powers and also engage in activities that are authorized for federal agencies.

Loan production office (LPO): A staffed facility, other than a branch, that is open to the public and provides lending-related services, such as loan information and applications (representational activities). Federal branches may operate these offices. These LPOs are supervised by the OCC as part of its supervision of the federal branch or agency. The FRB considers an LPO a representative office under its regulation.⁸⁹

Offshore branch: A non-U.S. branch established in an offshore center and managed by the U.S. branch of an FBO. An offshore branch is also referred to as a “shell branch” because it often does not have a physical presence and is only nominally domiciled in the offshore center.

ROCA: Rating system used by U.S. bank regulators to rate U.S. branches and agencies of FBOs. The acronym stands for risk management, operational controls, compliance, and asset quality. The individual components and the overall or composite ROCA rating are based on a scale from 1 to 5 in ascending order of supervisory concern. Thus, 1 represents the lowest level of concern and 5 the highest.

Short-distance relocation: Moving of a federal branch or agency within

- a 1,000-foot radius of the site if the federal branch or agency is located within a principal city of a Metropolitan Statistical Area (MSA) designated by the Office of Management and Budget;

⁸⁹ Refer to 12 CFR 211.21(x) and 211.24(d)(1)(i).

- a one-mile radius of the site if the federal branch or agency is not located within a principal city but is located within an MSA; or
- a two-mile radius of the site if the federal branch or agency is not located within an MSA.

Well capitalized: A federal branch or agency is considered well capitalized if the foreign bank's most recently reported capital adequacy position consists of, or is equivalent to, common equity tier 1, tier 1, and total risk-based capital ratios that satisfy the definition of "well capitalized" set forth at 12 CFR 6.4, respectively, on a consolidated basis; or the federal branch or agency has maintained on a daily basis, over the past three quarters, eligible assets in an amount not less than 108 percent of the preceding quarter's average third-party liabilities (determined consistent with applicable federal and state law), and sufficient liquidity is currently available to meet its obligations to third parties.⁹⁰

Well managed: A federal branch or agency is considered well managed if the federal branch or agency has received a composite ROCA supervisory rating of 1 or 2 at its most recent examination.⁹¹

⁹⁰ Refer to 12 CFR 4.7(b)(1)(iii) and 5.34(d)(2).

⁹¹ Refer to 12 CFR 5.34(d)(3)(ii).

References

Bank Secrecy Act

Law 31 USC Chapter X
 Regulation 12 CFR 21, subparts B and C

Capital Equivalency Deposit

Law 12 USC 3102(g)
 Regulation 12 CFR 28.15

Capital Requirements

Law 12 USC 3101 et seq.
 Regulation 12 CFR 3, 28.14, and 28.20

Change in Corporate Title

Law 12 USC 3101 et seq.
 Regulation 12 CFR 28.17(a)

Change in Home State Designation

Law 12 USC 3103(c)
 Regulation 12 CFR 28.11(n) and 28.17(d)

Change in Location—Policy and Procedures

Law 12 USC 30(b) and 3102
 Regulation 12 CFR 5.30, 5.40, and 28.12(e)(1)

Change in Mailing Address

Law 12 USC 3101 et seq.
 Regulation 12 CFR 28.17(b)

Change in Ownership or Control

Law 12 USC 3101 et seq.
 Regulation 12 CFR 28.11(d) and 28.25

Conversion to State-Licensed Branch, Agency, or Representative Office

Law 12 USC 3101 et seq. and state law
 Regulation 12 CFR 5.70 and 28.17(c)

Corporate Powers and Investment Securities

Law 12 USC 24 and 3102
 Regulation 12 CFR 1 and 28.13(a)

Establish a Federal Agency or Branch

Law 12 USC 3102
 Regulation 12 CFR 5.70, 28.11(f), and 28.12

Examinations

Law 12 USC 161, 3102(b), and 3108(a)
 Regulation 12 CFR 7.4000 and 28.18(c)

Expedited Review

Law 12 USC 3101 et seq.
 Regulation 12 CFR 5.13 and 28.12(e)

Failing to File Progress Reports

Law 12 USC 164 and 3101 et seq.
 Regulation 12 CFR 28.18 and 28.19

Fiduciary Powers

Law 12 USC 92a and 3102
 Regulation 12 CFR 5.26, 9, and 28.12(e)(5)

Fiduciary Powers of Liquidating Agent

Law 12 USC 92a(i) and 3101 et seq.
 Regulation 12 CFR 9

Fraudulent Statements

Law 18 USC 1001

Interstate Branching

Law 12 USC 3103
 Regulation 12 CFR 28.12

Liquidation Reports

Law 12 USC 181 and 3102
 Regulation 12 CFR 5.48 and 28.22(c)

Notice of Filing

Law 12 USC 93a and 3101 et seq.
 Regulation 12 CFR 5.8 and 5.70

Public Comments and Hearings

Regulation 12 CFR 5.10 and 5.11

Requirements and Procedures for Liquidation and Dissolution

Law 12 USC 181, 182, and 3101 et seq.
 Regulation 12 CFR 5.48, 9.16, and 28.22

Termination of Insurance

Law 12 USC 1818(a)(2), (p), and (q)
 Regulation 12 CFR 307

Theft, Embezzlement, or Misapplication

Law

Regulation

18 USC 656

12 CFR 19

Table of Updates Since Publication

| Date of Last Publication: October 2019 | |
|---|--|
| Reason | Affected pages |
| Regulatory and policy clarifications and corrections | 4–8, 12, 15–19, 27, 29, 31, 35, 36, 40, 41 |
| Added footnotes to reflect current statutes and regulations | 2–4, 5, 7–12, 14–16, 18, 20–23, 25–27, 29–32, 34, 36, 37, 41, 42, 46 |
| Changes and additions to “Glossary” section | 44–47 |
| Changes and update to “References” section | 48, 49 |
| Removed internal procedures | Throughout the booklet |