

DEPARTMENT OF TREASURY
Office of the Comptroller of the Currency
12 CFR Part 4
[Docket ID OCC-2018-0014]
RIN 1557-AE37

FEDERAL RESERVE SYSTEM
12 CFR Parts 208 and 211
[Docket No. R-1615]
RIN 7100-AF09

FEDERAL DEPOSIT INSURANCE CORPORATION
12 CFR Parts 337 and 347
RIN 3064-AE76

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), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rules.

SUMMARY: On August 29, 2018, the OCC, Board, and FDIC (collectively, the agencies) issued interim final rules that were effective immediately to implement section 210 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (Economic Growth Act), which was enacted on May 24, 2018. The agencies are now adopting the interim final rules as final without change. The interim final rules and final rules implement section 210 of the Economic Growth Act, which amended section 10(d) of the Federal Deposit Insurance Act (FDI Act) to permit the agencies to examine qualifying insured depository institutions (IDIs) with under \$3 billion in total assets not less than once during each 18-month period. In addition, these final rules adopt as final the 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 (IBA).

DATES: These final rules are effective on [INSERT DATE 30 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT:

OCC: Enice Thomas, Senior Advisor to Senior Deputy Comptroller, Midsize and Community Bank Supervision, (202) 649-5420; and Deborah Katz, Assistant Director, Melissa J. Lisenbee, Senior Attorney, or Christopher Rafferty, Attorney, Chief Counsel's Office, (202) 649-5490; for persons who are deaf or hearing impaired, TTY, (202) 649-5597.

Board: Division of Supervision and Regulation - Richard Naylor, Associate Director, (202) 728-5854; Jonathan Rono, Manager, (202) 721-4568; Assetou Traore, Supervisory Financial Analyst, (202) 974-7066; 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; Victoria Szybillo, Senior Counsel, (202) 475-6325; or Mary Watkins, Senior Attorney, (202) 452-3722.

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SUPPLEMENTARY INFORMATION:

I. Background

Section 210 of the Economic Growth Act¹ amended section 10(d) of the FDI Act² to permit the agencies to examine qualifying IDIs (generally, those IDIs that are well capitalized and well managed) with under \$3 billion in total assets not less than once during each 18-month period, rather than not less than once during each 12-month period. Prior to the enactment of the Economic Growth Act, only qualifying IDIs with under \$1 billion in total assets were eligible for an 18-month on-site examination cycle.³

On August 29, 2018, the agencies issued interim final rules to implement the Economic Growth Act's amendments to sections 10(d)(4) and 10(d)(10) of the FDI Act⁴ that allow qualifying IDIs with under \$3 billion in total assets to benefit from the extended 18-month examination cycle. In addition, the interim final rules made parallel changes to the agencies' regulations governing the on-site examination cycle for U.S. branches and agencies of foreign banks, consistent with the IBA.⁵

Section 10(d)(1) of the FDI Act⁶ generally requires the appropriate Federal

¹ Pub. L. 115-174, 132 Stat. 1296 (2018).

² 12 U.S.C. 1820(d).

³ See section 83001 of the Fixing America's Surface Transportation Act (the FAST) Act, enacted on December 4, 2015. Pub. L. 114-94, 129 Stat. 1312 (permitting the agencies to examine qualifying IDIs with under \$1 billion in total assets not less than once during each 18-month period). The agencies published interim final rules implementing the FAST Act amendments in February 2016, and final rules in December 2016. See 81 FR 10069 (Feb. 29, 2016) and 81 FR 90949 (Dec. 16, 2016), respectively, codified at 12 CFR 4.6 and 4.7 (OCC), 12 CFR 208.64 and 211.26 (Board), 12 CFR 337.12 and 347.211 (FDIC).

⁴ 12 U.S.C. 1820(d)(4) and 1820(d)(10).

⁵ 12 U.S.C. 3105(c)(1)(C).

⁶ 12 U.S.C. 1820(d)(1).

banking agency for an IDI⁷ to conduct a full-scope, on-site examination of an IDI at least once during each 12-month period. With the enactment of section 210 of the Economic Growth Act, section 10(d)(4) of the FDI Act authorizes 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) has total assets of less than \$3 billion; (2) is well capitalized (as defined in 12 U.S.C. 1831o (prompt corrective action)); (3) was found, at its most recent examination, to be well managed⁸ and to have a composite condition of “outstanding” or, in the case of an IDI with total assets of not more than \$200 million, “outstanding” or “good;” (4) is not subject to a formal enforcement proceeding or order by the FDIC or its appropriate Federal banking agency; and (5) has 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. The Economic Growth Act also amended section 10(d)(10) of the FDI Act to give each appropriate Federal banking agency discretionary authority to extend eligibility for an 18-month examination cycle, by regulation, to qualifying IDIs with an “outstanding” or “good” composite condition and total assets not greater than \$3 billion, if the agency determines that this amount would be consistent with the principles of safety and soundness for IDIs.⁹

⁷ The Board, FDIC, or OCC. *See* 12 U.S.C. 1813(q).

⁸ IDIs 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,” respectively. 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 CAMELS rating at its most recent examination. *See* 72 FR 17798 (Apr. 10, 2007).

⁹ 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 an IDI’s State supervisor, if the Board or FDIC, as appropriate, determines

In addition, section 7(c)(1)(C) of the 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.

II. Description of the Final Rules

The agencies received three comment letters addressing the interim final rules, two from trade associations and one from a multi-bank financial holding company. All three letters were supportive of the interim final rules.

After considering the comments on the interim final rules, the agencies are adopting the interim final rules as final without change. The final rules, like the interim final rules implement section 10(d)(4) of the FDI Act to increase, from \$1 billion to \$3 billion, the total asset threshold under which an agency may apply an 18-month on-site examination cycle for qualified IDIs that have an “outstanding” composite rating.

The agencies also are exercising their discretionary authority under section 10(d)(10) of the FDI Act to extend eligibility for an 18-month examination cycle, by regulation, to qualifying IDIs with an “outstanding” or “good” composite rating with total assets under \$3 billion. The agencies have determined that increasing the maximum asset amount limitation for qualifying IDIs with less than \$3 billion in total assets is consistent with the principles of safety and soundness.

In determining whether the reduction in examination frequency is consistent with the principles of safety and soundness for such IDIs, the agencies considered several

that the alternating examination conducted by the State carries out the purposes of section 10(d) of the FDI Act. 12 U.S.C. 1820(d)(3).

factors. The agencies acknowledge that extending the examination cycle could make it more likely that there will be a delay in an agency's ability to detect deterioration in an IDI's performance. However, the agencies believe that extending the examination cycle from 12 months to 18 months for these small IDIs with relatively simple risk profiles should not appreciably increase their risk of financial deterioration or failure. In addition, the agencies will continue their off-site monitoring activities and have the ability to examine IDIs more frequently as necessary or appropriate. The agencies also note that, in order to qualify for an 18-month examination cycle, any IDI with total assets under \$3 billion—including one with a composite rating of "good"—must meet the other capital, managerial, and supervisory criteria set forth in section 10(d) of the FDI Act and the agencies' implementing regulations.

Considering the agencies' off-site monitoring activities; their discretion to examine IDIs more frequently as necessary; and the capital, managerial, and supervisory criteria in section 10(d) of the FDI Act, the agencies believe that increasing the maximum asset amount limitation for IDIs from less than \$1 billion to less than \$3 billion is consistent with the principles of safety and soundness. Additionally, the agencies expect that this increase will allow the agencies to better focus their supervisory resources on the IDIs and U.S. branches and agencies of foreign banks (collectively, financial institutions) that may present capital, managerial, or other issues of supervisory concern, and therefore, the final rules have the potential to enhance safety and soundness collectively for all financial institutions. The agencies will continue to monitor financial institutions in this asset range between examinations and the impact of the extended examination cycle.

In accordance with section 7(c)(1)(C) of the IBA, the agencies also are finalizing conforming changes to their regulations governing the on-site examination cycle for the U.S. branches and agencies of foreign banks. For the same reasons as discussed above with respect to qualifying IDIs, the agencies believe that extending similar treatment to qualifying U.S. branches and agencies of foreign banks is consistent with the principles of safety and soundness.

Based on data available at publication, the agencies estimate that the number of banks and savings associations that may qualify for an extended 18-month examination cycle increased by approximately 430 (241 of which are supervised by the FDIC, 99 by the OCC, and 90 by the Board), bringing the total number to 4,706 banks and savings associations since the interim rules took effect.¹⁰ Approximately 30 U.S. branches and agencies of foreign banks would be eligible for the extended examination cycle based on the final rules (2 of which are supervised by the FDIC, 8 by the OCC, and 20 by the Board).¹¹

For all the reasons described above, the agencies are adopting the interim final rules as final without change.

Effective Date

The Administrative Procedure Act (APA) generally requires that a final rule be published in the Federal Register no less than 30 days before its effective date.¹²

Therefore, the final rules will become effective on [INSERT DATE 30 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]. The interim final rules will continue

¹⁰ Call Report data, Sept. 30, 2018.

¹¹ *Id.*

¹² 5 U.S.C. 553(d).

to be in effect until the final rules become effective.

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that each Federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosures, or other requirements on IDIs, consider, consistent with the principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations.¹³ Further, new regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally must 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.¹⁴ The RCDRIA does not apply to the final rules because the rules do not impose any additional reporting, disclosures, or other new requirements on IDIs.

III. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act¹⁵ requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies' staff believe the final rules are presented in a simple and straightforward manner. Having received no comments with respect to making the interim final rules easier to understand, the agencies are adopting the final rules without

¹³ 12 U.S.C. 4802(a).

¹⁴ 12 U.S.C. 4802(b).

¹⁵ Pub. L. 106-102, section 722, 113 Stat. 1338, 1471 (1999).

change.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)¹⁶ requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.¹⁷ The RFA 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 in the joint interim final rules, consistent with section 553(b)(B) of the APA, the agencies determined for good cause that general notice and opportunity for public comment was unnecessary, and therefore the agencies did not issue a notice of proposed rulemaking. Accordingly, the agencies have concluded that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply. Further, the agencies note that no small entities, as defined by the Small Business Administration's rules implementing the RFA, will be affected by the final rules' increased asset thresholds.

V. Paperwork Reduction Act

The Paperwork Reduction Act of 1995¹⁸ 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 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. OCC Unfunded Mandates Reform Act of 1995 Determination

¹⁶ 5 U.S.C. 601 et seq.

¹⁷ Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of \$550 million or less and trust companies with total assets of \$38.5 million or less.

¹⁸ 44 U.S.C. 3501-3521.

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

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, Investments, Reporting and recordkeeping requirements, U.S. investments abroad.

Office of the Comptroller of the Currency

12 CFR Chapter I

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

POST-EMPLOYMENT RESTRICTIONS FOR SENIOR EXAMINERS

- The interim final rule amending 12 CFR part 4 of chapter I, title 12 of the Code of Federal Regulations, which was published at 83 FR 43961 on August 29, 2018, is adopted as a final rule without change.

Federal Reserve System

12 CFR Chapter II

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

PART 211--INTERNATIONAL BANKING OPERATIONS (REGULATION K)

- The interim final rule amending parts 208 and 211 of chapter II, title 12 of the Code of Federal Regulations, which was published at 83 FR 43961 on August 29, 2018, is adopted as a final rule without change.

Federal Deposit Insurance Corporation

12 CFR Chapter III

PART 337—UNSAFE AND UNSOUND BANK PRACTICES

PART 347—INTERNATIONAL BANKING

- The interim final rule amending parts 337 and 347 of chapter III of title 12 of the Code of Federal Regulations, which was published at 83 FR 43961 on August 29, 2018, is adopted as a final rule without change.

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

Dated: December 13, 2018.

Joseph M. Otting,
Comptroller of the Currency.

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

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

Ann E. Misback,
Secretary to the Board.

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

Dated at Washington, DC, on December 18, 2018.
By order of the Board of Directors.
Federal Deposit Insurance Corporation.

Valerie J. Best,
Assistant Executive Secretary.