

98-106

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 30

[Docket No. 98-]

RIN-1557-AB67

FEDERAL RESERVE SYSTEM

12 CFR Part 263

[Docket No.]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 364

RIN _____

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 570

[Docket No. 98-]

RIN 1550-AB27

Safety and Soundness Standards

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

ACTION: Interim rule with request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the Agencies) are adopting this interim rule to update their rules of procedure pertaining to safety and soundness standards issued under section 39 of the Federal Deposit Insurance Act (FDI Act). This interim rule is intended only to incorporate appropriate references to the Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness published in today's edition of the Federal Register.

DATES: This interim rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments should be directed to:

OCC: Office of the Comptroller of the Currency, Communications Division, 250 E Street, SW, Washington, DC 20219, Attention: Docket No. _____. Comments will be available for public inspection and photocopying at the same location. In addition, comments may be sent by facsimile transmission to FAX number (202) 874-5274 or by Internet mail to regs.comments@occ.treas.gov.

Board: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, Docket No. _____, 20th Street and Constitution Avenue, NW, Washington, DC 20551.

Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW, Washington, DC. Comments may be inspected in room MP-500 between 9:00 a.m. and 5:00 p.m., except as provided in § 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14.

FDIC: Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429. Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. (Fax number: (202) 898-3838; Internet address: comments@fdic.gov). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, DC, between 9:00 a.m. and 4:30 p.m. on business days.

OTS: Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552. Attention Docket No. 98-____. These submissions may be hand-delivered to 1700 G Street, NW, Washington, DC, from 9:00 a.m. to 5:00 p.m. on business days; sent by facsimile transmission to FAX number (202) 906-7755, or may be sent by e-mail to: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments will be available for inspection at 1700 G Street, NW, from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT:

OCC: Ursula Pfeil, Attorney, Legislative and Regulatory Activities (202) 874-5090; or

Brian McCormally, Assistant Director, Enforcement and Compliance (202) 874-4800.

Board: Stephanie Martin, Senior Counsel, Legal Division (202) 452-3198. For the hearing impaired only, Telecommunication Device for Deaf (TDD), Diane Jenkins (202) 452-3544, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington DC 20551.

FDIC: Sandy Comenetz, Year 2000 Project Manager, Legal Division (202) 898-3582; Richard Bogue, Counsel, Legal Division (202) 898-3726; and Nancy Chase Miller, Counsel, Legal Division (202) 898-6533.

OTS: Dorothy Van Cleave, National Year 2000 Coordinator (202) 906-7380; or Robert D. DeCuir, Senior Enforcement Attorney, Office of Enforcement, Office of Chief Counsel (202) 906-7152.

SUPPLEMENTARY INFORMATION:

Background and Discussion of Interim Rule

In 1995, the Agencies jointly adopted Guidelines Establishing Standards for Safety and Soundness pursuant to section 39 of the FDI Act. At the same time, each of the Agencies adopted rules establishing procedures for requiring submission of a compliance plan and issuing an enforceable order for violation of safety and soundness standards pursuant to section 39. The general standards for safety and soundness are set forth in an appendix to each Agency's procedural rules. 60 FR 35674 (July 10, 1995).

Elsewhere in today's Federal Register, the Agencies are publishing Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness (Year 2000 Guidelines) under section 39 of the FDI Act. 12 U.S.C. 1831p-1. The Year 2000 Guidelines published today

will appear as a second appendix to the Agencies' respective procedural rules.

This interim rule makes minor conforming amendments to the Agencies' procedural rules to incorporate appropriate references to the Agencies' Year 2000 Guidelines. This interim rule makes no substantive changes to the Agencies' rules of procedure.

Notice and Comment, Effective Date, and Request for Comment

Section 553 of the Administrative Procedure Act (APA) permits an agency to issue rules without prior notice and comment if the Agency, for good cause, finds that notice and comment are impracticable, unnecessary, or contrary to the public interest and explains its finding when it publishes the rule. 5 U.S.C. 553(b)(B). This interim rule makes only conforming amendments to the Agencies' current rules of procedure to refer to the Year 2000 Guidelines. This interim rule makes no other changes to the Agencies' procedural rules, and it imposes no new substantive requirements on insured depository institutions. Therefore, each of the Agencies finds that prior notice and comment are unnecessary and, accordingly, are issuing this interim rule without prior notice and comment.

Section 302 of the Riegle Community Development and Regulatory Improvement Act (CDRIA) of 1994, Pub. L. 103-325, requires that new regulations and amendments to existing regulations prescribed by a Federal banking agency that impose reporting, disclosure, or other requirements on insured depository institutions shall take effect on the first day of the calendar quarter that begins on or after the date on which the regulation is published in final form. 12 U.S.C. 4802(b)(1). Additionally, section 553(d) of the APA states that publication of a rule shall be made not less than 30 days before its effective date. 5 U.S.C. 553(d). Both the CDRIA and APA permit an agency to select an earlier effective date for good cause published with the

regulation. As noted earlier, since this interim rule makes only conforming amendments to the Agencies' rules, each Agency finds good cause to dispense with the delayed effective date requirements.

The Agencies invite comments on this interim rule during the 60-day period that runs concurrently with their request for comment on the Year 2000 Guidelines.

Regulatory Flexibility Act Analysis

An initial regulatory flexibility analysis under the Regulatory Flexibility Act is required only when an agency must publish a general notice of proposed rulemaking. 5 U.S.C. 603. As noted previously, the Agencies have determined that it is not necessary to publish a notice of proposed rulemaking for this interim rule. Accordingly, an initial regulatory flexibility analysis is not required. In addition, since this interim rule imposes no new requirements on insured depository institutions and makes only conforming amendments to the Agencies' current rules of procedure, the Agencies find that this interim rule does not have a significant effect on a substantial number of small entities or create any additional burden on small entities.

Paperwork Reduction Act

The Agencies have determined that this interim rule does not involve a collection of information pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Executive Order 12866

The OCC and OTS have determined that this interim rule is not a significant regulatory action under Executive Order 12866.

OCC and OTS: Unfunded Mandates Reform Act Analysis

The Unfunded Mandates Reform Act of 1995 (UMA), Pub. L. 104-4, applies only when

an agency is required to issue a general notice of proposed rulemaking or a final rule for which a general notice of proposed rulemaking was published. 2 U.S.C. 1532. As noted previously, the Agencies have determined, for good cause, that this interim rule should take immediate effect and, therefore, that a notice of proposed rulemaking is not required. Accordingly, the Agencies have concluded that the UMA does not require an unfunded mandates analysis of this interim rule.

Moreover, the Agencies find that this interim rule will not result in expenditure by State, local, and tribal governments, or by the private sector, of more than \$100 million in any one year. Accordingly, neither the OCC nor the OTS has prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects

OCC

12 CFR Part 30

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Safety and soundness.

Board

12 CFR Part 263

Administrative practice and procedure, Claims, Crime, Equal access to justice, Federal Reserve System, Lawyers, Penalties.

FDIC

12 CFR Part 364

Administrative practice and procedure, Bank deposit insurance, Banks, Banking.

Reporting and recordkeeping requirements, Safety and soundness.

OTS

12 CFR Part 570

Accounting, Administrative practice and procedures, Bank deposit insurance, Holding companies, Reporting and recordkeeping requirements, Savings associations, Safety and soundness.

DEPARTMENT OF THE TREASURY

OFFICE OF THE COMPTROLLER OF THE CURRENCY

12 CFR Chapter I

Authority and Issuance

For the reasons set out in the joint preamble, the OCC is amending part 30 of chapter I of title 12 of the Code of Federal Regulations as follows:

PART 30--SAFETY AND SOUNDNESS STANDARDS

1. The authority citation for part 30 continues to read as follows:

Authority: 12 U.S.C. 93a, 1831p-1.

2. In § 30.2, the last sentence is revised to read as follows:

§ 30.2 Purpose.

* * * The Interagency Guidelines Establishing Standards for Safety and Soundness are set forth in appendix A to this part and the Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness are set forth in appendix B to this part.

3. In § 30.3, paragraph (a) is revised to read as follows:

§ 30.3 Determination and notification of failure to meet safety and soundness standard and request for compliance plan.

(a) Determination. The OCC may, based upon an examination, inspection, or any other information that becomes available to the OCC, determine that a bank has failed to satisfy the safety and soundness standards contained in the Interagency Guidelines Establishing Standards for Safety and Soundness set forth in appendix A to this part or the Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness set forth in appendix B to this part.

* * * * *

[THIS SIGNATURE PAGE RELATES TO THE INTERIM RULE ENTITLED "SAFETY AND SOUNDNESS STANDARDS"]

DATED:

Julie L. Williams,
Acting Comptroller of the Currency.

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

For the reasons set out in the joint preamble, the Board is amending part 263 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 263—RULES OF PRACTICE FOR HEARINGS, SUBPART I—SUBMISSION AND REVIEW OF SAFETY AND SOUNDNESS PLANS AND ORDERS TO CORRECT SAFETY AND SOUNDNESS DEFICIENCIES

1. The authority citation for part 263 continues to read as follows:

Authority: 5 U.S.C. 504; 12 U.S.C. 248, 324, 504, 505, 1817(j), 1818, 1828(c), 1831o, 1831p-1, 1847(b), 1847(d), 1884(b), 1972(2)(F), 3105, 3107, 3108, 3907, 3909; 15 U.S.C. 21, 78o-4, 78o-5, 78u-2; and 28 U.S.C. 2461 note.

2. In § 263.302, paragraph (a) is revised to read as follows:

§ 263.302 Determination and notification of failure to meet safety and soundness standard and request for compliance plan.

(a) Determination. The Board may, based upon an examination, inspection, or any other information that becomes available to the Board, determine that a bank has failed to satisfy the safety and soundness standards contained in the Interagency Guidelines Establishing Standards for Safety and Soundness set out in appendix D-1 to part 208 of this chapter or the Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness set out in appendix D-2 to part 208 of this chapter.

* * * * *

**[THIS SIGNATURE PAGE RELATES TO THE INTERIM RULE ENTITLED "SAFETY
AND SOUNDNESS STANDARDS"]**

By Order of the Board of Governors of the Federal Reserve System.

DATED:

Jennifer J. Johnson,
Secretary of the Board.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

For the reasons set out in the joint preamble, the FDIC is amending part 364 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 364--STANDARDS FOR SAFETY AND SOUNDNESS

1. The authority citation for part 364 continues to read as follows:

Authority: 12 U.S.C. 1819(Tenth), 1831p-1.

2. Section 364.101 is revised to read as follows:

§ 364.101 Standards for safety and soundness.

(a) General standards. The Interagency Guidelines Establishing Standards for Safety and Soundness prescribed pursuant to section 39 of the Federal Deposit Insurance Act (12 U.S.C. 1831p-1), as set forth as appendix A to this part apply to all insured state nonmember banks and to state-licensed insured branches of foreign banks, that are subject to the provisions of section 39 of the Federal Deposit Insurance Act.

(b) Year 2000 standards. The Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness prescribed pursuant to section 39 of the Federal Deposit Insurance Act (12 U.S.C. 1831p-1), as set forth as appendix B to this part apply to all insured state nonmember banks and to state-licensed insured branches of foreign banks, that are subject to the provisions of section 39 of the Federal Deposit Insurance Act.

**[THIS SIGNATURE PAGE RELATES TO THE INTERIM RULE ENTITLED "SAFETY
AND SOUNDNESS STANDARDS"]**

By Order of the Board of Directors.

Dated at Washington, DC, this _____ Day of _____, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,
Executive Secretary.
(SEAL)

OFFICE OF THRIFT SUPERVISION

12 CFR Chapter V

Authority and Issuance

For the reasons set out in the joint preamble, the OTS is amending part 570 of chapter V of title 12 of the Code of Federal Regulations as follows:

PART 570--SUBMISSION AND REVIEW OF SAFETY AND SOUNDNESS

COMPLIANCE PLANS AND ISSUANCE OF ORDERS TO CORRECT SAFETY AND SOUNDNESS DEFICIENCIES

1. The authority citation for part 570 continues to read as follows:

Authority: 12 U.S.C. 1831p-1.

2. In § 570.1, paragraph (a), the last sentence of paragraph (b), and paragraph (c) are revised to read as follows:

§ 570.1 Authority, purpose, scope and preservation of existing authority.

(a) Authority. This part and the Guidelines in Appendices A and B to this part are issued by the OTS under section 39 (section 39) of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1831p-1) as added by section 132 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (Pub. L. 102-242, 105 Stat. 2236 (1991)), and as amended by section 956 of the Housing and Community Development Act of 1992 (Pub. L. 102-550, 106 Stat. 3895 (1992)), and as amended by section 318 of the Community Development Banking Act of 1994 (Pub. L. 103-325, 108 Stat. 2160 (1994)).

(b) * * * Interagency Guidelines Establishing Standards for Safety and Soundness pursuant to section 39 of the FDI Act are set forth in Appendix A to this part. The

Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness are set forth in Appendix B to this part.

(c) Scope. This part and the Interagency Guidelines at Appendices A and B to this part implement the provisions of section 39 of the FDI Act as they apply to savings associations.

* * * * *

3. In § 570.2, paragraph (a) is revised to read as follows:

§ 570.2 Determination and notification of failure to meet safety and soundness standards and request for compliance plan.

(a) Determination. The OTS may, based upon an examination, inspection, or any other information that becomes available to the OTS, determine that a savings association has failed to satisfy the safety and soundness standards contained in the Interagency Guidelines Establishing Standards for Safety and Soundness as set forth in Appendix A to this part or the Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness as set forth in Appendix B to this part.

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[THIS SIGNATURE PAGE RELATES TO THE INTERIM RULE ENTITLED "SAFETY
AND SOUNDNESS STANDARDS"]

September 29, 1998

DATED:



Ellen Seidman,
Director.

BILLING CODES:

OCC: 4810-33-P (25%)
Board: 6210-01-P (25%)
FDIC: 6714-01-P (25%)
OTS: 6720-01-P (25%)