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CEO Ltr 103 - Uniform Retail Credit Classification Policy

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[Notices]

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FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Uniform Retail Credit Classification and Account Management Policy

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Final notice.

SUMMARY: The Federal Financial Institutions Examination Council (FFIEC), on behalf of the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS), collectively referred to as the Agencies, is publishing its revisions to the Uniform Policy for Classification of Consumer Installment Credit Based on Delinquency Status (Uniform Retail Credit Classification Policy). The National Credit Union Administration (NCUA), also a member of FFIEC, does not plan to adopt the policy at this time.

The Uniform Retail Credit Classification and Account Management Policy is a supervisory policy used by the Agencies for uniform classification and treatment of retail credit loans in financial institutions.

DATES: Changes in this policy that involve manual adjustments to the institutions' policies and procedures should be implemented for reporting in the June 30, 1999 Call Report or Thrift Financial Report as appropriate. Any policy changes involving programming resources should be implemented for reporting in the December 31, 2000 Call Report or Thrift Financial Report, as appropriate.

FOR FURTHER INFORMATION CONTACT:

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FDIC: James Leitner, Examination Specialist, (202) 898-6790, Division of Supervision. For legal issues, Michael Phillips, Counsel, (202) 898-3581, Supervision and Legislation Branch, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

OCC: Stephen Jackson, National Bank Examiner, Credit Risk Division, (202) 874-4473, or Ron Shimabukuro, Senior Attorney, Legislative and Regulatory Activities Division (202) 874-5090, Office of the Comptroller of the Currency, 250 E Street SW, Washington, DC 20219.

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SUPPLEMENTARY INFORMATION:

Background Information

On June 30, 1980, the FRB, FDIC, and OCC adopted the FFIEC uniform policy for classification of open-end and closed-end credit (1980 policy). The Federal Home Loan Bank Board, the predecessor of the OTS, adopted the 1980 policy in 1987. The 1980 policy established uniform guidelines for classification of installment credit based on delinquency status and provided different charge-off time frames for open-end and closed-end credit. The 1980 policy recognized the statistical validity of determining losses based on past due status.

The Agencies undertook a review of the 1980 policy as part of their review of all written policies mandated by Section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI). As noted in their September 23, 1996 Joint Report to Congress on CDRI review efforts[1], the Agencies believe that the 1980 policy should be revised due to changes that have taken place within the industry.

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[1] Joint Report: Streamlining of Regulatory Requirements--Section 303(a)(3) of the Riegle Community Development and Regulatory Improvement Act of 1994, page I-41.

In 1980, open-end credit consisted largely of credit card accounts with small lines of credit to the most creditworthy borrowers. Today, open-end credit generally includes accounts with much larger lines of credit to diverse borrowers with a variety of risk profiles. The change in those accounts and inconsistencies in reporting and charge-off practices of open-end accounts by financial institutions prompted the Agencies to consider several revisions to the 1980 policy.

Specifically, the FFIEC had concerns [[Page 6656]] that a number of institutions were not following existing policy guidance for charging off open-end accounts based on past due status. Charge-off practices ranged from 120 days to 240 days. This range reflected, in part, differing interpretations by some institutions with regard to the policy's guidance to charge off open-end loans by the seventh zero billing cycle. In addition, the 1980 policy did not establish guidance for charging off fraudulent accounts, accounts of deceased persons, or accounts of borrowers in bankruptcy (accounts in bankruptcy), which currently account for a large portion of total charge-offs. Moreover, no classification guidance existed for residential and home equity loans--a significant amount of consumer credit. Finally, no uniform guidance existed for handling re-aging of open-end credit, or extensions, deferrals, renewals, or re-writes of closed-end credit.

As a result of these concerns, the FFIEC published two notices in the Federal Register on September 12, 1997 (1997 Notice) (62 FR 48089) and on July 6, 1998 (1998 Notice) (63 FR 36403) requesting comment on various proposed revisions to the 1980 policy. Comments received during both periods provided extremely useful guidance to the FFIEC. After careful consideration, the FFIEC has made several changes to its earlier proposals and adopted those changes in this final policy statement. While the comments proved extremely helpful, the FFIEC is mindful of the Agencies' missions to promote safety and soundness of the financial industry and to recommend regulatory policies and standards that further those missions. In keeping with the Agencies' goals of promoting safety and soundness, certain aspects of the final notice are a departure from what the majority of commenters suggested.

Comments Received

The FFIEC received a total of 128 comments in response to the 1998 Notice. They came from 25 banks and thrifts, 19 bank holding companies, 8 regulatory agencies, 13 trade groups, 33 consumer credit counseling services, and 30 other companies and individuals. The following is a summary.

1a. Charge-off Policy for Open-End and Closed-End Credit. The 1998 Notice proposed two options for charging off delinquent accounts. The first proposed that both closed-end and open-end credit be charged off at 150 days delinquency. The second option proposed to retain, but clarify existing policy; charge off closed-end credit at 120 days delinquency and charge off open-end credit at 180 days delinquency. Commenters were overwhelmingly in favor of retaining the existing 120/180 charge-off time frames. Commenters representing the credit card industry stated that shortening time frames to 150 days would cause a $2 billion dollar write-off initially, with further impact during implementation. Moreover, credit card companies and community groups and counseling services stated that they needed those extra 30 days in the period from 150 days delinquency to 180 days delinquency to work with troubled borrowers. Several lenders indicated that they can collect ten percent or more of accounts during that time period. After careful consideration, the FFIEC has decided not to pursue uniform charge-off time frames for open-end and closed-end credit at this time. Moreover, since the revision to the 1980 policy was initiated, the majority of institutions whose open-end charge-off policy exceeded 180 days have brought themselves into compliance. However, because of confusion over the terminology of ``seven zero billing cycles,'' the FFIEC decided to eliminate that language in the final policy. Additionally, the FFIEC is adopting re-aging guidance so that greater consistency and clarity in reporting among retail credit lenders will be achieved.

1b. Substandard classification policy.--The majority of the comments received in response to the 1997 Notice supported retention of classifying open-end and closed-end consumer credit at 90 days delinquency. No objections were received in response to the 1998 Notice. The FFIEC agrees with the commenters. It believes that when an account is 90 days past due, it displays weakness warranting classification. Therefore, open-end and closed-end accounts will continue to be classified Substandard at 90 days past due.

2. Bankruptcy, fraud and deceased accounts. Bankruptcy.--The 1998 Notice requested comment on two proposals relating to treatment of accounts in bankruptcy. First, the 1998 Notice asked whether unsecured loans in bankruptcy should be charged off by the end of the month in which a creditor is notified of the bankruptcy filing. Second, the 1998 Notice proposed that for secured and partially secured accounts in bankruptcy, the collateral should be evaluated and any deficiency balance charged off within 30 days of notification.

The majority of the commenters believed that revised bankruptcy legislation would pass in the second session of the 105th Congress and asked the FFIEC to defer a decision on this issue pending new legislation. The FFIEC was prepared to conform the final policy statement to any new legislation; however, no legislation was enacted. Because widespread inconsistencies in charge-off practices on accounts in bankruptcy continue to exist, the FFIEC is adopting guidance at this time. If and when bankruptcy legislation is enacted, the FFIEC will review the policy statement to determine if any revisions are needed.

Commenters objected to both of the proposed time frames for bankrupt accounts. Fifty commenters opposed the proposal for unsecured accounts in bankruptcy versus only ten who supported it. Twenty-two commenters opposed the proposed handling of secured and unsecured accounts in bankruptcy, while only 11 supported it. A number of creditors noted that an accurate determination of loss on accounts in bankruptcy realistically cannot be made until after the meeting with creditors. This may be anywhere from 10 to 45 days or more after the bankruptcy filing, depending upon the case load of the bankruptcy court. The FFIEC shares the concerns of these commenters. Consequently, the final policy statement has been revised, for unsecured, partially secured, and fully secured accounts in bankruptcy, to allow creditors up to 60 days from their receipt of the bankruptcy notice filing to charge off those amounts deemed unrecoverable. However, accounts should be charged off no later than the respective 120-day or 180-day time frames for closed-end and open-end credit.

Fraud.--The 1998 Notice proposed that accounts affected by fraud be charged off within 90 days of discovery of the fraud or within the general charge-off time frames established by this final policy statement, whichever is shorter. The majority of the commenters supported this proposal. While the FFIEC recognizes that a fraud investigation may last more than 30 days, it believes that 90 days provides an institution sufficient time to charge off an account affected by fraud. Therefore, this final policy statement adopts this provision as proposed.

Accounts of deceased persons.--The 1998 Notice proposed that accounts of deceased persons should be charged off when loss is determined or within the classification time frames adopted by this final policy statement. A majority of the commenters supported this proposal. As discussed in the 1998 Notice, the FFIEC agrees that determination of repayment potential on an account of a deceased person may [[Page 6657]] take months when working through a trustee or the family. However, the FFIEC believes the time frames established by this final policy statement provide adequate time to determine the amount of the loss and charge off that amount. For this reason, the final policy statement adopts this provision as proposed.

3. Partial payments.--The 1998 Notice proposed that in addition to the existing guidance that 90 percent of a contractual payment may be considered a full payment in computing delinquency, the FFIEC allows an institution to aggregate payments to give a borrower credit for partial payments. The proposal stated that only one method should be allowed throughout a loan portfolio. Some institutions stated that they were already using both methods. One recommendation made by the commenters and supported by the FFIEC was to eliminate the guidance that one method be used consistently throughout the portfolio. These commenters noted that these methods are used for different reasons. For instance, the 90 percent method may handle errors in check writing while the aggregate method enables institutions to work flexibly with troubled borrowers. The FFIEC agrees with these commenters. Therefore, this final policy statement has been revised to allow an institution to use both methods in dealing with partial payments.

4. Re-aging, extension, renewal, deferral, or rewrite policy.--The 1998 Notice proposed a number of criteria be established before a re-aging, extension, renewal, deferral, or rewrite of an account. A majority of commenters supported the criteria that the borrower should show a renewed willingness and ability to pay and that the account should meet agency and bank guidelines. However, many commenters generally opposed the following criteria:

- The borrower should make three minimum consecutive payments or lump sum equivalent before being re-aged.
- An account should not be re-aged, extended, renewed, deferred, or rewritten more than once within any twelve-month period.
- An account should be in existence for at least twelve months before it can be re-aged, extended, deferred, or rewritten.
- No more than two re-agings, extensions, renewals, deferrals, or rewrites should occur during the lifetime of the account.
- The re-aged balance should not exceed the pre-delinquency credit limit.

While the FFIEC appreciates concerns of these commenters that flexibility is required to work with troubled borrowers, it also recognizes this has the greatest potential for masking the delinquency status of accounts. Consistent guidelines are needed to ensure the integrity of financial records and prevent abuses (such as automated re-aging programs). In addition, the FFIEC believes that an account should show some performance before a re-aging is allowed. In response to commenters' concerns, the Agencies modified the proposed guidelines. For example, to provide flexibility for lenders to work with borrowers, but still maintain the integrity of asset quality reports, the Agencies changed the proposed re-aging guidelines to allow accounts to be re-aged not more than twice in a five-year period. Therefore, in considering the commenters' views and the Agencies' missions of ensuring safety and soundness of institutions' loan assets, the following criteria are being adopted:

- The borrower should show a renewed willingness and ability to repay.
- The account should meet agency and bank policy standards.
- The borrower should make three minimum consecutive monthly payments or the lump sum equivalent before an account is re-aged.
- The account should be in existence at least nine months.
- An account should not be re-aged, deferred, extended, renewed or rewritten more than once within any twelve-month period, and not more than twice in a five-year period.
- An over limit account may be re-aged at its outstanding balance (including the over limit balance, interest, and fees) but new credit should not be extended until the account balance is below its designated credit limit.

5. Residential and home equity loans.--The 1998 Notice proposed that institutions holding both one- to four-family and home equity loans to the same borrower that are delinquent 90 days or more with loan-to-value ratios greater than 60 percent be classified Substandard. In addition, the FFIEC proposed that a current evaluation of collateral be made by the time the loan is 120 or 180 days past due for a closed-end or open-end account, respectively.

Commenters were almost equally divided on this proposal during the 1998 Notice. However, in response to the 1997 Notice, the majority of the commenters supported classifying the loans Substandard when they are 90 days delinquent. Some commenters supported a different loan-to value ratio as exposure to loss increases as the loan-to-value ratio of a real estate loan increases. The agencies believe, however, that for one- to four-family residential loans with loan-to-value ratios of 60 percent or less, ample collateral support exists to satisfy the loan. Therefore the FFIEC believes that the classification of such loans is not necessary. This final policy statement adopts the provision as proposed.

In response to the 1998 Notice, the commenters opposed the collateral evaluation. In response to the 1997 Notice, the majority of the commenters supported the proposal that a collateral evaluation be obtained. However, from the comments it appears that the proposal was not clear because many commenters believed that a "full" appraisal was required. The FFIEC agrees that the policy indicating that a collateral evaluation be obtained was not intended to be burdensome and that a full appraisal is not required. The policy reaffirms the need to determine the amount of loss in the loan when delinquency reaches the time frames for charge-off for non-real estate loans.

Implementation Period

In the 1998 Notice, it said that if the Agencies retained the 120/180 day charge-off time frames, the implementation period would begin January 1, 1999. However, the Agencies recognize that for some institutions, this may involve programming changes. The Agencies expect institutions to begin implementation of this policy upon publication. Manual changes should be implemented for reporting in the June 30, 1999 Call Report or Thrift Financial Report, as appropriate. Changes involving programming resources should be implemented for reporting in the December 31, 2000 Reports.

Final Policy Statement

After careful consideration of all the comments, the FFIEC adopts this final policy statement. In general, this final policy statement:

- Establishes a uniform charge-off policy for open-end credit at 180 days delinquency and closed-end credit at 120 days delinquency.
- Provides uniform guidance for loans affected by bankruptcy, fraud, and death.
- Establishes guidelines for re-aging, extending, deferring, or rewriting past due accounts.
- Classifies certain delinquent residential mortgage and home equity loans.
- Broadens recognition of partial payments that qualify as full payments.

The FFIEC considered the effect of generally accepted accounting [[Page 6658]] principles (GAAP) on this statement. GAAP requires prompt recognition of loss for assets or portions of assets deemed uncollectible. The FFIEC believes that because this final policy statement provides for prompt recognition of losses, it is fully consistent with GAAP.

The final statement is:

Uniform Retail Credit Classification and Account Management Policy[2]

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[2] Retail Credit includes open-end and closed-end credit extended to individuals for household, family, and other personal expenditures. It includes consumer loans and credit cards. For the purpose of this policy, retail credit also includes loans to individuals secured by their personal residence, including home equity and home improvement loans.

The regulatory classifications used for retail credit are Substandard, Doubtful, and Loss. These are defined as follows: Substandard: An asset classified Substandard is protected inadequately by the current net worth and paying capacity of the obligor, or by the collateral pledged, if any. Assets so classified must have a well-defined weakness or weaknesses that jeopardize the liquidation of the debt. They are characterized by the distinct possibility that the institution will sustain some loss if the deficiencies are not corrected. Doubtful: An asset classified Doubtful has all the weaknesses inherent in one classified Substandard with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions, and values, highly questionable and improbable. Loss: An asset, or portion thereof, classified Loss is considered uncollectible, and of such little value that its continuance on the books is not warranted. This classification does not mean that the asset has absolutely no recovery or salvage value; rather, it is not practical or desirable to defer writing off an essentially worthless asset (or portion thereof), even though partial recovery may occur in the future.

Although the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and Office of Thrift Supervision do not require institutions to adopt identical classification definitions, institutions should classify their assets using a system that can be easily reconciled with the regulatory classification system.

Evidence of the quality of consumer credit soundness is indicated best by the repayment performance demonstrated by the borrower. Because retail credit generally is comprised of a large number of relatively small balance loans, evaluating the quality of the retail credit portfolio on a loan-by-loan basis is inefficient and burdensome for the institution being examined and examiners. Therefore, in general, retail credit should be classified based on the following criteria:

- Open-end and closed-end retail loans past due 90 cumulative days from the contractual due date should be classified Substandard.
- Closed-end retail loans that become past due 120 cumulative days and open-end retail loans that become past due 180 cumulative days from the contractual due date should be charged off.
- The charge-off should be taken by the end of the month in which the 120-or 180-day time period elapses.[3]

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[3] Fixed payment open-end retail accounts that are placed on a closed-end repayment schedule should follow the closed-end charge-off time frames.

- Unless the institution can clearly demonstrate and document that repayment on accounts in bankruptcy is likely to occur, accounts in bankruptcy should be charged off within 60 days of receipt of notification of filing from the bankruptcy court or within the time frames specified in this classification policy, whichever is shorter.

- The charge-off should be taken by the end of the month in which the applicable time period elapses. Any loan balance not charged off should be classified Substandard until the borrower re-establishes the ability and willingness to repay (with demonstrated payment performance for six months at a minimum) or there is a receipt of proceeds from liquidation of collateral.

- Fraudulent loans should be charged off within 90 days of discovery or within the time frames specified in this classification policy, whichever is shorter. The charge-off should be taken by the end of the month in which the applicable time period elapses.

- Loans of deceased persons should be charged off when the loss is determined or within the time frames adopted in this classification policy, whichever is shorter. The charge-off should be taken by the end of the month in which the applicable time period elapses.

- One- to four-family residential real estate loans and home equity loans that are delinquent 90 days or more with loan-to-value ratios greater than 60 percent, should be classified Substandard.

- When a residential or home equity loan is 120 days past due for closed-end credit and 180 days past due for open-end credit, a current assessment of value should be made and any outstanding loan balance in excess of the fair value of the property, less cost to sell, should be classified Loss.

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[4] Additional information about content requirements of evaluations can be found in the "Interagency Appraisal and Evaluation Guidelines", October 27, 1994. For example, under certain circumstances, evaluations could be derived from an automated collateral evaluation model, drive-by inspection by bank employee or contracted employee, and real estate market comparable sales similar to the institution's collateral.

Properly secured residential real estate loans with loan-to-value ratios equal to or less than 60 percent are generally not classified based solely on delinquency status. Home equity loans to the same borrower at the same institution as the senior mortgage loan with a combined loan-to-value ratio equal to or less than 60 percent, should not be classified. However, home equity loans where the institution does not hold the senior mortgage, that are delinquent 90 days or more should be classified Substandard, even if the loan-to-value ratio is equal to, or less than, 60 percent.

Other Considerations for Classification

If an institution can clearly document that the delinquent loan is well secured and in the process of collection, such that collection will occur regardless of delinquency status, then the loan need not be classified. A well secured loan is collateralized by a perfected security interest in, or pledges of, real or personal property, including securities, with an estimated fair value, less cost to sell, sufficient to recover the recorded investment in the loan, as well as a reasonable return on that amount. In the process of collection means that either a collection effort or legal action is proceeding and is reasonably expected to result in recovery of the loan balance or its restoration to a current status, generally within the next 90 days.

This policy does not preclude an institution from adopting an internal classification policy more conservative than the one detailed above. It also does not preclude a regulatory agency from using the

Doubtful or Loss classification in certain situations if a rating more severe than Substandard is justified. Loss in retail credit should be recognized when the institution becomes aware of the loss, but in no case should the charge-off exceed the time frames stated in this policy.

Partial Payments on Open-End and Closed-End Credit

Institutions should use one of two methods to recognize partial payments. A payment equivalent to 90 percent or more of the contractual payment may be considered a full payment in computing delinquency. Alternatively, the institution may aggregate payments and give credit for any partial payment received. For example, if a regular installment payment is $300 and the borrower makes payments of only $150 per month for a six-month period, the loan would be $900 ($150 shortage times six payments), or three full months delinquent. An institution may use either or both methods in its portfolio, but may not use both methods simultaneously with a single loan.

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Re-aging, Extensions, Deferrals, Renewals, or Rewrites[5]

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[5] Certain advertising and marketing programs, like "skip-a-payment" and holiday payment deferral programs are not subject to this portion of the policy.

Re-aging is the practice of bringing a delinquent account current after the borrower has demonstrated a renewed willingness and ability to repay the loan by making some, but not all, past due payments. Re-aging of open-end accounts, or extensions, deferrals, renewals, or rewrites of closed-end accounts should only be used to help borrowers overcome temporary financial difficulties, such as loss of job, medical emergency, or change in family circumstances like loss of a family member. A permissive policy on re-agings, extensions, deferrals, renewals, or rewrites can cloud the true performance and delinquency status of the portfolio. However, prudent use of a policy is acceptable when it is based on recent, satisfactory performance and the true improvement in a borrower's other credit factors, and when it is structured in accordance with the institution's internal policies.

The decision to re-age a loan, like any other modification of contractual terms, should be supported in the institution's management information systems. Adequate management information systems usually identify and document any loan that is extended, deferred, renewed, or rewritten, including the number of times such action has been taken. Documentation normally shows that institution personnel communicated with the borrower, the borrower agreed to pay the loan in full, and the borrower shows the ability to repay the loan.

Institutions that re-age open-end accounts should establish a reasonable written policy and adhere to it. An account eligible for re-aging, extension, deferral, renewal, or rewrite should exhibit the following:

- The borrower should show a renewed willingness and ability to repay the loan. The account should exist for at least nine months before allowing a re-aging, extension, renewal, referral, or rewrite.
- The borrower should make at least three minimum consecutive monthly payments or the equivalent lump sum payment before an account is re-aged. Funds may not be advanced by the institution for this purpose.
- No loan should be re-aged, extended, deferred, renewed, or rewritten more than once within any twelve month period; that is, at least twelve months must have elapsed since a prior re-aging. In addition, no loan should be re-aged, extended, deferred, renewed, or rewritten more than two times within any five-year period.
- For open-end credit, an over limit account may be re-aged at its outstanding balance (including the over limit balance, interest, and fees). No new credit may be extended to the borrower until the balance falls below the designated pre-delinquency credit limit.

Examination Considerations

Examiners should ensure that institutions adhere to this policy. Nevertheless, there may be instances that warrant exceptions to the general classification policy. Loans need not be classified if the institution can document clearly that repayment will occur irrespective of delinquency status. Examples might include loans well secured by marketable collateral and in the process of collection, loans for which claims are filed against solvent estates, and loans supported by valid insurance claims.

The uniform classification and account management policy does not preclude examiners from reviewing and classifying individual large dollar retail credit loans that exhibit signs of credit weakness regardless of delinquency status.

In addition to reviewing loan classifications, the examiner should ensure that the institution's allowance for loan and lease loss provides adequate coverage for inherent losses. Sound risk and account management systems, including a prudent retail credit lending policy, measures to ensure and monitor adherence to stated policy, and detailed operating procedures, should also be implemented. Internal controls should be in place to ensure that the policy is followed. Institutions lacking sound policies or failing to implement or effectively follow established policies will be subject to criticism.

Implementation

Changes in this policy that involve manual adjustments to an institution's policies and procedures should be implemented for reporting in the June 30, 1999 Call Report or Thrift Financial Report, as appropriate. Any policy changes requiring programming resources should be implemented for reporting in the December 31, 2000 Call Report or Thrift Financial Report, as appropriate.

RESCINDED

Dated: February [illegible], 1999.

Keith J. Todd,

Executive Secretary, Federal Financial Institutions Examination Council.

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