

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OCC hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposal primarily reorganizes the process for making criminal referrals and has no material impact on national banks, regardless of size. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (PRA) (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget (OMB), Paperwork Reduction Project (1557-0180), Washington, DC 20503, with copies to the Legislative and Regulatory Activities Division (1557-0180), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

The collection of information in this proposed rule is limited to the retention of records and is found in 12 CFR 21.11(f), which requires national banks to retain copies of all documentation supporting a SAR for ten years. The SAR will be submitted to OMB separately for PRA review. The OCC requires banks to retain this information to ensure that law enforcement and supervisory agencies have access to the documentation necessary to prosecute a violation or pursue an administrative action. The likely respondents are banks.

Estimated total annual recordkeeping burden: 5,400 hours.

The estimated annual burden per recordkeeper varies from less than one hour to 1,300 burden hours, depending on individual circumstances, with an average of 1.8 hours.

Estimated number of recordkeepers: 3,000.

Executive Order 12866

The OCC has determined that this document is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104-4 (Unfunded Mandates Act) (signed into law on March 22, 1995) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a

Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that it is not required to prepare a written statement under section 202 and has concluded that, on balance, this proposal provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

List of Subjects in 12 CFR Part 21

Bank Secrecy Act, Check kiting, Criminal referrals, Criminal transactions, Currency, Defalcations, Embezzlement, Insider abuse, Money laundering, National banks, Reporting and recordkeeping requirements, Security measures, Theft.

Authority and Issuance

For the reasons set out in the preamble, part 21 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 21—MINIMUM SECURITY DEVICES AND PROCEDURES, REPORTS OF SUSPICIOUS ACTIVITIES, AND BANK SECRECY ACT COMPLIANCE PROGRAM

1. The heading for part 21 is revised as set forth above.

2. The authority citation for part 21 continues to read as follows:

Authority: 12 U.S.C. 93a, 1818, 1881-1884, and 3401-3422.

3. Subpart B of part 21 is revised to read as follows:

Subpart B—Reports of Suspicious Activities

§ 21.11 Suspicious Activity Report.

(a) *Purpose and scope.* This section ensures that national banks file a Suspicious Activity Report when they detect a known or suspected violation of Federal law or a suspicious financial transaction. This section applies to all national banks as well as any Federal branches and agencies of foreign banks licensed or chartered by the OCC.

(b) *Definitions.* For the purposes of this section:

(1) *FinCEN* means the Financial Crimes Enforcement Network of the Department of the Treasury.

(2) *Institution-affiliated party* means any institution-affiliated party as that

term is defined in sections 3(u) and 8(b)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1813(u) and 1818(b)(5)).

(3) *Instructions* means the instructions on the SAR.

(4) *Known or suspected violation* means any matter for which there is a basis to believe that a violation of a Federal criminal statute (including a pattern of criminal violations) has occurred or has been attempted, is occurring, or may occur, and there is a basis to believe that a national bank was an actual or potential victim of the criminal violation, involved in, or used to facilitate the criminal violation.

(5) *SAR* means a Suspicious Activity Report.

(c) *SARs required.* A national bank shall file a SAR with the appropriate Federal law enforcement agencies and Treasury and in accordance with the Instructions, by sending a completed SAR to FinCEN in the following circumstances:

(1) Whenever the national bank detects a known or suspected violation of Federal criminal law and has a substantial basis to believe that one of its directors, officers, employees, agents, or other institution-affiliated parties committed or aided in the commission of the violation;

(2) Whenever the national bank detects a known or suspected violation of Federal criminal law, there is an actual or potential loss to the national bank (before reimbursement or recovery) aggregating \$5,000 or more, and the bank has a substantial basis for identifying a possible suspect or group of suspects, where none of the suspects are included in paragraph (c)(1) of this section;

(3) Whenever the national bank detects a known or suspected violation of Federal criminal law, there is an actual or potential loss to the national bank (before reimbursement or recovery) aggregating \$25,000 or more, and the bank has no substantial basis for identifying a possible suspect or group of suspects; or

(4) Whenever a financial transaction is conducted, or attempted, at the national bank and:

(i) The bank suspects that the transaction involved funds derived from illicit activity, was conducted for the purpose of hiding or disguising funds from illicit activity, or in any way violated the money laundering statutes (18 U.S.C. 1956 and 1957);

(ii) The bank suspects that the transaction was potentially designed to evade the reporting or recordkeeping requirements of the Bank Secrecy Act (31 U.S.C. 5311 through 5330) or regulations issued thereunder; or