

Commercial Bank Examination Manual



Division of Banking Supervision and Regulation

Commercial Bank Examination Manual



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EXAMINATION AND SUPERVISORY AUTHORITY AND CONFIDENTIALITY PROVISIONS

The Federal Reserve System's statutory examination authority permits examiners to review all books and records maintained by a financial institution that is subject to the Federal Reserve's supervision. This authority extends to all documents.¹ Section 11(a)(1) of the Federal Reserve Act provides that the Board has the authority to examine, at its discretion, the accounts, books, and affairs of each member bank and to require such statements and reports as it may deem necessary.

Federal Reserve supervisory staff (includes the examination staff), therefore, may review *all* books and records of a banking organization that is subject to Federal Reserve supervision.^{1a} In addition, under the Board's Rules Regarding the Availability of Information, banking organizations are prohibited from disclosing confidential supervisory information without prior written permission of the Board's General Counsel.^{1b} Confidential supervisory information is defined to include any information related to the examination of a banking organization.^{1c} Board staff have taken the position that identification of information requested by, or provided to, supervisory staff—including the fact that an examination has taken or will take place—is related to an examination and falls within the definition of confidential supervisory information. It is contrary to Federal Reserve regulation and policy for agreements to contain confidentiality provisions that (1) restrict the banking organization from providing information to Federal Reserve supervisory staff;¹ (2) require or permit, without the prior approval of the Federal Reserve, the banking organization to disclose to a counterparty that any information will be or was provided to Federal Reserve supervisory staff; or (3) require or permit, without the prior approval of the Federal Reserve, the banking organization to inform a counterparty of a current or upcoming Federal Reserve examination or any nonpublic

Federal Reserve supervisory initiative or action. Banking organizations that have entered into agreements containing such confidentiality provisions are subject to legal risk. (See SR-07-19.)

EXAMINATION-FREQUENCY GUIDELINES FOR STATE MEMBER BANKS

The Federal Reserve is required to conduct a full-scope, on-site examination of every insured state member bank at least once during each 12-month period, with the exception that certain small institutions can be examined once during each 18-month period. The 18-month examination period can be applied to those banks that—

- have total assets of less than \$500 million;^{1d}
- are well capitalized;
- were assigned a management rating of 1 or 2 by the Federal Reserve as part of the bank's rating under the Uniform Financial Institutions Rating System;
- were assigned a composite CAMELS rating of 1 or 2 by the Federal Reserve at their most recent examination;
- are not subject to a formal enforcement proceeding or action; and
- have not had a change in control during the preceding 12-month period in which a full-scope, on-site examination would have been required but for the above exceptions.

(See section 208.64 of Regulation H and 72 *Fed. Reg.* 17798, April 10, 2007, and 72 *Fed. Reg.* 54347, September 25, 2007.) The exceptions do not limit the authority of the Federal Reserve to examine any insured member bank as frequently as deemed necessary. (See also SR-07-8 and SR-97-8.)

^{1d} Based on jointly issued interim rules (effective April 10, 2007) issued by the Federal Reserve Board (Board), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS). The interim rule was adopted as final, without change, on September 11, 2007. (See 72 *Fed. Reg.* 54347, September 25, 2007.) The interim rules implemented section 605 of the Financial Services Regulatory Relief Act of 2006 (FSRRA) and Public Law 109-473. Previously, the 18-month examination cycle was available only for institutions that had total assets of \$250 million or less.

1. SR-97-17 details the procedure supervisory staff should follow if a banking organization declines to provide information asserting a claim of legal privilege.

1a. Supervisory staff include individuals who are on and/or off site.

1b. 12 CFR 261.20(g).

1c. 12 CFR 261.2(c)(1)(i).