



FEDERAL RESERVE BANK
OF DALLAS

ROBERT D. McTEER, JR.
PRESIDENT
AND CHIEF EXECUTIVE OFFICER

DALLAS, TEXAS 75222

January 15, 1993

Notice 93-16

TO: The Chief Executive Officer of each
member bank and others concerned in
the Eleventh Federal Reserve District

SUBJECT

**Request for Comment on Proposed Amendments to Regulations H
(Membership of State Banking Institutions in the
Federal Reserve System), K (International
Banking Operations), and Y (Bank Holding
Companies and Change in Bank Control)**

DETAILS

The Federal Reserve Board has issued for public comment proposed amendments to Regulations H, K, and Y to implement a uniform multi-agency criminal referral form. The form is designed to facilitate compliance with financial institutions' criminal activity reporting requirements, to enhance law enforcement agencies' ability to investigate and prosecute the matters reported in the criminal referrals, and to develop and maintain a new interagency database.

The uniform criminal referral form was developed in consultation with the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration, and law enforcement agencies, including the Federal Bureau of Investigation.

This form would establish uniform reporting requirements for all domestic and foreign financial institutions operating in the United States.

The Board must receive comments by February 10, 1993. Comments should be addressed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551. All comments should refer to Docket No. R-0792.

ATTACHMENT

A copy of the Board's notice (Federal Reserve System Docket No. R-0792) is attached.

MORE INFORMATION

For more information, please contact W. Arthur Tribble at (214) 922-6132. For additional copies of this Bank's notice, please contact the Public Affairs Department at (214) 922-5254.

Sincerely yours,

Robert D. McTeer, Jr.

FEDERAL RESERVE SYSTEM
12 CFR Parts 208, 211, and 225

[Regulations H, K and Y; Docket No. R-0792]

Membership of State Banking Institutions in the
Federal Reserve System; International Banking Operations;
Bank Holding Companies and Change in Bank Control; Criminal
Referral Report

AGENCY: Board of Governors of the Federal Reserve System

ACTION: Notice of proposed rulemaking.

SUMMARY: An interagency task force has designed a uniform multi-agency criminal referral form in order to facilitate compliance with financial institutions' criminal activity reporting requirements, to enhance law enforcement agencies' ability to investigate and prosecute the matters reported in the criminal referrals, and to develop and maintain a new interagency database. This uniform criminal referral form will replace the various criminal referral forms that are currently being used by federal bank, thrift and credit union regulatory agencies and by financial institutions. The purpose of the proposed regulation is to create a uniform criminal referral reporting requirement for all domestic and foreign financial institutions operating in the United States.

DATES: Comments on this proposed regulation must be received by February 10, 1993.

ADDRESSES: Comments should be sent to:

Board of Governors of the Federal Reserve System,

Mr. William Wiles, Secretary of the Board, 20th and C Streets, N.W., Washington, D.C. 20551, attention Docket No.R-0792.

FOR FURTHER INFORMATION CONTACT:

Herbert A. Biern, Deputy Associate Director, (202) 452-2620, Richard A. Small, Special Counsel, (202) 452-5235, or Mark Leemon, Senior Attorney, (202) 452-5206, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson, (202) 452-3544, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W. Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION:

Background

The federal financial institutions regulatory agencies are the Office of the Comptroller of the Currency (the "OCC"), the Board of Governors of the Federal Reserve System (the "Board"), the Federal Deposit Insurance Corporation (the "FDIC"), the Office of Thrift Supervision (the "OTS"), and the National Credit Union Administration (the "NCUA"). These agencies are charged with safeguarding the safety and soundness of financial institutions with operations in the United States, including national banks, credit unions, savings associations, state-chartered banks, bank and thrift holding companies and their

nonbank subsidiaries, Edge and Agreement corporations, and all U.S. offices of foreign banks. Pursuant to their respective enabling statutes, these agencies are responsible for ensuring that financial institutions apprise federal law enforcement authorities of any violation or suspected violation of a criminal statute. Fraud, abusive insider transactions, check kiting schemes, money laundering and other crimes can cause significant financial losses, pose serious threats to a financial institution's continued viability and, if unchecked, may undermine the public confidence in the financial services industry. The law enforcement community needs to receive timely information regarding criminal and suspected criminal activity that is sufficiently detailed to determine whether investigations and prosecutions are warranted.

The Interagency Bank Fraud Working Group (the "Working Group") was formed in 1984 to promote interagency cooperation toward the goal of improving the federal government's response to white collar crime in financial institutions. The Working Group now consists of representatives from twelve federal agencies, including the Board, the other federal financial institutions regulators, the Federal Bureau of Investigation, the U.S. Secret Service, the Department of Justice and the U.S. Department of the Treasury. A subcommittee of the Working Group studied the criminal referral process and developed a new uniform criminal referral form (the "Form"). The purpose of the Form is to standardize criminal referral data and to facilitate its

automation. It is anticipated that the resulting interagency criminal referral database will provide information, inter alia, to the OCC, the Board, the FDIC, the OTS, the NCUA, the Department of Justice and the U.S. Department of the Treasury. In order to promote use of the Form, each of the federal financial institutions regulatory agencies has decided to adopt similar regulations relating to the filing of criminal referral reports in specific situations and the use of the same Form in the making of such criminal referral reports. The new regulations would replace requirements mandating the filing of criminal referrals and designating separate agency forms for such referrals.

Comments are sought on all the provisions contained in the proposed regulation.

Regulatory Flexibility Act

The Board certifies that this proposed regulation will not have a significant financial impact on a substantial number of small banks or other small entities.

Executive Order 12291

The Board has determined that this proposed regulation is not a "major rule" and therefore does not require a regulatory impact analysis.

Paperwork Reduction Act

In accordance with Section 3507 of the Paperwork Reduction Act of 1980, the criminal referral report regulation was approved under authority delegated to the Board by the Office of Management and Budget. The Board has determined that the regulation does not significantly increase the burden of the reporting institutions. The estimated average burden associated with the collections of information contained in a criminal referral report is approximately .5 hour per respondent. The burden per respondent will vary depending on the nature of the criminal activity being reported.

Comments concerning the accuracy of this burden estimate should be directed to the Herbert A. Biern, Deputy Associate Director, Division of Banking Supervision and Regulation, Mail Stop 175, Federal Reserve Board, 20th and Constitution Avenue, N.W., Washington, D.C. 20551.

List of Subjects**12 CFR Part 208**

Accounting, Agriculture, Banks, Banking, Confidential business information, Currency, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

12 CFR Part 211

Exports, Federal Reserve System, Foreign banks, Holding companies, Investments, Reporting and recordkeeping requirements.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and requirements, Securities.

For the reasons set forth in the preamble, Parts 208, 211, and 225 of Chapter II of Title 12 of the Code of Federal Regulations are amended as follows:

PART 208 -- MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE
FEDERAL RESERVE SYSTEM

1. The authority citation for 12 CFR Part 208 continues to read as follows:

AUTHORITY: Sections 9, 11(a), 11(c), 19, 21, 25 and 25(a) of the Federal Reserve Act (12 U.S.C. §§ 321-338, 248(a), 248(c), 461, 481-486, 601, and 611); sections 4, 13(j) and 38 of the Federal Deposit Insurance Act, as amended (12 U.S.C. §§ 1814, 1823(j), and 1831o).

2. Section 208.20 is added to read as follows:

§ 208.20 Reports of crimes and suspected crimes.

(a) Purpose. This section applies to known or suspected crimes involving state member banks. This section ensures that law enforcement agencies are notified by means of criminal referral reports when unexplained losses or known or suspected

criminal acts are discovered. Based on these reports, the federal government will take appropriate measures and will maintain an interagency database that is derived from these reports.

(b) Institution-affiliated party. Institution-affiliated party means any institution-affiliated party as that term is defined in Sections 3(u) and 8(b)(3) and (4) of the FDIA (12 U.S.C. §§ 1813(u) and 1818(b)(3) and (4)).

(c) Reports Required. A state member bank shall file a criminal referral report using a standardized form (the "Form"),¹ in accordance with instructions for the Form, in every situation where:

(1) The state member bank suspects one of its directors, officers, employees, agents, or other institution-affiliated parties of having committed or aided in the commission of a crime;

(2) There is an actual or potential loss to the state member bank (before reimbursement or recovery) of more than \$1,000 where the state member bank has a substantial basis for identifying a possible suspect or group of suspects and the suspect(s) is not an director, officer, employee, agent, or institution-affiliated party of the state member bank;

¹ Copies of the Form are available from the Federal Reserve Banks.

(3) There is an actual or potential loss to the state member bank (before reimbursement or recovery) of \$5,000 or more and where the state member bank has no substantial basis for identifying a possible suspect or group of suspects; or

(4) The state member bank suspects that a monetary transaction uses the financial institution as a conduit for criminal activity, such as money laundering or structuring transactions to evade the Bank Secrecy Act reporting requirements.

(d) Time for Reporting. (1) A state member bank shall file the report required by paragraph (c) of this section no later than 30 calendar days after the date of detection of the loss or the known or suspected criminal violation or activity. If no suspect has been identified within 30 calendar days after the date of the detection of the loss or the known, attempted or suspected criminal violation or activity, reporting may be delayed an additional 30 calendar days or until a suspect has been identified; but in no case shall reporting of known or suspected crimes be delayed more than 60 calendar days after the date of the detection of the loss or the known, attempted or suspected criminal violation or activity. When a report requirement is triggered by the identification of a suspect or group of suspects, the reporting period commences with the identification of each suspect or group of suspects.

(2) When a state member bank detects a pattern of crimes committed by an identifiable individual, the state member bank shall file a report no later than 30 calendar days after the aggregated amount of the crimes exceeds \$1,000.

(3) In situations involving violations requiring immediate attention or where a reportable violation is ongoing, the state member bank shall immediately notify by telephone the appropriate law enforcement agency and the appropriate Federal Reserve Bank in addition to filing a timely written report.

(e) Reporting to State and Local Authorities. State member banks are encouraged to file copies of the Form with State and local authorities where appropriate.

(f) Exceptions. A state member bank need not file the Form:

(1) For those robberies and burglaries that are reported to local law enforcement authorities; and

(2) For lost, missing, counterfeit or stolen securities if a report is filed pursuant to the reporting requirements of 17 CFR 240.17f-1.

(g) Retention of Records. A state member bank shall maintain copies of any Form that it filed and the originals of all related documents for a period of 10 years from the date of the report.

(h) Notification to Board of Directors. The management of a state member bank shall promptly notify its board of directors of any report filed pursuant to this section.

(i) Penalty. Failure to file a report in accordance with the instructions on the Form and this regulation may subject the state member bank, its directors, officers, employees, agents, or other institution-affiliated parties to supervisory action.

PART 211 -- INTERNATIONAL BANKING OPERATIONS

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

AUTHORITY: Federal Reserve Act (12 U.S.C. §§ 221 et seq.); Bank Holding Company Act of 1956, as amended (12 U.S.C. §§ 1841 et seq.); the International Banking Act of 1978, as amended (12 U.S.C. §§ 3101 et seq.); the International Lending Supervision Act (12 U.S.C. §§ 3901 et seq.); and the Export Trading Company Act Amendments of 1988 (title III, Pub. L. 100-418, 102 Stat. 1384 (1988)).

2. Section 211.8 is added to read as follows:

§ 211.8 Reports of crimes and suspected crimes.

(a) An Edge corporation or any subsidiary or an Agreement corporation or any subsidiary shall file a criminal referral form

in accordance with the provisions of § 208.20 of the Board's Regulation H, 12 CFR 208.20.

3. Section 211.24 is amended by adding a new paragraph (i) to read as follows:

§ 211.24 Nonbanking Activities of Foreign Banking Organizations.

* * * * *

(i) Reports of Crimes and Suspected Crimes. A branch or agency or representative office of a foreign bank operating in the United States shall file a criminal referral form in accordance with the provisions of § 208.20 of the Board's Regulation H, 12 CFR 208.20.

PART 225 -- BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

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

AUTHORITY: Section 5(b) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. § 1844(b)); section 8 and 13(a) of the International Banking Act of 1978 (12 U.S.C. § 3106 and 3108); section 7(j)(13) of the Federal Deposit Insurance Act, as amended by the Change in Bank Control Act of 1978 (12 U.S.C. § 1817(j)(13)); section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. § 1818(b)); and the International Lending Supervision Act of 1983 (Pub. L. 98-181, title IX).

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

SECTION 225.4 Corporate practices.

* * * * *

(g) Criminal Referral Report. A bank holding company or any nonbank subsidiary thereof, or a foreign bank that is subject to the BHC Act or any nonbank subsidiary of such foreign bank operating in the United States, shall file a criminal referral form in accordance with the provisions of § 208.20 of the Board's Regulation H, 12 CFR 208.20.

Board of Governors of the Federal Reserve System,
December 28, 1992.

(signed) William W. Wiles

William W. Wiles
Secretary of the Board