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[OTS-6720-01-P 25.0%]

DEPARTMENT OF THE TREASURY
Office of the Comptroller of the Currency
12 CFR Part 4
Docket ID OCC-2007-00014
RIN 1557-AD02

FEDERAL RESERVE SYSTEM
12 CFR Parts 208 and 211
Docket No. R-1279

FEDERAL DEPOSIT INSURANCE CORPORATION
12 CFR Parts 337 and 347
RIN 3064-AD17

DEPARTMENT OF THE TREASURY
Office of Thrift Supervision
12 CFR Part 563
Docket ID OTS-2007-0006

**Expanded Examination Cycle for Certain
Small Insured Depository Institutions and
U.S. Branches and Agencies of Foreign Banks**

AGENCIES: Office of the Comptroller of the Currency (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Final Rules.

SUMMARY: The OCC, Board, FDIC, and OTS (collectively, the Agencies) are jointly adopting as final the interim rules issued on April 10, 2007, that implemented section 605 of the Financial Services Regulatory Relief Act of 2006 (FSRRA) and related legislation (collectively the Examination Amendments). The Examination Amendments permit insured depository institutions (institutions) that have up to \$500 million in total assets, and that meet certain other criteria, to qualify for an 18-month (rather than 12-month)

on-site examination cycle. Prior to enactment of FSRRA, only institutions with less than \$250 million in total assets were eligible for an 18-month on-site examination cycle. The interim rules made parallel changes to the Agencies' regulations governing the on-site examination cycle for U.S. branches and agencies of foreign banks (foreign bank offices), consistent with the International Banking Act of 1978 (IBA). In addition to implementing the changes in the Examination Amendments, the interim rules clarified when a small insured depository institution is considered "well managed" for purposes of qualifying for an 18-month examination cycle.

DATES: Effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER,] the Interim Rules published on April 10, 2007 (72 FR 17798) are adopted as final without change.

FOR FURTHER INFORMATION CONTACT:

OCC: Mitchell Plave, Counsel, Legislative and Regulatory Activities Division, (202) 874-5090; Stuart E. Feldstein, Assistant Director, Legislative and Regulatory Activities, (202) 874-5090; Fred Finke, Mid-size/Community Bank Supervision, (202) 874-4468; Patricia Roberts, Operational Risk Policy Analyst, (202) 874-5637.

Board: Barbara Bouchard, Deputy Associate Director, (202) 452-3072, Mary Frances Monroe, Manager, (202) 452-5231, or Stanley Rediger, Supervisory Financial Analyst, (202) 452-2629, Division of Banking Supervision and Regulation; or Pamela G. Nardolilli, Senior Counsel, (202) 452-3289, for the revisions to Regulation H, or Jon Stoloff, Senior Counsel, (202) 452-3269, for the revisions to Regulation K, Legal Division. For users of Telecommunication Device for the Deaf (TDD) only, contact (202) 263-4869.

FDIC: Melinda West, Senior Examination Specialist, (202) 898-7221; Patricia A. Colohan, Senior Examination Specialist, (202) 898-7283; Division of Supervision and Consumer Protection; Rodney D. Ray, Counsel, (202) 898-3556, for the revisions to 12 CFR Part 347; Kimberly A. Stock, Senior Attorney, (202) 898-3815, for the revisions to 12 CFR Part 337; Legal Division.

OTS: Robyn H. Dennis, Director, Operation Risk, (202) 906-5751, Examinations and Supervision Policy Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

Section 10(d) of the Federal Deposit Insurance Act (the FDI Act)¹ generally requires that the appropriate federal banking agency for an insured depository institution conduct a full-scope, on-site examination of the institution at least once during each 12-month period. Prior to enactment of FSRRA, section 10(d) also authorized the appropriate federal banking agency to lengthen the on-site examination cycle for an institution to 18 months if the institution (1) had total assets of less than \$250 million;

¹ Section 10(d) of the FDI Act was added by section 111 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) and is codified at 12 U.S.C. 1820(d).

(2) was well capitalized (as defined for purposes of the prompt corrective action statute at 12 U.S.C. 1831o); (3) was found, at its most recent examination, to be well managed and to have a composite condition of outstanding or good;² (4) had not undergone a change in control during the previous 12-month period in which a full-scope, on-site examination otherwise would have been required; and (5) was not subject to a formal enforcement proceeding or order by its appropriate federal banking agency or the FDIC. The Board, the FDIC and the OTS, as the appropriate federal banking agencies for state-chartered insured banks and savings associations, are permitted to conduct on-site examinations of such institutions on alternating 12-month or 18-month schedules with the institution's State supervisor, if the Board, FDIC, or OTS, as appropriate, determines that the alternating examination conducted by the State carries out the purposes of section 10(d) of the FDI Act and, if relevant, the Home Owners' Loan Act.

In addition, section 7(c)(1)(C) of the IBA provides that a U.S. branch or agency of a foreign bank shall be subject to on-site examination by its appropriate federal banking agency as frequently as a national or state bank would be subject to such an examination by the agency. The Agencies have adopted regulations to implement the examination cycle requirements of section 10(d) of the FDI Act and section 7(c)(1)(C) of the IBA, including the extended 18-month examination cycle available to qualifying small institutions and foreign bank offices.³

Section 605 of FSRRA, which became effective on October 13, 2006, amended section 10(d) of the FDI Act to raise, from \$250 million to \$500 million, the total asset threshold below which an insured depository institution may qualify for an 18-month (rather than a 12-month) on-site examination cycle.⁴ Public Law 109-473, which became effective on January 11, 2007, also amended section 10(d)(10) of the FDI Act to authorize the appropriate agency, if it determines the action would be consistent with principles of safety and soundness, to allow an insured depository institution that falls within this expanded total asset threshold to qualify for an 18-month examination cycle if the institution received a composite rating of outstanding or good at its most recent examination.⁵

The Examination Amendments will allow the Agencies to better focus their supervisory resources on those institutions that may present capital, managerial, or other issues of supervisory concern, while concomitantly reducing the regulatory burden on

² Under section 10(d) of the FDI Act, before enactment of the Examination Amendments, the Agencies had the authority to allow an institution with assets of more than \$100 million (but less than \$250 million) and a composite CAMELS rating of 2 to qualify for an extended 18-month examination cycle if the Agencies determined that extending the 18-month cycle in this manner would be consistent with safety and soundness. See 12 U.S.C. 1820(d)(10). The Agencies exercised this discretion in 1997 and extended the 18-month examination cycle to 2-rated institutions with assets of more than \$100 million (but less than \$250 million). See 62 FR 6449, Feb. 12, 1997 (interim rule); see also 63 FR 16377, April 2, 1998 (final rule).

³ See 12 CFR 4.6 and 4.7 (OCC), 12 CFR 208.64 and 211.26 (Board), 12 CFR 337.12 and 347.211 (FDIC), and 12 CFR 563.171 (OTS).

⁴ Pub. L. 109-351, 120 Stat. 1966 (2006).

⁵ 120 Stat. 3561 (2007).

small, well capitalized and well managed institutions. The Agencies will continue to use off-site monitoring tools to identify potential problems in smaller, well capitalized and well managed institutions that present low levels of risk. Moreover, neither the statute nor the Agencies' regulations limit, and the Agencies therefore retain, the authority to examine an insured depository institution or foreign bank office more frequently than would be required by the FDI Act or IBA.

II. Interim Rule and Comments.

On April 10, 2007, the Agencies published and requested comment on interim rules to implement the Examination Amendments.⁶ In particular, the Agencies amended their respective rules to raise, from \$250 million to \$500 million, the total asset threshold below which an insured depository institution that meets the qualifying criteria in section 10(d) and the Agencies' rules may qualify for an 18-month on-site examination cycle. In addition, as authorized by the Examination Amendments, the Agencies determined that it is consistent with safety and soundness to permit institutions with between \$250 million and \$500 million in total assets that received a composite rating of 1 or 2, which corresponds to "outstanding" and "good" respectively, under the Uniform Financial Institutions Rating System (commonly referred to as CAMELS),⁷ and that meet the other qualifying criteria set forth in section 10(d) and the Agencies' rules, to qualify for an 18-month examination cycle. Consistent with section 7(c)(1)(C) of the IBA, the OCC, Board and FDIC also made conforming changes to their regulations governing the on-site examination cycle for the U.S. branches and agencies of foreign banks. These changes permit a foreign bank office with total assets of less than \$500 million to qualify for an 18-month examination cycle if the office received a composite ROCA rating of 1 or 2 at its most recent examination.⁸

In connection with these changes, the Agencies also modified their rules to specify that a small institution meets the statutory "well managed" criteria for an 18-month cycle if the institution, besides having a CAMELS composite rating of 1 or 2, also received a rating of 1 or 2 for the management component of the CAMELS rating at its most recent examination.

The Agencies received comments on the interim rules from 11 commenters, although many commenters submitted identical letters to each Agency. Comments were submitted by six banking trade associations, four insured depository institutions, and one law firm. All commenters supported the interim rules. Commenters generally agreed that the rules would appropriately reduce regulatory burden for qualifying small

⁶ 72 FR 17798, April 10, 2007.

⁷ CAMELS is an acronym that is drawn from the first letters of the individual components of the rating system: Capital adequacy, Asset quality, Management, Earnings, Liquidity, and Sensitivity to market risk.

⁸ The four components of the ROCA supervisory rating system for foreign bank offices are: Risk management, Operational controls, Compliance, and Asset quality.

institutions and foreign offices without creating undue risk to the institutions, officers or the deposit insurance fund.⁹

After carefully reviewing the comments and for the reasons set forth above and in the Supplementary Information to the interim rules, the Agencies have determined to make final the interim rules as published in April 2007.

The Agencies estimate that the final rules, like the interim rules, will increase the number of insured depository institutions that may qualify for an extended 18-month examination cycle by approximately 1,089 institutions, for a total of 6,670 insured depository institutions. Approximately 126 foreign branches and agencies would be eligible for the extended examination cycle based on the interim rules, for an increase of 31 offices.¹⁰

The FDI Act and the IBA set the outside limits within which an on-site safety and soundness examination of an institution or foreign bank office must commence, and permit the appropriate Agency for an institution or foreign bank to conduct an on-site examination more frequently than required. The Agencies' rules continue to expressly recognize that the appropriate Agency may examine an institution or foreign bank office as frequently as the Agency deems necessary.

REGULATORY FLEXIBILITY ACT

The final rules do not impose any new obligations, restrictions or burdens on banking organizations, including small banking organizations, and, indeed, reduce regulatory burden associated with on-site examinations for qualifying small institutions and foreign bank offices. For these reasons, the Agencies certify that the final rules will not have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and therefore a regulatory flexibility analysis is not required. The objective and legal basis for the rules are discussed in the Supplementary Information.

PAPERWORK REDUCTION ACT

In accordance with the Paperwork Reduction Act of 1995,¹¹ the Agencies have determined that no collections of information pursuant to the Paperwork Reduction Act are contained in these final rules.

ADMINISTRATIVE PROCEDURE ACT

The Agencies conclude that because the interim rules are in effect and recognize an exemption, and the Agencies have made no changes in the final rules, the rules are exempt from the delayed effective date requirement of the Administrative Procedure Act. 5 U.S.C. 553(d).

⁹ One commenter indicated that it would support increasing the total asset threshold in section 10(d) to \$1 billion. The Agencies note that section 10(d) of the FDI Act currently does not allow the Agencies to raise the asset threshold above \$500 million.

¹⁰ Data are as of June 30, 2006, and reflect the number of institutions and foreign bank offices with total assets of less than \$500 million.

¹¹ 44 U.S.C. 3506; 5 CFR 1320, Appendix A.1.

OCC AND OTS EXECUTIVE ORDER 12866 STATEMENT

The OCC and OTS have each independently determined that the final rules are not significant regulatory actions under Executive Order 12866.

OCC AND OTS UNFUNDED MANDATES ACT OF 1995 STATEMENT

Section 202 of the Unfunded Mandates Reform Act of 1995¹² 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 the OTS have each independently determined that the rules 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 the OTS have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. Nevertheless, as discussed in the preamble, the rules will have the effect of reducing regulatory burden on certain institutions and foreign bank offices.

PLAIN LANGUAGE

Section 722 of the Gramm-Leach-Bliley Act (12 U.S.C. 4809) requires the Agencies to use “plain language” in all proposed and final rules published in the Federal Register. The Agencies believe the final rules are presented in a clear and straightforward manner and received no comments on how to make the rules easier to understand.

LIST OF SUBJECTS**12 CFR Part 4**

Administrative practice and procedure, Availability and release of information, Confidential business information, Contracting outreach program, Freedom of information, National banks, Organization and functions (government agencies), Reporting and recordkeeping requirements, Women and minority businesses.

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 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

¹² Pub. L. 104-4, 109 Stat. 48 (March 22, 1995) (Unfunded Mandates Act).

12 CFR Part 337

Banks, banking, Reporting and recordkeeping requirements, Securities.

12 CFR Part 347

Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Credit, Foreign banking, Investments, Reporting and recordkeeping requirements, United States investments abroad

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

Authority and Issuance

For the reasons set forth in the joint preamble, the interim rules amending 12 CFR parts 4, 208, 211, 337, 347, and 563 which were published at 72 FR 17798 on April 10, 2007, are adopted as final rules without change.

[THIS SIGNATURE PAGE PERTAINS TO THE JOINT FINAL RULE ENTITLED
“EXPANDED EXMINATION CYCLE FOR CERTAIN SMALL INSURED
DEPOSITORY INSTITUTIONS AND U.S. BRANCHES AND AGENCIES OF
FOREIGN BANKS.”]

Dated: September 17, 2007

John C. Dugan (signed)

John C. Dugan,

Comptroller of the Currency.

Office of the Comptroller of the Currency.

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FOREIGN BANKS.”]

Board of Governors of the Federal Reserve System, September 19, 2007.

Jennifer J. Johnson (signed)

Jennifer J. Johnson,
Secretary of the Board.

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DEPOSITORY INSTITUTIONS AND U.S. BRANCHES AND AGENCIES OF
FOREIGN BANKS.”]

Dated at Washington, D.C., this 11th day of September, 2007.

FEDERAL DEPOSIT INSURANCE CORPORATION

Robert E. Feldman (signed)

Robert E. Feldman,
Executive Secretary.

[THIS SIGNATURE PAGE PERTAINS TO THE JOINT FINAL RULE ENTITLED
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FOREIGN BANKS.”]

Dated: September 13, 2007

By the Office of Thrift Supervision

John M. Reich (signed)

John M. Reich,

Director.