

Section 563.180(d)(11) Obtaining the SAR

Proposed § 563.180(d)(11) states that savings associations and service corporations may obtain the SAR form from the appropriate OTS Regional Office at the address listed in 12 CFR 516.1(b) (1995). The current rule does not contain a comparable instruction.

Section 563.180(d)(12) Confidentiality of SARs

The proposed rule contains a new provision preserving the confidentiality of SARs and the information contained in SARs.

Comments

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

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposal primarily reorganizes the process for reporting crimes and suspicious activities and has no material impact on savings associations and service corporations, regardless of size. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

The OTS has determined that this document is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4 (signed into law on March 22, 1995) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in one year. If the budgetary impact statement is required, section 205 of the Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. This proposal reorganizes the process for reporting crimes and suspicious activities by savings associations and service corporations to Federal agencies. The OTS has determined that the final rule will not result in expenditure by State, local, or tribal governments or by the private sector of more than \$100 million. Accordingly, the Unfunded Mandates Reform Act does not apply.

List of Subjects in 12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

Authority and Issuance

For the reasons set out in the preamble, part 563 of chapter V of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

**SUBCHAPTER D—REGULATIONS
APPLICABLE TO ALL SAVINGS
ASSOCIATIONS****PART 563—OPERATIONS**

1. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806; 42 U.S.C. 4012a, 4104a, 4104b, 4106, 4128.

2. Section 563.180 is amended by revising the section heading and paragraph (d) to read as follows:

§ 563.180 Suspicious Activity Reports and other reports and statements.

* * * * *

(d) *Suspicious Activity Reports.*—(1) *Purpose and scope.* This paragraph (d) ensures that savings associations and service corporations file a Suspicious Activity Report when they detect a known or suspected violation or a suspicious transaction.

(2) *Definitions.* For the purposes of this paragraph (d):

(i) *FinCEN* means the Financial Crimes Enforcement Network of the Department of the Treasury.

(ii) *Institution-affiliated party* means any institution-affiliated party as that term is defined in sections 3(u) and 8(b)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1813(u) and 1818(b)(8)).

(iii) *Instructions* means the instructions on the SAR.

(iv) *Known or suspected violation* means any matter for which there is a basis to believe that a violation of a Federal criminal statute (including a pattern of criminal violations) has occurred or has been attempted, is occurring, or may occur, and there is a basis to believe that a savings association or service corporation was an actual or potential victim of the criminal violation or was involved in or was used to facilitate the criminal violation.

(v) *SAR* means a Suspicious Activity Report.

(3) *SARs required.* A savings association or service corporation shall file a SAR with the appropriate Federal law enforcement agencies and the

Department of the Treasury, in accordance with the Instructions, by sending a completed SAR to FinCEN, in the following circumstances:

(i) Whenever the savings association or service corporation detects a known or suspected violation of Federal criminal law and has a substantial basis to believe that one of its directors, officers, employees, agents, or other institution-affiliated parties committed or aided in the commission of the violation;

(ii) Whenever the savings association or service corporation detects a known or suspected violation of Federal criminal law, there is an actual or potential loss to the savings association or service corporation (before reimbursement or recovery) aggregating \$5,000 or more, and the savings association or service corporation has a substantial basis for identifying a possible suspect or group of suspects, where none of the suspects are included in paragraph (d)(3)(i) of this section;

(iii) Whenever the savings association or service corporation detects a known or suspected violation of Federal criminal law, there is an actual or potential loss to the savings association or service corporation (before reimbursement or recovery) aggregating \$25,000 or more, and the savings association or service corporation has no substantial basis for identifying a possible suspect or group of suspects; or

(iv) Whenever a financial transaction is conducted, or attempted, at the savings association or service corporation and:

(A) The savings association or service corporation suspects that the transaction 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);

(B) The savings association or service corporation suspects that the transaction was potentially designed to evade the reporting or recordkeeping requirements of the Bank Secrecy Act (31 U.S.C. 5311 through 5330) or regulations issued thereunder; or

(C) The savings association or service corporation believes that the transaction was suspicious for any reason.

(4) *Service corporations.* When a service corporation is required to file a SAR under paragraph (d)(3) of this section, either the service corporation or a savings association that wholly or partially owns the service corporation, may file the SAR.

(5) *Time for reporting.*—(i) *Generally.* A savings association or service corporation shall file the SAR required