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Thru: Doug Robertson, Director, Policy Analysis Division

From: William Bednar and Karen Furst, Policy Analysis Division

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Subject: Bank Secrecy Act Compliance Program, Proposed Rule

The Office of the Comptroller of the Currency (OCC), Federal Reserve Board (FRB), the National Credit Union Administration (NCUA), and the Federal Deposit Insurance Corporation (FDIC) collectively, the federal banking agencies (FBAs) are issuing a notice of proposed rulemaking to amend the Bank Secrecy Act compliance program rule (BSA compliance program rule) that each FBA has issued for its institutions. The amendments are intended to conform with changes that are being concurrently proposed by the Financial Crimes Enforcement Network (FinCEN) as a result of the passage of the Anti-Money Laundering Act of 2020 (AML Act). In addition, the proposed rule would incorporate recent statutory modifications to the BSA and codify other longstanding supervisory expectations.

As you requested, we have assessed the impact of the proposed rule to determine if, pursuant to the Regulatory Flexibility Act (RFA), the rule will have a significant economic impact on a substantial number of small entities. In addition, consistent with the Unfunded Mandates Reform Act of 1995 (UMRA), our review considers whether mandates imposed by the proposed rule may result in an expenditure of \$100 million or more, adjusted for inflation (currently \$183 million) by state, local, and tribal governments or by the private sector.¹

Conclusion

We estimate that the total costs associated with the proposed rule would be approximately \$3.2 million and expenditures to comply with the proposed rule's mandates would be approximately \$2.1 million. Thus, we believe the proposed rule would not result in an expenditure of \$183 million or more annually by state, local, and tribal governments or by

¹ We estimate the UMRA inflation adjustment using the change in the annual U.S. GDP Implicit Price Deflator between 1995 and 2023, which are the most recent annual data available. The deflator was 66.937 in 1995 and 122.265 in 2023, resulting in an inflation adjustment factor of 1.83 ($122.265/66.937 = 1.826$ and $\$100 \text{ million} \times 1.83 = \183 million).

the private sector. Furthermore, we believe the proposed rule would not have a significant economic impact on a substantial number of OCC-supervised small entities.

Background

12 CFR 21.21 requires national banks, including federal branches and agencies, and federal savings associations to establish and maintain procedures reasonably designed to assure and monitor their compliance with the requirements of subchapter II of chapter 53 of title 31, United States Code and the implementing regulations promulgated thereunder by the Department of the Treasury at 31 CFR Chapter X.

The proposed rule

The proposed rule would revise 12 CFR 21.21 to require OCC-supervised institutions to establish and maintain an “effective” and “reasonably designed” anti-money laundering/countering the financing of terrorism program (AML/CFT program) that, at a minimum, includes: a risk assessment process that will serve as the basis for the bank’s AML/CFT program and includes, among other things, consideration of the priorities for anti-money laundering and countering the financing of terrorism (AML/CFT priorities); one or more qualified AML/CFT compliance officers; policies, procedures and internal controls commensurate to address the bank's money laundering and terrorism financing (ML/TF) risks; risk-based procedures for conducting ongoing customer due diligence (CDD); an ongoing employee training program; and, independent, periodic AML/CFT program testing performed by qualified persons. The proposed rule would also incorporate the self-executing statutory mandate of the AML Act that persons with a duty of establishing, maintaining, and enforcing the AML/CFT program be in the United States and accessible to oversight and supervision by the appropriate regulator.²

New mandates

The proposed rule would require institutions to

- update their programs to incorporate the new definition of “AML/CFT program”,
- incorporate the AML/CFT priorities,³ and
- create an effective and reasonably designed AML/CFT program.

Impact on OCC-supervised banks

The OCC currently supervises 1,044 institutions (commercial banks, trust companies, federal savings associations, and branches or agencies of foreign banks).⁴ The proposed rule would impact all OCC-supervised banks.

To estimate expenditures, we review the costs associated with the activities necessary to comply with the proposed rule. These include an estimate of the total time required to implement the proposed rule and the estimated hourly wage of bank employees who may be

² This self-executing provision became effective in January 2021.

³ See [AML/CFT Priorities](#) (June 30, 2021). Section 6101(b) of the AML Act requires that the Secretary of the Treasury establish priorities for anti-money laundering and countering the financing of terrorism and to promulgate regulations, as appropriate, to carry out those priorities. FinCEN issued the first AML/CFT Priorities on June 30, 2021.

⁴ Based on data accessed using FINDRS on May 8, 2024.

responsible for the tasks associated with achieving compliance with the proposed rule. For our cost estimates, we use a compensation rate of \$128 per hour.⁵

We estimate that the cost to comply with the requirement to update banks' programs to incorporate the new definition of "AML/CFT program" would be approximately \$2.1 million (16 hours × \$128 per hour × 1,044 banks). We believe that this is essentially a change in terminology and the burden associated with this change would be minimal.⁶

We believe that incorporating the AML/CFT Priorities would not impose an additional measurable burden because the "Priorities reflect longstanding and continuing AML/CFT concerns previously identified by FinCEN and other Treasury components and U.S. government departments and agencies."⁷

We believe that complying with the mandate to create an effective and reasonably designed AML/CFT program would not impose an additional burden because this is an existing requirement of supervisory guidance⁸ and guidelines in 12 CFR part 30. Accordingly, banks should already have a risk assessment and the other components of the proposed rule in place.

UMRA

Consistent with the UMRA, our review considers whether the mandates imposed by the proposed rule may result in an expenditure of \$100 million or more by state, local, and tribal governments, or by the private sector, in any one year, adjusted annually for inflation (currently \$183 million).

We estimate that expenditures to comply with proposed rule's mandates would be approximately \$2.1 million (16 hours × \$128 per hour × 1,044 banks). Therefore, we conclude that the proposed rule would not result in an expenditure of \$183 million or more annually by state, local, and tribal governments, or by the private sector.

Total cost

We estimate that the total cost that would be incurred by banks to comply with the proposed rule would be approximately \$3.2 million (24 hours × \$128 per hour × 1,044 banks). In addition to the UMRA expenditures outlined above, we estimate that banks' costs would include approximately \$1.1 million (8 hours × \$128 per hour × 1,044 banks) to review the rule.

RFA

As part of our analysis, we consider whether the proposed rule would have a significant economic impact on a substantial number of small entities, pursuant to the RFA. The OCC

⁵ To estimate wages the OCC reviewed May 2022 data for wages (by industry and occupation) from the U.S. Bureau of Labor Statistics (BLS) for credit intermediation and related activities (NAICS 5220A1). To estimate compensation costs associated with the rule, the OCC uses \$128.05 per hour, which is based on the average of the 90th percentile for six occupations adjusted for inflation (5.1 percent as of Q1 2023), plus an additional 34.3 percent for benefits (based on the percent of total compensation allocated to benefits as of Q4 2022 for NAICS 522: credit intermediation and related activities).

⁶ The current rule uses the phrase "BSA compliance program."

⁷ AML/CFT Priorities, page 3 (June 30, 2021).

⁸ <https://bsaaml.ffiec.gov/manual/BSAAMLRiskAssessment/01>.

currently supervises approximately 636 small entities.⁹ The proposed rule would impact all small entities.

We estimate the annual cost for small entities to comply with the proposed rule would be approximately \$3,072 dollars per bank (24 hours × \$128 per hour). In general, the OCC classifies the economic impact on a small entity as significant if the total estimated impact in one year is greater than 5 percent of the small entity's total annual salaries and benefits or greater than 2.5 percent of the small entity's total non-interest expense. Furthermore, the OCC considers 5 percent or more of OCC-supervised small entities to be a substantial number. Thus, at present, 32 OCC-supervised small entities would constitute a substantial number. Therefore, the proposed rule would affect a substantial number of OCC-supervised small entities.

Based on the thresholds for a significant economic impact, however, we estimate that, if implemented, the proposed rule would have a significant economic impact on zero small entities. Therefore, the proposed rule would not have a significant economic impact on a substantial number of small entities.

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⁹ We base our estimate of the number of small entities on the Small Business Administration's size thresholds for commercial banks and savings institutions, and trust companies, which are \$850 million and \$47 million, respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), we count the assets of affiliated financial institutions when determining if we should classify an OCC-supervised institution as a small entity. We use December 31, 2023, to determine size because a "financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." See footnote 8 of the U.S. Small Business Administration's *Table of Size Standards*.