





rule their joint interim rule implementing section 306 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI) and section 2221 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). Together, section 306 of CDRI and section 2221 of EGRPRA authorize the Agencies to increase the asset size of certain financial institutions that may be examined once in every 18-month period, rather than once in every 12-month period, from \$100 million to a revised limit of \$250 million. This final rule makes certain institutions that have \$250 million or less in assets eligible for the 18-month examination schedule.

EFFECTIVE DATE: April 2, 1998.

FOR FURTHER INFORMATION CONTACT: OCC: Lawrence W. Morris, National Bank Examiner, Examination Process (202) 874-4915; Ronald Schneck, Director, Special Supervision, (202) 874-4450; or Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities, (202) 874-5090.

Board: Molly Wassom, Deputy Associate Director, (202) 452-2305, or William H. Tiernay, Senior Financial Analyst, (202) 872-7579, Division of Banking Supervision and Regulation. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Diane Jenkins (202) 452-3544.

FDIC: Mark A. Mellon, Counsel, Regulation and Legislation section (202) 898-3854, Legal Division, or Robert W. Walsh, Manager, Planning and Program Development section (202) 898-6911, Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

OTS: Scott M. Albinson, Special Assistant to the Executive Director, Supervision, (202) 906-7984; or Ellen J. Sazzman, Counsel (Banking and Finance), Regulations and Legislation Division, Office of the Chief Counsel, (202) 906-7133.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 10(d) of the Federal Deposit Insurance Act (the FDI Act), <sup>1</sup> which was added by section 111 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), <sup>2</sup> requires that each appropriate Federal banking agency conduct a full-scope, on-site examination at least once during each 12-month period of every insured depository institution that the agency supervises. However, section 10(d) permits the Agencies to examine certain small insured depository institutions once during every 18-month period. As initially established by FDICIA, section 10(d) required an institution to have \$100 million or less in total assets and its composite condition must have been found to be outstanding (rated 1 under the Uniform Financial Institutions Rating System (UFIRS)) at its most recent examination in order to qualify for an extended exam cycle. In addition, a qualifying institution (a) must not have undergone a change in control during the previous 12-month period in which a full-scope



that they meet the qualifying criteria outlined above.

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          \                  4                  \ Pub. L. 104-208, 110 Stat. 3009 (section  
2221 is codified at  
                  12                  U.S.C. 1820(d)(10)).  
      \5\ Pub. L. 95-369, 92 Stat. 607 (codified at                  12  
U.S.C. 3101, et  
seq.).  
      \6\ Pub. L. 102-242, 105 Stat. 2286, 2291, 2304 (amending, inter  
alia,                  12                  U.S.C. 3105(c)(1)(C)).  
      \7\ Section 2214(a)(3) of EGRPRA is codified at                  12  
U.S.C.  
3105(c)(1)(C).  
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In 1997, the Federal banking agencies issued a joint rule that was immediately

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effective upon the date of publication implementing section 306 of CDRI and section 2221 of EGRPRA. See 62 FR 6449 (Feb. 12, 1997). The interim rule was published with a request for public comment. As discussed in greater detail below, the public comments generally favored adoption of the expanded examination cycle rule as set forth in the interim rule. Accordingly, the Agencies hereby adopt the interim rule with only minor stylistic changes.

#### Comments Received

In response to the interim rule request for comment, the Agencies received a total of 16 comments, including six from banking institutions, six from Federal Reserve Banks, and four from trade associations. Most agreed that the expansion of the 18-month examination cycle should be applied to UFIRS 1-and 2-rated domestic institutions with assets of \$250 million or less. Commenters favoring the proposed changes agreed that the application of an 18-month cycle would reduce regulatory burden on smaller, well run institutions that do not pose significant supervisory concerns. Commenters also noted that the rule is consistent with the Agencies' respective approaches to performance-based regulation and supervision.

One commenter suggested that a financial institution with a UFIRS rating of 1 or 2 should be allowed to elect either a 12-month or an 18-month exam cycle, and that each examination should cover, among other things, compliance issues and an examination of the financial institution's fiduciary and data processing operations. In response, the Agencies note that the examination cycle adopted in the interim rule and finalized by this rulemaking creates the generally applicable schedule. The primary regulator will have the option, however, to examine an institution as frequently as the regulator deems appropriate. The Agencies believe that this approach is an efficient and effective use of both financial institution and examiner resources.

Should a financial institution wish to discuss particular issues with its primary regulator at a time other than when an examination is ongoing, the financial institution is encouraged to contact its regulator for assistance at any time.

#### Final Rule

Based upon further deliberations by the Agencies and the comments received, the Agencies are adopting the interim rule in final form, with only minor stylistic changes. Pursuant to the final rule, a domestic national or state financial institution will be eligible for an 18-month examination schedule if the institution: (1) has total assets of \$250 million or less; (2) is well capitalized as defined in section 38(b)(1)(A) of the FDI Act ( 12 U.S.C. 1831o(b)(1)(A)); (3) is well managed; ( 4 ) received a UFIRS rating of 1 or 2 at its most recent examination; (5) is not subject to a formal enforcement proceeding or order; and (6) has not undergone a change in control during the previous 12 -month period.

The Agencies have determined that increasing the size limitation of UFIRS 2-rated institutions that are eligible for an 18-month cycle is consistent with the safety and soundness of insured depository institutions. A longer examination cycle permits the Agencies to focus their resources on those segments of the banking and thrift industry that present the most immediate supervisory concern, while concomitantly reducing the regulatory burden on smaller, well run institutions that do not pose an equivalent level of supervisory concern. In lieu of the more frequent annual examinations that would otherwise be conducted for these institutions, the agencies rely upon off-site monitoring tools to identify potential problems in smaller, well managed institutions that present low levels of risk. Moreover, neither the statute nor the regulation limits, and the Agencies therefore retain, the authority to examine an insured depository institution more frequently. The Agencies that supervise state-chartered insured institutions also recognize that flexibility must be made available in the implementation of this regulation to accommodate requirements for annual examinations by various states.

The FDIC, Board, and OCC, which have jurisdiction over U.S. branches and agencies of foreign banks, are reviewing the issue of how to apply the qualifying criteria to these entities. Upon development of a method under which the 18-month examination cycle qualifying criteria can be applied to Federal branches and agencies, a separate rule will be issued for comment.

#### Effective Date of Final Rule

The Agencies have determined that there is good cause to dispense with a 30-day delayed effective date pursuant to 5 U.S.C. 553(d)(3). The expanded exam cycle was immediately effective upon publication of the interim rule in February, 1997. This final rule adopts the interim rule without any substantive change. While the Agencies invited interested parties to comment on the rule at that time, each agency already has implemented the expanded exam cycle, and insured depository institutions already have been complying with the new rule for approximately a year. Accordingly, depository institutions will not require any additional time to adjust their policies or practices in

order to comply with the rule. Delaying the effective date simply would create confusion on the part of the banking industry concerning the applicability of the expanded exam cycle during the time between publication and some later effective date.

The Agencies also have determined, for the reasons stated in the preceding paragraph, that good cause exists to adopt an effective date that is before the first day of the calendar quarter that begins on or after the date on which the regulation is published, as would otherwise be required by section 302 of the CDRI.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (the Act) (5 U.S.C. 601-612) does not apply to a rulemaking where a general notice of proposed rulemaking is not required, as is the case with the 18-month examination cycle rulemaking. See 5 U.S.C. 603 and 604. Accordingly, the Act's requirements relating to an initial and final regulatory flexibility analysis are not applicable.

Even if the Act were to apply, the final rule will not have a significant economic impact on a substantial number of small entities. The final rule will reduce regulatory burdens on eligible banks and thrifts with assets of \$250 million or less. In addition, those depository institutions that are not eligible for the exemption from the statutorily prescribed 12-month examination cycle are not adversely affected by the final rule.

#### Small Business Regulatory Enforcement Fairness Act

Title II of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) \8\ provides generally for agencies to report rules to Congress and the General Accounting Office (GAO) for review. The reporting requirement is triggered when a Federal agency issues a final rule. The Agencies will file the appropriate reports with Congress and the GAO as required by SBREFA. The Office of Management and Budget has determined that the uniform rule promulgated by the Agencies does not constitute a ``major rule'' as defined by SBREFA.

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\8\ Pub. L. 104-121.

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#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), the Agencies have determined that no collections of information pursuant to the Paperwork Reduction Act are contained in this final rule.

#### OCC and OTS Executive Order 12866 Statement

The OCC and OTS each independently has determined that this final rule is not a significant regulatory action under Executive Order 12866.

OCC and OTS Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4, 109 Stat. 48 (March 22, 1995) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. Because the OCC and OTS have each independently determined that this final rule will not result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year, the OCC and OTS have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. As discussed in the preamble, this final rule will have the effect of reducing regulatory burden on certain institutions.

List of Subjects

12 CFR Part  
4

Banks, banking, Freedom of information, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

12 CFR Part  
208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Flood insurance, Mortgages, Reporting and recordkeeping requirements, Safety and soundness, Securities.

12 CFR Part  
337

Banks, banking, Reporting and recordkeeping requirements, Securities.

12 CFR Part  
563

Accounting, Advertising, Conflicts of interest, Corporate opportunity, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

Office of the Comptroller of the Currency

12 CFR CHAPTER I

Authority and Issuance

For the reasons set forth in the joint preamble, part  
4 of chapter  
I of title 12 of the Code of Federal  
Regulations is amended as follows:

PART 4 --ORGANIZATION AND  
FUNCTIONS, AVAILABILITY AND RELEASE OF  
INFORMATION, CONTRACTING OUTREACH PROGRAM

1. The authority citation for part  
4 continues to read as follows:

Authority: 12 U.S.C. 93a. Subpart A also  
issued under 5 U.S.C.  
552; 12 U.S.C. 481, 1820(d). Subpart B also  
issued under 5 U.S.C.  
552; E.O. 12600 (3 CFR, 1987 Comp., p. 235).  
Subpart C also issued  
under 5 U.S.C. 301, 552; 12 U.S.C. 481, 482,  
1821(o), 1821(t); 18  
U.S.C. 641, 1905, 1906; 31 U.S.C. 9701. Subpart D also issued under  
12 U.S.C. 1833e.

2. In Subpart A, Sec. 4 .6 is revised to read  
as follows:

Sec. 4 .6 Frequency of examination.

(a) General. The OCC examines national banks pursuant to authority  
conferred by 12 U.S.C. 481 and the requirements  
of 12 U.S.C. 1820(d).  
The OCC is required to conduct a full-scope, on-site examination of  
every national bank at least once during each 12 -  
month period.

(b) 18-month rule for certain small institutions. The OCC may  
conduct a full-scope, on-site examination of a national bank at least  
once during each 18-month period, rather than each 12  
-month period as  
provided in paragraph (a) of this section, if the following conditions  
are satisfied:

(1) The bank has total assets of \$250 million or less;

(2) The bank is well capitalized as defined in part  
6 of this  
chapter;

(3) At the most recent examination, the OCC found the bank to be  
well managed;

(4) At the most recent examination, the OCC  
assigned the bank a  
composite rating of 1 or 2 under the Uniform Financial Institutions  
Rating System (copies are available at the addresses specified in  
Sec. 4 .14);

(5) The bank currently is not subject to a formal enforcement  
proceeding or order by the FDIC, OCC, or Federal Reserve System; and

(6) No person acquired control of the bank during the preceding  
12 -  
month period in which a full-scope, on-site examination would have been  
required but for this section.

(c) Authority to conduct more frequent examinations. This section  
does not limit the authority of the OCC to examine any national bank as  
frequently as the agency deems necessary.

Dated: February 25, 1998.  
Eugene A. Ludwig,  
Comptroller of the Currency.

Federal Reserve System

12

CFR

CHAPTER II

Authority and Issuance

For the reasons set forth in the joint preamble, the Board amends  
part 208 of chapter II of title 12  
of the Code of Federal Regulations  
as follows:

PART 208--MEMBERSHIP OF STATE BANKING  
INSTITUTIONS IN THE FEDERAL  
RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208  
continues to read as  
follows:

Authority: 12 U.S.C. 24, 36, 92(a), 93(a),  
248(a), 248(c), 321-  
338a, 371d, 461, 481-486, 601, 611, 1814, 1816, 1818, 1820(d)(9),  
1823(j), 1828(o), 1831, 1831o, 1831p-1, 1831r-1, 1835(a), 1882,  
2901-2907, 3105, 3310, 3331-3351, and 3906-3909; 15 U.S.C. 78b,  
781(b), 781(g), 781(i), 78o- 4 (c)(5), 78q, 78q-1  
and 78w; 31 U.S.C.  
5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106 and 4128.

2. In Subpart A, Sec. 208.26 is revised to read as follows:

Sec. 208.26 Frequency of examination.

(a) General. The Federal Reserve examines insured member banks  
pursuant to authority conferred by 12 U.S.C. 325  
and the requirements  
of 12 U.S.C. 1820(d). The Federal Reserve is  
required to conduct a  
full-scope, on-site examination of every insured member bank at least  
once during each 12 -month period.

(b) 18-month rule for certain small institutions. The Federal  
Reserve may conduct a full-scope, on-site examination of an insured  
member bank at least once during each 18-month period, rather than each  
12 -month period as provided in paragraph (a) of  
this section, if the

following conditions are satisfied:

- (1) The bank has total assets of \$250 million or less;
- (2) The bank is well capitalized as defined in subpart B of this part (Sec. 208.33);

(3) At the most recent examination conducted by either the Federal Reserve

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or applicable State banking agency, the Federal Reserve found the bank to be well managed;

( 4 ) At the most recent examination conducted by either the Federal

Reserve or applicable State banking agency, the Federal Reserve assigned the bank a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (copies are available at the address specified in Sec. 216.6 of this chapter);

(5) The bank currently is not subject to a formal enforcement proceeding or order by the FDIC, OCC, or Federal Reserve System; and

(6) No person acquired control of the bank during the preceding 12

month period in which a full-scope, on-site examination would have been required but for this section.

(c) Authority to conduct more frequent examinations. This section does not limit the authority of the Federal Reserve to examine any insured member bank as frequently as the agency deems necessary.

By order of the Board of Governors of the Federal Reserve System, March 27, 1998.

Jennifer J. Johnson,  
Deputy Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR CHAPTER III

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Directors of the FDIC amends part 337 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 337--UNSAFE AND UNSOUND BANKING PRACTICES

1. The authority citation for part 337 continues to read as follows:

Authority: 12 U.S.C. 375a(4), 375b, 1816, 1818(a), 1818(b), 1819, 1820(d)(10), 1821(f), 1828(j)(2), 1831f, 1831f-1.

2. Section 337.12 is revised to read as follows:

(a) General. The Federal Deposit Insurance Corporation examines insured state nonmember banks pursuant to authority conferred by section 10 of the Federal Deposit Insurance Act ( 12 U.S.C. 1820). The FDIC is required to conduct a full-scope, on-site examination of every insured state nonmember bank at least once during each 12-month period.

(b) 18-month rule for certain small institutions. The FDIC may conduct a full-scope, on-site examination of an insured state nonmember bank at least once during each 18-month period, rather than each 12-month period as provided in paragraph (a) of this section, if the following conditions are satisfied:

- (1) The bank has total assets of \$250 million or less;
- (2) The bank is well capitalized as defined in Sec. 325.103(b)(1) of this chapter;
- (3) At the most recent FDIC or applicable State banking agency examination, the FDIC found the bank to be well managed;
- ( 4 ) At the most recent FDIC or applicable State banking agency examination, the FDIC assigned the insured state nonmember bank a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (copies are available at the addresses specified in Sec. 309. 4 of this chapter);
- (5) The bank currently is not subject to a formal enforcement proceeding or order by the FDIC, OCC, or Federal Reserve System; and
- (6) No person acquired control of the bank during the preceding 12-month period in which a full-scope, on-site examination would have been required but for this section.

(c) Authority to conduct more frequent examinations. This section does not limit the authority of the FDIC to examine any insured state nonmember bank as frequently as the agency deems necessary.

By order of the Board of Directors.

Dated at Washington, DC, this 24th day of March 1998.

Federal Deposit Insurance Corporation.  
 Robert E. Feldman,  
 Executive Secretary.

Office of Thrift Supervision

Authority and Issuance

For the reasons set forth in the joint preamble, the OTS amends part 563 of Chapter V of title 12 of the Code of Federal Regulations as follows:

1. The authority citation for  
continues read as follows:

part

563

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463,  
1464, 1467a, 1468,  
1817, 1820, 1828, 3806; 42 U.S.C. 4106.

2. Section 563.171 is revised to read as follows:

Sec. 563.171 Frequency of examination.

(a) General. The OTS examines savings associations pursuant to  
authority conferred by 12 U.S.C. 1463 and the  
requirements of 12 U.S.C.  
1820(d). The OTS is required to conduct a full-scope, on-site  
examination of every savings association at least once during each  
12  
month period.

(b) 18-month rule for certain small institutions. The OTS may  
conduct a full-scope, on-site examination of a savings association at  
least once during each 18-month period, rather than each 12  
-month  
period as provided in paragraph (a) of this section, if the following  
conditions are satisfied:

(1) The savings association has total assets of \$250 million or  
less;

(2) The savings association is well capitalized as defined in  
Sec. 565. 4 of this chapter;

(3) At its most recent examination, the OTS found the savings  
association to be well managed;

( 4 ) At its most recent examination, the OTS  
assigned the savings  
association a composite rating of 1 or 2, as defined in Sec. 516.3(c)  
of this chapter;

(5) The savings association currently is not subject to a formal  
enforcement proceeding or order; and

(6) No person acquired control of the savings association during  
the preceding 12  
-month period in which a full-  
scope, on-site  
examination would have been required but for this section.

(c) Authority to conduct more frequent examinations. This section  
does not limit the authority of the OTS to examine any savings  
association as frequently as the agency deems necessary.

Dated: February 10, 1998.

By the Office of Thrift Supervision.  
Ellen Seidman,  
Director.

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