

removes the unnecessary reference to Federal law.

Section 21.11(f) Retention of Records

Proposed § 21.11(f) requires a bank to retain a copy of the SAR and the original of any related documentation relating to a SAR for a period of ten years. The current rule is silent on this issue. However, the current criminal referral forms require a bank to submit copies of all related documentation when it files a criminal referral.

The new SAR reduces this burden by eliminating altogether the requirement to submit underlying documentation in connection with a criminal referral. Instead, the proposal requires that the documentation be identified and treated as filed with the SAR and that the bank maintain the documentation, along with a copy of the SAR, for ten years from the submission date. This time frame corresponds with the statutes of limitations for most Federal criminal statutes involving financial institutions.

This approach ensures that Federal law enforcement agencies and the Agencies, upon request, have access to any documentation necessary to prosecute a violation or pursue an administrative action by requiring banks to preserve underlying documentation for ten years.

Section 21.11(g) Exemptions

Proposed § 21.11(g), which replaces current § 21.11(f), does not substantively revise this provision.

Section 21.11(h) Notification of the Board of Directors

Proposed § 21.11(h), which replaces current § 21.11(g), reduces the burden

the current rule places on boards of directors to review criminal referrals. Under the current rule, each national bank must have procedures that ensure that the bank's board of directors is notified of each criminal referral before the next board meeting.

The proposal does not require a bank to have specific procedures for notifying its board of directors of a SAR. In addition, the proposal permits the management of the bank to notify either the board of directors or a committee of directors or executive officers designated by the board to receive notice of the filing of a SAR.

The OCC intends that each national bank maintain appropriate mechanisms to ensure that its board of directors can be informed promptly of SARs when appropriate. However, the OCC recognizes that board review of all SAR filings is impracticable in some cases. Therefore, under the proposal, the OCC gives each bank discretion to establish reporting systems appropriate for the particular institution.

The proposal also ensures, however, that if the bank elects to provide notice to a committee rather than the entire board, the bank may not give notice of a SAR filing to any director or officer who is a suspect in the known or suspected violation. The proposal also requires management to notify the entire board of directors, except the suspect, when an executive officer or director is a suspect.

Section 21.11(i) Compliance

The proposal changes the heading of the paragraph from "Penalties" to "Compliance" to reflect better the range of informal and formal supervisory

actions available to the Agencies. The proposal clarifies that the OCC treats a national bank's failure to comply with reporting requirements like any other violation of law or regulation, which may result in supervisory actions, including enforcement actions. The current rule, at § 21.11(h) (*Penalties*), appears to set a standard for penalties (willful failure to file or careless disregard in filing reports), that is inconsistent with the applicable statutory standard for violation of an agency regulation. This proposed change conforms the OCC's rules with the rules of the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation.

Section 21.11(j) Obtaining the SAR

Proposed § 21.11(j) states that SARs may be obtained from the appropriate OCC District Office at the address listed in 12 CFR part 4. The current rule does not contain a comparable instruction.

Section 21.11(k) Confidentiality of SARs

The proposal preserves the confidential nature of criminal referral reports by stating that a SAR and the information contained in a SAR are confidential.

Comments

The OCC invites public comment on all aspects of this proposal.

DERIVATION TABLE FOR 12 CFR PART 21

This table directs readers to the provisions of the current 12 CFR part 21.11 on which the revised 12 CFR part 21.11 is based.

Revised provision	Current provision	Comments
§ 21.11(a)	§ 21.11(a)	Modified.
§ 21.11(b)(1)	- - -	Added.
§ 21.11(b)(2)	- - -	Added.
§ 21.11(b)(3)	- - -	Added.
§ 21.11(b)(4)	Derived in part from § 21.11(i)	Added.
§ 21.11(b)(5)	- - -	Added.
§ 21.11(c)(1)	§ 21.11(b)(2)	Modified.
§ 21.11(c)(2)	§ 21.11(b)(3)	Modified.
§ 21.11(c)(3)	§ 21.11(b)(1) & (4)	Modified.
§ 21.11(c)(4)	Derived in part from the OCC's current criminal referral forms ..	Added.
§ 21.11(d)(1)	§ 21.11(c)(1) & (3)	Modified.
§ 21.11(d)(2)	§ 21.11(c)(2)	Modified.
§ 21.11(e)	§ 21.11(d)	Modified.
§ 21.11(f)	- - -	Added.
§ 21.11(g)(1)	§ 21.11(f)(1)	Modified.
§ 21.11(g)(2)	§ 21.11(f)(2)	Modified.
§ 21.11(h)(1)	§ 21.11(g)	Modified.
§ 21.11(h)(2)	- - -	Added.
§ 21.11(i)	§ 21.11(h)	Modified.
§ 21.11(j)	- - -	Added.
§ 21.11(k)	- - -	Added.