

Combining suspicious financial transaction reporting and criminal referral reporting should reduce confusion, increase the accuracy and efficiency of reporting, and reduce the burden on banks in reporting known or suspected violations, including suspicious financial transactions.

Section 21.11(b) Definitions

Proposed § 21.11(b) defines the following terms: "FinCEN," "institution-affiliated party," "instructions," "known or suspected violation," and "SAR." The definitions should make the rule easier to interpret and apply.

In particular, the definition of a "known or suspected violation" refers to any matter for which a national bank has a basis to believe that a violation of any Federal criminal statute has occurred, has been attempted, is occurring, or may occur, coupled with a basis to believe that a national bank was an actual or potential victim of the criminal violation, involved in, or used to facilitate the criminal violation. The definition supplants current § 21.11(i), which explains the term "suspected."

Section 21.11(c) Reports Required

Proposed § 21.11(c), which replaces current § 21.11(b), clarifies and expands the provision that requires a bank to file a completed SAR. This provision raises the dollar thresholds that trigger a filing requirement. It also modifies the scope of events that a national bank must report by using the new term "known, or suspected violation," which is defined at § 21.11(b)(4), and by requiring that a national bank file a SAR to report a suspicious financial transaction.

Under the current rule, the OCC requires a bank to file a criminal referral form with many different Federal agencies. The proposal, which replaces all other requirements for filing criminal referrals and suspicious financial transactions, requires a bank to file only a single SAR at one location, rather than the multiple copies of the criminal referral form that must now be filed with various Federal agencies.

Under proposed § 21.11(c), a national bank effectively files a SAR with all appropriate Federal law enforcement agencies by sending a single copy of the SAR to FinCEN, whose address will be printed on the SAR.

whenever a currency transaction exceeds \$10,000. If a currency transaction exceeds \$10,000 and is suspicious, the bank, under these new requirements, will file both a CTR (reporting the currency transaction) and a SAR (reporting the suspicious criminal aspect of the transaction). If a currency transaction equals or is below \$10,000 but is suspicious, the bank will only file a SAR.

FinCEN will input the information contained on the SARs into a newly created database that FinCEN will maintain. This process meets the regulatory requirement that a bank refer any known or suspected criminal violation to the various Federal law enforcement agencies. The database will enhance Federal law enforcement and supervisory agencies' ability to track, investigate, and prosecute individuals suspected of violating Federal criminal law.

This change ensures that all SARs are placed in the database at FinCEN and that the information is made available on computer to the appropriate law enforcement and supervisory agencies as quickly as possible. This change will reduce the filing burdens of national banks.

The proposal removes § 21.11(b)(1), which now requires national banks to report any mysterious disappearance or unexplained shortage of bank funds, because it would be redundant in light of proposed § 21.11(c)(3). In instances where criminal activity is suspected in connection with any disappearance or shortage of bank funds, § 21.11(c)(3) requires a national bank to file a SAR.

The proposal modifies current § 21.11(b)(2), which requires reporting of known or suspected criminal activity involving bank insiders. The proposal replaces current § 21.11(b)(2) with 21.11(c)(1) and describes suspects who are bank personnel more precisely. Specifically, the proposal replaces "responsible bank personnel" with "directors, officers, employees, agents, or other institution-affiliated parties." The proposal, however, does not change the requirement that a bank file a SAR, regardless of the dollar amount involved, whenever it has a substantial basis for believing that a bank insider has violated a Federal criminal statute.

The proposal modifies current § 21.11(b)(3), which requires reporting of known or suspected criminal activity when a bank has a substantial basis for identifying a non-insider suspect where bank funds or other assets involve or aggregate \$1,000 or more. Proposed § 21.11(c)(2), which replaces current § 21.11(b)(3), raises the reporting threshold to \$5,000.

The proposal also modifies current § 21.11(b)(4), which requires banks to report any known or suspected criminal violation involving \$5,000 or more where the bank has no substantial basis for identifying a suspect. Specifically, proposed § 21.11(c)(3), which replaces current § 21.11(b)(4), raises the dollar reporting threshold from \$5,000 to \$25,000.

Proposed § 21.11(c)(4) requires a national bank to report any financial transaction, regardless of the dollar amount, that: (1) the bank suspects involved funds derived from illicit activity, was conducted for the purpose of hiding or disguising funds from illicit activity, or in any way violated the money laundering statutes (18 U.S.C. 1956 and 1957); (2) the bank suspects was potentially designed to evade the reporting or recordkeeping requirements of the BSA (31 U.S.C. 5311 through 5330); or (3) the bank believes to be suspicious for any reason.

Section 21.11(d) Time for Reporting

Proposed § 21.11(d), which replaces current § 21.11(c), sets forth the time requirements a bank must meet when filing a SAR. The proposal does not substantively change the current requirements.

Under current § 21.11(e), "Manner of Reporting," a bank may file the appropriate criminal referral form in several ways, including submitting a photocopy or facsimile of the appropriate form. Under the proposal, a bank may file a SAR by photocopy and also by magnetic means, such as by a computer disk. However, FinCEN will not be able to receive SARs by facsimile machine. In the future, the OCC anticipates that a bank will be able to file a SAR electronically.

The Agencies, working with FinCEN, are developing computer software to assist banks in preparing and filing SARs. The software will allow a bank to complete a SAR, to save the SAR on its computers, and to print a hard copy of the SAR for its own records. The computer software will also enable a bank to file a SAR using various forms of magnetic media, such as computer disk or magnetic tape. The OCC will make the software available to all national banks. A bank, of course, may complete and file a SAR using a printed form, without using this software, if it so desires.

Because the permitted methods of filing the SAR may change, the OCC has removed current § 21.11(e). The permissible methods of filing the SAR will be stated in the instructions to the SAR.

Section 21.11(e) Reports to State and Local Authorities

Proposed § 21.11(e), which replaces current § 21.11(d), modifies the scope of this provision slightly. Proposed § 21.11(e) encourages national banks to file SARs with State and local law enforcement agencies where appropriate. Proposed § 21.11(e)