

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[No. 95-145]

RIN 1550-AA62

Operations—Suspicious Activity Reports and Other Reports and Statements

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to amend its regulations to implement a new interagency suspicious activity referral process and to update and clarify the underlying reporting regulation. The proposal reduces substantially the burden on savings associations and service corporations in reporting suspicious activities while enhancing access to such information by the Federal law enforcement agencies, the Federal financial institutions supervisory agencies, and the Department of the Treasury.

DATES: Comments must be received by September 15, 1995.

ADDRESSES: Comments should be sent to: Chief, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 95-145. These submissions may be hand-delivered to 1700 G Street, NW., from 9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202) 906-7755. Comments will be available for inspection at 1700 G Street, NW., from 1:00 P.M. until 4:00 P.M. on business days.

FOR FURTHER INFORMATION CONTACT:

Richard Stearns, Deputy Chief Counsel, Enforcement Division, (202) 906-7966, or Karen Osterloh Counsel (Banking and Finance), Regulations and Legislation Division, (202) 906-6639, Chief

Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington DC 20552.

SUPPLEMENTARY INFORMATION:

Background

The Federal financial institutions supervisory agencies (Agencies)¹ and the Department of the Treasury (Treasury)² are responsible for ensuring that financial institutions apprise Federal law enforcement authorities of any known or suspected violation of a Federal criminal statute and of any suspicious financial transaction. Suspicious financial transactions (which will be the subject of regulations and other guidance to be issued by Treasury) can include transactions that a savings association or service corporation suspects involved funds derived from illicit activities, were conducted for the purpose of hiding or disguising funds from illicit activity, otherwise violated the money laundering statutes,³ were potentially designed to evade the reporting or recordkeeping requirements of the Bank Secrecy Act (the BSA),⁴ and transactions that the savings association or service corporation believes were suspicious for any other reason.

Fraud, abusive insider transactions, check kiting schemes, money laundering, and other crimes can pose serious threats to a financial institution's continued viability and, if unchecked, can undermine the public confidence in the nation's financial industry. The Agencies and Federal law enforcement agencies need to receive timely and detailed information regarding suspected criminal activity to determine whether investigations, administrative actions, or criminal prosecutions are warranted.

An interagency Bank Fraud Working Group (BFWG), consisting of representatives from many Federal agencies, including the Agencies and law enforcement agencies, was formed in 1984. The BFWG addresses substantive issues, promotes

cooperation among the Agencies and Federal and State law enforcement agencies, and improves the Federal government's response to white collar crime in financial institutions. Today's revisions to this regulation and the reporting requirements are being made under the auspices of the BFWG.

Suspicious Activity Report

The Agencies have been working on a project to improve the criminal referral process, to reduce unnecessary reporting burdens on financial institutions, and to eliminate confusion associated with the current duplicative reporting of suspicious financial transactions in criminal referral forms and currency transaction reports (CTRs). Contemporaneously, Treasury analyzed the need to implement the procedures for reporting suspicious financial transactions by financial organizations following the enactment of the Annunzio-Wylie Anti-Money Laundering Act of 1992. As a result of these reviews, the Agencies and Treasury approved the development of a new referral process that includes suspicious financial transaction reporting.

To implement the reporting process, and to reduce unnecessary burdens associated with these various reporting requirements, the Agencies and FinCEN developed a new report form for reporting known or suspected Federal criminal law violations and suspicious financial transactions. The new form is designated the Suspicious Activity Report (SAR).⁵ The SAR is a simplified and shortened version of its predecessors.

The new referral process and the SAR reduce the burden on savings associations and service corporations for reporting known or suspected violations and suspicious financial transactions. The agencies anticipate that the new process will be instituted by October, 1995.

Proposal

The OTS proposes to revise 12 CFR 563.180 by updating and clarifying the current rule governing the filing of criminal referral reports, implementing the new SAR, and eliminating current

¹ The Federal financial institutions supervisory agencies are the OTS, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the National Credit Union Administration.

² Through its Financial Crimes Enforcement Network (FinCEN).

³ 18 U.S.C. 1956 and 1957.

⁴ 31 U.S.C. 5311 through 5330.

⁵ The reporting requirements contained in the SAR will be submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) and the OTS will seek comments on the SAR in a separate notice.