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In the attached interagency guidelines and companion final rule, the Office of Thrift supervision (OTS) and the other federal banking agencies adopt Year 2000 safety and soundness standards required by section 39 of the Federal Deposit Insurance Act.

Except for minor changes, the final guidelines are the same as the joint interim guidelines the agencies adopted on October 15, 1998.


The guidelines are distilled from, and are consistent with, key principles of several Year 2000 guidance papers issued by the Federal Financial Institutions Examination Council (FFIEC). Today's guidelines do not replace or supplant the FFIEC guidance, which continues to apply to the steps institutions must take to achieve Year 2000 readiness.

The guidelines and final rule were published in the November 29, 1999, edition of the Federal Register, Vol. 64, No. 228, pp. 66700-66706.

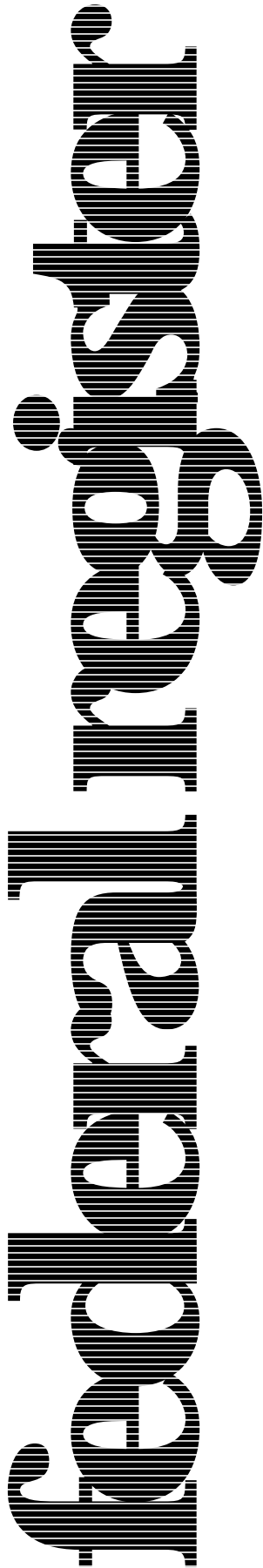
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Attachment



Monday
November 29, 1999

Part II

Department of the Treasury
Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

Department of the Treasury
Office of Thrift Supervision

12 CFR Part 30, et al.
**Interagency Guidelines Establishing Year 2000
Standards for Safety and Soundness; Final Rule**
Safety and Soundness Standards; Final Rule

DEPARTMENT OF THE TREASURY**Office of the Comptroller of the Currency****12 CFR Part 30**

[Docket No. 99-16]

RIN 1557-AB67

FEDERAL RESERVE SYSTEM**12 CFR Part 208**

[Docket No. R-1017]

FEDERAL DEPOSIT INSURANCE CORPORATION**12 CFR Part 364**

RIN 3064-AC18

DEPARTMENT OF THE TREASURY**Office of Thrift Supervision****12 CFR Part 570**

[Docket No. 99-35]

RIN 1550-AB27

Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness

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: Final uniform guidelines.

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 in final form the interim guidelines establishing Year 2000 safety and soundness standards for insured depository institutions published by the Agencies on October 15, 1998, and in effect since that date. This issuance of final guidelines (Guidelines), pursuant to section 39 of the Federal Deposit Insurance Act (FDI Act), is a technical action of the Agencies, which remain confident that, based on their reviews, insured depository institutions are appropriately preparing for the Year 2000.

EFFECTIVE DATE: The final Guidelines are effective November 29, 1999.

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SUPPLEMENTARY INFORMATION:**Background**

The Agencies today are issuing Guidelines establishing Year 2000 standards for safety and soundness pursuant to section 39 of the FDI Act. 12 U.S.C. 1831p-1. Section 39 requires the Agencies to establish operational and managerial standards either in the form of a regulation or guidelines for insured depository institutions relating to, among other things, internal controls, information systems, and internal audit systems. Section 39 also authorizes the Agencies to prescribe operational and managerial standards as they determine to be appropriate, and to require institutions that fail to meet such standards to submit corrective action plans.¹

¹ Standards issued under section 39 may take the form of regulations or guidelines. If an agency determines that an insured depository institution fails to meet any standard established by regulation,

On October 15, 1998, the Agencies requested comment on joint interim guidelines establishing Year 2000 standards for safety and soundness. 63 FR 55480. After careful review of the comments received, the Agencies adopt the interim guidelines with only minor technical changes, discussed in the following.

The Guidelines are distilled from—and are intended to be consistent with—key principles contained in several FFIEC guidance papers² on important aspects of Year 2000 readiness. Among other things, the Guidelines describe certain essential steps that insured depository institutions must take at the awareness, assessment, renovation, validation (testing), and implementation phases of their efforts to achieve Year 2000 readiness. The Guidelines, for instance, establish standards for management and boards of directors in developing and managing Year 2000 project plans, validating remediation efforts, and planning for contingencies. The Guidelines do not replace or supplant the FFIEC guidance, which will continue to apply to all entities regulated or examined by the Agencies. Insured depository institutions also should refer to the FFIEC guidance.³

The Agencies will use the existing rules regarding safety and soundness standards to require submission of

then, by the terms of the statute, the agency must require the institution to submit an acceptable plan to achieve compliance with the standard. If an agency determines that an insured depository institution fails to meet any standard established by guideline, the agency may require the institution to submit an acceptable compliance plan.

² Additional Questions and Answers Concerning Year 2000 Business Resumption Contingency Planning (May 6, 1999); Year 2000 Customer Communication Outline (February 17, 1999); Questions and Answers Concerning Year 2000 Contingency Planning (December 11, 1998); Guidance Concerning Fiduciary Services and Year 2000 Readiness (September 2, 1998); Questions and Answers Concerning FFIEC Year 2000 Policy (August 31, 1998); Guidance Concerning Contingency Planning in Connection with Year 2000 Readiness (May 13, 1998); Guidance on Year 2000 Customer Awareness Programs (May 13, 1998); Guidance Concerning Testing for Year 2000 Readiness (April 10, 1998); Guidance Concerning the Year 2000 Impact on Customers (March 17, 1998); Guidance Concerning Institution Due Diligence in Connection with Service Provider and Software Vendor Year 2000 Readiness (March 17, 1998); Safety and Soundness Guidelines Concerning the Year 2000 Business Risk (December 17, 1997); Year 2000 Project Management Awareness (May 5, 1997); and The Effect of Year 2000 on Computer Systems (June 1996) [collectively, the FFIEC guidance].

³ The standards in the Guidelines are described in mandatory terms in order to clarify the specific actions insured depository institutions are expected to take to achieve Year 2000 readiness. Nevertheless, as explained in the following, an Agency will decide whether to require corrective action under section 39 for an institution's noncompliance with these standards based on the circumstances of the particular case.

compliance plans by institutions that fail to comply with the Guidelines. Under those rules, an insured depository institution must file a compliance plan within 30 days of a request to do so from an appropriate Federal banking agency, unless a different date is prescribed by the agency. Within 30 days of the compliance plan's receipt, the agency must provide written notice to the insured depository institution of whether the compliance plan has been approved or if additional information is required.

An insured depository institution that fails to submit an acceptable compliance plan within the time allowed or fails in any material respect to implement an accepted compliance plan will be subject to supervisory action, including an agency order directing the institution to correct the deficiency. The agency order is directly enforceable in Federal district court; there is no requirement for a prior administrative adjudication. See 12 U.S.C. 1818(i)(1). A violation of such an order can serve as the basis for assessing civil money penalties and other enforcement remedies. See 12 U.S.C. 1818(i)(2). Section 39 also describes certain supervisory actions that an agency may take, and in certain cases must take, until the deficiency is corrected.

Description of the Guidelines and Comments Received

In response to the interim guidelines, the Agencies received nine comments. The commenters include three depository institutions, three trade associations, one state banking regulator, and two individuals. The commenters supported the interim guidelines. Several commenters, however, suggested modifications to the interim guidelines. A discussion of these comments and changes to the interim guidelines follows.

Definitions (I.B.)

The Guidelines define certain key terms to help clarify the types of actions insured depository institutions are expected to undertake. For example, the Guidelines define the terms "external system," "internal system," "external third party supplier," "other material third party," "renovation," and "remediation contingency plan." The Agencies received no comments on these definitions and are adopting them without any changes.

The Guidelines also define the key term "mission-critical system." The interim guidelines defined a mission-critical system as "an application or system that is vital to the successful

continuance of a core business activity." The Agencies made one clarifying change to this definition in the Guidelines so that it covers "an application or system that is vital to the successful continuance of a core business activity or process." The FFIEC guidance interchangeably uses the terms core business activity, core business process, or core business function in the context of discussing a mission-critical system. The Agencies find that these terms are synonymous and, therefore, may be used interchangeably for purposes of defining a mission-critical system.

Under the Guidelines, applications or systems interfacing with designated mission-critical systems and software products also may be mission-critical. Two commenters suggested that the Agencies revise the definition of a mission-critical system to clarify further the types of interfacing applications and software products that may be mission-critical. The first commenter urged the Agencies to consider an application that interfaces with a mission-critical system to be mission-critical only if the application's failure would prevent the continuance of the core business activity supported by such mission-critical system. The second commenter requested additional guidance on what systems and applications, particularly software products, are mission-critical and suggested that the definition contrast mission-critical systems with non-mission-critical systems.

To address these concerns, the Agencies emphasize that the question whether a specific system or application qualifies as "mission-critical" depends on whether it is "vital to the successful continuance of a core business activity or process." Since it is conceivable that a system or application that is mission-critical for one insured depository institution may not be mission-critical for another, neither the FFIEC guidance nor the Guidelines provide illustrative examples of mission-critical systems. The FFIEC guidance, however, further describes core business activities or processes. As stated in the FFIEC guidance, a core business activity or process means a task or group of tasks that must be performed together to ensure that an insured depository institution continues to be viable. A core business activity or process is generally defined along functional lines. For example, the deposit function, lending function, payments function, and investment function are examples of a core business activity or process.

Likewise, an application or system that interfaces with a designated mission-critical system also qualifies as

mission-critical if it is vital to the successful continuance of a core-business activity or process. Specific mission-critical systems may be components of a number of core business activities or processes and may serve as interfaces between and among the operations of core business activities or processes. For example, the deposit taking function is a core business activity or process that could depend on various interfacing mission-critical systems, such as the automated clearing house (ACH), proof, and deposit systems.⁴

The Guidelines also define "business resumption contingency plan" as a plan that "describes how mission-critical systems of the insured depository institution will continue to operate if there are system failures * * *." One commenter requested the Agencies to revise this definition to focus on the resumption of core business activities in the event of Year 2000-related system failures. As noted above, the term "mission-critical system" covers those systems and applications that are vital to the successful continuance of a core business activity or process. Accordingly, the Agencies find that the definition of a business resumption contingency plan, as stated in the interim guidelines, already focuses only on the resumption of systems vital to the successful continuance of a core business activity or process and, therefore, no change to the Guidelines is necessary.

Finally, the Agencies made minor, but clarifying changes to the definitions of "business resumption contingency plan" and "Year 2000 ready or readiness." The interim guidelines inadvertently used the conjunction or instead of and in these two definitions, and this has been corrected in the final Guidelines.

Review of Mission-Critical Systems for Year 2000 Readiness (II.A.)

The Guidelines specify that an insured depository institution's initial review of mission-critical systems for Year 2000 readiness should provide the basis for establishing priorities and deadlines and for identifying and allocating available resources. The development and implementation of a written due diligence process to monitor and evaluate Year 2000 efforts by third party service providers and software vendors is a critical component of an institution's initial assessment. The

⁴ See FFIEC Questions and Answers Concerning Year 2000 Contingency Planning (December 11, 1998) (discussing how core business processes relate to mission-critical systems).

Guidelines also require each insured depository institution to develop and adopt a written project plan that addresses each phase of the planning process. However, an insured depository institution that has already developed and adopted an adequate written project plan, or other plans and procedures for achieving Year 2000 readiness, need not prepare a new, separate project plan, or other plans and procedures, just to satisfy the Guidelines. Plans and procedures already adopted may suffice if they have been reviewed and deemed acceptable under the Guidelines by the appropriate Agency. The Agencies did not receive any comments on these provisions and, therefore, adopt them without any changes.

Renovation of Internal and External Mission-Critical Systems (II.B. and II.C.)

The Guidelines distinguish between renovation of systems controlled by the insured depository institution (internal mission-critical systems) and those controlled by a third party (external mission-critical systems). Renovation of internal mission-critical systems must be completed in sufficient time for testing to be substantially complete by December 31, 1998.

Insured depository institutions relying on systems controlled and renovated by external third party suppliers must determine the ability of their service providers and software vendors to address Year 2000 readiness for external mission-critical systems that are not Year 2000 ready and to establish programs that allow testing and remediation to be substantially completed by March 31, 1999. Insured depository institutions also must develop in writing an ongoing due diligence process to monitor and evaluate the efforts of external third party suppliers to achieve Year 2000 readiness. As part of this process, the institutions must maintain written documentation of their communications with external third party suppliers regarding the third party suppliers' efforts to achieve Year 2000 readiness and review the institution's contractual arrangements with third party suppliers to determine the parties' respective rights and obligations to achieve Year 2000 readiness. In response to one commenter's concerns, the Agencies clarify that the Guidelines require the institution to review only those contracts pertaining to external mission-critical systems.

Testing of Mission-Critical Systems (II.D.)

The Agencies consider testing to be a critical process in achieving Year 2000 readiness. Failure of an insured depository institution to perform adequate testing of mission-critical systems poses a risk to the safe and sound operation of the institution. Failure to conduct thorough testing may mask serious remediation problems. Failure to properly identify or correct those problems could threaten the safety and soundness of the institution. The Guidelines reflect the Agencies' expectations on the timing and scope of required testing.

One commenter raised concerns about the inability of an institution to meet the internal testing deadline because of extended delays by software vendors in producing software that is Year 2000 ready. Software products may be either internal or external systems, depending on whether the insured depository institution has control over the renovation. For example, in "turnkey" situations, where an institution has purchased software from a vendor and does all the data processing in-house or where it has a software license from a vendor and does all the data processing in-house, these are "internal" systems. Under the Guidelines, the purchase or license arrangement is deemed to give the institution responsibility for renovation, even though the software vendor must perform the actual renovation. Therefore, these situations were subject to the testing deadline for "internal" systems, which was December 31, 1998.

Contingency Planning (II.E. and II.F.)

Another essential component of achieving Year 2000 readiness addressed in the Guidelines is the development and implementation of effective contingency plans for Year 2000 technology failures. The Guidelines require an insured depository institution to design contingency plans appropriate for the institution's technological systems and operating structure that describe how the institution will mitigate the risks associated with the failure of systems (the business resumption contingency plan) and, as applicable, the failure to complete renovation, testing, or implementation of its mission-critical systems (the remediation contingency plan).

As noted in recent FFIEC guidance, contingency planning is a dynamic process. An effective contingency plan may become inadequate at a later date if the institution does not revise the

plan to address current needs. Accordingly, each insured depository institution must continue to update the contingency plans it has developed and implemented, as needed, to ensure that the plans remain effective. For example, some institutions rated less than satisfactory after June 1999 may need to establish plans that address obtaining alternative sources of service, transitioning to a new service provider, discontinuing the provision of certain bank services, and/or creating standardized backup programs for their deposit and loan accounts.

Customer Risk (II.G.)

The Guidelines require insured depository institutions to implement a due diligence process that identifies customers posing material Year 2000 risks, evaluates their Year 2000 preparedness, assesses their Year 2000 risk, and implements appropriate risk controls. The Agencies received no comments on this section and, therefore, adopt this section without any changes.

Involvement of the Board of Directors and Management (II.H.)

The Guidelines require the board of directors and management to be involved in all stages of the institution's efforts to achieve Year 2000 readiness. Management and the board of directors together must be actively involved in efforts to plan, allocate resources, and monitor progress towards attaining Year 2000 readiness. Management must provide to the board of directors written status reports at least quarterly or as otherwise required to keep the board of directors fully informed of the institution's Year 2000 efforts.

One commenter noted that the Guidelines are inconsistent with the FFIEC guidance in that they impose on the board of directors an inappropriate management function and a greater burden than would exist under accepted notions of corporate governance. The Agencies do not intend to alter traditional notions of corporate responsibility of the board of directors. The FFIEC guidance, as reflected in the Guidelines, emphasizes that Year 2000 issues present an enterprise-wide challenge, necessitating the active involvement of both senior management and the board of directors in overseeing the insured depository institution's internal Year 2000 efforts and monitoring its business risks. As stated in the FFIEC guidance, however, senior management continues to be responsible for the day-to-day management of the project. In order to erase any confusion on this point, however, the Agencies deleted the word "managing" from

section H.1. of the Guidelines. The Guidelines now require only that the board of directors and management "be actively involved in efforts to plan, allocate resources, and monitor progress towards attaining Year 2000 readiness."

Another commenter noted that management, in the past, generally provided oral status reports to the board of directors documented in the minutes. The commenter requested clarification whether this practice would satisfy the requirement for written status reports. The Agencies recognize that practices for documenting management's status updates to the board of directors varied from institution to institution. To ensure consistency in documenting an institution's progress in attaining Year 2000 readiness, however, the Agencies will require management to provide to the board of directors written status reports. Therefore, the Agencies are adopting this section without any changes.

Section 39 Remedies

The Guidelines enable the Agencies to use the streamlined compliance and enforcement mechanisms provided by section 39 to address, in appropriate circumstances, Year 2000 readiness-related safety and soundness concerns in insured depository institutions. Section 39 remedies for insured depository institutions allow the Agencies to move promptly in situations where immediate supervisory action is essential for safety and soundness reasons.

Nonetheless, issuance of a safety and soundness order pursuant to section 39 may not be the most appropriate remedy in every case where an insured depository institution fails to comply with the Guidelines. It is for this reason the Agencies have chosen to proceed by guideline, within the meaning of section 39, rather than by regulation. As is the case with respect to the Agencies' 1995 safety and soundness guidelines, the Agencies also wish to preserve their discretion to require supervisory actions different from those prescribed by section 39 with respect to the Guidelines if a different action is warranted by the facts and circumstances of a particular situation.

The Guidelines do not limit the authority of an Agency to address unsafe or unsound practices or conditions, violations of law, or other practices, or to adopt appropriate remedies to achieve compliance with the Guidelines, including requiring actions by dates that are different from those set forth in the Guidelines. Actions under section 39 and the Guidelines may be taken independently

of, in conjunction with, or in addition to, other appropriate enforcement actions.

The Agencies note that by law the Guidelines apply only to insured depository institutions, not to all financial institutions supervised by the Agencies, such as bank holding companies and U.S. offices of foreign banking organizations. The Agencies will continue to examine and inspect all financial institutions that they supervise for compliance with the FFIEC guidance and may use their authority under section 8 of the FDI Act if these institutions fail to comply with the FFIEC guidance.

Effective Date

The Agencies find good cause for issuing the Guidelines effective immediately. *Cf.* 5 U.S.C. 553(d) (good cause exception to APA requirement for a 30 day delayed effective date for final rule); 12 U.S.C. 4802(b)(1) (good cause exception to the CDRIA requirement that the Federal banking agencies make rules effective on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form). Making the Guidelines effective immediately is essential for ensuring that the Agencies can properly and timely address the Year 2000 problem and that insured depository institutions can achieve Year 2000 readiness in the relatively short time remaining before Year 2000 problems may begin to occur. The Agencies note that Congress has recently underscored the importance and urgency of ensuring Year 2000 readiness in the financial services sector by passing the Examination Parity and Year 2000 Readiness for Financial Institutions Act, Public Law 105-164, sec. 2, 112 Stat. 32, 32 (1998). Congress expressly found that the Year 2000 problem poses a serious challenge to the American economy, including the Nation's banking and financial services industries, and that Federal financial regulatory agencies must have sufficient examination authority to ensure that the safety and soundness of the Nation's financial institutions will not be at risk. Under these circumstances, the Agencies conclude that they have good cause for issuing the Guidelines with an immediate effective date.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) does not apply to a rule for which an agency is not required to publish a notice of proposed rulemaking. 5 U.S.C. 603. In issuing the interim guidelines, the Agencies concluded, for good cause, that they are not required to publish a

notice of proposed rulemaking. Accordingly, they issued the interim guidelines without prior notice and comment to be effective immediately. Since the RFA does not apply to a rule for which an agency is not required to publish a notice of proposed rulemaking, the Agencies also conclude that the RFA does not require a regulatory flexibility analysis of these joint final guidelines.

Nonetheless, the Agencies considered the likely economic impact of the Guidelines on small entities and believe that the Guidelines do not have a significant impact on a substantial number of small entities. The potential inability of computers to correctly recognize certain dates in 1999 and on and after January 1, 2000, compels all institutions, including small institutions, to formulate appropriate and timely management responses. The Guidelines provide a procedural framework for formulating that response and reiterate the Agencies' expectations, distilled from existing FFIEC guidance, regarding appropriate business practices for achieving Year 2000 readiness. For example, as indicated earlier in this preamble, plans and procedures that institutions have already developed to achieve Year 2000 readiness can satisfy the Guidelines if they have been reviewed and deemed acceptable by the appropriate Agency. The Agencies requested comments on the impact of the Guidelines on small entities and received no comments.

Paperwork Reduction Act

These Guidelines contain no continuing information collections that must be approved by the Office of Management and Budget (OMB).

Executive Order 12866

The OCC and OTS have determined that the Guidelines are 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), Public Law 104-4, applies only when an agency is required to promulgate a general notice of proposed rulemaking or to a final rule for which a general notice of proposed rulemaking was published. 2 U.S.C. 1532. As noted above, the Agencies did not publish a general notice of proposed rulemaking when they, for good cause, issued the interim guidelines with an immediate effective date. Accordingly, the OCC and OTS conclude that the UMA does not require an unfunded mandates analysis of the Guidelines.

Moreover, the OCC and OTS believe that the Guidelines will not result in expenditures 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.

Text of Uniform Final Guidelines (All Agencies)

The text of the Agencies' uniform final guidelines appears below:

Appendix ____ To Part ____ Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness

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I. Introduction

The Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness (Guidelines) set forth safety and soundness standards pursuant to section 39 of the Federal Deposit Insurance Act (section 39) (12 U.S.C. 1831p-1) that are applicable to an insured depository institution's efforts to achieve Year 2000 readiness. The Guidelines, which also interpret the general standards in the Interagency Guidelines Establishing Standards for Safety and Soundness adopted in 1995, apply to all insured depository institutions.

A. Preservation of Existing Authority

Neither section 39 nor the Guidelines in any way limits the authority of the Federal banking agencies to address unsafe or unsound practices, violations of law, unsafe or unsound conditions, or other practices. The Federal banking agencies, in their sole discretion, may take appropriate actions so that insured depository institutions will be able to successfully continue business operations after January 1, 2000, including on a case-by-case basis requiring actions by dates that are later than the key dates set forth in the Guidelines. Action under section 39 and the Guidelines may be taken independently of, in conjunction with, or in addition to any other action, including enforcement action, available to the Federal banking agencies.

B. Definitions

1. In general. For purposes of the Guidelines the following definitions apply:

a. *Business resumption contingency plan* means a plan that describes how mission-critical systems of the insured depository institution will continue to operate in the event there are system failures in processing, calculating, comparing, or sequencing date or time data from, into, or between the 20th and 21st centuries; and the years 1999 and 2000; and with regard to leap year calculations.

b. *External system* means a system the renovation of which is not controlled by the insured depository institution, including systems provided by service providers and any interfaces with external third party suppliers and other material third parties.

c. *External third party supplier* means a service provider or software vendor that supplies services or products to insured depository institutions.

d. *Internal system* means a system the renovation of which is controlled by the insured depository institution, including software, operating systems, mainframe computers, personal computers, readers/sorters, and proof machines. An internal system also may include a system controlled by the insured depository institution with embedded integrated circuits (e.g., heating and cooling systems, vaults, communications, security systems, and elevators).

e. *Mission-critical system* means an application or system that is vital to the successful continuance of a core business activity or process. An application or system may be mission-critical if it interfaces with a designated mission-critical system. Software products also may be mission-critical.

f. *Other material third party* means a third party, other than an external third party supplier, to whom an insured depository institution transmits data or from whom an insured depository institution receives data, including business partners (e.g., credit bureaus), other insured depository institutions, payment system providers, clearinghouses, customers, and utilities.

g. *Remediation contingency plan* means a plan that describes how the insured depository institution will mitigate the risks associated with the failure to successfully complete renovation, testing, or implementation of its mission-critical systems.

h. *Renovation* means code enhancements, hardware and software upgrades, system replacements, and other associated changes that ensure that the insured depository institution's mission-critical systems and applications are Year 2000 ready.

i. *Year 2000 ready or readiness* with respect to a system or application means a system or application accurately processes, calculates, compares, or sequences date or time data from, into, or between the 20th and 21st centuries; and the years 1999 and 2000; and with regard to leap year calculations.

II. Year 2000 Standards for Safety and Soundness

A. Review of Mission-Critical Systems For Year 2000 Readiness. Each insured depository institution shall in writing:

1. Identify all internal and external mission-critical systems that are not Year 2000 ready;

2. Establish priorities for accomplishing work and allocating resources to renovating internal mission-critical systems;

3. Identify the resource requirements and individuals assigned to the Year 2000 project on internal mission-critical systems;

4. Establish reasonable deadlines for commencing and completing the renovation of such internal mission-critical systems;

5. Develop and adopt a project plan that addresses the insured depository institution's Year 2000 renovation, testing, contingency planning, and management oversight process; and

6. Develop a due diligence process to monitor and evaluate the efforts of external third party suppliers to achieve Year 2000 readiness.

B. Renovation of Internal Mission-Critical Systems. Each insured depository institution shall commence renovation of all internal mission-critical systems that are not Year 2000 ready in sufficient time that testing of the renovation can be substantially completed by December 31, 1998.

C. Renovation of External Mission-Critical Systems. Each insured depository institution shall:

1. Determine the ability of external third party suppliers to renovate external mission-critical systems that are not Year 2000 ready and to complete the renovation in sufficient time to substantially complete testing by March 31, 1999;

2. Maintain written documentation of all its communications with external third party suppliers regarding their ability to renovate timely and effectively external mission-critical systems that are not Year 2000 ready; and

3. Develop in writing an ongoing due diligence process to monitor and evaluate the efforts of external third party suppliers to achieve Year 2000 readiness, including:

a. monitoring the efforts of external third party suppliers to achieve Year 2000 readiness on at least a quarterly basis and documenting communications with these suppliers; and

b. reviewing the insured depository institution's contractual arrangements with external third party suppliers to determine the parties' rights and obligations to achieve Year 2000 readiness.

D. Testing of Mission-Critical Systems. Each insured depository institution shall:

1. Develop and implement an effective written testing plan for both internal and external systems. Such a plan shall include the testing environment, testing methodology, testing schedules, budget projections, participants to be involved in testing, and the critical dates to be tested to achieve Year 2000 readiness;

2. Verify the adequacy of the testing process and validate the results of the tests with the assistance of the project manager responsible for Year 2000 readiness, the owner of the system tested, and an objective independent party (such as an auditor, a consultant, or a qualified individual from within or outside of the insured depository institution who is independent of the process under review);

3. Substantially complete testing of internal mission-critical systems by December 31, 1998;

4. Commence testing of external mission-critical systems by January 1, 1999;

5. Substantially complete testing of external mission-critical systems by March 31, 1999;

6. Commence testing with other material third parties by March 31, 1999; and

7. Complete testing of all mission-critical systems by June 30, 1999.

E. Business Resumption Contingency Planning. Each insured depository institution shall develop and implement an effective written business resumption contingency plan that, at a minimum:

1. Defines scenarios for mission-critical systems failing to achieve Year 2000 readiness;

2. Evaluates options and selects a reasonable contingency strategy for those systems;

3. Provides for the periodic testing of the business resumption contingency plan; and

4. Provides for independent testing of the business resumption contingency plan by an objective independent party, such as an auditor, consultant, or qualified individual from another area of the insured depository institution who was not involved in the formulation of the business resumption contingency plan.

F. Remediation Contingency Planning. Each insured depository institution that has failed to successfully complete renovation, testing, and implementation of a mission-critical system, or is in the process of remediation and is not on schedule with the key dates in section II.D., shall develop and implement an effective written remediation contingency plan that, at a minimum:

1. Outlines the alternatives available if remediation efforts are not successful, including the availability of alternative external third party suppliers, and selects a reasonable contingency strategy; and

2. Establishes trigger dates for activating the remediation contingency plan, taking into account the time necessary to convert to alternative external third party suppliers or to complete any other selected strategy.

G. Customer Risk. Each insured depository institution shall develop and implement a written due diligence process that:

1. Identifies customers, including fund providers, fund takers, and capital market/asset management counterparties, that represent material risk exposure to the institution;

2. Evaluates their Year 2000 preparedness;

3. Assesses their existing and potential Year 2000 risk to the institution; and

4. Implements appropriate risk controls, including controls for underwriting risk, to manage and mitigate their Year 2000 risk to the institution.

H. Involvement of the Board of Directors and Management.

1. During all stages of the renovation, testing, and contingency planning process, the board of directors and management of each insured depository institution shall:

a. be actively involved in efforts to plan, allocate resources, and monitor progress towards attaining Year 2000 readiness;

b. oversee the efforts of the insured depository institution to achieve Year 2000 readiness and allocate sufficient resources to resolve problems relating to the institution's Year 2000 readiness; and

c. evaluate the Year 2000 risk associated with any strategic business initiatives contemplated by the insured depository institution, including mergers and acquisitions, major systems development, corporate alliances, and system interdependencies.

2. In addition, the board of directors, at a minimum, shall require from management, and management shall provide to the board of directors, written status reports, at least quarterly and as otherwise appropriate to keep the directorate fully informed, of the insured depository institution's efforts in achieving Year 2000 readiness. Such written status reports shall, at a minimum, include:

a. The overall progress of the insured depository institution's efforts in achieving Year 2000 readiness;

b. The insured depository institution's interim progress in renovating, validating, and contingency planning measured against the insured depository institution's Year 2000 project plan as adopted under section II.A.5. of appendix B;

c. The status of efforts by key external third party suppliers and other material third parties in achieving Year 2000 readiness;

d. The results of the testing process;

e. The status of contingency planning efforts; and

f. The status of the ongoing assessment of customer risk.

[End of text of Uniform Interagency Guidelines]

List of Subjects

12 CFR Part 30

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

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Safety and soundness, Securities.

12 CFR Part 364

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Safety and soundness.

12 CFR Part 570

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

Adoption of Uniform Interagency Final Guidelines

The agency specific adoptions of the uniform interagency final guidelines, which appear at the end of the common preamble, are set forth below.

Office of the Comptroller of the Currency

12 CFR CHAPTER I

Authority and Issuance

For the reasons set forth in the common preamble, part 30 of chapter I of title 12 of the Code of Federal Regulations is amended 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, 1818, 1831p-1, 3102(b).

2. Appendix B to part 30 is revised to read as set forth at the end of the common preamble:

Appendix B to Part 30—Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness

Dated: October 12, 1999.

John D. Hawke, Jr.,
Comptroller of the Currency.

Federal Reserve System

12 CFR CHAPTER II

Authority and Issuance

For the reasons set forth in the common preamble, part 208 of chapter II of title 12 of the Code of Federal Regulations is amended as follows:

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

1. The authority citation for 12 CFR Part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321-338a, 371d, 461, 481-486, 601, 611, 1814, 1816, 1818, 1823(j), 1828(o), 1831o, 1831p-1, 1831r-1, 1835a, 1882, 2901-2907, 3105, 3310, 3331-3351, and 3906-3909, 15 U.S.C. 78b, 781(b), 781(g), 781(i), 78o-4(c)(5), 78q, 78q-1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. The interim rule redesignating Appendix D to 12 CFR part 208 as Appendix D-1 to 12 CFR part 208 published at 63 FR 55480 on October 15, 1998, is adopted as final.

3. Appendix D-2 to part 208 is revised to read as set forth at the end of the common preamble:

Appendix D-2 to Part 208—Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness

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

Dated: October 22, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR CHAPTER III

Authority and Issuance

For the reasons set forth in the common preamble, part 364 of chapter III of title 12 of the Code of Federal Regulations is amended as follows:

PART 364—STANDARDS FOR SAFETY AND SOUNDNESS

1. The authority citation for 12 CFR part 364 continues to read as follows:

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

2. Appendix B to part 364 is revised to read as set forth at the end of the common preamble:

Appendix B to Part 364—Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness

By Order of the Board of Directors.

Dated at Washington, DC, this 8th Day of November, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Office of Thrift Supervision

12 CFR CHAPTER V

Authority and Issuance

For the reasons set forth in the common preamble, part 570 of chapter V of title 12 of the Code of Federal Regulations is amended 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. Appendix B to part 570 is revised to read as set forth at the end of the common preamble:

Appendix B to Part 570—Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness

Dated: October 15, 1999.

Ellen Seidman,

Director.

[FR Doc. 99-30284 Filed 11-26-99; 8:45 am]

BILLING CODE 4810-33-U; 6210-01-U; 6714-01-U; 6720-01-U

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 30

[Docket No. 99-17]

RIN 1557-AB67

FEDERAL RESERVE SYSTEM

12 CFR Part 263

[Docket No. R-1018]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 364

RIN 3064-AC18

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 570

[Docket No. 99-50]

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: Joint final rule.

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 issuing this joint final rule to update their procedural rules pertaining to safety and soundness standards issued under section 39 of the Federal Deposit Insurance Act (FDI Act). This joint final rule adopts, with only one technical change, the Agencies' interim rules. This final rule is intended only to incorporate appropriate references to the Interagency Guidelines Establishing Year 2000 Standards for Safety and

Soundness published elsewhere in this issue of the **Federal Register**.

EFFECTIVE DATE: This joint final rule is effective on November 29, 1999.

FOR FURTHER INFORMATION CONTACT:

OCC: Karl Betz, Attorney, Legislative and Regulatory Activities (202) 874-5090; or Brian McCormally, Assistant Director, Enforcement and Compliance (202) 874-4800, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Board: Stephanie Martin, Managing 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; or Nancy Chase Burton, Counsel, Legal Division (202) 898-6533, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

OTS: Dorothy Van Cleave, National Year 2000 Coordinator (202) 906-7380; Stephen E. Hart, Assistant Chief Counsel, Office of Enforcement, Office of Chief Counsel (202) 906-7204; or Timothy P. Leary, Counsel (Banking & Finance), Regulations and Legislation Division, Office of Chief Counsel (202) 906-7170, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background and Discussion of Final Rule

In 1995, the Agencies jointly adopted Guidelines Establishing Standards for Safety and Soundness pursuant to section 39 of the FDI Act. 12 U.S.C. 1831p-1. At the same time, each Agency 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 Guidelines Establishing Standards for Safety and Soundness are set forth in an appendix to each Agency's procedural rules. 60 FR 35674 (July 10, 1995).

On October 15, 1998, the Agencies adopted interim Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness (Year 2000 Guidelines) under section 39 of the FDI Act. 63 FR 55480. Elsewhere in this issue of the **Federal Register**, the Agencies are publishing final Year 2000 Guidelines. These Year 2000 Guidelines

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

On October 15, 1998, the Agencies also published interim rules that made minor conforming amendments to their procedural rules to incorporate appropriate references to the Year 2000 Guidelines. 63 FR 55486. The Agencies received one comment on the interim rule. The commenter, a banking trade association, supported the interim rule.

The Agencies are now adopting the interim rule as published with two exceptions.

First, the OTS is making a minor, technical change to a reference in its rule.

Second, the OCC's current rules of procedure, set forth at §§ 30.1 through 30.6, differ slightly from those in the interim rule dated October 15, 1998 (63 FR 55486). On September 30, 1999, the OCC published its Guidelines Establishing Year 2000 Standards for Safety and Soundness for National Bank Transfer Agents and Broker-Dealers (64 FR 52638) (Supplemental Guidelines). The Supplemental Guidelines added a new appendix C to part 30 and made conforming changes to §§ 30.2 and 30.3(a) to incorporate appropriate references to appendix C to part 30. After adoption of this final rule, §§ 30.2 and 30.3(a) will continue to read as amended by the Supplemental Guidelines (that is, these sections will contain references to appendix C to part 30). Otherwise, the OCC adopts the interim rule as it was published.

Effective Date

The Agencies find good cause for issuing this final rule to be effective immediately. *Cf.* 5 U.S.C. 553(d) (good cause exception to the requirement in the Administrative Procedure Act for a 30 day delayed effective date for a final rule); 12 U.S.C. 4802(b)(1) (good cause exception to the requirement in the Riegle Community Development and Regulatory Improvement Act that the Federal banking agencies make rules effective on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form). The Agencies are finalizing, with one technical change, already effective interim rules. The interim rule made only conforming amendments to the Agencies' current rules of procedure to refer to the Year 2000 Guidelines. This final rule imposes no new substantive requirements on insured depository institutions. Therefore, each of the Agencies finds good cause to dispense with the delayed effective date requirements.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) does not apply to a rule for which an agency is not required to publish a notice of proposed rulemaking. 5 U.S.C. 603. In issuing the interim rule, the Agencies concluded, for good cause, that they are not required to publish a notice of proposed rulemaking. Accordingly, they issued the interim rule without prior notice and comment to be effective immediately. Since the RFA does not apply to a rule for which an agency is not required to publish a notice of proposed rulemaking, the Agencies also conclude that the RFA does not require a regulatory flexibility analysis of this final rule.

Nevertheless, since the final 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 the final rule does not have a significant effect on a substantial number of small entities or create any additional burden on small entities under the RFA.

Paperwork Reduction Act

The Agencies have determined that the final 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 the final 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), Public Law 104-4, does not apply to a rule for which an agency is not required to publish a notice of proposed rulemaking. 2 U.S.C. 1532. In issuing the interim rule, the Agencies concluded, for good cause, that they are not required to publish a notice of proposed rulemaking. Accordingly, the OCC and OTS conclude that the UMA does not require an unfunded mandates analysis of this final rule.

Nevertheless, since this final rule imposes no new requirements on insured depository institutions and makes only conforming amendments to the Agencies' current rules of procedure, the OCC and OTS find that this final 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

12 CFR Part 30

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

12 CFR Part 263

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

12 CFR Part 364

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Safety and soundness.

12 CFR Part 570

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

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 amends part 30 of chapter I of title 12 of the Code of Federal Regulations as follows:

PART 30—SAFETY AND SOUNDNESS STANDARDS

Accordingly, the interim rule amending 12 CFR part 30, which was published at 63 FR 55486 on October 15, 1998, was superseded by an interim rule published at 64 FR 52638 on September 30, 1999.

Dated: October 12, 1999.

John D. Hawke, Jr.,
Comptroller of the Currency.

Federal Reserve System

12 CFR CHAPTER II

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

PART 263—RULES OF PRACTICE FOR HEARINGS

Accordingly, the interim rule amending 12 CFR part 263, which was published at 63 FR 55486 on October 15, 1998, is adopted as a final rule without change.

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

Dated: October 22, 1999.
Robert deV. Frierson,
Associate Secretary of the Board.

Federal Deposit Insurance Corporation
12 CFR CHAPTER III

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

PART 364—STANDARDS FOR SAFETY AND SOUNDNESS

Accordingly, the interim rule amending 12 CFR part 364, which was published at 63 FR 55486 on October 15, 1998, is adopted as a final rule without change.

By Order of the Board of Directors.
Dated at Washington, DC, this 8th Day of November, 1999.

Federal Deposit Insurance Corporation.
Robert E. Feldman,
Executive Secretary.

Office of Thrift Supervision
12 CFR CHAPTER V

Authority and Issuance

For the reasons set out in the joint preamble, the interim rule amending 12 CFR part 570, which was published at 63 FR 55486 on October 15, 1998, is adopted as a final rule with the following change:

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. Section 570.1(c) is revised to read as follows:

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

* * * * *

(c) *Scope.* This part and the Interagency Guidelines Establishing Safety and Soundness Standards as set forth at Appendix A to this part and the Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness as set forth at Appendix B to this part implement the provisions of section 39 of the FDI Act as they apply to savings associations.

* * * * *

Dated: October 15, 1999.
Ellen Seidman,
Director.
[FR Doc. 99-30285 Filed 11-26-99; 8:45 am]
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