

Financial Institution Letters

SECURITY STANDARDS FOR CUSTOMER INFORMATION

FIL-22-2001
March 14, 2001

TO: CHIEF EXECUTIVE OFFICER AND COMPLIANCE OFFICER
SUBJECT: *Guidelines Establishing Standards for Safeguarding Customer Information*

The Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision have jointly approved and issued the attached guidelines establishing standards for safeguarding customer information as required by the Gramm-Leach-Bliley Act (GLBA).

GLBA requires the banking agencies to establish appropriate standards for financial institutions relating to the administrative, technical and physical safeguards of customer records and information. The standards' objectives are to:

- ensure the security and confidentiality of customer information;
- protect against any anticipated threats or hazards to the security or integrity of such information; and
- protect against unauthorized access to or use of customer information that could result in substantial harm or inconvenience to any customer.

Information Security Program

The guidelines describe the agencies' expectations for creating, implementing and maintaining an information security program. This program must include administrative, technical and physical safeguards appropriate to the size and complexity of the institution and the nature and scope of its activities.

The guidelines also describe the oversight role of the institution's board of directors in this process and its continuing duty to evaluate and oversee the program's overall status. Institutions are required to:

- identify and assess the risks that may threaten customer information;
- develop a written plan containing policies and procedures to manage and control these risks;
- implement and test the plan; and
- adjust the plan on a continuing basis to account for changes in technology, sensitivity of customer information, and internal or external threats to information security.

Risk Assessment

The guidelines describe the elements of a comprehensive risk-management plan designed to control identified risks and achieve the overall objective of ensuring the security and confidentiality of customer information. They identify the factors an institution should consider in evaluating the adequacy of its policies and procedures to effectively manage these risks commensurate with the sensitivity of the information, as well as the complexity and scope of the institution and its activities. The agencies intend that these elements will provide general parameters for institutions of varying sizes, scopes of operation and risk-management structures.

Involvement of the Board of Directors

The guidelines describe the responsibilities of the board of directors and management in developing and implementing an information security program. The board, or an appropriate board committee, is expected to:

- approve the institution's written information security program that complies with these guidelines; and
- oversee efforts to develop, implement and maintain an effective information security program, including regularly reviewing reports filed by management.

Outsourcing Arrangements

To confirm that its service providers have implemented an effective information security program to protect customer information and customer information systems consistent with these guidelines, an institution should exercise appropriate due diligence in managing and monitoring its outsourcing arrangements.

For more information, please contact Jeffrey M. Kopchik (202-898-3872) or Thomas J. Tuzinski (202-898-6748) in the FDIC's Division of Supervision, or Robert A. Patrick (202-898-3757) in the FDIC's Legal Division.

Michael J. Zamorski
Acting Director

[Attachment: Feb. 1, 2001, *Federal Register*, pages 8616-8641](#)

Distribution: FDIC-Supervised Banks (Commercial and Savings)

NOTE: Paper copies of FDIC financial institution letters may be obtained through the FDIC's Public Information Center, 801 17th Street, NW, Room 100, Washington, DC 20434 (800-276-6003 or 202-416-6940).

Financial Institution Letters

[Federal Register: February 1, 2001 (Volume 66, Number 22)]

[Rules and Regulations]

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Part II

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 Standards for Safeguarding Customer
Information and Rescission of Year 2000 Standards for Safety and

Soundness; Final Rule

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 30

[Docket No. 00-35]
RIN 1557-AB84

FEDERAL RESERVE SYSTEM

12 CFR Parts 208, 211, 225, and 263

[Docket No. R-1073]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 308 and 364

RIN 3064-AC39

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 568 and 570

[Docket No. 2000-112]
RIN 1550-AB36

Interagency Guidelines Establishing Standards for Safeguarding
Customer Information and Rescission of Year 2000 Standards for Safety
and Soundness

AGENCIES: The Office of the Comptroller of the Currency (OCC),
Treasury; Board of Governors of the Federal Reserve System (Board);
Federal Deposit Insurance Corporation (FDIC); and Office of Thrift
Supervision (OTS), Treasury.

ACTION: Joint final rule.

SUMMARY: The Office of the Comptroller of the Currency, Board of
Governors of the Federal Reserve System, Federal Deposit Insurance
Corporation, and Office of Thrift Supervision (collectively, the
Agencies) are publishing final Guidelines establishing standards for
safeguarding customer information that implement sections 501 and
505(b) of the Gramm-Leach-Bliley Act (the G-L-B Act or Act).

Section 501 of the G-L-B Act requires the Agencies to establish
appropriate standards for the financial institutions subject to their

respective jurisdictions relating to administrative, technical, and physical safeguards for customer records and information. As described in the Act, these safeguards are to: insure the security and confidentiality of customer records and information; protect against any anticipated threats or hazards to the security or integrity of such records; and protect against unauthorized access to or use of such records or information that could result in substantial harm or inconvenience to any customer. The Agencies are to implement these standards in the same manner, to the extent practicable, as standards prescribed pursuant to section 39(a) of the Federal Deposit Insurance Act (FDI Act). These final Guidelines implement the requirements described above.

The Agencies previously issued guidelines establishing Year 2000 safety and soundness standards for insured depository institutions pursuant to section 39 of the FDI Act. Since the events for which these guidelines were issued have passed, the Agencies have concluded that the guidelines are no longer necessary and are rescinding these guidelines.

Effective Date: The joint final rule is effective July 1, 2001.

Applicability date: The Year 2000 Standards for Safety and Soundness are no longer applicable as of March 5, 2001.

FOR FURTHER INFORMATION CONTACT:

OCC

John Carlson, Deputy Director for Bank Technology, (202) 874-5013; or Deborah Katz, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874-5090.

Board

Heidi Richards, Assistant Director, Division of Banking Supervision and Regulation, (202) 452-2598; Stephanie Martin, Managing Senior Counsel, Legal Division, (202) 452-3198; or Thomas E. Scanlon, Senior Attorney, Legal Division, (202) 452-3594. For the hearing impaired only, contact Janice Simms, Telecommunication Device for the Deaf (TDD) (202) 452-3544, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

FDIC

Thomas J. Tuzinski, Review Examiner, Division of Supervision, (202) 898-6748; Jeffrey M. Kopchik, Senior Policy Analyst, Division of Supervision, (202) 898-3872; or Robert A. Patrick, Counsel, Legal Division, (202) 898-3757.

OTS

Jennifer Dickerson, Manager, Information Technology, Examination Policy, (202) 906-5631; or Christine Harrington, Counsel, Banking and Finance, Regulations and Legislation Division, (202) 906-7957.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

- I. Background
- II. Overview of Comments Received
- III. Section-by-Section Analysis

IV. Regulatory Analysis

- A. Paperwork Reduction Act
- B. Regulatory Flexibility Act
- C. Executive Order 12866
- D. Unfunded Mandates Act of 1995

I. Background

On November 12, 1999, President Clinton signed the G-L-B Act (Pub. L. 106-102) into law. Section 501, titled "Protection of Nonpublic Personal Information", requires the Agencies, the National Credit Union Administration, the Securities and Exchange Commission, and the Federal Trade Commission to establish appropriate standards for the financial institutions subject to their respective jurisdictions relating to the administrative, technical, and physical safeguards for customer records and information. As stated in section 501, these safeguards are to: (1) insure the security and confidentiality of customer records and information; (2) protect against any anticipated threats or hazards to the security or integrity of such records; and (3) protect against unauthorized access to or use of such records or information that would result in substantial harm or inconvenience to any customer.

Section 505(b) of the G-L-B Act provides that these standards are to be implemented by the Agencies in the same manner, to the extent practicable, as standards prescribed pursuant to section 39(a) of the FDI Act. \1\ Section 39(a) of the FDI Act authorizes the Agencies to establish operational and managerial standards for insured depository institutions relative to, among other things, internal controls, information systems, and internal audit systems, as well as such other operational and managerial standards as the Agencies determine to be appropriate. \2\

\1\ Section 39 applies only to insure depository institutions, including insured branches of foreign banks. The Guidelines, however, will also apply to certain uninsured institutions, such as bank holding companies, certain nonbank subsidiaries of bank holding companies and insured depository institutions, and uninsured branches and agencies of foreign banks. See sections 501 and 505(b) of the G-L-B Act.

\2\ OTS has placed its information security guidelines in appendix B to 12 CFR part 570, with the provisions implementing section 39 of the FDI Act. At the same time, OTS has adopted a regulatory requirement that the institutions OTS regulates comply with the proposed Guidelines. Because information security guidelines are similar to physical security procedures, OTS has included a provision in 12 CFR part 568, which covers primarily physical security procedures, requiring compliance with the Guidelines in appendix B to part 570.

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II. Overview of Comments Received

On June 26, 2000, the Agencies published for comment the proposed Interagency Guidelines Establishing Standards for Safeguarding Customer Information and Rescission of Year 2000 Standards for Safety and Soundness in the Federal Register (65 FR 39472). The public comment

period closed August 25, 2000. The Agencies collectively received a total of 206 comments in response to the proposal, although many commenters sent copies of the same letter to each of the Agencies. Those combined comments included 49 from banks, 7 from savings associations, 60 from financial institution holding companies; 50 from financial institution trade associations; 33 from other business entities; and four from state regulators. The Federal Reserve also received comments from three Federal Reserve Banks.

The Agencies invited comment on all aspects of the proposed Guidelines, including whether the rules should be issued as guidelines or as regulations. Commenters overwhelmingly supported the adoption of guidelines, with many commenters offering suggestions for ways to improve the proposed Guidelines as discussed below. Many commenters cited the benefits of flexibility and the drawbacks of prescriptive requirements that could become rapidly outdated as a result of changes in technology.

The Agencies also requested comments on the impact of the proposal on community banks, recognizing that community banks operate with more limited resources than larger institutions and may present a different risk profile. In general, community banks urged the Agencies to issue guidelines that are not prescriptive, that do not require detailed policies or reporting by banks that share little or no information outside the bank, and that provide flexibility in the design of an information security program. Some community banks indicated that the Guidelines are unnecessary because they already have information security programs in place. Others requested clarification of the impact of the Guidelines on banks that do not share any information in the absence of a customer's consent.

In light of the comments received, the Agencies have decided to adopt the Guidelines, with several changes as discussed below to respond to the commenters' suggestions. The respective texts of the Agencies' Guidelines are substantively identical. In directing the Agencies to issue standards for the protection of customer records and information, Congress provided that the standards apply to all financial institutions, regardless of the extent to which they may disclose information to affiliated or nonaffiliated third parties, electronically transfer data with customers or third parties, or record data electronically. Because the requirements of the Act apply to a broad range of financial institutions, the Agencies believe that the Guidelines must establish appropriate standards that allow each institution the discretion to design an information security program that suits its particular size and complexity and the nature and scope of its activities. In many instances, financial institutions already will have information security programs that are consistent with these Guidelines, because key components of the Guidelines were derived from security-related supervisory guidance previously issued by the Agencies and the Federal Financial Institutions Examination Council (FFIEC). In such situations, little or no modification to an institution's program will be required.

Below is a section-by-section analysis of the final Guidelines.

III. Section-by-Section Analysis

The discussion that follows applies to each Agency's Guidelines.

I. Introduction

Paragraph I. of the proposal set forth the general purpose of the Guidelines, which is to provide guidance to each financial institution in establishing and implementing administrative, technical, and

physical safeguards to protect the security, confidentiality, and integrity of customer information. This paragraph also set forth the statutory authority for the Guidelines, including section 39(a) of the FDI Act (12 U.S.C. 1831p-1) and sections 501 and 505(b) of the G-L-B Act (15 U.S.C. 6801 and 6805(b)). The Agencies received no comments on this paragraph, and have adopted it as proposed.

I.A. Scope

Paragraph I.A. of the proposal described the scope of the Guidelines. Each Agency defined specifically those entities within its particular scope of coverage in this paragraph of the Guidelines.

The Agencies received no comments on the issue of which entities are covered by the Guidelines, and have adopted paragraph I.A. as proposed.

I.B. Preservation of Existing Authority

Paragraph I.B. of the proposal made clear that in issuing these Guidelines none of the Agencies is, in any way, limiting its authority to address any unsafe or unsound practice, violation of law, unsafe or unsound condition, or other practice, including any condition or practice related to safeguarding customer information. As noted in the preamble to the proposal, any action taken by any Agency under section 39(a) of the FDI Act and these Guidelines may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the Agency. The Agencies received no comments on this paragraph, and have adopted paragraph I.B. as proposed.

I.C.1. Definitions

Paragraph I.C. set forth the definitions of various terms for purposes of the Guidelines.^{3\} It also stated that terms used in the Guidelines have the same meanings as set forth in sections 3 and 39 of the FDI Act (12 U.S.C. 1813 and 1831p-1).

^{3\} In addition to the definitions discussed below, the Board's Guidelines in 12 CFR parts 208 and 225 contain a definition of "subsidiary", which described the state member bank and bank holding company subsidiaries that are subject to the Guidelines.

The Agencies received several comments on the proposed definitions, and have made certain changes as discussed below. The Agencies also have reordered proposed paragraph I.C. so that the statement concerning the reliance on sections 3 and 39(a) of the FDI Act is now in paragraph I.C.1., with the definitions appearing in paragraphs I.C.2.a.-e. The defined terms have been placed in alphabetical order in the final Guidelines.

I.C.2.a. Board of Directors

The proposal defined "board of directors" to mean, in the case of a branch or agency of a foreign bank, the managing official in charge of the branch or agency.^{4\} The Agencies received no comments on this proposed definition, and have adopted it without change.

^{4\} The OTS version of the Guidelines does not include this

definition because OTS does not regulate foreign institutions. Paragraph I of the OTS Guidelines has been renumbered accordingly.

I.C.2.b. Customer

The proposal defined "customer" in the same way as that term is defined in section __.3(h) of the Agencies' rule captioned "Privacy of Consumer Financial Information" (Privacy Rule).\5\

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The Agencies proposed to use this definition in the Guidelines because section 501(b) refers to safeguarding the security and confidentiality of "customer" information. Given that Congress used the same term for both the 501(b) standards and for the sections concerning financial privacy, the Agencies have concluded that it is appropriate to use the same definition in the Guidelines that was adopted in the Privacy Rule.

\6\ See 65 FR 35162 (June 1, 2000). Citations to the interagency Privacy Rule in this preamble are to sections only, leaving blank the citations to the part numbers used by each agency.

Under the Privacy Rule, a customer is a consumer who has established a continuing relationship with an institution under which the institution provides one or more financial products or services to the consumer to be used primarily for personal, family or household purposes. "Customer" does not include a business, nor does it include a consumer who has not established an ongoing relationship with a financial institution (e.g., an individual who merely uses an institution's ATM or applies for a loan). See sections __.3(h) and (i) of the Privacy Rule. The Agencies solicited comment on whether the definition of "customer" should be broadened to provide a common information security program for all types of records under the control of a financial institution.

The Agencies received many comments on this definition, almost all of which agreed with the proposed definition. Although a few commenters indicated they would apply the same security program to both business and consumer records, the vast majority of commenters supported the use of the same definition of "customer" in the Guidelines as is used in the Privacy Rule. They observed that the use of the term "customer" in section 501 of the G-L-B Act, when read in the context of the definitions of "consumer" and "customer relationship" in section 509, reflects the Congressional intent to distinguish between certain kinds of consumers for the information security standards and the other privacy provisions established under subtitle A of Title V.

The Agencies have concluded that the definition of "customer" used in the Guidelines should be consistent with the definition established in section __.3(h) of the Privacy Rule. The Agencies believe, therefore, that the most reasonable interpretation of the applicable provisions of subtitle A of Title V of the Act is that a financial institution is obligated to protect the security and confidentiality of the nonpublic personal information of its consumers with whom it has a customer relationship. As a practical matter, a financial institution may also design or implement its information security program in a manner that encompasses the records and information of its other consumers and its business clients.\6\

6) The Agencies recognize that "customer" is defined more broadly under Subtitle B of Title V of the Act, which, in general, makes it unlawful for any person to obtain or attempt to obtain customer information of a financial institution by making false, fictitious, or fraudulent statements. For the purpose of that subtitle, the term "customer" means "any person (or authorized representative of a person) to whom the financial institution provides a product or service, including that of acting as a fiduciary." (See section 527(1) of the Act.) In light of the statutory mandate to "prescribe such revisions to such regulations and guidelines as may be necessary to ensure that such financial institutions have policies, procedures, and controls in place to prevent the unauthorized disclosure of customer financial information" (section 525), the Agencies considered modifying these Guidelines to cover other customers, namely, business entities and individuals who obtain financial products and services for purposes other than personal, family, or household purposes. The Agencies have concluded, however, that defining "customer" to accommodate the range of objectives set forth in Title V of the Act is unnecessary. Instead, the Agencies have included a new paragraph III.C.1.a, described below, and plan to issue guidance and other revisions to the applicable regulations, as may be necessary, to satisfy the requirements of section 525 of the Act.

I.C.2.c. Customer Information

The proposal defined "customer information" as any records containing nonpublic personal information, as defined in section __.3(n) of the Privacy Rule, about a customer. This included records, data, files, or other information in paper, electronic, or other form that are maintained by any service provider on behalf of an institution. Although section 501(b) of the G-L-B Act refers to the protection of both customer "records" and "information", for the sake of simplicity, the proposed Guidelines used the term "customer information" to encompass both information and records.

The Agencies received several comments on this definition. The commenters suggested that the proposed definition was too broad because it included files "containing" nonpublic personal information. The Agencies believe, however, that a financial institution's security program must apply to files that contain nonpublic personal information in order to adequately protect the customer's information. In deciding what level of protection is appropriate, a financial institution may consider the fact that a given file contains very little nonpublic personal information, but that fact would not render the file entirely beyond the scope of the Guidelines. Accordingly, the Agencies have adopted a definition of "customer record" that is substantively the same as the proposed definition. The Agencies have, however, deleted the reference to "data, files, or other information" from the final Guidelines, since each is included in the term "records" and also is covered by the reference to "paper, electronic, or other form".

I.C.2.d. Customer Information System

The proposal defined "customer information system" to be electronic or physical methods used to access, collect, store, use, transmit, or protect customer information. The Agencies received a few comments on this definition, mostly from commenters who stated that it is too broad. The Agencies believe that the definition needs to be

sufficiently broad to protect all customer information, wherever the information is located within a financial institution and however it is used. Nevertheless, the broad scope of the definition of "customer information system" should not result in an undue burden because, in other important respects, the Guidelines allow a high degree of flexibility for each institution to design a security program that suits its circumstances.

For these reasons, the Agencies have adopted the definition of "customer information system" largely as proposed. However, the phrase "electronic or physical" in the proposal has been deleted because each is included in the term "any methods". The Agencies also have added a specific reference to records disposal in the definition of "customer information system." This is consistent with the proposal's inclusion of access controls in the list of items a financial institution is to consider when establishing security policies and procedures (see discussion of paragraph III.C.1.a., below), given that inadequate disposal of records may result in identity theft or other misuse of customer information. Under the final Guidelines, a financial institution's responsibility to safeguard customer information continues through the disposal process.

I.C.2.e. Service Provider

The proposal defined a "service provider" as any person or entity that maintains or processes customer information for a financial institution, or is otherwise granted access to customer information through its provision of services to an institution. One commenter urged the Agencies to modify this definition so that it would not include a financial institution's attorneys, accountants, and appraisers. Others suggested deleting the phrase "or

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is otherwise granted access to customer information through its provision of services to an institution".

The Agencies believe that the Act requires each financial institution to adopt a comprehensive information security program that is designed to protect against unauthorized access to or use of customers' nonpublic personal information. Disclosing information to a person or entity that provides services to a financial institution creates additional risks to the security and confidentiality of the information disclosed. In order to protect against these risks, a financial institution must take appropriate steps to protect information that it provides to a service provider, regardless of who the service provider is or how the service provider obtains access. The fact that an entity obtains access to customer information through, for instance, providing professional services does not obviate the need for the financial institution to take appropriate steps to protect the information. Accordingly, the Agencies have determined that, in general, the term "service provider" should be broadly defined to encompass a variety of individuals or companies that provide services to the institution.

This does not mean, however, that a financial institution's methods for overseeing its service provider arrangements will be the same for every provider. As explained in the discussion of paragraph III.D., a financial institution's oversight responsibilities will be shaped by the institution's analysis of the risks posed by a given service provider. If a service provider is subject to a code of conduct that imposes a duty to protect customer information consistent with the objectives of these Guidelines, a financial institution may take that

duty into account when deciding what level of oversight it should provide.

Moreover, a financial institution will be responsible under the final Guidelines for overseeing its service provider arrangements only when the service is provided directly to the financial institution. The Agencies clarified this point by amending the definition of "service provider" in the final Guidelines to state that it applies only to a person or entity that maintains, processes, or otherwise is permitted access to customer information through its provision of services directly to the financial institution. Thus, for instance, a payment intermediary involved in the collection of a check but that has no correspondent relationship with a financial institution would not be considered a service provider of that financial institution under this rule. By contrast, a financial institution's correspondent bank would be considered its service provider. Nevertheless, the financial institution may take into account the fact that the correspondent bank is itself a financial institution that is subject to security standards under section 501(b) when it determines the appropriate level of oversight for that service provider.\7\

\7\ Similarly, in the case of a service provider that is not subject to these Guidelines but is subject to standards adopted by its primary regulator under section 501(b) of the G-L-B Act, a financial institution may take that fact into consideration when deciding what level of oversight is appropriate for that service provider.

In situations where a service provider hires a subservicer,\8\ the subservicer would not be a "service provider" under the final Guidelines. The Agencies recognize that it would be inappropriate to impose obligations on a financial institution to select and monitor subservicers in situations where the financial institution has no contractual relationship with that person or entity. When conducting due diligence in selecting its service providers (see discussion of paragraph III.D., below), however, a financial institution must determine that the service provider has adequate controls to ensure that the subservicer will protect the customer information in a way that meets the objectives of these Guidelines.

\8\ The term "subservicer" means any person who has access to an institution's customer information through its provision of services to the service provider and is not limited to mortgage subservicers.

II. Standards for Safeguarding Customer Information

II.A. Information Security Program

The proposed Guidelines described the Agencies' expectations for the creation, implementation, and maintenance of a comprehensive information security program. As noted in the proposal, this program must include administrative, technical, and physical safeguards appropriate to the size and complexity of the institution and the nature and scope of its activities.

Several commenters representing large and complex organizations were concerned that the term "comprehensive information security

program" required a single and uniform document that must apply to all component parts of the organization. In response, the Agencies note that a program that includes administrative, technical, and physical safeguards will, in many instances, be composed of more than one document. Moreover, use of this term does not require that all parts of an organization implement a uniform program. However, the Agencies will expect an institution to coordinate all the elements of its information security program. Where the elements of the program are dispersed throughout the institution, management should be aware of these elements and their locations. If they are not maintained on a consolidated basis, management should have an ability to retrieve the current documents from those responsible for the overall coordination and ongoing evaluation of the program.

The Board received comment on its proposal to revise the appendix to Regulation Y regarding the provision that would require a bank holding company to ensure that each of its subsidiaries is subject to a comprehensive information security program.¹⁹ This comment urged the Board to eliminate that provision and argued, in part, that the requirement assumes that a bank holding company has the power to impose such controls upon its subsidiary companies. These commenters recommended, instead, that the standards should be limited to customer information in the possession or control of the bank holding company.

¹⁹ The appendix provided that the proposed Guidelines would be applicable to customer information maintained by or on behalf of bank holding companies and their nonbank subsidiaries or affiliates (except brokers, dealers, persons providing insurance, investment companies, and investment advisors) for which the Board has supervisory authority. See 65 FR 39484 (June 26, 2000).

Under the Bank Holding Company Act of 1956 and the Board's Regulation Y, a subsidiary is presumed to be controlled directly or indirectly by the holding company. 12 U.S.C. 1841(d); 12 CFR 225.2(o). Moreover, the Board believes that a bank holding company is ultimately responsible for ensuring that its subsidiaries comply with the standards set forth under these Guidelines. The Board recognizes, however, that a bank holding company may satisfy its obligations under section 501 of the GLB Act through a variety of measures, such as by including a subsidiary within the scope of its information security program or by causing the subsidiary to implement a separate information security program in accordance with these Guidelines.

II.B. Objectives

Paragraph II.B. of the proposed Guidelines described the objectives that each financial institution's information security program should be designed to achieve. These objectives tracked the objectives as stated in section 501(b)(1)-(3), adding only that the security

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program is to protect against unauthorized access that could risk the safety and soundness of the institution. The Agencies requested comment on whether there are additional or alternative objectives that should be included in the Guidelines.

The Agencies received several comments on this proposed paragraph, most of which objected to language that, in the commenters' view, required compliance with objectives that were impossible to meet. Many

commenters stated, for instance, that no information security program can ensure that there will be no problems with the security or confidentiality of customer information. Others criticized the objective that required protection against any anticipated threat or hazard. A few commenters questioned the objective of protecting against unauthorized access that could result in inconvenience to a customer, while others objected to the addition of the safety and soundness standard noted above.

The Agencies do not believe the statute mandates a standard of absolute liability for a financial institution that experiences a security breach. Thus, the Agencies have clarified these objectives by stating that each security program is to be designed to accomplish the objectives stated. With the one exception discussed below, the Agencies have otherwise left unchanged the statement of the objectives, given that these objectives are identical to those set out in the statute.

In response to comments that objected to the addition of the safety and soundness standard, the Agencies have deleted that reference in order to make the statement of objectives identical to the objectives identified in the statute. The Agencies believe that risks to the safety and soundness of a financial institution may be addressed through other supervisory or regulatory means, making it unnecessary to expand the statement of objectives in this rulemaking.

Some commenters asked for clarification of a financial institution's responsibilities when a customer authorizes a third party to access that customer's information. For purposes of the Guidelines, access to or use of customer information is not "unauthorized" access if it is done with the customer's consent. When a customer gives consent to a third party to access or use that customer's information, such as by providing the third party with an account number, PIN, or password, the Guidelines do not require the financial institution to prevent such access or monitor the use or redisclosure of the customer's information by the third party. Finally, unauthorized access does not mean disclosure pursuant to one of the exceptions in the Privacy Rule.

III. Develop and Implement Information Security Program

III.A. Involve the Board of Directors

Paragraph III.A. of the proposal described the involvement of the board and management in the development and implementation of an information security program. As explained in the proposal, the board's responsibilities are to: (1) Approve the institution's written information security policy and program; and (2) oversee efforts to develop, implement, and maintain an effective information security program, including reviewing reports from management. The proposal also laid out management's responsibilities for developing, implementing, and maintaining the security program.

The Agencies received a number of comments regarding the requirement of board approval of the information security program. Some commenters stated that each financial institution should be allowed to decide for itself whether to obtain board approval of its program. Others suggested that approval by either a board committee or at the holding company level might be appropriate. Still others suggested modifying the Guidelines to require only that the board approve the initial information security program and delegate subsequent review and approval of the program to either a committee or an individual.

The Agencies believe that a financial institution's overall information security program is critical to the safety and soundness of the institution. Therefore, the final Guidelines continue to place

responsibility on an institution's board to approve and exercise general oversight over the program. However, the Guidelines allow the entire board of a financial institution, or an appropriate committee of the board to approve the institution's written security program. In addition, the Guidelines permit the board to assign specific implementation responsibilities to a committee or an individual.

One commenter suggested that the Guidelines be revised to provide that if a holding company develops, approves, and oversees the information security program that applies to its bank and nonbank subsidiaries, there should be no separate requirement for each subsidiary to do the same thing, as long as those subsidiaries agree to abide by the holding company's security program. The Agencies agree that subsidiaries within a holding company can use the security program developed at the holding company level. However, if subsidiary institutions choose to use a security program developed at the holding company level, the board of directors or an appropriate committee at each subsidiary institution must conduct an independent review to ensure that the program is suitable and complies with the requirements prescribed by the subsidiary's primary regulator. See 12 U.S.C. 505. Once the subsidiary institution's board, or a committee thereof, has approved the security program, it must oversee the institution's efforts to implement and maintain an effective program.

The Agencies also received comments suggesting that use of the term "oversee" conveyed the notion that a board is expected to be involved in day-to-day monitoring of the development, implementation, and maintenance of an information security program. The Agencies' use of the term "oversee" is meant to convey a board's conventional supervisory responsibilities. Day-to-day monitoring of any aspect of an information security program is a management responsibility. The final Guidelines reflect this by providing that the board must oversee the institution's information security program but may assign specific responsibility for its implementation.

The Agencies invited comment on whether the Guidelines should require that the board designate a Corporate Information Security Officer or other responsible individual who would have the authority, subject to the board's approval, to develop and administer the institution's information security program. The Agencies received a number of comments suggesting that the Agencies should not require the creation of a new position for this purpose. Some financial institutions also stated that hiring one or more additional staff for this purpose would impose a significant burden. The Agencies believe that a financial institution will not need to create a new position with a specific title for this purpose, as long as the institution has adequate staff in light of the risks to its customer information. Regardless of whether new staff are added, the lines of authority and responsibility for development, implementation, and administration of a financial institution's information security program need to be well defined and clearly articulated.\10\

\10\ The Agencies note that other regulations already require a financial institution to designate a security officer for different purposes. See 12 CFR 21.2; 12 CFR 208.61(b).

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The proposal identified three responsibilities of management in the development of an information security program. They were to: (1)

Evaluate the impact on a financial institution's security program of changing business arrangements and changes to customer information systems; (2) document compliance with these Guidelines; and (3) keep the board informed of the overall status of the institution's information security program. A few commenters objected to the Agencies assigning specific tasks to management. These commenters did not object to the tasks per se, but suggested that the Agencies allow an institution's board and management to decide who within the institution is to carry out the tasks.

The Agencies agree that a financial institution is in the best position to determine who should be assigned specific roles in implementing the institution's security program. Accordingly, the Agencies have deleted the separate provision assigning specific roles to management. The responsibilities that were contained in this provision are now included in other paragraphs of the Guidelines.

III.B. Assess Risk

Paragraph III.B. of the proposal described the risk assessment process to be used in the development of the information security program. Under the proposal, a financial institution was to identify and assess the risks to customer information. As part of that assessment, the institution was to determine the sensitivity of the information and the threats to the institution's systems. The institution also was to assess the sufficiency of its policies, procedures, systems, and other arrangements in place to control risk. Finally, the institution was to monitor, evaluate, and adjust its risk assessment in light of changes in areas identified in the proposal.

The Agencies received several comments on these provisions, most of which focused on the requirement that financial institutions do a sensitivity analysis. One commenter noted that "customer information" is defined to mean "nonpublic personal information" as defined in the G-L-B Act, and that the G-L-B Act provides the same level of coverage for all nonpublic personal information. The commenter stated that it is therefore unclear how the level of sensitivity would affect an institution's obligations with respect to the security of this information.

While the Agencies agree that all customer information requires protection, the Agencies believe that requiring all institutions to afford the same degree of protection to all customer information may be unnecessarily burdensome in many cases. Accordingly, the final Guidelines continue to state that institutions should take into consideration the sensitivity of customer information. Disclosure of certain information (such as account numbers or access codes) might be particularly harmful to customers if the disclosure is not authorized. Individuals who try to breach the institution's security systems may be likely to target this type of information. When such information is housed on systems that are accessible through public telecommunications networks, it may require more and different protections, such as encryption, than if it were located in a locked file drawer. To provide flexibility to respond to these different security needs in the way most appropriate, the Guidelines confer upon institutions the discretion to determine the levels of protection necessary for different categories of information. Institutions may treat all customer information the same, provided that the level of protection is adequate for all the information.

Other commenters suggested that the risk assessment requirement be tied to reasonably foreseeable risks. The Agencies agree that the security program should be focused on reasonably foreseeable risks and have amended the final Guidelines accordingly.

The final Guidelines make several other changes to this paragraph to improve the order of the Guidelines and to eliminate provisions that were redundant in light of responsibilities outlined elsewhere. For instance, while the proposal stated that the risk assessment function included the need to monitor for relevant changes to technology, sensitivity of customer information, and threats to information security and make adjustments as needed, that function has been incorporated into the discussion of managing and controlling risk in paragraphs III.C.3. and III.E.

Thus, under the Guidelines as adopted, a financial institution should identify the reasonably foreseeable internal and external threats that could result in unauthorized disclosure, misuse, alteration, or destruction of customer information or customer information systems. Next, the risk assessment should consider the potential damage that a compromise of customer information from an identified threat would have on the customer information, taking into consideration the sensitivity of the information to be protected in assessing the potential damage. Finally, a financial institution should conduct an assessment of the sufficiency of existing policies, procedures, customer information systems, and other arrangements intended to control the risks it has identified.

III.C. Manage and Control Risk

Paragraph III.C. describes the steps an institution should take to manage and the control risks identified in paragraph III.B.

Establish policies and procedures (III.C.1.). Paragraph III.C.1 of the proposal described the elements of a comprehensive risk management plan designed to control identified risks and to achieve the overall objective of ensuring the security and confidentiality of customer information. It identified eleven factors an institution should consider in evaluating the adequacy of its policies and procedures to effectively manage these risks.

The Agencies received a large number of comments on this paragraph. Most of the comments were based on a perception that every institution would have to adopt every security measure listed in proposed III.C.1.a.-k. as part of the institution's policies and procedures. In particular, a number of commenters were concerned that the proposed Guidelines would require the encryption of all customer data.

The Agencies did not intend for the security measures listed in paragraph III.C.1. to be seen as mandatory for all financial institutions and for all data. Rather, the Agencies intended only that an institution would consider whether the protections listed were appropriate for the institution's particular circumstances, and, if so, adopt those identified as appropriate. The Agencies continue to believe that these elements may be adapted by institutions of varying sizes, scope of operations, and risk management structures. Consistent with that approach, the manner of implementing a particular element may vary from institution to institution. For example, while a financial institution that offers Internet-based transaction accounts may conclude that encryption is appropriate, a different institution that processes all data internally and does not have a transactional web site may consider other kinds of access restrictions that are adequate to maintain the confidentiality of customer information. To underscore this point, the final Guidelines have been amended to state that each financial institution must consider whether the security elements discussed in paragraphs III.C.1.a.-h. are appropriate for the institution and, if so, adopt those

elements an institution concludes are appropriate.

The Agencies invited comment on the degree of detail that should be included in the Guidelines regarding the risk management program, including which elements should be specified in the Guidelines, and any other components of a risk management program that should be listed. With the exception of those commenters who thought some or all of the elements of the risk management program were intended to be mandatory for all financial institutions, the comments supported the level of detail conveyed in the proposed Guidelines. The Agencies have adopted the provision regarding management and control of risks with the changes discussed below. Comments addressing proposed security measures that have been adopted without change also are discussed below.

Access rights. The Agencies received a number of comments suggesting that the reference to "access rights to customer information" in paragraph III.C.1.a. of the proposal could be interpreted to mean providing customers with a right of access to financial information. The reference was intended to refer to limitations on employee access to customer financial information, not to customer access to financial information. However, this element has been deleted since limitations on employee access are covered adequately in other parts of paragraph III.C.1. (See discussion of "access controls" in paragraph III.C.1.a. of the final Guidelines, below.)

Access controls. Paragraph III.C.1.b. of the proposed Guidelines required a financial institution to consider appropriate access controls when establishing its information security policies and procedures. These controls were intended to address unauthorized access to an institution's customer information by anyone, whether or not employed by the institution.

The Agencies believe that this element sufficiently addresses the concept of unauthorized access, regardless of who is attempting to obtain access. This would cover, for instance, attempts through pretext calling to gather information about a financial institution's customers.¹¹ The Agencies have amended the final Guidelines to refer specifically to pretext calling in new III.C.1.a. The Agencies do not intend for the final Guidelines to require a financial institution to provide its customers with access to information the institution has gathered. Instead, the provision in the final Guidelines addressing access is limited solely to the issue of preventing unauthorized access to customer information.

¹¹ Pretext calling is a fraudulent means of obtaining an individual's personal information by persons posing as bank customers.

The Agencies have deleted the reference in the proposed paragraph III.C.1.b. to providing access to authorized companies. This change was made partly in response to commenters who objected to what they perceived to be an inappropriate expansion of the scope of the Guidelines to include company records and partly in recognition of the fact that access to records would be obtained, in any case, only through requests by individuals. The final Guidelines require an institution to consider the need for access controls in light of the institution's various customer information systems and adopt such controls as appropriate.

Dual control procedures. Paragraph III.C.1.f. of the proposed Guidelines stated that financial institutions should consider dual

control procedures, segregation of duties, and employee background checks for employees with responsibility for, or access to, customer information. Most of the comments on this paragraph focused on dual control procedures, which refers to a security technique that uses two or more separate persons, operating together to protect sensitive information. Both persons are equally responsible for protecting the information and neither can access the information alone.

According to one commenter, dual controls are part of normal audit procedures and did not need to be restated. Other commenters suggested that dual control procedures are not always necessary, implying that these procedures are not the norm. The Agencies recognize that dual-control procedures are not necessary for all activities, but might be appropriate for higher-risk activities. Given that the Guidelines state only that dual control procedures should be considered by a financial institution and adopted only if appropriate for the institution, the Agencies have retained a reference to dual control procedures in the items to be considered (paragraph III.C.1.e).

Oversight of servicers. Paragraph III.C.1.g. of the proposal was deleted. Instead, the final Guidelines consolidate the provisions related to service providers in paragraph III.D.

Physical hazards and technical failures. The paragraphs of the proposed Guidelines addressing protection against destruction due to physical hazards and technological failures (paragraphs III.C.1.j. and k., respectively, of the proposal) have been consolidated in paragraph III.C.1.h. of the final Guidelines. The Agencies believe that this change improves clarity and recognizes that disaster recovery from environmental and technological failures often involve the same considerations.

Training (III.C.2.). Paragraph III.C.2. of the proposed Guidelines provided that an institution's information security program should include a training component designed to train employees to recognize, respond to, and report unauthorized attempts to obtain customer information. The Agencies received several comments suggesting that this provision directed staff of financial institutions to report suspected attempts to obtain customer information to law enforcement agencies rather than to the management of the financial institution. The Agencies did not intend that result, and note that nothing in the Guidelines alters other applicable requirements and procedures for reporting suspicious activities. For purposes of these Guidelines, the Agencies believe that, as part of a training program, staff should be made aware both of federal reporting requirements and an institution's procedures for reporting suspicious activities, including attempts to obtain access to customer information without proper authority.

The final Guidelines amend the provision governing training to state that a financial institution's information security program should include a training component designed to implement the institution's information security policies and procedures. The Agencies believe that the appropriate focus for the training should be on compliance with the institution's security program generally and not just on the limited aspects identified in proposed III.C.2. The provisions governing reporting have been moved to paragraph III.C.1.g., which addresses response programs in general.

Testing (III.C.3.). Paragraph III.C.3. of the proposed Guidelines provided that an information security program should include regular testing of key controls, systems, and procedures. The proposal provided that the frequency and nature of the testing should be determined by the risk assessment and adjusted as necessary to reflect changes in both internal and external conditions. The proposal also provided that the tests are to be conducted, where appropriate, by independent third parties or staff independent of those that develop or maintain the

security program. Finally, the proposal stated that test results are to be reviewed by independent third parties or staff independent of those that

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conducted the test. The Agencies requested comment on whether specific types of security tests, such as penetration tests or intrusion detection tests, should be required.

The most frequent comment regarding testing of key controls was that the Agencies should not require specific tests. Commenters noted that because technology changes rapidly, the tests specified in the Guidelines will become obsolete and other tests will become the standard. Consequently, according to these commenters, the Guidelines should identify areas where testing may be appropriate without requiring a financial institution to implement a specific test or testing procedure. Several commenters noted that periodic testing of information security controls is a sound idea and is an appropriate standard for inclusion in these Guidelines.

The Agencies believe that a variety of tests may be used to ensure the controls, systems, and procedures of the information security program work properly and also recognize that such tests will progressively change over time. The Agencies believe that the particular tests that may be applied should be left to the discretion of management rather than specified in advance in these Guidelines. Accordingly, the final Guidelines do not require a financial institution to apply specific tests to evaluate the key control systems of its information security program.

The Agencies also invited comment regarding the appropriate degree of independence that should be specified in the Guidelines in connection with the testing of information security systems and the review of test results. The proposal asked whether the tests or reviews of tests be conducted by persons who are not employees of the financial institution. The proposal also asked whether employees may conduct the testing or may review test results, and what measures, if any, are appropriate to assure their independence.

Some commenters interpreted the proposal as requiring three separate teams of people to provide sufficient independence to control testing: one team to operate the system; a second team to test the system; and a third team to review test results. This approach, they argued, would be too burdensome and expensive to implement. The Agencies believe that the critical need for independence is between those who operate the systems and those who either test them or review the test results. Therefore, the final Guidelines now require that tests should be conducted or reviewed by persons who are independent of those who operate the systems, including the management of those systems.

Whether a financial institution should use third parties to either conduct tests or review their results depends upon a number of factors. Some financial institutions may have the capability to thoroughly test certain systems in-house and review the test results but will need the assistance of third party testers to assess other systems. For example, an institution's internal audit department may be sufficiently trained and independent for the purposes of testing certain key controls and providing test results to decision makers independent of system managers. Some testing may be conducted by third parties in connection with the actual installation or modification of a particular program. In each instance, management needs to weigh the benefits of testing and test review by third parties against its own resources in this area, both in terms of expense and reliability.

Ongoing adjustment of program. Paragraph III.C.4. of the proposal required an institution to monitor, evaluate and adjust, as appropriate, the information security program in light of any relevant changes in technology, the sensitivity of its customer information, and internal or external threats to information security. This provision was previously located in the paragraph titled "Manage and Control Risk". While there were no comments on this provision, the Agencies wanted to highlight this concept and clarify that this provision is applicable to an institutions' entire information security program. Therefore, this provision is now separately identified as new paragraph III.E. of the final Guidelines, discussed below.

III.D. Oversee Service Provider Arrangements

The Agencies' proposal addressed service providers in two provisions. The Agencies provided that an institution should consider contract provisions and oversight mechanisms to protect the security of customer information maintained or processed by service providers as one of the proposed elements to be considered in establishing risk management policies and procedures (proposed paragraph III.C.1.g.). Additionally, proposed paragraph III.D. provided that, when an institution uses an outsourcing arrangement, the institution would continue to be responsible for safeguarding customer information that it gives to the service provider. That proposed paragraph also provided that the institution must use due diligence in managing and monitoring the outsourcing arrangement to confirm that its service providers would protect customer information consistent with the Guidelines.

The Agencies requested comment on the appropriate treatment of outsourcing arrangements, such as whether industry best practices are available regarding effective monitoring of service provider security precautions, whether service providers accommodate requests for specific contract provisions regarding information security, and, to the extent that service providers do not accommodate these requests, whether financial institutions implement effective information security programs. The Agencies also requested comment on whether institutions would find it helpful if the Guidelines contained specific contract provisions requiring service provider performance standards in connection with the security of customer information.

The Agencies received one example of best practices, but the commenter did not recommend that they be included in the Guidelines. While some commenters suggested that the Guidelines include best practices, other commenters stated that, given the various types of financial institutions, there could be a variety of best industry practices. Another commenter stated that best practices could become minimum requirements that result in inappropriate burdens. The Agencies recognize that information security practices are likely to evolve rapidly, and thus believe that it is inappropriate to include best practices in the final Guidelines.

Commenters were mixed as to whether service providers are receptive to contract modifications to protect customer information. Commenters were uniform, however, in stating that an institution's obligation to monitor service providers should not include on-site audits by the institution or its agent. The commenters stated that, in addition to the expense for financial institutions, the procedure would place an inordinate burden on many service providers that process customer information for multiple institutions. Several commenters noted that the service providers often contract for audits of their systems and that institutions should be able to rely upon those testing procedures. Some commenters recommended that an institution's responsibility for information given to service providers require only that the

institution enter into appropriate contractual arrangements. However, commenters also indicated that requiring specific

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contract provisions would not be consistent with the development of flexible Guidelines and recommended against the inclusion of specific provisions.

The Agencies believe that financial institutions should enter into appropriate contracts, but also believe that these contracts, alone, are not sufficient. Therefore, the final Guidelines, in paragraph III.D., include provisions relating to selecting, contracting with, and monitoring service providers.

The final Guidelines require that an institution exercise appropriate due diligence in the selection of service providers. Due diligence should include a review of the measures taken by a service provider to protect customer information. As previously noted in the discussion of "service provider", it also should include a review of the controls the service provider has in place to ensure that any subservicer used by the service provider will be able to meet the objectives of these Guidelines.

The final Guidelines also require that a financial institution have a contract with each of its service providers that requires each provider to implement appropriate measures designed to meet the objectives of these Guidelines (as stated in paragraph II.B.). This provision does not require a service provider to have a security program in place that complies with each paragraph of these Guidelines. Instead, by stating that a service provider's security measures need only achieve the objectives of these Guidelines, the Guidelines provide flexibility for a service provider's information security measures to differ from the program that a financial institution implements. The Agencies have provided a two-year transition period during which institutions may bring their outsourcing contracts into compliance. (See discussion of paragraph III.F.) The Agencies have not included model contract language, given our belief that the precise terms of service contracts are best left to the parties involved.

Each financial institution must also exercise an appropriate level of oversight over each of its service providers to confirm that the service provider is implementing the provider's security measures. The Agencies have amended the Guidelines as proposed to include greater flexibility with regard to the monitoring of service providers. A financial institution need only monitor its outsourcing arrangements if such oversight is indicated by an institution's own risk assessment. The Agencies recognize that not all outsourcing arrangements will need to be monitored or monitored in the same fashion. Some service providers will be financial institutions that are directly subject to these Guidelines or other standards promulgated by their primary regulator under section 501(b). Other service providers may already be subject to legal and professional standards that require them to safeguard the institution's customer information. Therefore, the final Guidelines permit an institution to do a risk assessment taking these factors into account and determine for themselves which service providers will need to be monitored.

Even where monitoring is warranted, the Guidelines do not require on-site inspections. Instead, the Guidelines state that this monitoring can be accomplished, for example, through the periodic review of the service provider's associated audits, summaries of test results, or equivalent measures of the service provider. The Agencies expect that institutions will arrange, when appropriate, through contracts or otherwise, to receive copies of audits and test result information

sufficient to assure the institution that the service provider implements information security measures that are consistent with its contract provisions regarding the security of customer information. The American Institute of Certified Public Accountants Statement of Auditing Standards No. 70, captioned "Reports on the Processing of Transactions by Service Organizations" (SAS 70 report), is one commonly used external audit tool for service providers. Information contained in an SAS 70 report may enable an institution to assess whether its service provider has information security measures that are consistent with representations made to the institution during the service provider selection process.

III.E. Adjust the Program

Paragraphs III.B.3 and III.C.4. of the proposed Guidelines both addressed a financial institution's obligations when circumstances change. Both paragraph III.B.3. (which set forth management's responsibilities with respect to its risk assessment) and paragraph III.C.4. (which focused on the adequacy of an institution's information security program) identified the possible need for changes to an institution's program in light of relevant changes to technology, the sensitivity of customer information, and internal or external threats to the information security.

The Agencies received no comments objecting to the statements in these paragraphs of the need to adjust a financial institution's program as circumstances change. While the Agencies have not changed the substance of these provisions in the final Guidelines, we have, however, made a stylistic change to simplify the Guidelines. The final Guidelines combine, in paragraph III.E., the provisions previously stated separately. Consistent with the proposal, this paragraph provides that each financial institution must monitor, evaluate, and adjust its information security program in light of relevant changes in technology, the sensitivity of its customer information, internal or external threats to information, and the institution's own changing business arrangements. This would include an analysis of risks to customer information posed by new technology (and any needed program adjustments) before a financial institution adopts the technology in order to determine whether a security program remains adequate in light of the new risks presented.\12\

\12\ For additional information concerning how a financial institution should identify, measure, monitor, and control risks associated with the use of technology, see OCC Bulletin 98-3 concerning technology risk management, which may be obtained on the Internet at <http://www.occ.treas.gov/ftp/bulletin/98-3.txt>.; Federal Reserve SR Letter 98-9 on Assessment of Information Technology in the Risk-Focused Frameworks for the Supervision of Community Banks and Large Complex Banking Organizations, April 20, 1998, <http://www.federalreserve.gov/boarddocs/SRLETTERS/1998/SR9809.HTM>; FDIC FIL 99-68 concerning risk assessment tools and practices for information security systems at <http://www.fdic.gov/news/news/financial/1999/fil9968.html>.; OTS's CEO Letter 70, Statement on Retail On-Line Personal Computer Banking, (June 23, 1997), available at <http://www.ots.treas.gov/docs/25070.pdf>.

III.F. Report to the Board

Paragraph III.A.2.c. of the proposal set out management's

responsibilities for reporting to its board of directors. As previously discussed, the final Guidelines have removed specific requirements for management, but instead allow a financial institution to determine who within the organization should carry out a given responsibility. The board reporting requirement thus has been amended to require that a financial institution report to its board, and that this report be at least annual. Paragraph III.F. of the final Guidelines sets out this requirement.

The Agencies invited comment regarding the appropriate frequency of reports to the board, including whether reports should be monthly, quarterly, or annually. The Agencies received a number of comments recommending that no specific frequency be mandated by the Guidelines and that each financial institution be permitted to establish its own reporting period.

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Several commenters stated that if a reporting period is required, then it should be not less than annually unless some material event triggers the need for an interim report.

The Agencies expect that in all cases, management will provide its board (or the appropriate board committee) a written report on the information security program consistent with the Guidelines at least annually. Management of financial institutions with more complex information systems may find it necessary to provide information to the board (or a committee) on a more frequent basis. Similarly, more frequent reporting will be appropriate whenever a material event affecting the system occurs or a material modification is made to the system. The Agencies expect that the content of these reports will vary for each financial institution, depending upon the nature and scope of its activities as well as the different circumstances that it will confront as it implements and maintains its program.

III.G. Implement the Standards

Paragraph III.E. of the proposal described the timing requirements for the implementation of these standards. It provided that each financial institution is to take appropriate steps to fully implement an information security program pursuant to these Guidelines by July 1, 2001.

The Agencies received several comments suggesting that the proposed effective date be extended for a period of 12 to 18 months because financial institutions are currently involved in efforts to meet the requirements of the final Privacy Rule by the compliance deadline, July 1, 2001. The Agencies believe that the dates for full compliance with these Guidelines and the Privacy Rule should coincide. Financial institutions are required, as part of their initial privacy notices, to disclose their policies and practices with respect to protecting the confidentiality and security of nonpublic personal information. See Sec. __.6(a)(8). Each Agency has provided in the appendix to its Privacy Rule that a financial institution may satisfy this disclosure requirement by advising its customers that the institution maintains physical, electronic, and procedural safeguards that comply with federal standards to guard customers' nonpublic personal information. See appendix A-7. The Agencies believe that this disclosure will be meaningful only if the final Guidelines are effective when the disclosure is made. If the effective date of these Guidelines is extended beyond July 1, 2001, then a financial institution may be placed in the position of providing an initial notice regarding confidentiality and security and thereafter amending the privacy policy

to accurately refer to the federal standards once they became effective. For these reasons, the Agencies have retained July 1, 2001, as the effective date for these Guidelines.

However, the Agencies have included a transition rule for contracts with service providers. The transition rule, which parallels a similar provision in the Privacy Rule, provides a two-year period for grandfathering existing contracts. Thus a contract entered into on or before the date that is 30 days after publication of the final Guidelines in the Federal Register satisfies the provisions of this part until July 1, 2003, even if the contract does not include provisions delineating the servicer's duties and responsibilities to protect customer information described in paragraph III.D.

Location of Guidelines: These guidelines have been published as an appendix to each Agency's Standards for Safety and Soundness. For the OCC, those regulations appear at 12 CFR part 30; for the Board, at 12 CFR part 208; for the FDIC, at 12 CFR part 364; and for the OTS, at 12 CFR part 570. The Board also is amending 12 CFR parts 211 and 225 to apply the Guidelines to other institutions that it supervises.

The Agencies will apply the rules already in place to require the submission of a compliance plan in appropriate circumstances. For the OCC, those regulations appear at 12 CFR part 30; for the Board at 12 CFR part 263; for the FDIC at 12 CFR part 308, subpart R; and for the OTS at 12 CFR part 570. The final rules make conforming changes to the regulatory text of these parts.

Rescission of Year 2000 Standards for Safety and Soundness: The Agencies previously issued guidelines establishing Year 2000 safety and soundness standards for insured depository institutions pursuant to section 39 of the FDI Act. Because the events for which these standards were issued have passed, the Agencies have concluded that the guidelines are no longer necessary and proposed to rescind the standards as part of this rulemaking. The Agencies requested comment on whether rescission of these standards is appropriate. Those commenters responding to this request were unanimous in recommending the rescission of the Year 2000 Standards, and the Agencies have rescinded these standards. These standards appeared for the OCC at 12 CFR part 30, appendix B and C; for the Board at 12 CFR part 208, appendix D-2; for the FDIC at 12 CFR part 364, appendix B; and for the OTS at 12 CFR part 570, appendix B. Accordingly, the Agencies hereby rescind the Year 2000 Standards for Safety and Soundness, effective thirty (30) days after the publication date of this notice of the joint final rule.

IV. Regulatory Analysis

A. Paperwork Reduction Act

The Agencies have determined that this rule does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

B. Regulatory Flexibility Act

OCC: Under the Regulatory Flexibility Act (RFA), the OCC must either provide a Final Regulatory Flexibility Analysis (FRFA) with these final Guidelines or certify that the final Guidelines "will not, if promulgated", have a significant economic impact on a substantial number of small entities.¹³ The OCC has evaluated the effects of these Guidelines on small entities and is providing the following FRFA.

¹³ The RFA defines the term "small entity" in 5 U.S.C. 601

by reference to a definition published by the Small Business Administration (SBA). The SBA has defined a "small entity" for banking purposes as a national or commercial bank, or savings institution with less than \$100 million in assets. See 13 CFR 121.201.

Although the OCC specifically sought comment on the costs to small entities of establishing and operating information security programs, no commenters provided specific cost information. Instead, commenters confirmed the OCC's conclusion that most if not all institutions already have information security programs in place, because the standards reflect good business practices and existing OCC and FFIEC guidance. Some comments indicated, however, that institutions will have to formalize or enhance their information security programs. Accordingly, the OCC considered certifying, under section 605(b) of the RFA, that these Guidelines will not have a significant economic impact on a substantial number of small entities. However, given that the guidance previously issued by the OCC and the FFIEC is not completely identical to the Guidelines being adopted in this rulemaking, the Guidelines are likely to have some impact on all affected institutions. While the OCC believes that this impact will not be substantial in the case of most small entities, we nevertheless have prepared the following FRFA.

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1. Reasons for Final Action

The OCC is issuing these Guidelines under section 501(b) of the G-L-B Act. Section 501(b) requires the OCC to publish standards for financial institutions subject to its jurisdiction relating to administrative, technical and physical standards to: (1) insure the security and confidentiality of customer records and information; (2) protect against any anticipated threats or hazards to the security or integrity of such records; and (3) protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.

2. Objectives of and Legal Basis for Final Action

The objectives of the Guidelines are described in the Supplementary Information section above. The legal bases for the Guidelines are: 12 U.S.C. 93a, 1818, 1831p-1, and 3102(b) and 15 USC 6801 and 6805(b)(1).

3. Small Entities to Which the Rule Will Apply

The OCC's final Guidelines will apply to approximately 2300 institutions, including national banks, federal branches and federal agencies of foreign banks, and certain subsidiaries of such entities. The OCC estimates that approximately 1125 of these institutions are small institutions with assets less than \$100 million.

4. Projected Reporting, Recordkeeping, and Other Compliance Requirements; Skills Required

The Guidelines do not require any reports to the OCC, however, they require all covered institutions to develop and implement a written information security program comprised of several elements. Institutions must assess the risks to their customer information and adopt appropriate measures to control those risks. Institutions must then test these security measures and adjust their information security programs in light of any relevant changes. In addition, institutions must use appropriate due diligence in selecting service providers, and require service providers, by contract, to implement appropriate security measures. The Guidelines also require institutions to monitor their service providers, where appropriate, to confirm they have met

I. Introduction

The Interagency Guidelines Establishing Standards for Safeguarding Customer Information (Guidelines) set forth standards pursuant to section 39 of the Federal Deposit Insurance Act (section 39, codified at 12 U.S.C. 1831p-1), and sections 501 and 505(b), codified at 15 U.S.C. 6801 and 6805(b), of the Gramm-Leach-Bliley Act. These Guidelines address standards for developing and implementing administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of customer information.

A. Scope. The Guidelines apply to customer information maintained by or on behalf of entities over which the Federal Deposit Insurance Corporation (FDIC) has authority. Such entities, referred to as "the bank" are banks insured by the FDIC (other than members of the Federal Reserve System), insured state branches of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers).

B. Preservation of Existing Authority. Neither section 39 nor these Guidelines in any way limit the authority of the FDIC to address unsafe or unsound practices, violations of law, unsafe or unsound conditions, or other practices. The FDIC may take action under section 39 and these Guidelines independently of, in conjunction with, or in addition to, any other enforcement action available to the FDIC.

C. Definitions. 1. Except as modified in the Guidelines, or unless the context otherwise requires, the terms used in these Guidelines have the same meanings as set forth in sections 3 and 39 of the Federal Deposit Insurance Act (12 U.S.C. 1813 and 1831p-1).

2. For purposes of the Guidelines, the following definitions apply:

a. Board of directors, in the case of a branch or agency of a foreign bank, means the managing official in charge of the branch or agency.

b. Customer means any customer of the bank as defined in Sec. 332.3(h) of this chapter.

c. Customer information means any record containing nonpublic personal information, as defined in Sec. 332.3(n) of this chapter, about a customer, whether in paper, electronic, or other form, that is maintained by or on behalf of the bank.

d. Customer information systems means any methods used to access, collect, store, use, transmit, protect, or dispose of customer information.

e. Service provider means any person or entity that maintains, processes, or otherwise is permitted access to customer information through its provision of services directly to the bank.

II. Standards for Safeguarding Customer Information

A. Information Security Program. Each bank shall implement a comprehensive written information security program that includes administrative, technical, and physical safeguards appropriate to the size and complexity of the bank and the nature and scope of its activities. While all parts of the bank are not required to implement a uniform set of policies, all elements of the information security program must be coordinated.

B. Objectives. A bank's information security program shall be designed to:

1. Ensure the security and confidentiality of customer

information;

2. Protect against any anticipated threats or hazards to the security or integrity of such information; and

3. Protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer.

III. Development and Implementation of Information Security Program

A. Involve the Board of Directors. The board of directors or an appropriate committee of the board of each bank shall:

1. Approve the bank's written information security program; and

2. Oversee the development, implementation, and maintenance of the bank's information security program, including assigning specific responsibility for its implementation and reviewing reports from management.

B. Assess Risk.

Each bank shall:

1. Identify reasonably foreseeable internal and external threats that could result in unauthorized disclosure, misuse, alteration, or destruction of customer information or customer information systems.

2. Assess the likelihood and potential damage of these threats, taking into consideration the sensitivity of customer information.

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3. Assess the sufficiency of policies, procedures, customer information systems, and other arrangements in place to control risks.

C. Manage and Control Risk. Each bank shall:

1. Design its information security program to control the identified risks, commensurate with the sensitivity of the information as well as the complexity and scope of the bank's activities. Each bank must consider whether the following security measures are appropriate for the bank and, if so, adopt those measures the bank concludes are appropriate:

a. Access controls on customer information systems, including controls to authenticate and permit access only to authorized individuals and controls to prevent employees from providing customer information to unauthorized individuals who may seek to obtain this information through fraudulent means.

b. Access restrictions at physical locations containing customer information, such as buildings, computer facilities, and records storage facilities to permit access only to authorized individuals;

c. Encryption of electronic customer information, including while in transit or in storage on networks or systems to which unauthorized individuals may have access;

d. Procedures designed to ensure that customer information system modifications are consistent with the bank's information security program;

e. Dual control procedures, segregation of duties, and employee background checks for employees with responsibilities for or access to customer information;

f. Monitoring systems and procedures to detect actual and attempted attacks on or intrusions into customer information systems;

g. Response programs that specify actions to be taken when the bank suspects or detects that unauthorized individuals have gained access to customer information systems, including appropriate reports to regulatory and law enforcement agencies; and

h. Measures to protect against destruction, loss, or damage of customer information due to potential environmental hazards, such as fire and water damage or technological failures.

2. Train staff to implement the bank's information security program.

3. Regularly test the key controls, systems and procedures of the information security program. The frequency and nature of such tests should be determined by the bank's risk assessment. Tests should be conducted or reviewed by independent third parties or staff independent of those that develop or maintain the security programs.

D. Oversee Service Provider Arrangements. Each bank shall:

1. Exercise appropriate due diligence in selecting its service providers;

2. Require its service providers by contract to implement appropriate measures designed to meet the objectives of these Guidelines; and

3. Where indicated by the bank's risk assessment, monitor its service providers to confirm that they have satisfied their obligations as required by paragraph D.2. As part of this monitoring, a bank should review audits, summaries of test results, or other equivalent evaluations of its service providers.

E. Adjust the Program. Each bank shall monitor, evaluate, and adjust, as appropriate, the information security program in light of any relevant changes in technology, the sensitivity of its customer information, internal or external threats to information, and the bank's own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements, and changes to customer information systems.

F. Report to the Board. Each bank shall report to its board or an appropriate committee of the board at least annually. This report should describe the overall status of the information security program and the bank's compliance with these Guidelines. The report, which will vary depending upon the complexity of each bank's program should discuss material matters related to its program, addressing issues such as: risk assessment; risk management and control decisions; service provider arrangements; results of testing; security breaches or violations, and management's responses; and recommendations for changes in the information security program.

G. Implement the Standards. 1. Effective date. Each bank must implement an information security program pursuant to these Guidelines by July 1, 2001.

2. Two-year grandfathering of agreements with service providers. Until July 1, 2003, a contract that a bank has entered into with a service provider to perform services for it or functions on its behalf, satisfies the provisions of paragraph III.D., even if the contract does not include a requirement that the servicer maintain the security and confidentiality of customer information as long as the bank entered into the contract on or before March 5, 2001.

By order of the Board of Directors.

Dated at Washington, D.C., this 21st day of December, 2000.

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 joint preamble, parts 568 and 570 of chapter V of title 12 of the Code of Federal regulations are amended as follows:

PART 568--SECURITY PROCEDURES

1. The authority citation of part 568 is revised to read as follows:

Authority: Secs. 2-5, 82 Stat. 294-295 (12 U.S.C. 1881-1984); 12 U.S.C. 1831p-1; 15 U.S.C. 6801, 6805(b)(1).

2. Amend Sec. 568.1 by revising paragraph (a) to read as follows:

Sec. 568.1 Authority, purpose, and scope.

(a) This part is issued by the Office of Thrift Supervision (OTS) pursuant to section 3 of the Bank Protection Act of 1968 (12 U.S.C. 1882), and sections 501 and 505(b)(1) of the Gramm-Leach-Bliley Act (12 U.S.C. 6801, 6805(b)(1)). This part is applicable to savings associations. It requires each savings association to adopt appropriate security procedures to discourage robberies, burglaries, and larcenies and to assist in the identification and prosecution of persons who commit such acts. Section 568.5 of this part is applicable to savings associations and their subsidiaries (except brokers, dealers, persons providing insurance, investment companies, and investment advisers). Section 568.5 of this part requires covered institutions to establish and implement appropriate administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of customer information.

* * * * *

3. Add new Sec. 568.5 to read as follows:

Sec. 568.5 Protection of customer information.

Savings associations and their subsidiaries (except brokers, dealers, persons providing insurance, investment companies, and investment advisers) must comply with the Interagency Guidelines Establishing Standards for Safeguarding Customer Information prescribed pursuant to sections 501 and 505 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 and 6805), set forth in appendix B to part 570 of this chapter.

PART 570--SUBMISSION AND REVIEW OF SAFETY AND SOUNDNESS COMPLIANCE PLANS AND ISSUANCE OF ORDERS TO CORRECT SAFETY AND SOUNDNESS DEFICIENCIES

4. Amend Sec. 570.1 by adding a sentence at the end of paragraph (a) and revising the last sentence of paragraph (b) to read as follows:

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

(a) * * * Appendix B to this part is further issued under sections 501(b) and 505 of the Gramm-Leach-Bliley Act (Pub. L. 106-102, 113 Stat. 1338 (1999)).

(b) * * * Interagency Guidelines Establishing Standards for Safeguarding Customer Information are set forth in appendix B to this part.

* * * * *

5. Amend Sec. 570.2 by revising paragraph (a) to read as follows:

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Sec. 570.2 Determination and notification of failure to meet safety and soundness standards and request for compliance plan.

(a) Determination. OTS may, based upon an examination, inspection, or any other information that becomes available to OTS, determine that a savings association has failed to satisfy the safety and soundness standards contained in the Interagency Guidelines Establishing Standards for Safety and Soundness as set forth in appendix A to this part or the Interagency Guidelines Establishing Standards for Safeguarding Customer Information as set forth in appendix B to this part.

* * * * *

6. Revise appendix B to part 570 to read as follows:

Appendix B to Part 570--Interagency Guidelines Establishing Standards for Safeguarding Customer Information

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I. Introduction

The Interagency Guidelines Establishing Standards for Safeguarding Customer Information (Guidelines) set forth standards pursuant to section 39 of the Federal Deposit Insurance Act (section 39, codified at 12 U.S.C. 1831p-1), and sections 501 and 505(b), codified at 15 U.S.C. 6801 and 6805(b), of the Gramm-Leach-Bliley Act. These Guidelines address standards for developing and implementing administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of customer

information.

A. Scope. The Guidelines apply to customer information maintained by or on behalf of entities over which OTS has authority. For purposes of this appendix, these entities are savings associations whose deposits are FDIC-insured and any subsidiaries of such savings associations, except brokers, dealers, persons providing insurance, investment companies, and investment advisers. This appendix refers to such entities as ``you'.

B. Preservation of Existing Authority. Neither section 39 nor these Guidelines in any way limit OTS's authority to address unsafe or unsound practices, violations of law, unsafe or unsound conditions, or other practices. OTS may take action under section 39 and these Guidelines independently of, in conjunction with, or in addition to, any other enforcement action available to OTS.

C. Definitions. 1. Except as modified in the Guidelines, or unless the context otherwise requires, the terms used in these Guidelines have the same meanings as set forth in sections 3 and 39 of the Federal Deposit Insurance Act (12 U.S.C. 1813 and 1831p-1).

2. For purposes of the Guidelines, the following definitions apply:

a. Customer means any of your customers as defined in Sec. 573.3(h) of this chapter.

b. Customer information means any record containing nonpublic personal information, as defined in Sec. 573.3(n) of this chapter, about a customer, whether in paper, electronic, or other form, that you maintain or that is maintained on your behalf.

c. Customer information systems means any methods used to access, collect, store, use, transmit, protect, or dispose of customer information.

d. Service provider means any person or entity that maintains, processes, or otherwise is permitted access to customer information through its provision of services directly to you.

II. Standards for Safeguarding Customer Information

A. Information Security Program. You shall implement a comprehensive written information security program that includes administrative, technical, and physical safeguards appropriate to your size and complexity and the nature and scope of your activities. While all parts of your organization are not required to implement a uniform set of policies, all elements of your information security program must be coordinated.

B. Objectives. Your information security program shall be designed to:

1. Ensure the security and confidentiality of customer information;

2. Protect against any anticipated threats or hazards to the security or integrity of such information; and

3. Protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer.

III. Development and Implementation of Information Security Program

A. Involve the Board of Directors. Your board of directors or an appropriate committee of the board shall:

1. Approve your written information security program; and

2. Oversee the development, implementation, and maintenance of your information security program, including assigning specific responsibility for its implementation and reviewing reports from

management.

B. Assess Risk. You shall:

1. Identify reasonably foreseeable internal and external threats that could result in unauthorized disclosure, misuse, alteration, or destruction of customer information or customer information systems.

2. Assess the likelihood and potential damage of these threats, taking into consideration the sensitivity of customer information.

3. Assess the sufficiency of policies, procedures, customer information systems, and other arrangements in place to control risks.

C. Manage and Control Risk. You shall:

1. Design your information security program to control the identified risks, commensurate with the sensitivity of the information as well as the complexity and scope of your activities. You must consider whether the following security measures are appropriate for you and, if so, adopt those measures you conclude are appropriate:

a. Access controls on customer information systems, including controls to authenticate and permit access only to authorized individuals and controls to prevent employees from providing customer information to unauthorized individuals who may seek to obtain this information through fraudulent means.

b. Access restrictions at physical locations containing customer information, such as buildings, computer facilities, and records storage facilities to permit access only to authorized individuals;

c. Encryption of electronic customer information, including while in transit or in storage on networks or systems to which unauthorized individuals may have access;

d. Procedures designed to ensure that customer information system modifications are consistent with your information security program;

e. Dual control procedures, segregation of duties, and employee background checks for employees with responsibilities for or access to customer information;

f. Monitoring systems and procedures to detect actual and attempted attacks on or intrusions into customer information systems;

g. Response programs that specify actions for you to take when you suspect or detect that unauthorized individuals have gained access to customer information systems, including appropriate reports to regulatory and law enforcement agencies; and

h. Measures to protect against destruction, loss, or damage of customer information due to potential environmental hazards, such as fire and water damage or technological failures.

2. Train staff to implement your information security program.

3. Regularly test the key controls, systems and procedures of the information security program. The frequency and nature of such tests should be determined by your risk assessment. Tests should be conducted or reviewed by independent third parties or staff independent of those that develop or maintain the security programs.

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1. Exercise appropriate due diligence in selecting your service providers;

2. Require your service providers by contract to implement appropriate measures designed to meet the objectives of these Guidelines; and

3. Where indicated by your risk assessment, monitor your service providers to confirm that they have satisfied their

obligations as required by paragraph D.2. As part of this monitoring, you should review audits, summaries of test results, or other equivalent evaluations of your service providers.

E. Adjust the Program. You shall monitor, evaluate, and adjust, as appropriate, the information security program in light of any relevant changes in technology, the sensitivity of your customer information, internal or external threats to information, and your own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements, and changes to customer information systems.

F. Report to the Board. You shall report to your board or an appropriate committee of the board at least annually. This report should describe the overall status of the information security program and your compliance with these Guidelines. The reports should discuss material matters related to your program, addressing issues such as: risk assessment; risk management and control decisions; service provider arrangements; results of testing; security breaches or violations and management's responses; and recommendations for changes in the information security program.

G. Implement the Standards. 1. Effective date. You must implement an information security program pursuant to these Guidelines by July 1, 2001.

2. Two-year grandfathering of agreements with service providers. Until July 1, 2003, a contract that you have entered into with a service provider to perform services for you or functions on your behalf satisfies the provisions of paragraph III.D., even if the contract does not include a requirement that the servicer maintain the security and confidentiality of customer information, as long as you entered into the contract on or before March 5, 2001.

Dated: December 19, 2000.

By the Office of Thrift Supervision.
Ellen Seidman,
Director.

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