

ensure that all information and documentation sufficient to comply with the requirements of this paragraph (d) are available for examination and inspection, at a location specified by a Board or Reserve Bank representative, within 48 hours of a Board or Reserve Bank representative's request for such information and documentation. In instances where the information and documentation is maintained at a location other than where the customer's account is maintained or the financial services are rendered, the bank must include, as part of its Know Your Customer program, specific procedures designed to ensure that the information and documentation is reviewed on an ongoing basis by appropriate bank personnel in order to comply with this paragraph (d).

#### **PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)**

1. The authority citation for 12 CFR part 211 continues to read as follows:

**Authority:** 12 U.S.C. 221 *et seq.*, 1818, 1835a, 1841 *et seq.*, 3101 *et seq.*, 3901 *et seq.*

2. A new § 211.9 would be added to read as follows:

##### **§ 211.9 Procedures for monitoring Bank Secrecy Act compliance.**

(a) Each Edge corporation or any branch or subsidiary thereof, Agreement corporation or branch or subsidiary thereof, shall, by April 1, 2000, in accordance with the provisions of § 208.63 of the Board's Regulation H, 12 CFR 208.63, develop and provide for the continued administration of:

(1) A program reasonably designed to ensure and monitor compliance with the provisions of subchapter II of chapter 53 of title 31, United States Code, the Bank Secrecy Act, and the implementing regulations promulgated thereunder by the Department of the Treasury at 31 CFR part 103; and

(2) A "Know Your Customer" program reasonably designed to identify customers of the Edge or Agreement corporation or subsidiary thereof, including customers' normal and expected transactions at or through the institution.

3. Section 211.24 is amended as follows:

a. Paragraph (f) is redesignated as paragraph (f)(1); and

b. A new paragraph (f)(2) is added.

The addition would read as follows:

##### **§ 211.24 Approval of officers of foreign banks; procedures for applications; standards for approval; representative-office activities and standards for approval; preservation of existing authority; reports of crimes and suspected crimes; government securities sales practices.**

\* \* \* \* \*

(f) *Reports of crimes and suspected crimes.*—(1) \* \* \*

(2) *Procedures for monitoring Bank Secrecy Act compliance.* Each branch and agency of a foreign bank (except a federal branch or a federal agency or a state branch that is insured by the Federal Deposit Insurance Corporation) in the United States shall, by April 1, 2000, in accordance with the provisions of § 208.63 of the Board's Regulation H, 12 CFR 208.63, develop and provide for the continued administration of:

(i) A program reasonably designed to ensure and monitor compliance with the provisions of subchapter II of chapter 53 of title 31, United States Code, the Bank Secrecy Act, and the implementing regulations promulgated thereunder by the Department of the Treasury at 31 CFR part 103; and

(ii) A "Know Your Customer" program reasonably designed to identify customers of the branch or agency, including customers' normal and expected transactions at or through the institution.

#### **PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)**

1. The authority citation for 12 CFR part 225 continues to read as follows:

**Authority:** 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p-1, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3310, 3331-3351, 3907, and 3909.

2. Section 225.4 is amended by adding a new paragraph (g) to read as follows:

##### **§ 225.4 Corporate practices.**

\* \* \* \* \*

(g) *Procedures for Monitoring Bank Secrecy Act Compliance.*—(1) By April 1, 2000, each company described in paragraph (g)(2) of this section, shall, in accordance with the provisions of § 208.63 of the Board's Regulation H, 12 CFR 208.63, develop and provide for the continued administration of:

(i) A program reasonably designed to ensure and monitor compliance with the provisions of subchapter II of chapter 53 of title 31, United States Code, the Bank Secrecy Act, and the implementing regulations promulgated thereunder by the Department of the Treasury at 31 CFR part 103; and

(ii) A "Know Your Customer" program reasonably designed to identify

customers of the company, subsidiary, or foreign bank including customers' normal and expected transactions at or through the institution.

(2) Paragraph (g)(1) of this section shall apply to each company that:

(i)(A) Is a bank holding company or a nonbank subsidiary thereof; or

(B) Is a nonbank company operating in the United States that is a subsidiary of a foreign bank that is a bank holding company or that is subject to the BHC Act by virtue of section 8(a) of the International Banking Act (12 U.S.C. 3106(a)); and

(ii) Holds accounts involving the receipt or disbursement of funds for persons other than affiliates.

By order of the Board of Governors of the Federal Reserve System, December 1, 1998.

**Jennifer J. Johnson,**

*Secretary of the Board.*

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#### **DEPARTMENT OF THE TREASURY**

##### **Office of the Comptroller of the Currency**

##### **12 CFR Part 21**

[Docket No. 98-15]

RIN 1557-AB66

##### **"Know Your Customer" Requirements**

**AGENCY:** Office of the Comptroller of the Currency, Treasury (OCC).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The OCC is proposing to issue a regulation requiring national banks to develop and maintain "Know Your Customer" programs. As proposed, the regulation would require each bank to develop a program designed to determine the identity of its customers; determine its customers' sources of funds; determine the normal and expected transactions of its customers; monitor account activity for transactions that are inconsistent with those normal and expected transactions; and report any transactions of its customers that are determined to be suspicious, in accordance with the OCC's existing suspicious activity reporting regulation. By requiring banks to determine the identity of their customers, as well as to obtain knowledge regarding the legitimate activities of their customers, the proposed regulation will reduce the likelihood that banks will become unwitting participants in illicit activities conducted or attempted by their customers.

**DATES:** Comments must be received by March 8, 1999.

**ADDRESSES:** Comments should be directed to: Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219, Attention: Docket No. 98-15. Comments will be available for public inspection and photocopying at the same location. In addition, comments may be sent by fax to (202) 874-5274, or by electronic mail to [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov).

**FOR FURTHER INFORMATION CONTACT:** Robert Pasley, Assistant Director, Enforcement and Compliance Division (202) 874-4879; Thomas Fleming, Compliance Specialist (202) 874-4879, or Susan Quill, Compliance Expert (202) 874-4879, Community and Consumer Policy; or Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities Division (202) 874-4879.

**SUPPLEMENTARY INFORMATION:**

**Background**

The integrity of the financial sector depends on the ability of banks and other financial institutions to attract and retain legitimate funds from legitimate customers. Banks are able to attract and retain the business of legitimate customers because of the quality and reliability of the services being rendered and, as important, the sound and highly respected reputation of banks. Illicit activities, such as money laundering, fraud, and other transactions designed to assist criminals in their illegal ventures, pose a serious threat to the integrity of banks. When transactions at banks involving illicit funds are revealed, these transactions invariably damage the reputation of the banks involved. While it is impossible to identify every transaction at a bank that is potentially illegal or is being conducted to assist criminals in the movement of illegally derived funds, it is fundamental for safe and sound operations that banks take reasonable measures to identify their customers, understand the normal and expected transactions typically conducted by those customers, and, consequently, identify those transactions conducted by their customers that are suspicious in nature. By identifying and, when appropriate, reporting such transactions in accordance with existing suspicious activity reporting requirements, banks are protecting their integrity and are assisting the efforts of the bank regulatory agencies and law enforcement authorities to combat illicit activities at financial institutions.

One of the most effective means by which a bank can both protect itself

from engaging in transactions designed to facilitate illicit activities and ensure compliance with applicable suspicious activity reporting requirements is for the bank to have adequate Know Your Customer policies and procedures. By knowing its customers, a bank is both better able to serve the legitimate needs of its customers and to fulfill its compliance responsibilities, including its Bank Secrecy Act and suspicious activity reporting requirements.

Recognizing that a Know Your Customer program for one bank will not necessarily be appropriate for another, the proposed regulation focuses on the basic components that the OCC believes should be contained in any Know Your Customer program. In supplemental guidance to be provided at the time this regulation becomes final, the OCC will provide further information about specific steps that banks may consider taking to ensure that their Know Your Customer programs comport with the regulations. The OCC believes that this approach strikes an appropriate balance that responds to requests for additional guidance in this area while preserving the flexibility for each bank to take steps appropriate for the size and complexity of its business.

**Privacy Issues**

The proposed regulation requires banks to gather information about customers that, if misused, could result in an invasion of a customer's privacy. Accordingly, it is the OCC's expectation that, in complying with the Know Your Customer regulation, a bank will obtain only that information that is necessary to comply with the regulation and will limit the use of this information to complying with the regulation. Financial institutions need to safeguard and handle responsibly the information gathered in connection with complying with these obligations, and should integrate comprehensive privacy practices into their Know Your Customer programs.

**Authority to Issue Regulation**

The proposed regulation is authorized pursuant to the OCC's statutory authority under section 8(s)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818(s)(1)), as amended by section 2596(a)(2) of the Crime Control Act of 1990 (Pub. L. 101-647), which mandates that the OCC issue regulations requiring banks under its supervision to establish and maintain internal procedures reasonably designed to ensure and monitor compliance with the Bank Secrecy Act. Effective Know Your Customer programs serve to

facilitate compliance with the Bank Secrecy Act.

**Proposal**

The OCC proposes to revise 12 CFR Part 21 by requiring national banks to develop and implement Know Your Customer programs. Under the proposed regulation, the OCC would expect each bank to design a program that is appropriate given the bank's size and complexity, the nature and extent of its activities, its customer base and the levels of risk associated with its various customers and their transactions. The OCC believes that this approach is preferable to a detailed regulation that imposes the same list of specific requirements on every bank regardless of its circumstances.

Each of the other Federal bank supervisory agencies is proposing to adopt Know Your Customer regulations covering state member and nonmember banks, state-chartered branches and agencies of foreign banks, and savings associations.<sup>1</sup> The OCC also has been discussing with the Federal regulators of non-bank financial institutions, such as broker-dealers, the need to propose similar rules governing the activities of these non-bank institutions.

**Section-by-Section Analysis**

The OCC proposes to add a new § 21.22. The various components of the Know Your Customer rule are summarized below.

*Purpose and scope (§ 21.22(a))*

The purposes of adopting a Know Your Customer program are to protect the reputation of the bank; to facilitate the bank's compliance with all applicable statutes and regulations (including the Bank Secrecy Act and the OCC's suspicious activity reporting regulations) and with safe and sound banking practices; and to protect the bank from becoming a vehicle for, or a victim of, illegal activities perpetrated by its customers. The rules apply, as a general matter, to all national banks. However, the rules do not apply to credit card banks, bankers' banks, or other banks that operate solely to service the activities of their affiliates. The OCC recognizes that certain banks operate solely to service the activities of their affiliates or other banks and, in so doing, do not interact in any manner with any public customers. The OCC does not intend the proposed regulation

<sup>1</sup> As of the date this proposed rule was signed, the National Credit Union Administration was still reviewing the issue of whether to adopt a regulation that would create similar Know Your Customer obligations for credit unions.

to impose any requirements on those banks.

The rules also apply to all Federal branches or agencies of foreign banks licensed or chartered by the OCC. The OCC expects U.S. banks to implement Know Your Customer systems in their overseas branches that are equivalent to those that they have in the United States in order to minimize the risk to the bank posed by illegal activities in the overseas branches.

*Definition of Customer (§ 21.22(b))*

The proposed regulation defines the term "customer" as any person or entity who has an account involving the receipt or disbursement of funds with an institution covered by this regulation and any person or entity on behalf of whom an account is maintained. If, for instance, a bank knows that an account is opened on behalf of a third party, the bank will need to treat as a customer both the person or entity opening the account and the person or entity for whom the account is opened. The regulation applies to deposit accounts, loan accounts, and any other type of account involving the receipt or disbursement of funds. It does not include, for instance, transactions such as renting safe deposit boxes.

Except for the provisions regarding identifying customers (see the discussion of paragraph (d)(2)(i) of the proposed rule, below) the proposed regulation does not differentiate between current customers and new customers. The effectiveness of a bank's Know Your Customer program would be greatly reduced if all customer accounts in existence prior to the effective date of the regulation were excluded from its scope. However, the OCC does not believe that it is practicable for a bank to conduct a large-scale information request from all its existing customers. Rather, a bank may comply with the proposed regulation with respect to its current customers by determining their normal and expected transactions using available account data and monitoring their transactions for suspicious activities. However, depending on the nature of the risk associated with some customers and their transactions (for instance, transactions involving private banking customers), it may be necessary to fulfill all of the requirements of this regulation as if they were new customers.

*Establishment of Know Your Customer Program (§ 21.22(c))*

This section requires that each bank establish a Know Your Customer program by April 1, 2000. Additionally, this section requires that the Know Your

Customer program be reduced to writing and approved by the board of directors of the bank, or a committee thereof, and the approval recorded in the official minutes of the board.

*Contents of Know Your Customer Program (§ 21.22(d))*

This section sets forth the specific requirements for the contents of the Know Your Customer program. As previously noted, the OCC believes that to impose a regulation that requires each bank to follow a pre-designed, standardized checklist would not be appropriate. The proposed regulation thus allows each bank to develop and delineate a system that will comprise the Know Your Customer program, consistent with the banking practices of the particular bank that, when followed by the bank, will effectively meet the requirements and goals of the regulation.

Section 21.22(d) reflects the OCC's recognition that each bank's Know Your Customer program may vary depending on the nature of the specific activity, the type of customers involved, the size of the transactions, and other factors that reflect the bank's assessment of the risk presented. In complying with this section, it may be beneficial for banks to classify customers into varying risk-based categories that the banks can use in determining the amount and type of information, documentation and monitoring that is appropriate. While the proposed regulation will provide banks with substantial flexibility in devising an appropriate Know Your Customer program, the OCC believes that all Know Your Customer programs should contain certain critical features, which are discussed below.

*Documentation and Due Diligence*

Paragraph (d)(1) of § 21.22 requires that the Know Your Customer program delineate acceptable documentation requirements and due diligence procedures the bank will follow in meeting the requirements of the proposed regulation. The delineation of this information in the Know Your Customer program will ensure that the same standards are applied throughout the bank and will inform auditors and examiners of the bank's established standards for review of customer information.

*Minimum Steps to Take to Comply With the Know Your Customer Rule*

Paragraph (d)(2) of § 21.22 sets forth the steps a bank needs to take in order to know its customers. These steps are discussed below.

*Identify the customer.* Paragraph (d)(2)(i) requires that the Know Your Customer program provide a system for determining the identity of new customers. If a bank has reasonable cause to believe that it lacks sufficient information to know the identity of an existing customer, paragraph (d)(2)(i) also requires that the program provide a system for determining the identity of that customer.

It is imperative that a bank establish, to its own satisfaction, that it is dealing with a legitimate customer, whether the customer is a natural person, corporation, or other business entity. The nature and extent of the identification process should be commensurate with the types of transactions anticipated by the customer and the risks associated with such transactions. If a bank is unable to establish the identity or legitimacy of the customer, sound practices require that the bank not open the account (or terminate the account if the bank lacks adequate information to know the identity of an existing customer and is unable to obtain the information).

The best identification documents for verifying the identity of prospective customers are the ones that are the most difficult to obtain illicitly and the most difficult to counterfeit. No single form of identification can be guaranteed to be genuine, however. Therefore, the identification process should be cumulative, obtaining enough information and documentation to assure the bank that it has adequately identified the prospective customer. For individual accounts, this might include, for instance, a photograph and signature of the individual. For corporate or business customers, the customer identification process could include the review of appropriate documentation that allows for a means to verify that the corporation or other business entity does exist and does engage in the business, as stated. All documentation reviewed, as well as verifications of the information contained therein, should be recorded and maintained by the bank.

Any practice of a bank that allows for the establishment of a customer relationship without face-to-face contact with bank personnel, such as banking by mail or Internet banking, poses difficulties in the identification of the prospective customer by use of the traditionally accepted practice of obtaining photographic identification. Even though photographic identification in such circumstances will be impractical, other accepted means of identifying a customer are still viable. In such circumstances, special care should

be given to verification of address and telephone number.

If a bank offers private banking services, it is important that the bank understand a customer's personal and business background, source of funds, and intended use of the private banking services. Typically, private banking customers are clients of financial advisors or make use of account vehicles such as personal investment companies, trusts, and personal mutual investment funds. The establishment of such accounts protects the legitimate confidentiality and financial privacy of the customers who use such accounts. However, banks need to identify properly the beneficial owners of such accounts in order to have an effective Know Your Customer program. Any needed confidentiality required by customers of a bank's private banking department can be addressed by the development of special protections to limit access to information that would generally reveal the beneficial owners of those accounts.

Introductions or referrals of prospective customers by established customers of the bank, while extremely valuable in providing background information about the prospective customer, cannot take the place of identification requirements that should be set forth in the bank's Know Your Customer program. Details regarding the introduction or referral should be documented so that the information obtained can be effectively used to assist in the verification of the prospective customer.

*Determine the source of funds.* Paragraph (d)(2)(ii) requires that the Know Your Customer program provide a system for determining the source of a customer's funds. The amount of information needed to do this can depend on the type of customer in question. As an example, if a retail banking customer maintains demand deposit accounts funded primarily from payroll deposits, it should be a relatively simple task to identify and document the source of funds as payroll deposits. On the other hand, a more detailed analysis, with a more extensive documentation process, would be required for high net worth customers with multiple deposits from a variety of sources. For these reasons, among others, it may be beneficial for banks to classify customers into varying categories, based on factors such as the types of accounts maintained, the types of transactions conducted, and the potential risk of illicit activities associated with such accounts and transactions. Banks could then develop procedures to obtain necessary

information and documentation based on the risk assessment for the various categories or classes established by a bank.

*Determine normal and expected transactions.* Paragraph (d)(2)(iii) requires that the Know Your Customer program provide a system for determining a customer's normal and expected transactions involving the bank. Without this information, a bank is unable to identify suspicious transactions. A bank's understanding of a customer's normal and expected transactions should be based on information obtained both when an account is opened and during a reasonable period of time thereafter. It also should be based on normal transactions for similarly situated customers.

*Monitor the account transactions.* Paragraph (d)(2)(iv) requires that the Know Your Customer program provide a system for monitoring, on an ongoing basis, the transactions conducted by customers and identifying transactions that are inconsistent with the normal and expected transactions for particular customers or for customers in the same or similar categories or classes. The proposed regulation does not require that every transaction of every customer be reviewed. Rather, it requires that a bank develop a monitoring system that is appropriate for the risks presented by the accounts maintained at that bank.

In designing a monitoring system, a bank may choose to classify accounts into various categories based on factors such as the type and size of account, the types, number, and size of transactions conducted in the account, and the risk of illicit activity associated with the account. For certain classes or categories of accounts, it would be sufficient for an effective monitoring system to establish parameters for which the transactions within these accounts will normally occur. Rather than monitoring each transaction, an effective monitoring system could entail monitoring only for those transactions that exceed the established parameters for that particular class or category of accounts. For other categories or classes of accounts, such as private banking accounts, it may be necessary to monitor each significant transaction.

*Determine if transaction should be reported.* Once a transaction is identified as inconsistent with normal and expected transactions, paragraph (d)(2)(v) requires that a bank determine if the transaction warrants the filing of a Suspicious Activity Report. This is consistent with a bank's existing obligations under 12 CFR 21.11(c). In identifying reportable transactions, a

bank should not conclude that every transaction that falls outside what is expected for a given customer should be reported. Rather, a bank should focus on patterns of inconsistent transactions and isolated transactions that present risk factors that warrant further review.

#### *Compliance with Know Your Customer Program (§ 21.22(e))*

This section sets forth the requirements a bank must follow to ensure that it is in compliance with its Know Your Customer program. The requirements include that a bank provide for and document a system of internal controls to ensure ongoing compliance, as well as provide for and document independent testing for compliance with the Know Your Customer program. Additionally, the bank must designate an individual responsible for coordinating and monitoring day-to-day compliance and provide for and document training to all appropriate personnel of the content and requirements of the Know Your Customer program.

#### *Availability of Documentation (§ 21.22(f))*

This section requires, for all accounts opened or maintained in the United States, that all information and documentation necessary to comply with the regulation be made available for examination and inspection, at a location specified by a OCC representative, within 48 hours of a request for such information and documentation. In instances where the information and documentation is at a location other than where the customer's account is maintained or the financial services are rendered, the bank must adopt, as part of its Know Your Customer program, specific procedures designed to ensure that the information and documentation is reviewed by personnel at the location where the customer's account is located or the financial services are rendered, and the bank should provide written evidence that the appropriate review of the information and documentation is being performed by the personnel at that location on a regular basis.

While issues arise on occasion concerning whether foreign laws permit a bank to disclose certain customer information, the OCC's experience is that the information typically already exists within the bank in the United States because the information is used by the relationship manager, who resides in the United States, as well as other components of the bank, to provide banking services to the customer. Moreover, in instances where

banks have raised foreign law disclosure issues, the banks, at the OCC's suggestion, have obtained from their customers waivers to any perceived prohibition to disclosure of the information and documentation. Thus, the OCC does not anticipate that foreign laws will preclude the production of information relating to accounts opened and maintained in the United States.

#### Comments Sought

The OCC invites comment on any aspect of the proposed regulation, and specifically seeks comment on the following issues:

1. Whether the proposed definition of "customer" is sufficient to include all persons who benefit from an account opened at a bank, such as persons who establish off-shore shell companies or entities or otherwise conduct their business through intermediaries.

2. Whether the proposed definition of "customer" is too broad and will unnecessarily include persons that pose a minimal Know Your Customer risk.

3. Whether a bank's Know Your Customer program should apply to a bank's counterparty relationships with respect to transactions in wholesale financial markets (e.g., sales or purchases involving foreign exchange or securities) and correspondent banking relationships.

4. Whether a different standard than that applicable to retail relationships would be more appropriate for wholesale and correspondent banking relationships, and, if such a distinction is appropriate, how the definition of "customer" can be distinguished between transactional counterparty customers, correspondents, and retail customers.

5. Whether the proposed regulation will create a competitive disadvantage with respect to other financial entities offering similar services that may not be subject to the similar regulations (citing, where possible, specific examples) and, if so, what could be done to mitigate the disadvantage consistent with the OCC's supervisory responsibilities.

6. Whether the actual or perceived invasion of personal privacy interests is outweighed by the additional compliance benefits anticipated by this proposal.

7. Whether there should be a minimum account size threshold below which the Know Your Customer requirements should be waived.

8. Whether credit card banks should be exempt from the regulation.

#### Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601

*et seq.*), the OCC certifies that this proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. Most banks, from small to large, already have policies and procedures aimed at collecting, retaining, and reviewing the types of information required by this proposal. Therefore, there should not be a significant economic impact from this proposal.

#### Paperwork Reduction Act

The OCC invites comment on:

(1) Whether the proposed collections of information contained in this notice of proposed rulemaking are necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(2) The accuracy of the OCC's estimate of the burden of the proposed information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, minutes, and purchase of services to provide information.

Recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number.

The collection of information requirements 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 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1557-KYCP), Washington, D.C. 20503, with copies to Office of the Comptroller of the Currency, Communications Division, 250 E Street, SW, Attention: 1557-KYCP, Washington, D.C. 20219.

The proposed rule is not expected to significantly increase the ongoing annual paperwork burden for the recordkeepers because most of the ongoing burden is incurred and accounted for under other existing information collections. As discussed in the preamble to the proposed rule, banks already must report suspicious transactions, pursuant to 12 CFR 21.11. Therefore, they already must gather information about customers and

monitor customer transactions as part of their usual and customary activities in order to comply with the suspicious activity reporting requirements. Moreover, the OCC has drafted the proposed regulation in a way that is designed to give banks as much flexibility as possible to design a system that is appropriate for each individual bank and generally has not proposed to require compliance with specific paperwork burdens.

The majority of the paperwork burden associated with the proposed rule is the one-time burden of developing a plan. In the normal course of business, most institutions likely already have sufficient information about their customers in their files and would only need to organize and review such information. Because each institution would design its own program in accordance with its own business practices, the OCC estimates that the burden of the proposed rule would vary considerably and may range, during the initial year, from 10 to 30 hours, with an average of 20 hours per recordkeeper.

The collection of information requirements in this proposed rule are found in 12 CFR 21.22(c) and 21.22(e)(3). This information is required to evidence compliance with the requirements that the Know Your Customer program has been developed and approved by a bank's board of directors (or committee thereof) and to identify the person(s) responsible for coordinating and monitoring compliance with the program. The likely respondents are national banks, District banks, and Federal branches and agencies of foreign banks licensed or chartered by the OCC.

*Estimated average annual burden hours per recordkeeper:* 20 hours for the first year, with an average over the first three years of 8 hours per year.

*Estimated number of recordkeeper:* 2,600.

*Estimated total annual recordkeeping burden:* 52,000 for the first year, with an average over the first three years of 20,800 hours per year.

*Start-up costs:* None.

#### Executive Order 12866

The Office of Management and Budget has concurred with the OCC's determination that this proposal is not a significant regulatory action under Executive Order 12866.

#### Unfunded Mandates Reform Act of 1995

The OCC has determined that this proposal will not result in expenditures by state, local, and tribal governments, or by the private sector, of \$100 million

or more in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995. Most banks already have policies and procedures aimed at collecting, retaining and reviewing the types of information required by this proposal and, thus, this proposal should not result in substantial additional expenditures.

#### List of Subjects in 12 CFR Part 21

Currency, National banks, Reporting and recordkeeping requirements, Security measures.

#### Authority and Issuance

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

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

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

**Authority:** 12 U.S.C. 93a, 1818, 1881–1884, and 3401–3422; 31 U.S.C. 5318.

2. A new § 21.22 is added to read as follows:

#### § 21.22 Know Your Customer rules.

(a) *Purpose and scope*—(1) *Purpose*. The Know Your Customer rules require that national banks and Federal branches or agencies of foreign banks establish and regularly maintain procedures designed to determine the identity of their customers, as well as their customers' normal and expected transactions and sources of funds involving the bank. These procedures (referred to as the "Know Your Customer" program) are intended to: protect the reputation of the bank; facilitate the bank's compliance with all applicable statutes and regulations (including the Bank Secrecy Act and the suspicious activity reporting requirements of 12 CFR 21.11) and with safe and sound banking practices; and protect the bank from becoming a vehicle for or a victim of illegal activities perpetrated by its customers.

(2) *Scope*. In general, the Know Your Customer rules apply to all national banks as well as all Federal branches or agencies of foreign banks licensed or chartered by the OCC. However, the rules do not apply to credit card banks, bankers's banks, or other banks that operate solely to service the activities of their affiliates.

(b) *Definition of customer*. For the purposes of this section, customer means:

(1) Any person or entity who has an account involving the receipt or disbursement of funds with an institution covered by this section; and

(2) Any person or entity on behalf of whom an account is maintained.

(c) *Establishment of Know Your Customer program*. Each bank shall develop and provide for the continued administration of a Know Your Customer program by April 1, 2000. The Know Your Customer program shall be reduced to writing and approved by the board of directors (or a committee thereof) with the approval recorded in the official minutes of the board.

(d) *Contents of Know Your Customer program*. The Know Your Customer program may vary in complexity and scope according to categories or classes of customers established by the bank and the potential risk of illicit activities associated with those customers' accounts and transactions. Components of the program should include the following:

(1) Appropriate documentation requirements and due diligence procedures established by the bank to comply with this section; and

(2) A system for:

(i) Determining the identity of the bank's new customers and, if the bank has reasonable cause to believe that it lacks adequate information to know the identity of existing customers, determining the identity of those existing customers;

(ii) Determining the customer's sources of funds for transactions involving the bank;

(iii) Determining the particular customer's normal and expected transactions involving the bank;

(iv) Monitoring customer transactions and identifying transactions that are inconsistent with normal and expected transactions for that particular customer or for customers in the same or similar categories or classes, as established by the bank; and

(v) Determining if a transaction should be reported in accordance with the OCC's suspicious activity reporting regulations and, if so, reporting accordingly.

(e) *Compliance with Know Your Customer program*. The bank shall comply with its Know Your Customer program. To ensure compliance, the bank shall:

(1) Provide for and document a system of internal controls;

(2) Provide for and document independent testing for compliance to

be conducted by bank personnel or by an outside party on a regular basis;

(3) Designate an individual or individuals responsible for coordinating and monitoring day-to-day compliance; and

(4) Provide for and document training to all appropriate personnel, on at least an annual basis, of the content and required procedures of the Know Your Customer program.

(f) *Availability of documentation*. For all accounts opened or maintained in the United States, each bank must ensure that all information and documentation sufficient to comply with the requirements of this section are available for examination and inspection, at a location specified by an OCC representative, within 48 hours of an OCC representative's request for such information and documentation. In instances where the information and documentation is maintained at a location other than where the customer's account is maintained or the financial services are rendered, the bank must include, as part of its Know Your Customer program, specific procedures designed to ensure that the information and documentation is reviewed on an ongoing basis by appropriate bank personnel in order to comply with this section.

Dated: October 17, 1998.

**Julie L. Williams,**

*Acting Comptroller of the Currency.*

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#### FEDERAL DEPOSIT INSURANCE CORPORATION

#### 12 CFR Part 326

RIN 3064–AC19

#### Minimum Security Devices and Procedures and Bank Secrecy Act Compliance

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The FDIC is proposing to issue a regulation requiring insured nonmember banks to develop and maintain "Know Your Customer" programs. As proposed, the regulation would require each nonmember bank to develop a program designed to determine the identity of its customers; determine its customers' sources of funds; determine the normal and expected transactions of its customers; monitor account activity for transactions that are inconsistent with those normal