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October 15, 1998

Part IV

Department of the Treasury

Office of the Comptroller of the Currency
Office of Thrift Supervision

Federal Reserve System

**Federal Deposit Insurance
Corporation**

12 CFR Part 30, et al.

Interagency Guidelines Establishing Year
2000 Standards for Safety and
Soundness; Safety and Soundness
Standards; Interim Rules

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

[Docket No. 98-14]

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. 98-97]

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: Joint interim guidelines with request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the Agencies) are issuing interim guidelines (the Guidelines) establishing Year 2000 safety and soundness standards for insured depository institutions pursuant to section 39 of the Federal Deposit Insurance Act (FDI Act). Under the auspices of the Federal Financial Institutions Examination Council (FFIEC), the Agencies have previously issued eight guidance papers on important aspects of Year 2000 readiness. The Guidelines complement these eight guidance papers by establishing minimum safety and soundness standards for achieving Year 2000 readiness.

DATES: The Guidelines are effective October 15, 1998. Comments must be received by December 14, 1998.

ADDRESSES: Comments should be directed to:

OCC: Office of the Comptroller of the Currency, Communications Division, 250 E Street, SW, Washington, DC 20219, Attention: Docket No. 98-14. Comments will be available for public inspection and photocopying at the same location. In addition, comments may be sent by facsimile transmission to FAX number (202) 874-5274 or by Internet mail to

regs.comments@occ.treas.gov.

Board: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, Docket No. R-1017, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW, Washington, DC. Comments may be inspected in room MP-500 between 9:00 a.m. and 5:00 p.m., except as provided in § 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14.

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

OTS: Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, Attention Docket No. 98-97. These submissions may be hand delivered to 1700 G Street, NW, Washington, DC, from 9:00 a.m. to 5:00 p.m. on business days; sent by facsimile transmission to FAX number (202) 906-7755, or may be sent by e-mail to: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments will be available for inspection at 1700 G Street, NW, Washington, DC, from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: OCC: Mark L. O'Dell, Director, Year

2000 Bank Supervision Policy (202) 874-2340; Brian McCormally, Assistant Director, Enforcement and Compliance (202) 874-4800; Ursula Pfeil, Attorney, Legislative and Regulatory Activities (202) 874-5090; or Stuart E. Feldstein, Assistant Director, Legislative and Regulatory Activities (202) 874-5090.

Board: Angela Desmond, Special Counsel, Division of Banking Supervision and Regulation (202) 452-3497; or Nancy Oakes, Senior Attorney, Division of Banking Supervision and Regulation (202) 452-2743. 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: Frank Hartigan, Year 2000 Project Manager, Division of Supervision (202) 898-6867; Sandy Comenetz, Year 2000 Project Manager, Legal Division (202) 898-3582; Richard Bogue, Counsel, Legal Division (202) 898-3726; or Nancy Chase Miller, Counsel, Legal Division (202) 898-6533.

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

SUPPLEMENTARY INFORMATION:**Background**

The potential inability of computers to recognize correctly certain dates in 1999 and on and after January 1, 2000, presents significant and unprecedented enterprise-wide challenges for insured depository institutions. Timely management response is critical in order for insured depository institutions to identify problems and implement effective remediation programs in the relatively short time remaining until those dates occur. Under the auspices of the FFIEC, the Agencies have issued eight guidance papers¹ on important aspects of Year 2000 readiness. The Agencies are issuing the Guidelines, which are distilled from the FFIEC guidance, to establish minimum safety and soundness standards for achieving

¹ See 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].

Year 2000 readiness. 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.

The Agencies are issuing the Guidelines pursuant to section 39 of the FDI Act.² Section 39 requires the Agencies to establish operational and managerial standards 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.

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, 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.

In 1995, the Agencies promulgated Interagency Guidelines Establishing Standards for Safety and Soundness. 60 FR 35674 (July 10, 1995).³ Among other things, the 1995 guidelines provided generally that an insured depository institution should have internal controls and information systems that are appropriate to the size of the institution and the nature, scope, and risk of its activities.

As the Agencies noted in adopting the 1995 safety and soundness guidelines, their purpose in issuing standards as guidelines rather than regulations is to retain the flexibility to determine whether to require an insured depository institution to submit an acceptable compliance plan or to pursue another course of supervisory action, depending on the circumstances and

severity of an institution's noncompliance with one or more of the standards and the significance of the particular standard at issue. See 60 FR at 35675.

The Guidelines adopted today establish standards for management and boards of directors in developing and managing Year 2000 project plans, validating remediation efforts, and planning for contingencies. In appropriate circumstances, an agency will require an insured depository institution that fails to comply with the Guidelines to prepare and submit an acceptable compliance plan. The Agencies will use the rules already in place under the 1995 safety and soundness guidelines to require submission of compliance plans.

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 plan's receipt, the agency must provide written notice to the insured depository institution of whether the 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 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. 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

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.⁴ The standards contained in the Guidelines are based on—and are

intended to be consistent with—key principles contained in the FFIEC guidance.

The Guidelines define certain key terms to help clarify the types of actions insured depository institutions are expected to undertake. For example, the term "mission-critical system" is defined as "an application or system that is vital to the successful continuance of a core business activity." An application that interfaces with a designated mission-critical system and software products also may be deemed a mission-critical system. The Guidelines also set forth definitions for "external system," "internal system," "external third party supplier," "other material third party," "renovation," "business resumption contingency plan," "remediation contingency plan," and "Year 2000 ready or readiness." The Agencies invite comment on whether these terms are defined appropriately and whether the Guidelines should include additional definitions.

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 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 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 will suffice if they have been reviewed and deemed acceptable by the appropriate Agency.

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 the internal mission-critical systems must be done 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

² Section 39 was added to the FDI Act by section 132 of the Federal Deposit Insurance Corporation Improvement Act, Pub. L. 102-242, 105 Stat. 2236, 2267-70 (December 19, 1991), and was subsequently amended by section 318 of the Riegle Community Development and Regulatory Improvement Act (CDRIA), Pub. L. 103-325, 108 Stat. 2160, 2223-24 (September 23, 1994).

³ For a brief history of the Agencies' regulations and guidelines implementing section 39, see 61 FR 43948 (Aug. 27, 1996) (adopting final asset quality and earnings standards).

⁴ 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 above, 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.

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

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.

Another essential component of achieving Year 2000 readiness addressed in the Guidelines is the development and implementation of 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).

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. Finally, the Guidelines require that the board of directors and management must be involved in all stages of the institution's efforts to achieve 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.

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.

Request for Comment

The Agencies invite comment on all aspects of the Guidelines.

Effective Date

The Agencies find good cause for issuing the Guidelines effective immediately, without prior notice and comment. *Cf.* 5 U.S.C. 553(b)(B) (Administrative Procedure Act (APA) provision permitting an agency to issue a rule without prior notice and

comment when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest); 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 computer 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, Pub. L. 105-164, sec. 2, 112 Stat. 32, 32 (1998). Congress expressly found that the Year 2000 computer 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 prior notice and comment procedure is impracticable and contrary to the public interest.

Regulatory Flexibility Act Analysis

An initial regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) is required when an agency is required to publish a general notice of proposed rulemaking. 5 U.S.C. 603. As noted above, the Agencies have concluded, for good cause, that these Guidelines should take immediate effect and, therefore, that a notice of proposed rulemaking is not required. Accordingly, the Agencies have concluded that the RFA does not require an initial regulatory flexibility analysis of these Interim Guidelines.

Nonetheless, the Agencies have considered the likely 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 invite interested persons to submit comments on the impact of the Guidelines on small entities for consideration in the development of final Guidelines.

Paperwork Reduction Act

The Agencies invite comment on:

(1) Whether the collections of information contained in the Guidelines are necessary for the proper performance of each Agency's functions, including whether the information has practical utility;

(2) The accuracy of each Agency's estimate of the burden of the information collections;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collections on respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, minutes, and purchase of services to provide information.

Respondents and Recordkeepers are not required to respond to this collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

OCC: The collection of information requirements contained in the Guidelines have been submitted to and approved by the OMB under its emergency procedures and in accordance with the Paperwork Reduction Act of 1995. 44 U.S.C. 3507. Since OMB clearance is for a 6-month period, OCC will use any comments received to develop its renewed request. Comments on the collections of information should be sent to the Legislative and Regulatory Activities Division (1557-0212), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219, with a copy to the Office of Management and

Budget, Paperwork Reduction Project (1557-0212), Washington, DC 20503.

In essence, the Guidelines incorporate the important elements of the outstanding FFIEC guidance. In addition to the paperwork usually maintained by an insured depository institution in the regular course of business, the FFIEC guidance and the Guidelines impose some additional paperwork burden. This burden is found in appendix B to part 30. The OCC needs this information to assess an insured depository institution's compliance with the Guidelines set forth in appendix B. The likely respondents are national banks.

Estimated number of respondents: 650.

Estimated average annual burden hours per respondent: 60 hours.

Estimated total annual recordkeeping burden: 39,255 hours.

Board: In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320, appendix A.1), the Board reviewed the Guidelines under the authority delegated to the Board by the OMB. Comments on the collections of information should be sent to Mary M. McLaughlin, Chief, Financial Reports Section, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551, with a copy to the Office of Management and Budget, Paperwork Reduction Project (7100-0290), Washington, DC 20503.

In essence, the Guidelines incorporate the important elements of the outstanding FFIEC guidance. In addition to the paperwork usually maintained by an insured depository institution in the regular course of business, the FFIEC guidance and the Guidelines impose some additional paperwork burden. This burden is found in appendix D-2 to part 208. The Board needs this information to assess an insured depository institution's compliance with the Guidelines set forth in appendix D-2. The likely respondents are state member banks.

Estimated number of respondents: 994.

Estimated average annual burden hours per respondent: 20 hours.

Estimated total annual recordkeeping burden: 19,880.

FDIC: The collections of information contained in the Guidelines have been submitted to and approved by the OMB under its emergency procedures and in accordance with the Paperwork Reduction Act of 1995. 44 U.S.C. 3507. Since OMB clearance is for a 6-month period, the FDIC will use any comments received to develop its renewed request. Comments on the collections of

information should be sent to Steven F. Hanft, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429, with a copy to the Office of Management and Budget, Paperwork Reduction Project (3064-0128 Year 2000), Washington, DC 20503.

In essence, the Guidelines incorporate the important elements of the outstanding FFIEC guidance. In addition to the paperwork usually maintained by an insured depository institution in the regular course of business, the FFIEC guidance and the Guidelines impose some additional paperwork burden. This burden is found in appendix B to part 364. The FDIC needs this information to assess an insured depository institution's compliance with the Guidelines set forth in appendix B. The likely respondents are insured nonmember banks.

Estimated number of respondents: 341.

Estimated average annual burden hours per respondent: 68 hours.

Estimated total annual recordkeeping burden: 23,188 hours.

OTS: The collection of information requirements contained in the Guidelines have been submitted to and approved by the OMB under its emergency procedures and in accordance with the Paperwork Reduction Act of 1995. 44 U.S.C. 3507. Since OMB clearance is for a 6-month period, the OTS will use any comments received to develop its renewed request. Comments on the collection of information should be sent to the Regulations and Legislation Division (1550-0051), Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, with a copy to the Office of Management and Budget, Paperwork Reduction Project (1550-0051), Washington, DC 20503.

In essence, the Guidelines incorporate the important elements of the outstanding FFIEC guidance. In addition to the paperwork usually maintained by an insured depository institution in the regular course of business, the FFIEC guidance and the Guidelines impose some additional paperwork burden. This burden is found in appendix B to part 570. The OTS needs this information to assess an insured depository institution's compliance with the Guidelines set forth in appendix B. The likely respondents are savings associations.

Estimated number of respondents: 275.

Estimated average annual burden hours per respondent: 57 hours.

Estimated total annual recordkeeping burden: 15,675 hours.

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), Pub. L. 104-4, applies only when an agency is required to promulgate a general notice of proposed rulemaking or a final rule for which a general notice of proposed rulemaking was published. 2 U.S.C. 1532. As noted above, the Agencies have concluded, for good cause, that a notice of proposed rulemaking is not required. Accordingly, the Agencies have concluded that the UMA does not require an unfunded mandates analysis of the Guidelines.

Moreover, the Agencies 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 Interim Guidelines (All Agencies)

The text of the agencies' uniform interim guidelines appears below:

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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; or the years 1999 and 2000; or 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. 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. 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 the system or application accurately processes, calculates, compares, or sequences date or time data from, into, or between the 20th and 21st centuries; or the years 1999 and 2000; or 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 managing 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 Interim 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 procedures, Bank deposit insurance, Holding companies, Reporting and recordkeeping requirements, Savings associations, Safety and soundness.

Adoption of Uniform Interagency Guidelines. The agency specific adoptions of the uniform interagency 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, 1831p-1.

2. A new appendix B is added to part 30 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: September 21, 1998.

Julie L. Williams,

Acting Comptroller of the Currency.

Federal Reserve System

12 CFR Part 208

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.

Appendix D [Redesignated as Appendix D-1]

2. Appendix D to part 208 is redesignated as Appendix D-1.

3. A new appendix D-2 is added to part 208 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, September 30, 1998.

Jennifer J. Johnson,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Part 364

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. A new Appendix B is added to part 364 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 October, 1998.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

Office of Thrift Supervision

12 CFR Part 570

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. A new appendix B is added to part 570 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: September 29, 1998.

Ellen Seidman,

Director.

[FR Doc. 98-27672 Filed 10-14-98; 8:45 am]

BILLING CODES 4810-33-P, 6210-01-P, 6714-01-P, 6720-01-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 30

[Docket No. 98-13]

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. 98-106]

RIN 1550-AB27

Safety and Soundness Standards

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

ACTION: Interim rule with request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the Agencies) are adopting this interim rule to update their rules of procedure pertaining to safety and soundness standards issued under section 39 of the Federal Deposit Insurance Act (FDI Act). This interim

rule is intended only to incorporate appropriate references to the Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness published elsewhere in this issue of the **Federal Register**.

DATES: This interim rule is effective October 15, 1998. Comments must be received by December 14, 1998.

ADDRESSES: Comments should be directed to:

OCC: Office of the Comptroller of the Currency, Communications Division, 250 E Street, SW, Washington, DC 20219, Attention: Docket No. 98-13. Comments will be available for public inspection and photocopying at the same location. In addition, comments may be sent by facsimile transmission to FAX number (202) 874-5274 or by Internet mail to regs.comments@occ.treas.gov.

Board: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, Docket No. R-1018, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW, Washington, DC. Comments may be inspected in room MP-500 between 9:00 a.m. and 5:00 p.m., except as provided in § 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14.

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

OTS: Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, Attention Docket No. 98-106. These submissions may be hand delivered to 1700 G Street, NW, Washington, DC, from 9:00 a.m. to 5:00 p.m. on business days; sent by facsimile transmission to FAX number (202) 906-7755, or may be sent by e-mail to: