

DEPARTMENT OF TREASURY
Office of the Comptroller of the Currency
12 CFR Part 4
[Docket ID OCC-2016-0001]
RIN 1557-AE01

FEDERAL RESERVE SYSTEM
12 CFR Parts 208 and 211
RIN xxxx-xxxx

FEDERAL DEPOSIT INSURANCE CORPORATION
12 CFR Parts 337, 347, and 390
RIN 3064-AE42

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); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint interim final rules and request for comments.

SUMMARY: The OCC, Board, and FDIC (collectively, the agencies) are jointly issuing and requesting public comment on interim final rules to implement section 83001 of the Fixing America's Surface Transportation Act (FAST Act), which was enacted on December 4, 2015. Section 83001 of the FAST Act permits the agencies to examine qualifying insured depository institutions with less than \$1 billion in total assets no less than once during each 18-month period. Prior to enactment of the FAST Act, only qualifying insured depository institutions with less than \$500 million in total assets were eligible for an 18-month on-site examination cycle. The interim final rules generally would allow well capitalized and well managed institutions with less than \$1 billion in total assets to benefit from the extended 18-month examination schedule. In addition, the interim final rules make parallel changes to the agencies' regulations governing the on-site examination cycle for U.S. branches and agencies of foreign banks, consistent with the International Banking Act of 1978. Finally, the FDIC is integrating its regulations regarding

the frequency of safety and soundness examinations for State nonmember banks and State savings associations.

DATES: These interim final rules are effective on [date of publication]. Comments on the rules must be received by [60 days from date of publication].

ADDRESSES:

OCC: Commenters are encouraged to submit comments by the Federal eRulemaking Portal or e-mail, if possible. Please use the title “Expanded Examination Cycle for Certain Small Insured Depository Institutions and U.S. Branches and Agencies of Foreign Banks” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- **Federal eRulemaking Portal—“regulations.gov”:** Go to <http://www.regulations.gov>. Enter “Docket ID OCC-2016-0001” in the Search Box and click “Search.” Results can be filtered using the filtering tools on the left side of the screen. Click on “Comment Now” to submit public comments. Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.
- **E-mail:** regs.comments@occ.treas.gov.
- **Mail:** Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E-218, Mail Stop 9W-11, Washington, DC 20219.
- **Hand Delivery/Courier:** 400 7th Street SW., Suite 3E-218, Mail Stop 9W-11, Washington, DC 20219.
- **Fax:** (571) 465-4326.

Instructions: You must include “OCC” as the agency name and “Docket ID OCC-2016-0001” in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide, such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials,

are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- **Viewing Comments Electronically:** Go to <http://www.regulations.gov>. Enter “Docket ID OCC-2016-0001” in the Search box and click “Search.” Comments can be filtered by Agency using the filtering tools on the left side of the screen. Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- **Viewing Comments Personally:** You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC. For security reasons, the OCC requires visitors to make an appointment to inspect comments. You may do so by calling (202) 649-6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649-5597. Upon arrival, visitors will be required to present a valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.
- **Docket:** You may also view or request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. R-xxxx, by any of the following methods:

- **Agency Web Site:** <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **E-mail:** regs.comments@federalreserve.gov. Include docket number in the subject line of the message.

- **FAX:** (202) 452-3819 or (202) 452-3102.
- **Mail:** Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP-500 of the Board's Martin Building (20th and C Street NW) between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments by any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Agency Web site:** <http://www.FDIC.gov/regulations/laws/federal/propose.html>
- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- **Hand Delivered/Courier:** The guard station at the rear of the 550 17th Street Building NW. (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.
- **E-mail:** comments@FDIC.gov.

Instructions: Comments submitted must include "FDIC" and "RIN 3064-AE42." Comments received will be posted without change to <http://www.FDIC.gov/regulations/laws/federal/propose.html>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

OCC: Deborah Katz, Assistant Director, or Melissa J. Lisenbee, Attorney, Legislative and Regulatory Activities Division, (202) 649-5490; Scott Schainost, Midsize and Community Bank Supervision Liaison, Midsize and Community Bank Supervision, (202) 649-8173.

Board: Division of Banking Supervision and Regulation - Richard Naylor, Associate Director, (202) 728-5854; Richard Watkins, Deputy Associate Director, (202) 452-3421; Virginia Gibbs,

Manager, (202) 452-2521; or Alexander Kobulsky, Supervisory Financial Analyst, (202) 452-2031; and Legal Division - Laurie Schaffer, Associate General Counsel, (202) 452-2277; Brian Chernoff, Senior Attorney, (202) 452-2952; or Mary Watkins, Attorney, (202) 452-3722.

FDIC: Thomas F. Lyons, Chief, Policy and Program Development, (202) 898-6850, Karen J. Currie, Senior Examination Specialist, (202) 898-3981, Timothy R. Millette, Program Specialist, Policy Branch Division of Risk Management and Supervision; Mark A. Mellon, Counsel, (202) 898-3884 for revisions to 12 CFR Part 337; Rodney D. Ray, Counsel, (202) 898-3556 for revisions to 12 CFR Part 347; Suzanne J. Dawley, Senior Attorney, (202) 898-6509 for revisions to 12 CFR Part 390.

SUPPLEMENTARY INFORMATION

I. Background

Section 10(d) of the Federal Deposit Insurance Act (FDI Act) generally requires the appropriate Federal banking agency for an insured depository institution (IDI) to conduct a full-scope, on-site examination of the institution at least once during each 12-month period.¹ Prior to enactment of section 83001 of the FAST Act,² section 10(d)(4) of the FDI Act authorized the appropriate Federal banking agency to extend the on-site examination cycle for an IDI to at least once during an 18-month period if the IDI (1) had total assets of less than \$500 million; (2) was well capitalized (as defined in 12 U.S.C.1831o (prompt corrective action)); (3) was found, at its most recent examination, to be well managed³ and to have a composite condition of

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

² Pub. L. 114-94. 129 Stat. 1312 (Dec. 4, 2015).

³ Depository institutions are evaluated under the Uniform Financial Institutions Rating System (commonly referred to as "CAMELS"). 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. CAMELS ratings of "1" and "2" correspond with ratings of "outstanding" and "good." In addition to having a CAMELS composite rating of "1" or "2," an IDI is considered to be "well managed" for the purposes of section 10(d) of the FDI Act only if the IDI also received a rating of "1" or "2" for the management component of the

“outstanding” or, in the case of an institution that has total assets of not more than \$100 million, “outstanding” or “good;” (4) was not subject to a formal enforcement proceeding or order by the FDIC or its appropriate Federal banking agency; and (5) 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. Section 10(d)(10) of the FDI Act further gave the agencies discretionary authority to raise the size limit for otherwise qualifying IDIs with an “outstanding” or “good” composite rating from \$100 million to an amount not to exceed \$500 million in total assets if the agencies determined that the higher limit would be consistent with the principles of safety and soundness.⁴

The Board and the FDIC, as the appropriate Federal banking agencies for State-chartered insured banks and savings associations, are permitted to conduct on-site examinations of such IDIs on alternating 12-month or 18-month periods with the institution’s State supervisor, if the Board or FDIC, as appropriate, determines that the alternating examination conducted by the State carries out the purposes of section 10(d) of the FDI Act.⁵

In addition, section 7(c)(1)(C) of the International Banking Act (IBA) provides that a Federal or a State branch or agency of a foreign bank shall be subject to on-site examination by its appropriate Federal banking agency or State bank supervisor as frequently as a national or State bank would be subject to such an examination by the agency.⁶ The agencies previously 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

CAMELS rating at its most recent examination. See 72 FR 17798 (Apr. 10, 2007).

⁴ 12 U.S.C. 1820(d)(10).

⁵ 12 U.S.C. 1820(d)(3).

⁶ 12 U.S.C. 3105(c)(1)(C).

available to qualifying small institutions and U.S. branches and agencies of foreign banks.⁷ The agencies have also exercised discretion under section 10(d)(10) of the FDI Act, first, in 1997 to extend the 18-month examination cycle for otherwise qualifying institutions with “good” composite ratings⁸ with total assets of \$250 million or less, and again in 2007 for such institutions with total assets of \$500 million or less.⁹

Section 83001 of the FAST Act, effective on December 4, 2015, amended section 10(d) of the FDI Act to raise, from \$500 million to \$1 billion, the total asset threshold below which an agency may apply an 18-month (rather than a 12-month) on-site examination cycle for IDIs with “outstanding” composite ratings, and to raise, from not more than \$100 million to not more than \$200 million, the total asset threshold below which an agency may apply an 18-month examination cycle to an institution with an “outstanding” or “good” composite rating.¹⁰ Section 83001 also amended section 10(d)(10) of the FDI Act to authorize the appropriate Federal banking agency to increase, by regulation, the maximum amount limitation for IDIs with “outstanding” or “good” composite ratings from not more than \$200 million to not more than \$1 billion if the appropriate Federal banking agency determines that the higher amount would be consistent with the principles of safety and soundness for IDIs.¹¹

These FAST Act amendments reduce regulatory burdens on small, well capitalized, and well managed institutions and allow the agencies to better focus their supervisory resources on those IDIs and U.S. branches and agencies of foreign banks that may present capital, managerial, or other issues of supervisory concern.

⁷ See 12 CFR 4.6 and 4.7 (OCC), 12 CFR 208.64 and 211.26 (Board), 12 CFR 337.12, 12 CFR 390.351 and 347.211 (FDIC).

⁸ Corresponding to a CAMELS or Risk management, Operational controls, Compliance, and Asset quality (ROCA) rating of “2.”

⁹ See 62 FR 6449 (Feb. 12, 1997) (interim final rule); see also 63 FR 16377 (Apr. 2, 1998) (final rule); see also 72 FR 17798 (Apr. 10, 2007) (interim final rule); see also 72 FR 54347 (Sept. 25, 2007) (final rule).

¹⁰ Pub. L. No. 114-94, 129 Stat. 1312.

¹¹ Id.

II. Description of the Interim Final Rules

The agencies are adopting interim final rules to implement the FAST Act amendments to section 10(d) of the FDI Act. In particular, the agencies are amending their respective rules to raise, from \$500 million to \$1 billion, the total asset threshold below which an institution that meets the 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 FAST Act, the agencies have determined that it is consistent with the principles of safety and soundness to permit institutions with total assets of \$200 million or greater and not exceeding \$1 billion that receive a composite CAMELS or ROCA rating of "1" or "2," 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. The FDIC analyzed the frequency with which institutions rated a composite CAMELS rating of "1" or "2" failed within five years, versus the frequency of institutions with which institutions rated composite CAMELS ratings of "3," "4," or "5" failed within five years. FDIC analysis indicates that between 1985 and 2010 (using bank failure data through 2015),¹² FDIC-insured depository institutions with assets less than \$1 billion and a composite CAMELS rating of "1" or "2" had a five-year failure rate that was one-seventh as high as institutions with a CAMELS rating of "3," "4," or "5." Moreover, the relationship between failure rates in the two ratings groups does not meaningfully change when the analysis is restricted to institutions with assets between \$200 million and \$500 million compared to institutions with assets between \$500 million to \$1 billion. This analysis suggests that extending the examination cycle for well-rated institutions with \$500 million to \$1 billion in assets by an additional six months, combined with the agencies' off-site monitoring activities and ability to examine an institution more frequently as necessary or

¹² A list of failed institutions can be found on the FDIC's website at <https://www.fdic.gov/bank/individual/failed/banklist.html>.

appropriate, will not negatively affect the safe and sound operations of qualifying institutions or the ability of the agencies to effectively supervise and protect the safety and soundness of institutions with total assets of less than \$1 billion.¹³ Furthermore, the agencies note that, in order to qualify for an 18-month examination cycle, any institution with total assets of less than \$1 billion—including one with a CAMELS composite rating of “2”—must meet the other capital, managerial, and supervisory criteria set forth in section 10(d).

Consistent with section 7(c)(1)(C) of the IBA, the agencies also are making conforming changes to their regulations governing the on-site examination cycle for the U.S. branches and agencies of foreign banks. The interim final rules permit a U.S. branch or agency of a foreign bank with total assets of less than \$1 billion 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 and meets the other applicable criteria.

The agencies estimate that the interim final rules will increase the number of institutions that may qualify for an extended 18-month examination cycle by approximately 617 institutions (371 of which are supervised by the FDIC, 142 by the OCC, and 104 by the Board), bringing the total number to 4,987 IDIs.¹⁴ Approximately 89 U.S. branches and agencies of foreign banks would be eligible for the extended examination cycle based on the interim final rules, an increase of 26 (1 of which is supervised by the FDIC, 3 by the OCC, and 22 by the Board).¹⁵

Consistent Treatment for Insured State Savings Associations Regarding Examination Frequency

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)

¹³ The agencies continue to reserve the right in their regulations to examine an IDI or U.S. branch or agency of a foreign bank more frequently than is required by the FDI Act or IBA. See 12 CFR 4.6(c) and 12 CFR 4.7(c) (OCC), 12 CFR 208.64(c) and 12 CFR 211.26(c)(3) (Board), 12 CFR 337.12(c), 12 CFR 390.351(c), and 347.211(c) (FDIC).

¹⁴ Call report data, Sept. 30, 2015.

¹⁵ *Id.*

provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies.¹⁶ Beginning July 21, 2011, the powers, duties, and functions formerly performed by the Office of Thrift Supervision (OTS) were transferred to the FDIC, as to State savings associations, the OCC, as to Federal savings associations, and the Board, as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act¹⁷ provides the manner of treatment for all orders, resolutions, determinations, regulations, and advisory materials that had been issued, made, prescribed, or allowed to become effective by the OTS. Section 316(b) provides that if such materials were in effect on the day before the transfer date, they continue in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

Section 316(c) of the Dodd-Frank Act further directed the FDIC and the OCC to consult with one another and to publish a list of the continued OTS regulations that will be enforced by the FDIC and the OCC, respectively. On June 14, 2011, the FDIC's Board of Directors approved a "List of OTS Regulations to be Enforced by the OCC and the FDIC Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act." This list was published by the FDIC and the OCC as a Joint Notice in the Federal Register on July 6, 2011.¹⁸

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act¹⁹ granted the OCC rulemaking authority relating to both State and Federal savings associations, nothing in the Dodd-Frank Act affected the FDIC's existing authority to issue regulations for State savings associations under the FDI Act and other laws as the "appropriate Federal banking agency" or

¹⁶ 12 U.S.C. 5301, et seq.

¹⁷ 12 U.S.C. 5414(c).

¹⁸ 76 FR 39247 (July 6, 2011).

¹⁹ 12 U.S.C. 5412(b)(2)(B)(i)(II).

under similar statutory terminology. Section 312(c) of the Dodd-Frank Act²⁰ amended the definition of “appropriate Federal banking agency” contained in section 3(q) of the FDI Act²¹ to add State savings associations to the list of entities for which the FDIC is designated as the “appropriate Federal banking agency.” As a result, when the FDIC acts as the designated “appropriate Federal banking agency” (or under similar terminology) for State savings associations, as it does here, the FDIC is authorized to issue, modify, and rescind regulations involving such associations.

As noted, on June 14, 2011, operating pursuant to this authority, the FDIC’s Board of Directors reissued and re-designated certain transferring regulations of the former OTS. These transferred OTS regulations were published as new FDIC regulations in the Federal Register on August 5, 2011.²² When the FDIC republished the transferred OTS regulations as new FDIC regulations, the FDIC specifically noted that its staff would evaluate the transferred OTS rules and might later recommend incorporating the transferred OTS regulations into other FDIC rules, amending them, or rescinding them, as appropriate.

Twelve CFR 390.351 implements the FDIC’s examination requirements for savings associations under the authority of section 4(a) of the Home Owners’ Loan Act (HOLA),²³ which provides that the FDIC will examine State savings associations for safety and soundness and under section 10(d) of the FDI Act, which covers examinations of all insured depository institutions.²⁴

Section 390.351 requires full-scope, on-site examinations of State savings associations at

²⁰ 12 U.S.C. 5412(c).

²¹ 12 U.S.C. 1813(q).

²² 76 FR 47652 (Aug. 5, 2011).

²³ 12 U.S.C. 1463.

²⁴ This section was redesignated from the former OTS regulation at section 563.171 pursuant to the Dodd-Frank Act transfer of authority for State savings associations.

least once each 12-month period and once each 18-month period for a State savings association with total assets of no more than \$500 million that is well capitalized; was assigned a CAMELS “1” or “2” for management and was rated either a CAMELS composite “1” or “2” on its most recent examination; is not currently under a formal enforcement proceeding or order by the FDIC; and has not undergone a change in control during the preceding 12-month period.

Section 390.351 is substantively identical to section 337.12 and, therefore, redundant to section 337.12. This interim final rule rescinds and removes Section 390.351. The amendment to section 337.12 in the interim final rule also reflects the authority of the FDIC under section 4(a) of HOLA to provide for the examination and safe and sound operation of State savings associations. With this amendment, all FDIC-supervised institutions, including State savings associations, will be subject to the requirements of 12 CFR 337.12.

Effective Date/Request for Comment

The agencies are issuing the interim final rules without prior notice and the opportunity for public comment and the 30-day delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).²⁵ Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an “agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”²⁶ The interim final rules implement the provisions of section 83001 of the FAST Act, which became effective on December 4, 2015. The interim final rules adopt without change the statutory increase in the total asset ceiling for the 18-month examination cycle for CAMELS and ROCA 1-rated institutions and also make

²⁵ 5 U.S.C. 553.

²⁶ 5 U.S.C. 553(b)(B).

available, pursuant to the statutory authority, the 18-month examination cycle for CAMELS and ROCA 2-rated institutions. Consistent with the underlying statute, the interim final rules would allow well capitalized and well managed institutions with under \$1 billion in total assets to benefit from the statutorily extended 18-month examination schedule.

The agencies believe that the public interest is best served by implementing the statutorily amended thresholds as soon as possible. Immediate implementation would reduce regulatory burdens on small, well capitalized, and well managed institutions, while also allowing the agencies to better focus their supervisory resources on those institutions that may present capital, managerial, or other issues of supervisory concern. Because the affected institutions and agencies must plan and prepare for examinations in advance, the agencies believe issuing interim final rules would provide the certainty necessary to allow the institutions and agencies to begin scheduling according to the new examination cycle period. In addition, the agencies believe that providing a notice and comment period prior to issuance of the interim final rules is unnecessary because the agencies do not expect public objection to the regulations being promulgated, as these rules implement the changes specified by Congress.²⁷ Moreover, because the interim final rules would permit an agency to conduct an on-site examination of an institution more frequently than once every 18 months, the agencies retain the ability to maintain the current—or a more frequent—on-site examination schedule for an institution, if the relevant agency determines it would be necessary or appropriate.

Similarly, the FDIC believes there is good cause to rescind and remove section 390.351 because section 337.12 will be made immediately applicable to both insured State savings

²⁷ All eleven commenters supported the agencies' 2007 interim final rules implementing section 605 of the Financial Services Regulatory Relief Act of 2006 (FSRRA), which revised section 10(d) to allow institutions with up to \$500 million in total assets to qualify for an 18-month on-site examination cycle. Prior to the enactment of FSRRA, only institutions with less than \$250 million were eligible for an 18-month on-site examination cycle. See 72 FR 54347 (final rule); see also 72 FR 17798 (interim rule).

associations and insured State nonmember banks. As a result, insured State savings associations will be provided the same burden reduction benefits and appropriate supervisory focus afforded to insured State nonmember banks. For these reasons, the agencies find there is good cause consistent with the public interest to issue the rules without advance notice and comment.²⁸

The APA also requires a 30-day delayed effective date, except for (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause.²⁹ The agencies conclude that, because the rules recognize an exemption, the interim final rules are exempt from the APA's delayed effective date requirement.³⁰ Additionally, the agencies find good cause to publish the interim final rules with an immediate effective date for the same reasons set forth above under the discussion of section 553(b)(B) of the APA.

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),³¹ in determining the effective date and administrative compliance requirements for a new regulation that imposes additional reporting, disclosure, or other requirements on insured depository institutions, each Federal banking agency must consider any administrative burdens that such regulation would place on depository institutions and the benefits of such regulation. In addition, section 302(b) of the RCDRIA requires such new regulation to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions, including for good cause. Because the interim final rules expand eligibility for an 18-month, rather than 12-month on-site examination schedule and are burden-reducing in nature, the interim final rules do not

²⁸ 5 U.S.C. 553(b)(B); 553(d)(3).

²⁹ 5 U.S.C. 553(d).

³⁰ 5 U.S.C. 553(d)(1).

³¹ 12 U.S.C. 4802(a).

impose additional reporting, disclosure, or other requirements on IDIs, and section 302 of the RCDRIA therefore does not apply. Nevertheless, the agencies have considered the administrative burdens that such regulations would place on depository institutions and the benefits of such regulations in determining the effective date and compliance requirements. In addition, for the same reasons set forth above under the discussion of the section 553(b)(B) of the APA, the agencies find good cause would exist under section 302 of RCDRIA to publish these interim final rules with an immediate effective date.

While the agencies believe there is good cause to issue the rules without advance notice and comment and with an immediate effective date, the agencies are interested in the views of the public and request comment on all aspects of the interim final rules.

III. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act³² requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Federal banking agencies invite your comments on how to make these interim final rules easier to understand. For example:

- *Have the agencies organized the material to suit your needs? If not, how could this material be better organized?*
- *Are the requirements in the interim final rules clearly stated? If not, how could the interim final rules be more clearly stated?*
- *Do the interim final rules contain language or jargon that is not clear? If so, which language requires clarification?*
- *Would a different format (grouping and order of sections, use of headings, paragraphing) make the interim final rules easier to understand? If so, what changes to the format would make the interim final rules easier to understand?*
- *What else could the agencies do to make the regulation easier to understand?*

³² Pub. L. 106-102, sec. 722, 113 Stat. 1338, 1471 (1999).

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)³³ applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). As discussed above, consistent with section 553(b)(B) of the APA, the agencies have determined for good cause that general notice and opportunity for public comment is not necessary. Accordingly, the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply.

Nonetheless, the agencies observe that the extension of the periodic examination cycle for certain small institutions from 12 to 18 months should not have a significant adverse economic impact on a substantial number of small entities, and, in fact, should reduce regulatory burdens on these entities. The agencies request comment on these conclusions.

V. Paperwork Reduction Act

The Paperwork Reduction Act of 1995³⁴ states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. Because the interim final rules do not create a new, or revise an existing, collection of information, no information collection request submission needs to be made to the OMB.

VI. The Economic Growth and Regulatory Paperwork Reduction Act

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA),³⁵ the agencies are required to conduct a review at least once every 10 years to identify any outdated or otherwise unnecessary regulations. The agencies completed the last comprehensive review of their regulations under EGRPRA in 2006 and are currently conducting the next decennial review. The burden reduction evidenced in these interim final rules is

³³ Pub. L. 96-354, Sept. 19, 1980, codified to 5 U.S.C. 601 et seq.

³⁴ 44 U.S.C. 3501-3521.

³⁵ Public Law 104-208, 110 Stat. 3009 (Sept. 30, 1996).

consistent with the objectives of the EGRPRA review process.

VII. OCC Unfunded Mandates Reform Act of 1995 Determination

Consistent with section 202 of the Unfunded Mandates Reform Act of 1995, before promulgating any final rule for which a general notice of proposed rulemaking was published, the OCC prepares an economic analysis of the final rule. As discussed above, the OCC has determined that the publication of a general notice of proposed rulemaking was unnecessary. Accordingly, the OCC has not prepared an economic analysis of the joint interim final rules.

List of Subjects

12 CFR Part 4

Administrative practice and procedure, Freedom of information, Individuals with disabilities, Minority businesses, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Women.

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 CFR Part 337

Banks, banking, Reporting and recordkeeping requirements, Savings Associations.

12 CFR Part 347

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

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

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

PART 4 - ORGANIZATION AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM, POST-EMPLOYMENT RESTRICTIONS FOR SENIOR EXAMINERS

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

Authority: 5 U.S.C. 301, 552; 12 U.S.C. 1, 93a, 161, 481, 482, 484(a), 1442, 1462a, 1463, 1464 1817(a), 1818, 1820, 1821, 1831m, 1831p-1, 1831o, 1833e, 1867, 1951 *et seq.*, 2601 *et seq.*, 2801 *et seq.*, 2901 *et seq.*, 3101 *et seq.*, 3401 *et seq.*, 5321, 5412, 5414; 15 U.S.C. 77uu(b), 78q(c)(3); 18 U.S.C. 641, 1905, 1906; 29 U.S.C. 1204; 31 U.S.C. 5318(g)(2), 9701; 42 U.S.C. 3601; 44 U.S.C. 3506, 3510; E.O. 12600 (3 CFR 1987 Comp., p. 235).

2. Section 4.6 is revised to read as follows:

§4.6 Frequency of examination of national banks and Federal savings associations.

(a) General. The OCC examines national banks and Federal savings associations pursuant to authority conferred by 12 U.S.C. 481 (with respect to national banks) and 1463(a)(1) and 1464 (with respect to Federal savings associations) and the requirements of 12 U.S.C. 1820(d) (with respect to national banks and Federal savings associations). The OCC is required to conduct a full-scope, on-site examination of every national bank and Federal savings association 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 or a Federal 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 bank or Federal savings association has total assets of less than \$1 billion;

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

(3) At the most recent examination;

(i) The bank or Federal savings association was assigned a rating of 1 or 2 for management as part of the bank's or association's rating under the Uniform Financial Institutions Rating System; and

(ii) The bank or Federal savings association was assigned a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System.

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

(5) No person acquired control of the bank or Federal 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 OCC to examine any national bank or Federal savings association as frequently as the agency deems necessary.

3. Section 4.7 is revised to read as follows:

§4.7 Frequency of examination of Federal agencies and branches.

(a) General. The OCC examines Federal agencies and Federal branches (as these entities are defined in §28.11 (g) and (h), respectively, of this chapter) pursuant to the authority conferred by 12 U.S.C. 3105(c)(1)(C). Except as noted in paragraph (b) of this section, the OCC will conduct a full-scope, on-site examination of every Federal branch and agency at least once during each 12-month period.

(b) 18-month rule for certain small institutions—(1) Mandatory standards. The OCC may conduct a full-scope, on-site examination at least once during each 18-month period, rather than each 12-month period as provided in paragraph (a) of this section, if the Federal branch or agency:

(i) Has total assets of less than \$1 billion;

(ii) Has received a composite ROCA supervisory rating (which rates risk management, operational controls, compliance, and asset quality) of 1 or 2 at its most recent examination;

(iii) Satisfies the requirements of either the following paragraph (b)(1)(iii) (A) or (B):

(A) The foreign bank's most recently reported capital adequacy position consists of, or is equivalent to, common equity tier 1, tier 1 and total risk-based capital ratios that satisfy the definition of "well capitalized" set forth at 12 CFR 6.4, respectively, on a consolidated basis; or

(B) The branch or agency has maintained on a daily basis, over the past three quarters, eligible assets in an amount not less than 108 percent of the preceding quarter's average third party liabilities (determined consistent with applicable federal and state law), and sufficient liquidity is currently available to meet its obligations to third parties;

(iv) Is not subject to a formal enforcement action or order by the Federal Reserve Board, the Federal Deposit Insurance Corporation, or the OCC; and

(v) Has not experienced a change in control during the preceding 12-month period in which a full-scope, on-site examination would have been required but for this section.

(2) Discretionary standards. In determining whether a Federal branch or agency that meets the standards of paragraph (b)(1) of this section should not be eligible for an 18-month examination cycle pursuant to this paragraph (b), the OCC may consider additional factors, including whether:

(i) Any of the individual components of the ROCA rating of the Federal branch or agency is rated "3" or worse;

(ii) The results of any off-site supervision indicate a deterioration in the condition of the Federal branch or agency;

(iii) The size, relative importance, and role of a particular office when reviewed in the context of the foreign bank's entire U.S. operations otherwise necessitate an annual examination; and

(iv) The condition of the foreign bank gives rise to such a need.

(c) Authority to conduct more frequent examinations. Nothing in paragraph (a) or (b) of this section limits the authority of the OCC to examine any Federal branch or agency as frequently as the OCC deems necessary.

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the joint preamble, the Board amends 12 CFR parts 208 and 211 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, 1831(o), 1831p-1, 1831r-1, 1831(w), 1831(x), 1835a, 1882, 2901-2907, 3105, 3310, 3331-3351, 3906-3909, and 5371; 15 U.S.C. 78b, 781(b), 781(i), 780-4(c)(5), 78q, 78q-1, and 78w, 1681s, 1681w, 6801, and 6805, 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106 and 4128.

2. Revise § 208.64 paragraph (b)(1) to read as follows:

§208.64 Frequency of examination.

* * * * *

(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 less than \$1 billion;

* * * * *

PART 211--INTERNATIONAL BANKING OPERATIONS (REGULATION K)

1. The authority citation for part 211 continues to read as follows:

Authority: 12 U.S.C. 221 et seq., 1818, 1835a, 1841 et seq., 3101 et seq., and 3901 et seq.

2. Revise § 211.26 paragraph (c)(2)(i)(A) to read as follows:

§ 211.26 Examinations of offices and affiliates of foreign banks.

* * * * *

(c) Frequency of on-site examination

(2) 18-month cycle for certain small institutions- (i) Mandatory standards. The Board may conduct a full-scope, on-site examination at least once during each 18-month period, rather than each 12-month period as required in paragraph (c)(1) of this section, if the branch or agency—

(A) Has total assets of less than \$1 billion;

* * * * *

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 parts 337, 347, and 390 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 337—UNSAFE AND UNSOUND BANK PRACTICES

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

Authority: 12 U.S.C. 375a(4), 375b, 1463(a)(1), 1816, 1818(a), 1818(b), 1819, 1820(d), 1828(j)(2), 1831, 1831f, 5412.

12 CFR § 337.12

2. Section 337.12 is revised to read as follows:

§ 337.12 Frequency of examination.

(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) and examines insured State savings associations pursuant to authority conferred by section 10 of the Federal Deposit Insurance Act (12 U.S.C. 1820) and the Home Owners' Loan Act (12 U.S.C. 1463). The FDIC is required to conduct a full-scope, on-site examination of every insured state nonmember bank and insured State savings association 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 or insured State 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 institution has total assets of less than \$1 billion;
 - (2) The institution is well capitalized as defined in § 324.403(b)(1) of this chapter;
 - (3) At the most recent FDIC or applicable State agency examination, the FDIC—
 - (i) Assigned the institution a rating of 1 or 2 for management as part of the institution's composite rating under the Uniform Financial Institutions Rating System (commonly referred to as CAMELS); and
 - (ii) Assigned the institution a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (copies of which are available at the addresses specified in § 309.4 of this chapter);
 - (4) The institution currently is not subject to a formal enforcement proceeding or order by the FDIC, OCC or the Board of Governors of the Federal Reserve System; and
 - (5) No person acquired control of the institution 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 or insured State savings association as frequently as the agency deems necessary.

PART 347—INTERNATIONAL BANKING

3. The authority citation for part 347 is revised to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1819, 1820(d), 1828, 3103, 3104, 3105, 3108, 3109;

Title IX, Publ. L. 98-181, 97 Stat. 1153.

12 CFR § 347.211

4. Section 347.211(b) is revised to read as follows:

§ 347.211 Examination of branches of foreign banks.

* * * * *

(b) 18-month cycle for certain small institutions. (1) Mandatory standards. The FDIC may conduct a full-scope, on-site examination at least once during each 18-month period, rather than each 12-month period as provided in paragraph (a) of this section, if the insured branch:

(i) Has total assets of less than \$1 billion;

* * * * *

PART 390—STATE SAVINGS ASSOCIATIONS—OPERATIONS

5. The authority citation for part 390 continues to read as follows:

Authority: 12 U.S.C. 1819.

* * * * *

Subpart S also issued under 12 U.S.C. 1462; 1462a; 1463; 1464; 1468a; 1817; 1820; 1828; 1831e; 1831o; 1831p-1; 1881-1884; 3207; 3339; 15 U.S.C. 78b, 78l; 78m; 78n; 78p; 78q; 78w; 31 U.S.C. 5318; 42 U.S.C. 4106.

* * * * *

12 CFR § 390.351

6. Rescind and remove section 390.351.

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

Dated:

Thomas J. Curry
Comptroller of the Currency

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

Board of Governors of the Federal Reserve System, January __, 2016.

Robert deV. Frierson,
Secretary to the Board

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

Dated:

Federal Deposit Insurance Corporation by,

Robert E. Feldman
Executive Secretary

BILLING CODES: 4810-33-P; 6210-01-P; 6714-01-P