

**FEDERAL RESERVE BANK
OF NEW YORK**

[Circular No. **10662**
October 14, 1993]

STANDARDIZED CRIMINAL REFERRAL FORM
Amendments to Regulations H, K, and Y Establishing
a Uniform Multi-Agency Criminal Referral Form

*To All State Member Banks, Bank Holding Companies, Branches and Agencies of
Foreign Banks, and Edge and Agreement Corporations in the Second
Federal Reserve District, and Others Concerned:*

The Board of Governors of the Federal Reserve System recently adopted amendments to its Regulation H (Membership of State Banking Institutions in the Federal Reserve System), Regulation K (International Banking Operations), and Regulation Y (Bank Holding Companies and Change in Bank Control) requiring all domestic and foreign banking organizations supervised by the Federal Reserve to make criminal referrals when they detect suspected criminal activities. The final rule, which was published in the *Federal Register* on September 8, 1993, with an effective date of October 8, 1993, codified the existing criminal referral guidelines used by the Board since 1985.

The Board's final rule provides, in part, that financial institutions should use a new criminal referral form that was developed jointly by the bank and thrift regulatory agencies or, in the alternative, computer software capable of producing a "shell" of the new form.

In its *Federal Register* notice, the Board advised that the forms and computer software would be available from the Federal Reserve Banks and the Board. It was expected that distribution of the forms and computer program would take place in enough time to facilitate compliance with the final rule's October 8, 1993 effective date. However, while the new forms are ready for distribution, the computer software program that could be used to produce the new form is not yet available. Financial institutions may comply with the Board's new criminal referral regulation by using the current version of the Board's Criminal Referral Form (FR 2230).

Enclosed is the text of the amendments to Regulations H, K, and Y, which have been reprinted from the *Federal Register* of September 8. Questions regarding the Criminal Referral reporting process should be directed to Regina Sherwood at (212) 720-2698.

WILLIAM J. McDONOUGH,
President.

Board of Governors of the Federal Reserve System

MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM INTERNATIONAL BANKING OPERATIONS BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL AMENDMENTS TO REGULATIONS H, K, and Y

(Effective October 8, 1993)

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: Final rule.

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 the banking organizations they supervise. The purpose of the regulation is to create a uniform criminal referral reporting requirement for all domestic and foreign financial institutions operating in the United States.

EFFECTIVE DATE: October 8, 1993.

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. For the hearing impaired only, Telecommunication Device for the Deaf, Dorothea Thompson, (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

The Federal financial institutions regulatory agencies are the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (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 (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. Because the Form is machine readable, it is anticipated that the resulting interagency criminal referral database will be fully functional in a relatively short period of time. The database will provide information, *inter alia* to the OCC, Board, FDIC, OTS, NCUA, and 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 Received

On January 8, 1993, a proposed regulation was published in the *Federal Register* [58 FR 3235]. Thirty-four comments were received on the proposed regulation. Fourteen comments were from holding companies, eighteen comments were from commercial banks or Federal Reserve Banks, and two comments were from attorneys representing financial institutions. Twenty-five of the comments expressed general support for the regulation. Four of the comments were critical of any reporting requirement whatsoever, a view that we must reject in light of the responsibility of financial institutions to assist law enforcement authorities in the performance of their duties. Ten of the comments suggested raising the dollar thresholds for required reporting. Five of the comments suggested computer software be made available to simplify the reporting requirement. One comment expresses concern for possible liability to financial institutions that might arise under various privacy laws.

With respect to potential civil liability that might arise in connection with the submission of a criminal referral, Congress has enacted a statute that provides protection from civil liability for the reporting of criminal acts to appropriate authorities. Amendments to the Bank Secrecy Act made by the Housing and Community Development Act of 1992 (31 U.S.C. 5314(g)(3)) provide that financial institutions, and their directors, officers, employees and agents, that disclose, in good faith, possible violations of law in connection with the preparation of criminal referral forms shall not be liable to any person under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the person involved in the transaction or any other person of such disclosure. This law also requires that financial institutions, and their directors, officers, employees and

agents, refrain from communicating that a criminal referral has been made and the information reported in a criminal referral to any person involved in the suspicious transaction.¹

Several commenters recommended that the dollar minimums on reportable offenses be raised. Although these comments raise a valid concern, particularly for financial institutions that may file numerous criminal referrals, the appropriate law enforcement authorities have advised the staff of the Board and the other bank and thrift regulatory agencies that the present limits are necessary for their law enforcement functions. Additionally, with the advent of the new banking and law enforcement agency databases, patterns of crime throughout the financial community should become more easily detectable. Especially in the cases of credit card fraud, money laundering, and check kiting, seemingly minor individual reports often are analyzed to detect major fraud schemes.

Several commenters queried whether the requirement to notify the boards of directors of financial institutions of the filing of criminal referrals should be viewed as mandating a communication to the board every time a criminal referral is filed or whether the notification requirement could be satisfied by a periodic or summary report. Consistent with current practice, the requirements of the regulation will be satisfied by a summary or periodic report to the board of directors, unless a criminal referral relates to a material event that necessitates a more prompt notification to the board of directors.

Several commenters recommended that a computerized model be developed to facilitate the task of completing the forms. The use of a computer shell was contemplated from the inception of the interagency database; and, as a result, a computer shell will be made available contemporaneously with the distribution of the new form, at no, or a very minimal, cost to financial institutions. The computer shell will enable the completion of the form using a personal computer and a laser printer. The computer shell should reduce the costs and burdens associated with the preparation of the Form.

¹ The new criminal referral form prominently provides a description of this new law on the front page of the form's instructions.

It is important to note that the regulation requires that financial institutions use only the Form or the computer shell that has been authorized by the Federal regulators. Use of another form, a facsimile of the Form, or any computer software shell of the Form other than the shell distributed by the regulators is not permitted and could result in a determination that a financial institution or an institution-affiliated party has not complied with this regulation.

Regulatory Flexibility Act Analysis

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 collection of information contained in a criminal referral report is approximately .6 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 C Streets, NW., Washington, DC 20551.

List of Subjects

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Currency, Reporting and recordkeeping requirements, Securities.

12 CFR Part 211

Exports, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Holding companies, Reporting and recordkeeping 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 is revised to read as follows:

Authority: 12 U.S.C. 248(a) and (c), 321-328, 461, 481-486, 601, 611, 814, 1818, 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 (Form),¹³ 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;

(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 it is being used 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 is revised to read as follows:

Authority: 12 U.S.C. 221 et seq., 1818, 1841 et seq., 3101 et seq., 3901 et seq., and 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.

An Edge corporation or any branch or subsidiary thereof or an Agreement corporation or branch or any subsidiary thereof 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 (f) to read as follows:

§ 211.24 Approval of offices of foreign banks; procedures for applications; standards for approval; representative office activities and standards for approval; preservation of existing authority.

* * * * *

(f) *Reports of crimes and suspected crimes.* Except for a federal branch or a federal agency or a state branch that is insured by the Federal Deposit Insurance Corporation, a branch or agency or a 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.

¹³ Copies of the Form (FR 2230) are available from the Federal Reserve Banks. The Form may be prepared using a computer shell that is distributed by the Board.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

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

Authority: 12 U.S.C. 1817(j)(13); 1818(b); 1844(b); 3106 and 3108; and Pub. L. 98-181, title IX.

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

follows:

§ 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, August 31, 1993.

William W. Wiles,
Secretary of the Board.

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