

**PART 369—PROHIBITION AGAINST
USE OF INTERSTATE BRANCHES
PRIMARILY FOR DEPOSIT PRO-
DUCTION**

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AUTHORITY: 12 U.S.C. 1819 (Tenth) and 1835a.

SOURCE: 62 FR 47737, Sept. 10, 1997, unless otherwise noted.

§ 369.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to implement section 109 (12 U.S.C. 1835a) of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act).

(b) *Scope.* (1) This part applies to any State nonmember bank that has operated a covered interstate branch for a period of at least one year.

(2) This part describes the requirements imposed under 12 U.S.C. 1835a, which requires the appropriate Federal banking agencies (the FDIC, the Office of the Comptroller of the Currency, and the Board of Governors of the Federal Reserve System) to prescribe uniform rules that prohibit a bank from using any authority to engage in interstate branching pursuant to the Interstate Act, or any amendment made by the Interstate Act to any other provision of law, primarily for the purpose of deposit production.

§ 369.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Bank* means, unless the context indicates otherwise:

- (1) A State nonmember bank; and
- (2) A foreign bank as that term is defined in 12 U.S.C. 3101(7) and 12 CFR 346.1(a).

(b) *Covered interstate branch* means:

(1) Any branch of a State nonmember bank, and any insured branch of a foreign bank licensed by a State, that:

- (i) Is established or acquired outside the bank's home State pursuant to the interstate branching authority granted by the Interstate Act or by any amend-

ment made by the Interstate Act to any other provision of law; or

(ii) Could not have been established or acquired outside of the bank's home State but for the establishment or acquisition of a branch described in paragraph (b)(1)(i) of this section; and

(2) Any bank or branch of a bank controlled by an out-of-State bank holding company.

(c) *Home State* means:

(1) With respect to a State bank, the State that chartered the bank;

(2) With respect to a national bank, the State in which the main office of the bank is located;

(3) With respect to a bank holding company, the State in which the total deposits of all banking subsidiaries of such company are the largest on the later of:

(i) July 1, 1966; or

(ii) The date on which the company becomes a bank holding company under the Bank Holding Company Act;

(4) With respect to a foreign bank:

(i) For purposes of determining whether a U.S. branch of a foreign bank is a covered interstate branch, the home State of the foreign bank as determined in accordance with 12 U.S.C. 3103(c) and 12 CFR 347.202(j); and

(ii) For purposes of determining whether a branch of a U.S. bank controlled by a foreign bank is a covered interstate branch, the State in which the total deposits of all banking subsidiaries of such foreign bank are the largest on the later of:

(A) July 1, 1966; or

(B) The date on which the foreign bank becomes a bank holding company under the Bank Holding Company Act.

(d) *Host State* means a State in which a covered interstate branch is established or acquired.

(e) *Host state loan-to-deposit ratio* generally means, with respect to a particular host state, the ratio of total loans in the host state relative to total deposits from the host state for all banks (including institutions covered under the definition of "bank" in 12 U.S.C. 1813(a)(1)) that have that state as their home state, as determined and updated periodically by the appropriate Federal banking agencies and made available to the public.

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(f) *Out-of-State bank holding company* means, with respect to any State, a bank holding company whose home State is another State.

(g) *State* means state as that term is defined in 12 U.S.C. 1813(a)(3).

(h) *Statewide loan-to-deposit ratio* means, with respect to a bank, the ratio of the bank's loans to its deposits in a state in which the bank has one or more covered interstate branches, as determined by the FDIC.

[62 FR 47737, Sept. 10, 1997, as amended at 67 FR 38848, June 6, 2002]

§ 369.3 Loan-to-deposit ratio screen.

(a) *Application of screen.* Beginning no earlier than one year after a covered interstate branch is acquired or established, the FDIC will consider whether the bank's statewide loan-to-deposit ratio is less than 50 percent of the relevant host State loan-to-deposit ratio.

(b) *Results of screen.* (1) If the FDIC determines that the bank's statewide loan-to-deposit ratio is 50 percent or more of the host state loan-to-deposit ratio, no further consideration under this part is required.

(2) If the FDIC determines that the bank's statewide loan-to-deposit ratio is less than 50 percent of the host state loan-to-deposit ratio, or if reasonably available data are insufficient to calculate the bank's statewide loan-to-deposit ratio, the FDIC will make a credit needs determination for the bank as provided in § 369.4.

[62 FR 47737, Sept. 10, 1997, as amended at 67 FR 38848, June 6, 2002]

§ 369.4 Credit needs determination.

(a) *In general.* The FDIC will review the loan portfolio of the bank and determine whether the bank is reasonably helping to meet the credit needs of the communities in the host state that are served by the bank.

(b) *Guidelines.* The FDIC will use the following considerations as guidelines when making the determination pursuant to paragraph (a) of this section:

(1) Whether covered interstate branches were formerly part of a failed or failing depository institution;

(2) Whether covered interstate branches were acquired under circumstances where there was a low

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loan-to-deposit ratio because of the nature of the acquired institution's business or loan portfolio;

(3) Whether covered interstate branches have a high concentration of commercial or credit card lending, trust services, or other specialized activities, including the extent to which the covered interstate branches accept deposits in the host state;

(4) The Community Reinvestment Act (CRA) ratings received by the bank, if any, under 12 U.S.C. 2901 *et seq.*;

(5) Economic conditions, including the level of loan demand, within the communities served by the covered interstate branches;

(6) The safe and sound operation and condition of the bank; and

(7) The FDIC's Community Reinvestment regulations (12 CFR Part 345) and interpretations of those regulations.

§ 369.5 Sanctions.

(a) *In general.* If the FDIC determines that a bank is not reasonably helping to meet the credit needs of the communities served by the bank in the host state, and that the bank's statewide loan-to-deposit ratio is less than 50 percent of the host state loan-to-deposit ratio, the FDIC:

(1) May order that a bank's covered interstate branch or branches be closed unless the bank provides reasonable assurances to the satisfaction of the FDIC, after an opportunity for public comment, that the bank has an acceptable plan under which the bank will reasonably help to meet the credit needs of the communities served by the bank in the host state; and

(2) Will not permit the bank to open a new branch in the host state that would be considered to be a covered interstate branch unless the bank provides reasonable assurances to the satisfaction of the FDIC, after an opportunity for public comment, that the bank will reasonably help to meet the credit needs of the community that the new branch will serve.

(b) *Notice prior to closure of a covered interstate branch.* Before exercising the FDIC's authority to order the bank to close a covered interstate branch, the FDIC will issue to the bank a notice of the FDIC's intent to order the closure

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and will schedule a hearing within 60 days of issuing the notice.

(c) *Hearing*. The FDIC will conduct a hearing scheduled under paragraph (b) of this section in accordance with the provisions of 12 U.S.C. 1818(h) and 12 CFR part 308.

PART 370—RECORDKEEPING FOR TIMELY DEPOSIT INSURANCE DE- TERMINATION

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APPENDIX A TO PART 370—OWNERSHIP RIGHT
AND CAPACITY CODES

APPENDIX B TO PART 370—OUTPUT FILES
STRUCTURE

APPENDIX C TO PART 370—CREDIT BALANCE
PROCESSING FILE STRUCTURE

AUTHORITY: 12 U.S.C. 1817(a)(9), 1819
(Tenth), 1821(f)(1), 1822(c), 1823(c)(4).

SOURCE: 84 FR 37042, July 30, 2019, unless
otherwise noted.

§ 370.1 Purpose and scope.

Unless otherwise provided in this part, each “covered institution” (defined in §370.2(c)) is required to implement the information technology system and recordkeeping capabilities needed to calculate the amount of deposit insurance coverage available for each deposit account in the event of its failure. Doing so will improve the FDIC’s ability to fulfill its statutory mandates to pay deposit insurance as soon as possible after a covered institution’s failure and to resolve a covered institution at the least cost to the Deposit Insurance Fund.

§ 370.2 Definitions.

For purposes of this part:

(a) *Account holder* means the person or entity who has opened a deposit account with a covered institution and with whom the covered institution has

a direct legal and contractual relationship with respect to the deposit.

(b) [Reserved]

(c) *Covered institution* means:

(1) An insured depository institution which, based on its Reports of Condition and Income filed with the appropriate federal banking agency, has 2 million or more deposit accounts during the two consecutive quarters preceding the effective date of this part or thereafter; or

(2) Any other insured depository institution that delivers written notice to the FDIC that it will voluntarily comply with the requirements set forth in this part.

(d) *Compliance date* means, except as otherwise provided in §370.6(b):

(1) April 1, 2020, for any insured depository institution that was a covered institution as of April 1, 2017;

(2) The date that is three years after the date on which an insured depository institution becomes a covered institution; or

(3) The date on which an insured depository institution that elects to be a covered institution under §370.2(c)(2) files its first certification of compliance and deposit insurance coverage summary report pursuant to §370.10(a).

(e) *Deposit* has the same meaning as provided under section 3(l) of the Federal Deposit Insurance Act (12 U.S.C. 1813(l)).

(f) *Deposit account records* has the same meaning as provided in 12 CFR 330.1(e).

(g) *Ownership rights and capacities* are set forth in 12 CFR part 330.

(h) *Payment instrument* means a check, draft, warrant, money order, traveler’s check, electronic instrument, or other instrument, payment of funds, or monetary value (other than currency).

(i) *Standard maximum deposit insurance amount* (or SMDIA) has the same meaning as provided pursuant to section 11(a)(1)(E) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)(E)) and 12 CFR 330.1(o).

(j) *Transactional features* with respect to a deposit account means that the account holder or the beneficial owner of deposits can make a transfer from the deposit account to a party other than the account holder, beneficial owner of