

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

Section 208.20(b) Definitions

In addition to the current definition of "institution-affiliated party" set forth at 12 CFR 208.20(b), the proposed § 208.20(b) defines the following terms: "FinCEN" and "SAR." The definitions should make the rule easier to interpret and apply.

Section § 208.20(c) Reports Required

Proposed § 208.20(c), which replaces the current subsection, clarifies and expands the provision that requires a state member bank to file a SAR. This provision raises the dollar thresholds that trigger a filing requirement. It also modifies the scope of events that a state member bank must report by requiring that a bank file a SAR to report a suspicious financial transaction.

Under the current rule, the Board requires a state member bank to file a criminal referral form with many different Federal agencies. The proposal, which replaces all other requirements for filing criminal and suspicious financial transaction referrals, 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 § 208.20(c), a state member 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.

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 banking organization refer any known or suspected criminal violation to the various Federal law enforcement agencies. The database will enhance Federal law enforcement and bank supervisory agencies' ability to track, investigate, and prosecute, criminally, civilly, and administratively, individuals and entities 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 banking organizations.

The proposal modifies current § 208.20(c)(2), which requires reporting of known or suspected criminal activity when a state member 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 § 208.20(c)(2) raises the reporting threshold to \$5,000, thereby reducing the reporting burden on banking organizations.

The proposal also modifies current § 208.20(c)(3), which requires a state member bank 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 § 208.20(c)(3) raises the dollar reporting threshold from \$5,000 to \$25,000, thereby reducing further the reporting burden on banking organizations.

Proposed § 208.20(c)(4) requires a state member bank to report any financial transaction, regardless of the dollar amount, that: (i) 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 Federal money laundering statutes (18 U.S.C. 1956 and 1957); (ii) the bank suspects was potentially designed to evade the reporting or recordkeeping requirements of the BSA (31 U.S.C. 5311 through 5330); or (iii) the bank believes to be suspicious for any reason.

Section 208.20(d) Time for Reporting

Proposed § 208.20(d) sets forth the time requirements a state member bank must meet when filing a SAR. The proposal clarifies the reporting requirement in the event a suspect or group of suspects is not immediately identified. It does not substantively change the current requirements.

Section 208.20(e) Reporting to State and Local Authorities

No changes are being proposed to the current § 208.20(e).

Section 208.20(f) Exceptions

No changes are being made to the current § 208.20(f).

Section 208.20(g) Retention of Records

Current § 208.20(g) requires a state member bank to retain a copy of the criminal referral form and the original of any related documentation relating to a referral for a period of 10 years from the date of the report. No changes are being made to this requirement. The proposal

clarifies the requirement that banking organizations make all supporting documentation available to appropriate law enforcement agencies upon request. This approach ensures that Federal law enforcement agencies and the Agencies, upon request, have access to any documentation necessary to prosecute a violation or pursue an administrative action by requiring financial institutions to identify and preserve underlying documentation for 10 years and treat such underlying documentation as having been filed with the SAR.

Section 208.20(h) Notification of the Board of Directors

Current § 208.20(h) requires notification regarding the filing of a SAR to a state member bank's board of directors by the bank's management. To reduce burdens on the boards of directors of state member banks, especially those large banks that file many SARs, the proposal recognizes that the required notification may be made to a committee of the board.

Section 208.20(i) Compliance

Current § 208.20(i) is headed "Penalty". The heading of the subsection is changed to reflect better the range of informal and formal supervisory actions that the Board can take to address suspicious activity reporting deficiencies.

Section 208.20(j) Confidentiality of SARs

The Board proposes to add a new subsection relating to the confidentiality of a SAR. Proposed § 208.20(j) states that a SAR and the information contained in a SAR are confidential, and that a state member bank should decline to produce a SAR citing applicable law (e.g., 31 U.S.C. 5318(g)) and the provisions of § 208.20 of Regulation H of the Board.

Comments

The Board invites public comment on all aspects of this proposal.

Regulatory Flexibility Act

Because this proposal is designed to reduce the burden on financial institutions for reporting suspicious financial transactions, the Board certifies that this proposed regulation will not have a significant financial impact on a substantial number of small banks or other small entities.

Paperwork Reduction Act

In accordance with Section 3507 of the Paperwork Reduction Act of 1980, the suspicious activity report regulation was approved under authority delegated