

action, may form the basis for a suspension or debarment from practice before the Board. This change also reflected the modification made to the SEC's rules of practice by the Sarbanes-Oxley Act.

The Board did not receive any comments on these proposed changes. Accordingly, the conforming and technical changes are adopted in the final rule as proposed.

FDIC

The FDIC proposed making 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."

The FDIC did not receive any comments on these proposed changes. Accordingly, the conforming and technical changes are adopted in the final rule as proposed.

V. Regulatory Analysis

A. Regulatory Flexibility Act

OCC: Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the appropriate Federal banking agencies must either provide a Final Regulatory Flexibility Analysis for a final rule or certify that the rule will not have a significant economic impact on a substantial number of small entities. For purposes of this Regulatory Flexibility Analysis and final 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 final rule will have on small banks. Based on that review, we certify that the final 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 RFA, 5 U.S.C. 605(b), the Board certifies that the suspension and debarment amendments in this final 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 final 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 FDIC certifies, pursuant to section 605(b) of the RFA, 5 U.S.C. 605(b), that the final suspension and debarment amendments will not 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 a Final Regulatory Flexibility Analysis, or certify that the rule will not have a significant economic impact on a substantial number of small entities. For purposes of this RFA analysis, the OTS defines "small banks" to be those savings associations with less than \$150 million in total assets.

Pursuant to section 605(b) of the RFA, 5 U.S.C. 605(b) certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The basis of this certification is that this rule does not apply to savings associations with less than \$500 million in assets.

B. Paperwork Reduction Act

The Agencies have determined that this proposed rule does not involve a collection of information pursuant to the provisions of the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

C. Executive Order 12866

The OCC and OTS have determined that this final rule is not a significant regulatory action under Executive Order 12866.

D. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC and OTS have determined that the final rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of \$100 million or more in any one year. Accordingly, this rulemaking requires no further analysis under the Unfunded Mandates Act.

List of Subjects

12 CFR Part 19

Administrative practice and procedure, Crime, Equal access to justice, Investigations, National banks, Penalties, Securities.

12 CFR Part 263

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

12 CFR Part 308

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Claims, Crime, Equal access to justice, Investigations, Lawyers, Penalties, State nonmember banks.

12 CFR Part 513

Accountants, Administrative practice and procedure, Lawyers.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

■ For reasons set out in the joint preamble, part 19 of chapter I of title 12