

appropriate Federal law enforcement authorities. Because this process results in multiple filings with several agencies, the Agencies propose to reduce the filing burden by permitting institutions to file a single SAR at one location. Accordingly, under proposed § 563.180(d)(3), a savings association or service corporation will file a SAR with all appropriate Federal law enforcement agencies by sending a single copy of the SAR to the 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 will fulfill the regulatory requirement that a savings association or service corporation refer any known or suspected criminal violation to appropriate 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 will ensure 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.

To further reduce the reporting burden, the Agencies are modifying the manner in which financial institutions file a SAR. In following the Instructions on a SAR, a savings association or service corporation may file the referral form in several ways, including submitting an original form or a photocopy, and filing a SAR by magnetic means, such as by a computer disk.¹⁰ In the future, the OTS and the other Agencies anticipate that a financial institution will be able to file a SAR electronically.

The Agencies, working with FinCEN, are developing computer software to assist financial institutions in preparing and filing SARs. The software will allow an institution 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 an institution to file a SAR using various forms of magnetic media, such as computer disk or magnetic tape. The OTS will make the software available to all savings associations and service corporations. A savings association or service corporation, of course, may complete and file a SAR using printed forms without using this software, if it so desires. The Instructions to the SAR will address

new permissible filing methods as the methods are developed.

Section 563.180(d)(4) Service Corporations

When a service corporation must file a report under the current rule, the required filing may be made either by the service corporation or by a saving association that wholly or partially owns the service corporation. This provision is retained in the proposed rule at 12 CFR 563.180(d)(4).

Section 563.180(d)(5) Time for Reporting

Proposed § 563.180(d)(5) requires a savings association or service corporation to file the SAR within 30 calendar days after the date of detection of the act triggering the reporting requirement. If no suspect is identified on that date, the savings association or service corporation may delay the filing of a SAR for an additional 30 calendar days after the identification of a suspect. Filings, however, may not be delayed for more than 60 calendar days after detection. The proposal substantially modifies the current regulation at § 563.180(d)(2) which requires the savings association or service corporation to file within 14 business days after discovery of the activity.

Section 563.180(d)(6) Reports to State and Local Authorities

The proposed rule includes a new provision encouraging savings associations and service corporations to file SARs with State and local law enforcement agencies where appropriate.

Section 563.180(d)(7) Retention of Records

Existing OTS rules require savings associations and service corporations to retain a copy of the criminal referral report and related records for a period of ten years.¹¹ This requirement is retained in the proposed rules at § 563.180(d)(7).

The current instructions to the criminal referral form require savings associations and service corporations to submit copies of all related documentation when a criminal referral is filed. The new SAR reduces the regulatory burdens on the industry by eliminating this requirement altogether. Instead, the proposal requires that the documentation be identified and treated as filed with the SAR and that the savings association or service

corporation maintain the documentation, along with a copy of the SAR, for ten years from the submission date. 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 administrative action by requiring the preservation of the underlying documentation for ten years.

Section 563.180(d)(8) Exemptions

The proposed rule would exempt robberies and burglaries and attempted robberies and burglaries that are reported to the appropriate local law enforcement authorities. This exemption is substantially similar to the existing exemption at 12 CFR 563.180(d)(2)(1995).

Section 563.180(d)(9) Notification of the Board of Directors

Proposed § 563.180(d)(9) requires the management of a savings association to promptly notify the board of directors (or a committee of directors or executive officers designated by the board to receive notice) whenever the savings association or a service corporation in which the savings association has an ownership interest has filed a SAR. Where an executive officer or director is a suspect, the proposal requires management to notify the entire board of directors, except the suspect.

This proposed rule generally incorporates the requirements of the existing rules at § 563.180(d)(4) (1995), but includes several modifications designed to provide savings associations with greater flexibility. These modifications: (1) permit notification to a designated committee in lieu of the entire board; (2) require "prompt" notification, rather than notification at the first regularly scheduled board meeting after the filing of the SAR; and (3) assign notification responsibility to management of the savings association rather than the chief executive officer. The OTS expects each savings association to maintain appropriate mechanisms to ensure that the board of directors will be informed promptly of SAR filings.

Section 563.180(d)(10) Compliance

The proposed rule includes a new provision stating that the failure to file a SAR in accordance with the regulation and the Instructions may result in supervisory actions, including enforcement actions.

¹⁰ FinCEN, however, will not be able to receive SARs by facsimile machine.

¹¹ 12 CFR 563.180(d)(5) (1995). This time frame corresponds with the statute of limitations for most Federal criminal statutes involving financial institutions.