

the operating subsidiary's lines of business. The OCC will make this information available to the public on its Web site at <http://www.occ.gov> in order to assist consumers in identifying entities that are national bank operating subsidiaries.

**DATES:** *Effective Date:* December 6, 2004.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

**Background**

On March 25, 2004, the OCC published a notice of proposed rulemaking (NPRM) (69 FR 15260) in the **Federal Register** to require each national bank to file an Annual Report on Operating Subsidiaries (Annual Report) with the OCC. The Annual Report identifies the bank's operating subsidiaries that do business directly with consumers and are not functionally regulated<sup>1</sup> as defined in section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5)). The NPRM required a national bank to provide information including the name of each operating subsidiary, its location and contact information, and the operating subsidiary's lines of business. The NPRM also discussed how the OCC would make the information available to the public on its Web site.

**Overview of Comments Received**

The NPRM comment period closed on April 26, 2004, and we received 15 comments. Commenters included national banks, state agencies, banking trade associations, a realtor trade association, and community groups. The

<sup>1</sup> A subsidiary is a "functionally regulated" subsidiary if under section 5(c)(5) of the Bank Holding Company Act of 1956, as amended, it is a broker or dealer that is registered under the Securities Exchange Act of 1934; a registered investment adviser, properly registered by or on behalf of either the Securities and Exchange Commission or any State, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities; an investment company that is registered under the Investment Company Act of 1940; an insurance company, with respect to insurance activities of the insurance company and activities incidental to such insurance activities, that is subject to supervision by a State insurance regulator; or an entity that is subject to regulation by the Commodity Futures Trading Commission, with respect to the commodities activities of such entity and activities incidental to such commodities activities. See 12 U.S.C. 1844(c)(5)(B)(i)-(v).

majority of the commenters expressing a view generally supported the NPRM.<sup>2</sup> Several commenters offered specific suggestions for refining the information contained in the Annual Report. A summary of the comments and a description of the final rule follow.

**Summary of Comments and OCC Response**

*Filing Requirement (§ 5.34(e)(6)(i))*

The NPRM required each national bank to prepare and file with the OCC an Annual Report for each of its operating subsidiaries that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5)) and that do business directly with consumers in the United States. The NPRM stated that an operating subsidiary "does business directly with consumers" if it provides products or services to individuals to be used primarily for personal, family, or household purposes.

Several commenters suggested revisions to, or sought clarification of, the proposed filing requirement. For example, one commenter suggested that the final rule should not apply to an operating subsidiary that provides products or services to commercial entities and only incidentally to consumers. We agree with the commenter that a business transaction with a consumer that is not otherwise part of the bank's ordinary course of business should not trigger this reporting requirement. Therefore, the final rule provides that a national bank operating subsidiary does business with consumers in the United States if, *in the ordinary course of its business*, it provides products or services to individuals to be used primarily for personal, family, or household purposes. Thus, for example, an operating subsidiary is not covered by this reporting requirement when it is engaged in the business of leasing

<sup>2</sup> Three commenters asserted objections to the OCC's previous rules relating to visitorial powers and preemption. See 69 FR 1895 (visitorial powers) and 69 FR 1904 (preemption) (Jan. 13, 2004). These comments are beyond the scope of the current rulemaking, and, accordingly we do not address them here. One commenter noted that many states have laws that require operating subsidiaries to provide consumers with information about where to direct questions and complaints, including the appropriate state supervisory authority. This commenter asserted that the proposal would preempt these types of state disclosure requirements. We note that this final rule is an administrative reporting requirement and has no independent preemptive effect on state or local disclosure requirements. Questions about the applicability of such requirements are governed by the OCC's final preemption rule and Federal judicial preemption precedents.

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**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Part 5**

[Docket No. 04-23]

RIN 1557-AC81

**Rules, Policies, and Procedures for Corporate Activities; Annual Report on Operating Subsidiaries**

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is amending 12 CFR part 5 to require a national bank to file an Annual Report on Operating Subsidiaries (Annual Report) with the OCC. The Annual Report will identify the national bank's operating subsidiaries that do business directly with consumers and that are not functionally regulated. The Annual Report will include certain information about each operating subsidiary, such as the name of the operating subsidiary, its location and contact information, and

equipment or other property to businesses, and, as an accommodation, leases a piece of equipment to an officer or director of a company.

Another commenter questioned whether the reporting requirement would apply to a second-tier subsidiary that does business directly with consumers where the first-tier operating subsidiary does not. The OCC confirms that the reporting requirement applies to the second-tier operating subsidiary in this example. The final rule covers any operating subsidiary of a national bank that is not functionally regulated and does business directly with consumers.

One commenter asked for clarification as to whether a national bank must include on its Annual Report an operating subsidiary that only engages in the business of servicing consumer mortgage loans, where the operating subsidiary is not involved with the initial credit decisions or funding of any loans. The final rule's definition of "doing business directly with consumers" includes providing products or *services* to consumers. Since an operating subsidiary that engages solely in mortgage servicing provides *services* for consumers (e.g., pay off information, payment processing and accounting, customer service, escrow administration), a national bank must include this type of operating subsidiary on its Annual Report.

A few commenters suggested that national banks should also report information on operating subsidiaries that are functionally regulated by another state or federal regulatory agency. The Gramm-Leach-Bliley Act of 1999 put in place a framework for the functional regulation of bank subsidiaries and affiliates by amending section 5(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)) and adding section 45 to the Federal Deposit Insurance Act (12 U.S.C. 1831v).<sup>3</sup> Under that framework, another regulatory agency has primary supervisory authority over a national bank's functionally regulated subsidiary. For example, a state insurance regulator would have supervisory authority in the case of a subsidiary that sells insurance products. In this example, the state insurance regulator is the appropriate agency to receive consumer complaints.

<sup>3</sup> The amendments to section 5(c) of the Bank Holding Company Act set out, among other things, the limited circumstances when reports may be required from, and examinations can be made of, a functionally regulated subsidiary. Section 45 imposes certain limits on the OCC's authority to examine, or require reports from, subsidiaries that are "functionally regulated."

The OCC continues to believe that the agency with primary supervisory authority should be the consumer's first point of contact for any complaints. Thus, a national bank need not include on the Annual Report information about any functionally regulated operating subsidiary that engages only in functionally regulated activities that are regulated by a primary supervisor other than the OCC. However, in order to assist consumers in locating information concerning functionally regulated subsidiaries and other entities that may be regulated by other State or Federal supervisory authorities, the OCC plans to provide contact information for these other regulators on its public Web site.

Another commenter recommended that the final rule permit a national bank to file an Annual Report on any number of operating subsidiaries even if the rule does not require the filing of information about operating subsidiaries that are functionally regulated by another agency or that do not do business directly with consumers. We believe that, at this time, a national bank should only file the required information for its operating subsidiaries that are expressly covered by the rule. Focusing only on those operating subsidiaries that do business directly with consumers will minimize confusion and better assist customers in identifying whether the entity they are doing business with is related to a national bank.

#### *Information Required (§ 5.34(e)(6)(ii))*

The NPRM required the Annual Report to contain:

- The name and charter number of the parent national bank;
- The name, mailing address (including the street address or post office box, city, state, and zip code), and telephone number of the operating subsidiary;
- The principal place of business of the operating subsidiary, if different from its reported mailing address; and
- The lines of business in which the operating subsidiary is engaged by designating the appropriate code contained in appendix B (Federal Reserve Board Activity Codes) to the General Instructions for filing the Report of Changes in Organizational Structure, Form FR Y-10. If the operating subsidiary is engaged in an activity not set forth in this list, the national bank would use the code 0000 and provide a brief description of the activity.

One commenter suggested that the OCC include, in addition to the name of the operating subsidiary, any "doing business as" (dba), abbreviated, or trade names. We agree that this change would

remove confusion and help direct consumers to the appropriate entity. Therefore, the final rule requires that national banks report an operating subsidiary's name, including any dba, abbreviated, or trade names that are used to identify the operating subsidiary when it does business directly with consumers.

Another commenter suggested that the OCC require national banks to list in the Annual Report all the locations where an operating subsidiary's transactions occur or where it conducts business. Given consumers' increasing use of electronic channels for obtaining and using financial services, such as by telephone and the Internet, the physical location of an operating subsidiary's offices is not necessarily related to the number or location of the consumers with whom it does business. Accordingly, we believe this information is not likely to be helpful to consumers who want to know where to file a complaint.

Two commenters addressed the use of the Federal Reserve Board Activity Codes to identify operating subsidiary activities. One commenter suggested that the NPRM would limit paperwork burden if the OCC obtained operating subsidiary information from the Board of Governors of the Federal Reserve System (Federal Reserve Board) as that information is reported on the Form FR Y-10. Another commenter wrote that the FR Y-10 code list is insufficient to describe the range of activities authorized by the OCC for national bank operating subsidiaries. The commenter suggested that it would be more appropriate for the OCC to use a coding system derived from the list of activities that are eligible for notice procedures under 12 CFR 5.34(e)(5)(v). As we next describe, we have revised the regulation so that the reporting codes will align better with the range of activities permissible for national bank operating subsidiaries. We continue to believe, however, that the use of standardized reporting codes, rather than codes tailored only to the national banking system, is preferable because it avoids the burden on banks of reporting the same information in different ways for different reports.

The Federal Reserve Board recently replaced its FR Y-10 activity code list with the North American Industry Classification System codes (NAICS) relevant to the banking industry to describe organizational activities.<sup>4</sup>

<sup>4</sup> NAICS is a system for classifying establishments by type of economic activity. Its purposes are to facilitate the collection, tabulation, presentation,

National banks are likely to be familiar with the NAICS codes since they are required for reporting changes in organizational structure to the Federal Reserve Board, reported by national banks that file the OCC's Shared Credit Review Report, and used by many national banks to identify collateral or for internal business analysis and planning. In addition, these NAICS codes are usually more specific and thus more accurately describe permissible activities of national bank operating subsidiaries. This should make activity information more meaningful to consumers. In addition, national banks that are part of a holding company that is required to file Form FR Y-10 to report changes in operating subsidiary activities will be able to use much of the same information in filing their operating subsidiary report with the OCC. Accordingly, the final rule requires national banks to report the lines of business in which an operating subsidiary is doing business directly with consumers by designating the appropriate NAICS code listed in appendix B to the Federal Reserve Board's form FR Y-10, Report of Changes in Organizational Structure.

In a few circumstances, the NAICS may not contain a code that describes a particular operating subsidiary activity. The proposal permitted a national bank to code as 0000 and include a brief description for other activities not included in the FR Y-10 activity code list. The final rule retains this provision, but now allows use of the 0000 code where the activity is not appropriately covered by a NAICS code. The OCC also will provide a link on its public Web site to the FR Y-10 data reported to the Federal Reserve Board so that consumers can check information on national bank operating subsidiaries that are part of a bank holding company structure for a change in status after the information is reported to the OCC.

#### *Filing Time Frames and Availability of Information (§ 5.34(e)(6)(iii))*

The NPRM required national banks to file their Annual Reports with information current as of March 31st of the year in which the report is filed and to submit this information before July 1st of each corresponding calendar year.

and analysis of data relating to establishments, and to promote uniformity and comparability in the presentation and analysis of statistical data describing the economy. Federal statistical agencies use NAICS to collect or publish data by industry. NAICS also is used widely by State agencies, trade associations, private businesses, and other organizations. NAICS activity codes that are relevant to the banking industry for describing organizational activities are available on the OCC Web site at <http://www.occ.gov>.

One commenter suggested that the timing of the filing requirement should be based on a national bank's fiscal year, which would correspond to certain Federal Reserve Board and Securities and Exchange Commission filings.

The OCC believes that aligning the timeframe of this filing requirement closely with the Call Report filing requirements reduces compliance burden. Therefore, the final rule requires national banks to file their Annual Reports by January 31st and to include information as of December 31st of the immediate prior year. Thus, the first report will be due January 31, 2005, for information as of December 31, 2004. A national bank may submit the Annual Report electronically or in another format prescribed by the OCC. The OCC plans to issue guidance to national banks and Federal branches and agencies that will provide more specific information for filing the Annual Report. The OCC will make available to the public the information contained in the Annual Report on its Web site at <http://www.occ.gov>.

We also note that a national bank may not submit partial information in the Annual Report to update information contained in prior reports. The Annual Report represents a complete list of the required information for each operating subsidiary that is not functionally regulated and that does business directly with consumers. A national bank must include in its Annual Report all of the required information for each covered operating subsidiary. The OCC will replace the information every year in its entirety.

A few commenters expressed concern that consumers may have difficulty locating the information contained in the Annual Report on the OCC public Web site at <http://www.occ.treas.gov>, particularly if they are not aware that the OCC is a bureau of the United States Department of the Treasury. In response to this comment, the OCC has acquired the <http://www.occ.gov> Web address and has taken steps to acquire other similar Web addresses. This should provide easier access to the OCC's public Web site. In addition, as discussed previously, we intend to enhance the OCC's Web site to assist consumers in finding information about entities that are regulated by other State and Federal agencies. Further, the OCC is considering several options to enhance consumer awareness of the OCC's Customer Assistance Group<sup>5</sup>

<sup>5</sup> The OCC Customer Assistance Group (CAG) answers questions, offers guidance, and assists consumers in resolving complaints about national banks and their subsidiaries. You can reach one of

such as by use of notices, advertising vehicles, and technological solutions. The OCC expects to begin implementing this consumer information program in 2005.

#### **Description of Final Rule**

This final rule specifies the Annual Report filing requirement, information reported, filing time frames, and public availability of the information. This final rule requires each national bank to prepare and file with the OCC an Annual Report for each of its operating subsidiaries that (1) is not functionally regulated and (2) does business directly with consumers in the United States. An operating subsidiary, or any subsidiary thereof, "does business directly with consumers" if, in the ordinary course of its business, it provides products or services to individuals to be used primarily for personal, family, or household purposes.

The final rule requires an Annual Report to contain the following information:

- The name and charter number of the parent national bank;
- The name (including any "dba," abbreviated names, or trade names that are used to identify the operating subsidiary when it does business directly with consumers), mailing address (which includes the street address or post office box, city, state, and zip code), e-mail address (if any), and telephone number of the operating subsidiary;
- The principal place of business of the operating subsidiary, if different from the mailing address; and
- The lines of business in which the operating subsidiary is doing business directly with consumers by designating the appropriate code contained in appendix B (NAICS Activity Codes for Commonly Reported Activities) to the Federal Reserve Board's Instructions for Preparation of Report of Changes in Organizational Structure, Form FR Y-10, which appears on the OCC's Web site at <http://www.occ.gov>. If the operating subsidiary is engaged in an activity not set forth in this list, the national bank should use the code 0000 and provide a brief description of the activity.

This final rule contains specific filing time frames. Each national bank's

the OCC Customer Assistance Specialists by calling our toll free number, 1-800-613-6743, or sending an e-mail to [Customer.Assistance@occ.treas.gov](mailto:Customer.Assistance@occ.treas.gov). Since e-mail is not necessarily secure against interception, the OCC asks that consumers not include sensitive information of a personal or confidential nature—such as your bank account, credit card, or social security number—in their e-mails to the CAG.

Annual Report will contain information current as of December 31st for each year the report is filed. A national bank must submit its first report to the OCC on or before January 31, 2005, and on or before January 31st each year thereafter. A national bank may submit its Annual Report electronically or in another format prescribed by the OCC. The OCC plans to issue guidance to national banks and Federal branches and agencies that will provide more specific information for filing the Annual Report. The OCC will make available to the public the information contained in the Annual Report on its Web site at <http://www.occ.gov>.

#### Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule.

Pursuant to section 605(b) of the RFA, the OCC hereby certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. The OCC has reviewed the impact this final rule will have on small national banks. "Small national banks" are those banks with less than \$150 million in total assets. Based on that review, the OCC certifies that the final rule will not have a significant economic impact on a substantial number of small entities. This final rule imposes a minimal annual reporting requirement only on national banks with operating subsidiaries that do business directly with consumers. The OCC is providing an option for institutions to report this information to the OCC electronically. The economic impact of this final rule on national banks, regardless of size, is not expected to be significant. Accordingly, a regulatory flexibility analysis is not needed.

#### Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

#### Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to

result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that this final rule 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, this final rule is not subject to section 202 of the Unfunded Mandates Act.

#### Paperwork Reduction Act

The Office of Management and Budget (OMB), pursuant to the requirements of the Paperwork Reduction Act, approved the paperwork burden associated with the final rule under OMB control number 1557-0014.

#### Executive Order 13132

The OCC has determined that this final rule does not have any Federalism implications, as required by Executive Order 13132.

#### List of Subjects in 12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

#### Authority and Issuance

■ For the reasons set forth in the preamble, part 5 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

#### PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

■ 1. Revise the authority citation for part 5 to read as follows:

**Authority:** 12 U.S.C. 1 *et seq.*, 93a, 215a-2, 215a-3, 481, and section 5136A of the Revised Statutes (12 U.S.C. 24a).

■ 2. In § 5.34, a new paragraph (e)(6) is added to read as follows:

#### § 5.34 Operating subsidiaries.

\* \* \* \* \*

(e)(6) *Annual Report on Operating Subsidiaries—(i) Filing requirement.* Each national bank shall prepare and file with the OCC an Annual Report on Operating Subsidiaries containing the information set forth in paragraph (e)(6)(ii) of this section for each of its operating subsidiaries that:

(A) Is not functionally regulated within the meaning of section 5(c)(5) of

the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5)); and

(B) Does business directly with consumers in the United States. For purposes of paragraph (e)(6) of this section, an operating subsidiary, or any subsidiary thereof, does business directly with consumers if, in the ordinary course of its business, it provides products or services to individuals to be used primarily for personal, family, or household purposes.

(ii) *Information required.* The Annual Report on Operating Subsidiaries must contain the following information for each covered operating subsidiary listed:

(A) The name and charter number of the parent national bank;

(B) The name (include any "dba" (doing business as), abbreviated names, or trade names used to identify the operating subsidiary when it does business directly with consumers), mailing address (include the street address or post office box, city, state, and zip code), e-mail address (if any), and telephone number of the operating subsidiary;

(C) The principal place of business of the operating subsidiary, if different from the address provided pursuant to paragraph (e)(6)(ii)(B) of this section; and

(D) The lines of business in which the operating subsidiary is doing business directly with consumers by designating the appropriate code contained in appendix B (NAICS Activity Codes for Commonly Reported Activities) to the Instructions for Preparation of Report of Changes in Organizational Structure, Form FR Y-10, a copy of which is set forth on the OCC's Web site at <http://www.occ.gov>. If the operating subsidiary is engaged in an activity not set forth in this list, a national bank shall report the code 0000 and provide a brief description of the activity.

(iii) *Filing time frames and availability of information.* Each national bank's Annual Report on Operating Subsidiaries shall contain information current as of December 31st for the year prior to the year the report is filed. The national bank shall submit its first Annual Report on Operating Subsidiaries (for information as of December 31, 2004) to the OCC on or before January 31, 2005, and on or before January 31st each year thereafter. The national bank may submit the Annual Report on Operating Subsidiaries electronically or in another format prescribed by the OCC. The OCC will make available to the public the information contained in the Annual

Report on Operating Subsidiaries on its  
Web site at <http://www.occ.gov>.

Dated: October 29, 2004.

**Julie L. Williams,**

*Acting Comptroller of the Currency.*

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**BILLING CODE 4810-33-P**

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