



12 CFR Part 208

[Docket No. R-1738]

RIN 7100-AG08

Membership of State Banking Institutions in the Federal Reserve System; Reports of Suspicious Activities Under Bank Secrecy Act

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Notice of proposed rulemaking with request for public comment.

SUMMARY: The Board is inviting comment on a proposed rule that would modify the requirements to file Suspicious Activity Reports for state member banks, Edge and agreement corporations, U.S. offices of foreign banking organizations supervised by the Federal Reserve, and bank holding companies and their nonbank subsidiaries. Specifically, the proposed rule would amend the Board's Suspicious Activity Report regulations to provide for the issuance of exemptions from the requirements of those regulations, in full or in part. The proposed rule is intended, among other things, to facilitate supervised institutions in meeting Bank Secrecy Act requirements more efficiently and effectively, including through development of innovative solutions.

DATES: Comments must be received by [INSERT DATE 30 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]

ADDRESSES: You may submit comments, identified by Docket No. R-1738 and RIN 7100-AG08, by any of the following methods:

- *Agency website:* <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx>.
- *E-mail:* regs.comments@federalreserve.gov. Include docket number and RIN in the subject line of the message.
- *Fax:* (202) 452-3819 or (202) 452-3102.

- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, D.C. 20551.

All public comments are available from the Board's website at

<http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue, NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors call (202) 452-3684 to make an appointment to inspect comments.

FOR FURTHER INFORMATION CONTACT: Jason Gonzalez, Assistant General Counsel, (202) 452-3725, or Bernard Kim, Senior Counsel, (202) 452-3083, Legal Division; or Suzanne Williams, Deputy Associate Director, (202) 452-3513, or Koko Ives, Manager, (202) 973-6163, Division of Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, D.C. 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to the Board's Regulations H, K, and Y, state member banks, Edge and agreement corporations, U.S. offices of foreign banking organizations supervised by the Federal Reserve, and bank holding companies and their nonbank subsidiaries must file Suspicious Activity Reports (SARs) to report known or suspected violations of U.S. law.¹ The proposed rule would amend the Board's SAR regulations to expressly provide for exemptions from the regulations' SAR requirements, in full or in part and subject to the Board's approval.

¹ 12 CFR 208.62; 12 CFR 211.5(k); 12 CFR 211.24(f); 12 CFR 225.4(f). See Board, Supervision & Regulation Letter (SR) 10-8, "Suspicious Activity Report Filing Requirements for Banking Organizations Supervised by the Federal Reserve" (Apr. 27, 2010).

II. Background

The Board, along with the other federal banking agencies, is charged with safeguarding the safety and soundness of its supervised institutions. Pursuant to its safety-and-soundness authority and enabling statutes, the Board has long required a member bank, a bank holding company and its nonbank subsidiaries, an Edge Act or Agreement corporation, or a U.S. branch or agency of a foreign bank to refer potential violations of law arising from transactions that flow through those institutions to relevant law enforcement authorities, because financial crimes can pose serious threats to a financial institution's continued viability and, if unchecked, may undermine the public confidence in the financial services industry.²

In 1992, Congress passed the Annunzio-Wylie Anti-Money Laundering Act, which redesigned the criminal referral process applicable to Board-supervised entities and made the reporting of certain suspicious transactions a requirement of the Bank Secrecy Act (BSA).³ The Act permitted the Department of the Treasury to require financial institutions to "report any suspicious transaction relevant to a possible violation of law or regulation."⁴ Thereafter, the Department of the Treasury, in consultation with the federal banking agencies and law enforcement, developed the modern SAR form and reporting process, which standardized the reporting forms, eliminated duplicate filings, and created a centralized database that could be accessed by multiple law enforcement and regulatory agencies.

To implement this new reporting system, the Financial Crimes Enforcement Network (FinCEN), a bureau of the Department of the Treasury, issued its implementing SAR regulations in 1996. The regulations require financial institutions subject to the requirements of the BSA to, among other things, specifically address the reporting of money laundering transactions and transactions designed to evade the reporting requirements of the BSA.⁵

² See generally 58 FR 47206 (Sept. 3, 1993) (codifying the Board's criminal referral procedures); see also SR 88-9, "New Criminal Referral Form and Updated Criminal Referral Procedures" (Mar. 18, 1988).

³ Public Law 102-550, 106 Stat. 3672 (1992).

⁴ 31 U.S.C. 5318(g)(1).

⁵ 61 FR 4326 (Feb. 5, 1996).

To further implement this new reporting process and reduce unnecessary reporting burdens, the Board and the other federal banking agencies contemporaneously amended their criminal referral form regulations to incorporate the new SAR form and reporting database, align their regulatory reporting requirements with FinCEN's BSA reporting requirements, and further refine the reporting processes.⁶

As a result of this redesign and FinCEN's implementing regulations, relevant institutions supervised by the Board are currently required to file SARs under both the Board's and FinCEN's SAR regulations. These regulations are not identical but are substantially similar with regard to the specified BSA reporting obligations required by FinCEN, in that they both require banks, among other things, to file SARs relating to money laundering and transactions designed to evade BSA reporting requirements, as well as maintain the confidentiality of a SAR in most circumstances. However, the Board's SAR regulations cover a slightly broader range of transactions, for example, by requiring SARs to be filed for any known or suspected instance of insider abuse in any amount, and further requiring the prompt notification to the institution's board of directors when a SAR has been filed.

The Secretary of the Treasury has statutory authority to grant exemptions from the requirements of the BSA, which includes FinCEN's SAR requirements.⁷ The regulation implementing this exemption authority provides:⁸

The Secretary [of the Treasury], in his sole discretion, may by written order or authorization make exceptions to or grant exemptions from the requirements of this chapter. Such exceptions or exemptions may be conditional or unconditional, may apply to particular persons or to classes of persons, and may apply to particular transactions or classes of transactions. They shall, however, be applicable only as expressly stated in the order of authorization, and they shall be revocable in the sole discretion of the Secretary.

The Secretary of the Treasury has delegated this exemption authority to FinCEN. The purpose of the Board's proposed rule, which would largely parallel FinCEN's general exemptive

⁶ 61 FR 4338 (Feb. 5, 1996).

⁷ See 31 U.S.C. 5318(a)(7).

⁸ 31 CFR 1010.970(a).

authority, would be to facilitate the Board's granting of relief to a bank seeking an exemption from the requirements of the Board's SAR regulations.

The decision to grant or deny such an exemption would be made from a safety-and-soundness and anti-money laundering regulatory perspective. In particular, the Board's view is that these exemptions would facilitate supervised institutions to meet BSA requirements more efficiently and effectively, including through development of innovative solutions. Financial technology and innovation continue to develop in the area of monitoring and reporting financial crime and terrorist financing, and the Board recognizes the increasing importance of regulatory flexibility to such efforts. Recently, the Board, along with the other federal banking agencies and FinCEN, issued a statement encouraging banks to take innovative approaches to meet their BSA/anti-money laundering (BSA/AML) compliance obligations.⁹ The statement explained that banks are encouraged to consider, evaluate, and where appropriate, responsibly implement innovative approaches in this area.

Today, innovative approaches and technological developments in the area of SAR monitoring, investigation, and filings may involve, among other things: (i) automated form population using natural language processing, transaction data, and customer due diligence information; (ii) automated or limited investigation processes depending on the complexity and risk of a particular transaction and appropriate safeguards; and (iii) enhanced monitoring processes using more and better data, optical scanning, artificial intelligence, or machine learning capabilities. Accordingly, exemptive relief may be helpful to foster innovation in this area, as the Board expects that new technologies will continue to prompt additional innovative approaches related to SAR filing and monitoring.

It is important to recognize that any Board-issued exemptions from its SAR regulations would not relieve the supervised institution from the independent obligation to comply with

⁹ Joint Statement on Innovative Efforts to Combat Money Laundering and Terrorist Financing (Dec. 3, 2018), available at <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20181203a1.pdf>.

FinCEN's SAR regulations, if applicable. To the extent that the supervised institution is subject to requirements imposed by both the Board's and FinCEN's SAR regulations, the institution would need to acquire an exemption from both the Board and FinCEN. The Board expects to coordinate with FinCEN when handling such parallel exemption requests, and accordingly, the Board's proposed rule would require FinCEN's concurrence with regard to such exemptions. As explained above, however, the Board's SAR regulation imposes additional requirements not included in FinCEN's regulation. To the extent the supervised institution is subject to a requirement imposed by the Board's SAR regulations alone (and not a parallel FinCEN requirement), the proposed rule would allow the Board to exempt the institution from that requirement without FinCEN's concurrence.

III. The Proposal

The proposed rule would provide for the issuance of exemptions from the requirements, in full or in part, of the Board's SAR regulations. Upon receiving a written request from a Board-supervised institution, the Board would determine whether the exemption is consistent with safe and sound banking. The Board would also seek FinCEN's determination whether the exemption is consistent with the purposes of the BSA, as applicable, where an exemption request involves an exemption from the requirements to file a SAR required by FinCEN regulations implementing the BSA.

The proposed rule would require the Board to seek FinCEN's concurrence regarding any exemptions that involve SAR provisions relating to potential money laundering or violations of the BSA or other unusual activity covered by FinCEN's SAR regulation. The proposed rule would allow the Board to consult with FinCEN regarding other exemption requests. The Board may also consult with the other state and federal banking agencies before granting any exemption.

An approved exemption under the proposed rule may apply to only certain parts of the SAR requirements. It may be conditional or unconditional, may apply to particular persons or to

classes of persons, and may apply to transactions or classes of transactions. In addition, the proposed rule provides that the Board may grant an exemption for a specified time period or extend the time period of a previously granted exemption. Finally, the proposed rule provides that the Board may, in its sole discretion, revoke previously granted exemptions.

The changes made by the proposed rule would add a new paragraph (l) to § 208.62 of Regulation H (12 CFR 208.62), which concerns the SAR filing obligations of member banks. Sections 211.5(k) and 211.24(f) of Regulation K (12 CFR 211.5(k) and 211.24(f)) and § 225.4(f) of Regulation Y (12 CFR 225.4(f)) make § 208.62 of Regulation H applicable to Edge and Agreement corporations, the U.S. branches and agencies of foreign banks (except a Federal branch or Federal agency or a state branch that is insured by the Federal Deposit Insurance Corporation), a representative office of a foreign bank, and bank holding companies and their nonbank subsidiaries, respectively. This means that the changes applicable to member banks will also be applicable to the suspicious activity reporting responsibilities of these other domestic and foreign banking organizations supervised by the Federal Reserve, including bank holding companies, Edge corporations, and the U.S. branches and agencies of foreign banks.

The Board welcomes comments on any aspect of the proposed rule, in particular, with regard to whether additional or different factors or standards should be applied in the determination whether to grant an exemption request, as well as the form and manner of the Board's response to an exemption request.

IV. Administrative Law Matters

A. Solicitation of comments and use of plain language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106-102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board has sought to present the proposed rule in a simple and straightforward manner, and invites comment on the use of plain language.

B. Paperwork Reduction Act analysis

Certain provisions of the proposed rule contain “collections of information” within the meaning of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3521). In accordance with the requirements of the PRA, the Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Board reviewed the proposed rule under the authority delegated to the Board by OMB. The proposed rule contains reporting requirements subject to the PRA. To implement these requirements, the Board is revising the Suspicious Activity Report (FR 2230; OMB No. 7100-0212),

Comments are invited on:

- a. Whether the collections of information are necessary for the proper performance of the agencies’ functions, including whether the information has practical utility;
- b. The accuracy or the estimate of the burden of the information collections, including the validity of the methodology and assumptions used;
- c. Ways to enhance the quality, utility, and clarity of the information to be collected;
- d. Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and
- e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the ADDRESSES section of this document. A copy of the comments may also be submitted to the OMB desk officer for the agencies by mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503; facsimile to (202) 395-5806; or email oir_submission@omb.eop.gov, Attention, Federal Reserve Desk Officer.

PROPOSED INFORMATION COLLECTION

Title of Information Collection: Suspicious Activity Report

Agency Form Number: FR 2230.

OMB control number: 7100-0212

Frequency: On occasion.

Affected Public: Businesses or other for-profit.

Respondents: State member banks, bank holding companies and their nonbank subsidiaries, Edge and agreement corporations, and the U.S. branches and agencies, representative offices, and nonbank subsidiaries of foreign banks supervised by the Board.

Description of Information Collection: Certain institutions supervised by the Board are required, pursuant to the Bank Secrecy Act (BSA) and the Board's regulations, to file a SAR to report known or suspected violations of federal law or a suspicious transaction related to a money laundering activity or a violation of the BSA. Institutions file a SAR electronically through a secure network created and maintained by the administrator of the BSA, the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN).

Current Actions: The proposed rule would provide for the issuance of exemptions from the requirements, in full or in part, of the Board's SAR regulations. In section 208.62(l), upon receiving a written request from a Board-supervised institution, the Board would determine whether the exemption is consistent with safe and sound banking. The written request for exemption would be a new reporting requirement under the PRA. The Board estimates that the average hours per response would be 8 hours.

In addition, because FinCEN already accounts for the reporting burden for all respondents (including Board-supervised institutions) to file a SAR (see OMB Control No. 1506-0065) the Board would remove this same reporting burden from the FR 2230.¹⁰

¹⁰ Section 208.62(e) encourages respondents to file SARs with state and local law enforcement agencies. In practice, these agencies have access to SARs through FinCEN's database, making it unnecessary for respondents to file SARs directly with these agencies. Therefore, the Board assumes de minimus burden for this requirement.

Legal Authorization and Confidentiality: The FR 2230 is authorized pursuant to the Federal Reserve Act (12 U.S.C. 248(a)(1), 602, and 625), Federal Deposit Insurance Act (12 U.S.C. 1818(s)), Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)), and International Banking Act of 1978 (12 U.S.C. 3105(c)(2) and 3106(a)). The FR 2230 is mandatory.

SARs are confidential and exempt from Freedom of Information Act (FOIA) disclosure by 31 U.S.C. 5319, which specifically provides that SARs “are exempt from disclosure under section 552 of title 5” and FOIA exemption 3 (5 U.S.C. 552(b)(3)) (matters “specifically exempted from disclosure by statute”).

Estimated number of respondents: Reporting Section 208.62(l) – 3.

Estimated average hours per response: Reporting Section 208.62(l) – 8.

Current estimated annual burden hours: 439,520.

Estimated annual burden hours due to proposed revisions: Exemption request, 24; removal of SAR filing, (439,520).

Proposed estimated annual burden hours: 24.

C. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, (RFA), generally requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities based on size standards of the Small Business Administration (SBA) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. An initial regulatory flexibility analysis must contain (1) a description of the reasons why action by the agency is being considered; (2) a succinct statement of the objectives of, and legal basis for, the proposed rule; (3) a description of, and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; (4) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the

report or record; (5) an identification, to the extent practicable, of all relevant federal rules which may duplicate, overlap with, or conflict with the proposed rule; and (6) a description of any significant alternatives to the proposed rule which accomplish its stated objectives. The Board has considered the potential impact of the proposed rule on small entities in accordance with section 603 of the RFA.¹¹ Under regulations issued by the SBA, a small entity includes a bank, bank holding company, or savings and loan holding company with assets of \$600 million or less and trust companies with annual receipts of \$41.5 million or less.¹² As of March 2020, there were approximately 2,925 small bank holding companies, 132 small savings and loan holding companies, and 472 small state member banks. As of March 2020, the Board does not supervise any small trust companies.

Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing and inviting comment on this initial regulatory flexibility analysis. A final regulatory flexibility analysis may be conducted after any comments received during the public comment period have been considered. The Board welcomes comment on all aspects of its analysis. In particular, the Board requests that commenters describe the nature of any impact on small entities and provide empirical data to illustrate and support the extent of the impact.

As discussed above, the purpose of the Board's proposed rule is to facilitate the Board's granting of relief to a bank seeking relief from the requirements of the Board's SAR regulations, when such relief would be beneficial from a safety-and-soundness and anti-money laundering regulatory perspective. The proposed rule would be issued pursuant to the Board's safety-and-soundness authority over supervised institutions. The proposed rule will apply to small bank holding companies and their nonbank subsidiaries and small state member banks as well as Edge

¹¹ 5 U.S.C. 603.

¹² See 13 CFR 121.201.

and agreement corporations, and U.S. offices of foreign banking organizations supervised by the Federal Reserve. The Board does not expect that the proposal would impose a significant cost on small banking organizations due to compliance, recordkeeping, and reporting updates from this proposal. The Board does not believe that the proposal would result in any significant economic impact on banking organizations as there are no projected recordkeeping, reporting, or other compliance requirements associated with the proposal. Moreover, the proposal does not impose any new requirements on banking organization, as applying for an exemption under the proposal would be entirely voluntary. In addition, the Board is not aware of any federal rules that duplicate, overlap, or conflict with the proposed rule. For these reasons, the Board believes that the proposed rule will not have a significant economic impact on a substantial number of small entities supervised by the Board, and believes that there are no significant alternatives to the proposed rule that would reduce the economic impact on small banking organizations supervised by the Board.

D. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA), in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, each federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on insured depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations.¹³ In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally to take effect on the first day of a calendar quarter that begins on

¹³ 12 U.S.C. 4802(a).

or after the date on which the regulations are published in final form.¹⁴ The proposed rule would not impose additional reporting, disclosure, or other requirements; therefore the requirements of the RCDRIA do not apply.

However, the agencies invite comments that further will inform the agencies' consideration of RCDRIA.

List of Subjects

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Consumer protection, Crime, Currency, Federal Reserve System, Flood insurance, Insurance, Investments, Mortgages, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons stated in the preamble, the Board of Governors of the Federal Reserve System proposes to amend 12 CFR Part 208 as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321-338a, 371d, 461, 481-486, 601, 611, 1814, 1816, 1817(a)(3), 1817(a)(12), 1818, 1820(d)(9), 1833(j), 1828(o), 1831, 1831o, 1831p-1, 1831r-1, 1831w, 1831x, 1835a, 1882, 2901-2907, 3105, 3310, 3331-3351, 3905-3909, 5371, and 5371 note; 15 U.S.C. 78b, 78I(b), 78I(i), 780-4(c)(5), 78q, 78q-1, 78w, 1681s, 1681w, 6801, and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In § 208.62, add a new paragraph (l) to read as follows:

§ 208.62 Suspicious activity reports.

* * * * *

(l) Exemptions.

¹⁴ 12 U.S.C. 4802(b).

(1)(i) The Board may exempt any member bank from the requirements of this section. Upon receiving a written request from a member bank, the Board will consider whether the exemption is consistent with safe and sound banking and may consider other appropriate factors. The Board also would seek FinCEN's determination whether the exemption is consistent with the purposes of the Bank Secrecy Act, if applicable. The exemption shall be applicable only as expressly stated in the exemption, may be conditional or unconditional, may apply to particular persons or classes of persons, and may apply to transactions or classes of transactions.

(ii) The Board will seek FinCEN's concurrence with regard to any exemption request that would also require an exemption from FinCEN's SAR regulations, and may consult with FinCEN regarding other exemption requests. The Board also may consult with the other state and federal banking agencies and consider comments before granting any exemption.

(2) The Board will provide a written response to the member bank that submitted the exemption request after considering whether the exemption is consistent with safe and sound banking, consulting with the appropriate agencies, and seeking concurrence when appropriate. A member bank that has received an exemption under paragraph (1) of this section may rely on the exemption for a period of time to be communicated by the Board in its granting of the exemption, which may be indefinite.

(3) The Board may extend the period of time or may revoke an exemption granted under paragraph (1) of this section. Exemptions may be revoked at the sole discretion of the Board. The Board will provide written notice to the member bank of the Board's intention to revoke an exemption. Such notice will include the basis for the revocation and will provide an opportunity for the member bank to submit a response to the Board. The Board will consider the response prior to deciding whether to revoke an exemption, and will notify the member bank of the Board's final decision to revoke an exemption in writing.

By order of Board of Governors of the Federal Reserve System.

Ann Misback,
Secretary of the Board.

[FR Doc. 2021-00033 Filed: 1/21/2021 8:45 am; Publication Date: 1/22/2021]