

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 326, 12 CFR Part 334

RIN XXXXXXXX

Procedures for Monitoring Bank Secrecy Act Compliance and Fair Credit Reporting:
Technical Amendments.

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is adopting a final rule to update cross-references in its anti-money laundering program and Fair Credit Reporting Act rules, to conform to changes in the numbering of the Department of the Treasury's rules that implement the Bank Secrecy Act.

DATE: Effective upon issuance.

FOR FURTHER INFORMATION CONTACT: Division of Risk Management
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SUPPLEMENTARY INFORMATION:

As required by section 8(s) of the Federal Deposit Insurance Act, 12 USC 1818(s), the FDIC's regulation, 12 CFR 326.8, requires every state nonmember bank to establish and maintain procedures reasonably designed to assure and monitor its compliance with the requirements of the Bank Secrecy Act ("BSA"), 31 USC 5311 *et seq.*, and the regulations implementing that statute ("BSA regulations"). In addition, the FDIC has regulations, 12 CFR Part 334, which implement the Fair Credit Reporting Act, 15 USC 1681 *et seq.* The Financial Crimes Enforcement Network (FinCEN), an arm of the Department of the Treasury, recently amended the BSA regulations to reorganize and move them from 31 CFR Part 103 to Chapter X of Title 31 of the CFR. 75 Fed. Reg. 65806 *et seq.* (Oct. 26, 2010). Effective March 1, 2010, the BSA regulations governing State nonmember banks (as well as other federally-insured depository institutions) are contained in 31 CFR Part 1010 *et seq.*

To conform to this change, the FDIC is amending a general cross-reference to the BSA regulations in 12 CFR 326.8, and specific cross-references to the Customer Identification Program ("CIP"), 31 CFR 103.121, in 12 CFR 326.8, 12 CFR 334.82, and

Appendix J to Part 334. The CIP regulation, which is substantively unchanged, is now found at 31 CFR 1020.220.

Administrative Procedure Act

The Administrative Procedure Act, 5 USC 553(b) provides that a final regulation may be issued without prior notice or an opportunity for comment when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. The FDIC finds that good cause exists as the regulatory amendments are nonsubstantive, and therefore notice and public procedure are unnecessary. 5 USC 553(d) provides that the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, with some exceptions. Since this is not a substantive rule, the rule is effective immediately upon publication in the Federal Register.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required. See 5 USC 603 and 604. As noted previously in the **Supplementary Information** section, the FDIC has determined, for good cause, that it is unnecessary to publish a notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

There are no information collection requirements in this final rule.

List of Subjects

Administrative practice and procedure, Banks, banking, Currency, Insured nonmember banks, Reporting and recordkeeping requirements, Safety and soundness.

For the reasons set out in the preamble, the FDIC hereby amends 12 CFR Part 326.8 as follows:

PART 326--MINIMUM SECURITY DEVICES AND PROCEDURES AND BANK SECRECY ACT COMPLIANCE

1. The authority citation for part 326 continues to read as follows:

Authority: 12 USC 1813, 1815, 1817, 1818, 1819 (Tenth), 1881--1883; 31 USC 5311--5314 and 5316--5332.2.

2. Sec. 326.8 is amended to read:

(a) *Purpose.* This subpart is issued to assure that all insured nonmember banks as defined in 12 CFR 326.1 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 Treasury at 31 CFR Chapter X.

(b) *Compliance procedures.* (1) *Program requirement.* Each bank shall develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code, and the implementing regulations issued by the Department of Treasury at 31 CFR Chapter X. The compliance program shall be written, approved by the bank's board of directors, and noted in the minutes.

(2) *Customer identification program.* Each bank is subject to the requirements of 31 USC 5318(l) and the implementing regulation jointly promulgated by the FDIC and the Department of the Treasury at 31 CFR 1020.220

PART 334—FAIR CREDIT REPORTING

3. The authority citation for Part 334 continues to read:

AUTHORITY: 12 USC 1818 1819(Tenth) and 1831p--1; 15 USC 1681a, 1681b, 1681c, 1681m, 1681s, 1681s--3, 1681t, 1681w, 6801 and 6805, Pub. L. 108--159, 117 Stat. 1952.

4. Amend Sec. 334.82 to read:

(c) * * *

(2) * * *

(A) Obtains and uses to verify the consumer's identity in accordance with the requirements of the Customer Identification Program (CIP) rules implementing 31 USC 5318(l) (31 CFR 1020.220);

APPENDIX J TO PART 334—INTERAGENCY GUIDELINES ON IDENTITY THEFT
DETECTION, PREVENTION, AND MITIGATION

5. In Appendix J to Part 334, revise Section III, paragraph (a) to read as follows:

III. Detecting Red Flags

* * * * *

(a) Obtaining identifying information about, and verifying the identity of, a person opening a covered account, for example, using the policies and procedures regarding identification and verification set forth in the Customer Identification Program rules implementing 31 USC 5318(l) (31 CFR 1020.220); and

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Dated at Washington, DC, this day of _____, 2011.

By order of the Board of Directors.

Federal Deposit Insurance Corporation
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