

removal, suspension, or debarment by the OCC, even if the suspension by the other agency did not relate to a banking matter.

Unlike the other amendments in the proposal, which would address an accountant's or firm's ability to perform section 36-required audits, this part of the proposal concerns who may practice before the OCC in other capacities, such as in adjudications, or through preparation of documents for submission to the OCC.

The OCC would also revise a number of sections within part 19 to make conforming and technical changes to implement section 36 of the FDIA and bring procedural aspects of part 19 up to date.

2. Board

The Board proposes to amend its Rules of Practice Before the Board (12 CFR part 263, subpart F) to expand the type of conduct for which an individual may be censured, debarred, or suspended from practice before the Agency. In particular, the Board proposes to revise the description of the conduct that would warrant sanctions to include reckless violations, or reckless aiding and abetting violations, of specified laws and the reckless provision of false or misleading information, or reckless participation in the provision of false or misleading information, to the Board. The regulation currently provides for sanctions only for willful misconduct. The purpose of this proposed amendment is to clarify that conduct more culpable than incompetence, but less culpable than willful or knowing action, may form the basis for a suspension or debarment from practice before the Agency. This change also reflects the modification made to the SEC's rules of practice by the Sarbanes-Oxley Act.

3. FDIC

The FDIC proposes to make a clarifying and conforming amendment to 12 CFR 308.109, which deals with the suspension and disbarment of the right of any counsel to appear or practice before the FDIC, to specify that an application for reinstatement must comply with the general filing procedures established by part 303. The amendment would add a new sentence before the current last sentence of section 308.109(b)(3) to read as follows: "The application shall comply with the requirements of 12 CFR 303.3."

C. Comment Solicitation

The Agencies ask for comment on all aspects of the proposed rules. Section

722 of the Gramm-Leach-Bliley Act, Pub. L. 106–102, sec. 722, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposal easier to understand. For example:

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

D. Community Bank Comment Request

The Agencies invite comment on the impact of this proposal on community banks. The Agencies recognize that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, we specifically request comments on the impact of this proposal on community banks' current resources and available personnel with the requisite expertise, and whether the goals of the proposed regulation could be achieved, for community banks, through an alternative approach.

E. Regulatory Flexibility Act

OCC: Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), the appropriate Federal banking agencies must either provide an Initial Regulatory Flexibility Analysis (IRFA) with a proposed rule or certify that the rule would not have a significant economic impact on a substantial number of small entities. For purposes of this Regulatory Flexibility Analysis and proposed regulation, the OCC defines "small entities" to be those national banks with less than \$150 million in total assets. For other entities that could be affected by this rule, such as accountants and accounting firms, a small entity is defined as an accounting office with \$7 million or less in annual receipts.

We have reviewed the impact this proposed rule will have on small banks. Based on that review, we certify that the proposed rule will not have a significant

economic impact on a substantial number of small entities. The basis for the certification is that the requirement for audits does not apply to national banks with less than \$500 million in total assets. In addition, only a limited number of small accounting firms provide section 36 audit services to national banks. For these reasons, the OCC does not anticipate that the proposal will affect a substantial number of small entities.

Board: Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the suspension and debarment amendments proposed in this rulemaking will not have a significant adverse economic impact on a substantial number of small entities. For purposes of this Regulatory Flexibility Analysis, the Board defines "small entity" as (1) any insured state member bank with less than \$150 million in total assets, or (2) any bank holding company with a subsidiary insured state member bank with less than \$150 million in total assets. For other entities that could be affected by this rule, such as accountants and accounting firms, a small entity is defined as an accounting office with \$7 million or less in annual receipts. The basis for the Board's certification is that the rule will not apply to state member banks that have less than \$500 million in total assets. In addition, only a limited number of small accounting firms provide section 36 audit services to institutions that are regulated by the Federal Reserve.

FDIC: The rule proposes and requests comment on amendments to the FDIC's rules of practice (12 CFR part 308). These amendments would add rules of practice and standards of conduct with regard to accountants and accounting firms engaged by State nonmember banks. The FDIC hereby certifies, pursuant to section 605(b) of the RFA, 5 U.S.C. 605(b), that the proposed suspension and debarment amendments will not, if promulgated through a final rule, have a significant economic impact on a substantial number of small entities. The basis for the certification is that the rule will not apply to insured depository institutions that have less than \$150 million in total assets. Furthermore, only a limited number of small accounting firms provide section 36 audit services to insured depository institutions for which the FDIC is the appropriate Federal banking agency.

OTS: Under the RFA, OTS must either provide an IRFA with this proposed rule, or certify that the rule would not have a significant economic impact on a substantial number of small entities. For purposes of this RFA analysis and