

**7535-01-U**

**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Part 748**

**RIN 3133-AF25**

**Bank Secrecy Act**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Proposed rule.

**SUMMARY:** The NCUA Board (Board) is inviting comment on a proposed rule that would modify the requirements for federally insured credit unions (FICUs) to file Suspicious Activity Reports (SARs). The proposed rule would amend the NCUA's SARs regulation to allow the Board to issue exemptions from the requirements of that regulation in order to grant relief to FICUs that develop innovative solutions to meet the requirements of the Bank Secrecy Act (BSA).

**DATES:** Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** You may submit written comments, identified by RIN 3133-AF25, by any of the following methods (**Please send comments by one method only**):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Fax: (703) 518-6319. Include “[Your Name]—Comments on Proposed Rule: Bank Secrecy Act” in the transmittal.
- Mail: Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

- Hand Delivery/Courier: Same as mail address.

**PUBLIC INSPECTION:** You may view all public comments on the Federal eRulemaking Portal at <http://www.regulations.gov> as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments submitted. Due to social distancing measures in effect, the usual opportunity to inspect paper copies of comments in the NCUA's law library is not currently available. After social distancing measures are relaxed, visitors may make an appointment to review paper copies by calling (703) 518-6540 or e-mailing [OGCMail@ncua.gov](mailto:OGCMail@ncua.gov).

**FOR FURTHER INFORMATION CONTACT:** *Policy and Analysis:* Timothy Segerson, Deputy Director, Office of Examination and Insurance, (703) 518-6397; *Legal:* Justin Anderson, Senior Staff Attorney, Damon P. Frank, Staff Attorney, and Chrisanthy J. Loizos, Senior Staff Attorney, Office of General Counsel, (703) 518-6540; or by mail at National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

## **SUPPLEMENTARY INFORMATION:**

### **I. Introduction**

Requirements related to SARs are codified in 12 CFR § 748.1(c). This section of the NCUA's regulations requires FICUs to file SARs under certain conditions. In addition, this section provides for: (i) board of director or other committee notification; (ii) filing exceptions; (iii) SAR confidentiality; (iv) recordkeeping requirements; (v) supporting documentation

requirements; and (vi) limitations on liability. The proposed rule would allow the NCUA to issue exemptions from the regulation's SAR requirements.

## **II. Background**

The NCUA's original SARs regulation required FICUs to report potential violations of law arising from transactions that flow through those institutions.<sup>1</sup> As discussed in more detail later in this document, this regulation has been amended and updated since its inception. The NCUA's purpose for the regulation has, however, remained unchanged because fraud, abusive insider transactions, check-kiting schemes, money laundering, and other financial 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 services industry generally.<sup>2</sup>

In 1992, Congress passed the Annunzio-Wylie Anti-Money Laundering Act (the Anti-Money Laundering Act), which redesigned the criminal referral process applicable to credit unions and made the reporting of certain suspicious transactions a requirement of the BSA.<sup>3</sup> The Anti-Money Laundering Act permitted the Department of the Treasury to require financial institutions, including credit unions, to "report any suspicious transaction relevant to a possible violation of law or regulation."<sup>4</sup> Thereafter, the Department of the Treasury, in consultation with the NCUA, the other federal banking agencies,<sup>5</sup> and law enforcement developed the modern

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<sup>1</sup> See 50 FR 53294-01 (Dec. 31, 1985).

<sup>2</sup> 58 FR 5663 (Jan. 22, 1993).

<sup>3</sup> Pub. L. 102-550, 106 Stat. 3672, 4059 (1992).

<sup>4</sup> 31 U.S.C. 5318(g)(1). The quoted text is from section 1517 of the Annunzio-Wylie Anti-Money Laundering Act, which was originally codified at 31 U.S.C. 5314(g). The text was moved as part of the Violent Crime Control and Law Enforcement Act of 1994.

<sup>5</sup> For purposes of this rulemaking, the other federal banking agencies are defined as the Board of Governors of the Federal Reserve (FRB), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC).

SAR form and reporting process, which standardized the reporting forms and created a centralized database that could be accessed by multiple law enforcement and regulatory agencies.

To implement this new reporting system, in 1996, the Financial Crimes Enforcement Network of the Department of the Treasury (FinCEN) issued its implementing SAR regulations for financial institutions subject to the requirements of the BSA to, among other things, specifically address the reporting of money laundering transactions and transactions designed to evade the reporting requirements of the BSA.<sup>6</sup> To further implement this new reporting process and reduce unnecessary reporting burdens, the NCUA and the other federal banking agencies contemporaneously amended their criminal referral form regulations to incorporate the new SAR form and reporting database, align their regulatory reporting requirements with FinCEN's BSA reporting requirements, and further refine the reporting processes.<sup>7</sup>

As a result of this redesign and FinCEN's implementing regulations, FICUs are currently required to file SARs under both NCUA and FinCEN regulations. These regulations are not identical but are substantially similar with regard to the specified BSA reporting obligations required by FinCEN. Both the NCUA's and FinCEN's SAR regulations, among other things, require FICUs to file SARs relating to money laundering and transactions that are designed to evade the reporting requirements of the BSA<sup>8</sup> Furthermore, with respect to the SAR

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<sup>6</sup> 61 FR 4326 (Feb. 5, 1996) (FinCEN). The NCUA's current regulation is codified at 12 C.F.R. 748.1(c)(1)(iv)(B). It should be noted that prior to the adoption of FinCEN's SAR regulation in 1996 and the accompanying revisions to the NCUA's regulation, the NCUA's criminal referral regulation did not have a specific provision that required the reporting of money laundering transactions. However, the required criminal referral form broadly encompassed money laundering and structuring transactions.

<sup>7</sup> 61 FR 11526 (Mar 21, 1996) (NCUA); 61 FR 4326 (Feb. 5, 1996) (FinCEN).

<sup>8</sup> 12 CFR 748.1(c)(1)(iv)(B) (NCUA); 31 CFR 1020.320(a)(2) (FinCEN).

confidentiality requirements in the BSA, both the NCUA's and FinCEN's SAR regulations require FICUs to maintain the confidentiality of a SAR, and any information that would reveal the existence of the SAR, outside of certain circumstances.<sup>9</sup>

However, the NCUA's and the other federal banking agencies' regulations cover a slightly broader range of transactions (e.g., insider abuse at any dollar amount).<sup>10</sup>

The NCUA and FinCEN SAR regulations also provide: (i) that SARs are not required for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities; (ii) that SARs are confidential and shall not be disclosed except as authorized; (iii) recordkeeping requirements for SARs and supporting documentation; (iv) that supporting documentation shall be deemed to have been filed with the SAR; and (v) that supporting documentation shall be made available to appropriate law enforcement agencies upon request. The NCUA and FinCEN SAR regulations also provide a safe harbor from liability to any FICU and any of its officials, employees, or agents that make a voluntary disclosure of any possible violation of law or regulation to a government agency or file a SAR pursuant to the regulations or any other authority. The NCUA's regulation also contains a provision requiring that FICUs promptly notify their board of directors or committee designated by the board of directors to receive such notifications when a SAR has been filed.

FinCEN has general authority to grant exemptions from the requirements of the BSA, which includes granting exemptions under its SAR reporting regulations.<sup>11</sup> FinCEN's regulation provides that "[t]he Secretary [of Treasury], in his sole discretion, may by written order or

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<sup>9</sup> 12 CFR 748.1(c)(5) (NCUA); 31 CFR 1020.320(e)(1) (FinCEN).

<sup>10</sup> 12 CFR 748.1(c) (NCUA); 12 CFR 208.62 (FRB); 12 CFR 390.355 (FDIC); 12 CFR 21.11, 163.80 (OCC).

<sup>11</sup> See 31 U.S.C. 5318(a)(7), with implementing regulations at 31 CFR 1010.970.

authorization make exceptions to or grant exemptions from the requirements of [the BSA]. Such exemptions may be conditional or unconditional, may apply to particular persons or to classes of persons, and may apply to transactions or classes of transactions.” The Secretary has delegated this exemption authority to FinCEN.<sup>12</sup>

As financial technology and innovation continue to develop in the area of monitoring and reporting financial crime and terrorist financing, the NCUA will need the express regulatory flexibility to grant exemptive relief when appropriate in this area on a consistent basis. In 2018, the NCUA, FinCEN, and the other federal banking agencies issued a statement encouraging financial institutions to take innovative approaches to meet their BSA/anti-money laundering (BSA/AML) compliance obligations.<sup>13</sup> That statement explained that financial institutions are encouraged to consider, evaluate, and where appropriate, responsibly implement innovative approaches in this area. Today, innovative approaches and technological developments in the areas of SAR monitoring, investigation and filings may involve, among other things: (i) automated form population using natural language processing, transaction data, and customer due diligence information; (ii) automated or limited investigation processes depending on the complexity and risk of a particular transaction and appropriate safeguards; and (iii) enhanced monitoring processes using more and better data, optical scanning, artificial intelligence, or machine learning capabilities. Requests for exemptive relief pertaining to innovation or other matters may involve, among other things, expanded investigations and SAR timing issues, SAR disclosures and sharing, continued SAR filings for ongoing activity, SAR outsourcing of

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<sup>12</sup> Treas. Order 180-01, (re-affirmed Jan. 14, 2020).

<sup>13</sup> Joint Statement on Innovative Efforts to Combat Money Laundering and Terrorist Financing (Dec. 3, 2018), available at <https://www.ncua.gov/newsroom/press-release/2018/agencies-issue-joint-statement-encourage-innovative-approaches-bsaaml-compliance>.

responsibilities and practices, the role of agents of FICUs, the use of shared utilities and shared data, and the use and sharing of de-identified data. The NCUA expects that new technologies will continue to prompt additional innovative approaches related to SAR filing and monitoring.

It is important to recognize that any NCUA-issued exemptions from its SAR regulation would not relieve the FICU from independent obligation to comply with FinCEN's SAR regulations, if applicable. To the extent an exemption request from a FICU involves both the NCUA's SAR regulation and FinCEN's SAR regulation, the FICU would need an exemption from both the NCUA and FinCEN. The NCUA expects to coordinate with FinCEN when handling parallel exemptions. As explained above, however, the NCUA's SAR regulation imposes additional requirements not included in FinCEN's SAR regulation. To the extent an exemption request is subject to a requirement imposed by the NCUA's SAR regulation alone (and not a parallel FinCEN requirement), the proposed rule would allow the NCUA to exempt a FICU from that requirement.

### **III. The Proposal**

This proposed rule would allow the NCUA to issue exemptions from the requirements of its SAR regulation. Specifically, the proposed rule would add a provision to 12 CFR § 748.1 that would provide that the NCUA may exempt a FICU from the requirements of that section. Under the proposed rule, the NCUA would determine whether the exemption is consistent with the purposes of the BSA, if applicable, and with safe and sound practices, and may consider other appropriate factors. The NCUA would also seek FinCEN's determination on whether the

exemption would be consistent with the purposes of the BSA. The exemptions may be conditional or unconditional, may apply to particular persons or to classes of persons, and may apply to transactions or classes of transactions.

In addition, this proposal would require the NCUA to seek FinCEN's concurrence regarding any exemption requests that involve an exemption from the requirement to file a SAR required by FinCEN regulations implementing the BSA. The proposal would also permit the NCUA to consult with FinCEN regarding other exemption requests. The NCUA may also consult with the other state and federal banking agencies before granting any exemption.

Finally, the proposed rule provides that the NCUA may grant an exemption for a specified time period. Under the proposed rule, the NCUA could also revoke previously granted exemptions if circumstances change related to the factors set out above (consistency with the BSA and safety and soundness) or any imposed conditions.

If the NCUA adopts this proposed rule and uses it to grant exemptions, such exemptions would not relieve a FICU from the obligation to comply with FinCEN's SAR regulation, if applicable. To the extent a FICU is subject to requirements imposed by both the NCUA's SAR regulation and FinCEN's SAR regulation, the FICU would need to seek an exemption from both the NCUA and FinCEN. As explained above, however, the NCUA's SAR regulation imposes additional requirements not included in FinCEN's regulation. To the extent a FICU is subject to a requirement imposed by the NCUA's SAR regulation alone (and not a parallel FinCEN requirement), the proposed rule would allow the NCUA to exempt a FICU from that requirement.



The Board is providing for a 30-day comment period instead of a 60-day comment period because the proposed rule is limited in scope, and the Board believes that 30 days will provide the public adequate time to review and comment on it.<sup>14</sup>

The Board invites comments on the proposed rule, including whether any additional detail relating to the procedures that would be followed in considering, granting or revoking exemptions is necessary. The Board is also specifically requesting comments on whether additional or different factors or standards should be applied in the determination whether to grant an exemption request, as well as the form and manner of the Board's response to an exemption request.

#### **IV. Regulatory Procedures**

##### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities (defined for purposes of the RFA to include credit unions with assets less than \$100 million).<sup>15</sup>

A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will

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<sup>14</sup> See NCUA Interpretive Ruling and Policy Statement (IRPS) 87-2, as amended by IRPS 03-2 and IRPS 15-1. 80 FR 57512 (Sept. 24, 2015), available at <https://www.ncua.gov/files/publications/irps/IRPS1987-2.pdf>.

<sup>15</sup> See NCUA Interpretive Ruling and Policy Statement 87-2, as amended by IRPS 03-2 and IRPS 15-1, 80 FR 57512 (Sept. 24, 2015).

not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the *Federal Register* together with the rule.

The proposed rule would allow FICUs to request exemptions from certain regulatory requirements if they choose to do so. As a result, it would not cause any increased burden or impose any new requirements on FICUs. Accordingly, the NCUA certifies that the proposed rule would not have a significant economic impact on a substantial number of small credit unions.

#### *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (PRA) applies to information collection requirements in which an agency creates a new paperwork burden on regulated entities or modifies an existing burden. For purposes of the PRA, a paperwork burden may take the form of a reporting, recordkeeping, or third-party disclosure requirement, each referred to as an information collection. The NCUA may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule adds a provision to §748.1(c) that would allow FICUs to submit a written request to NCUA if it wishes to seek an exemption from the requirements of this section. There are 2,932 FICUs that currently file SARs annually. It is estimated that 50 of these FICUs would file for an exemption under the proposed new §748.1(c)(7); taking 2 hours per response, for a total increase of 100 burden hours. This proposed rule would revise the information collection requirement currently approved under OMB number 3133-0094, as follows:

*Title of Information Collection:* Suspicious Activity Report by Depository Institutions.

*OMB Control Number:* 3133–0094.

*Estimated Number of Respondents:* 2,932.

*Estimated Annual Frequency of Response:* 65.

*Estimated Total Annual Responses:* 191,069

*Estimated Hours per Response:* 1.

*Estimated Total Annual Burden Hours:* 191,119.

*Affected Public:* Private Sector: Not-for-profit institutions.

The NCUA invites comments on: (a) whether the collections of information are necessary for the proper performance of the agencies’ functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments are a matter of public record. Due to the limited in-house staff, email comments are preferred. Comments regarding the information collection requirements of this rule should be (1) emailed to: [PRAComments@ncua.gov](mailto:PRAComments@ncua.gov) with “OMB No. 3133-0094” in the subject line; faxed to 703–837–2406, or mailed to Mackie Malaka, NCUA PRA Clearance Officer, National Credit Union Administration, 1775 Duke Street, Suite 5080, Alexandria, Virginia 22314 and to the (2) Office of Information and Regulatory Affairs, Office of

Management and Budget, at [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Select "Currently under 30-day Review - Open for Public Comments" or by using the search function.

#### *Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the principles of the executive order. This rulemaking will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that this proposal does not constitute a policy that has federalism implications for purposes of the executive order.

#### *Assessment of Federal Regulations and Policies on Families*

The NCUA has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

#### **List of Subjects in 12 CFR Part 748**

Security program, report of suspected crimes, suspicious transactions, catastrophic acts and Bank Secrecy Act compliance.

By the National Credit Union Administration Board on December 17, 2020.

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Melane Conyers-Ausbrooks,  
Secretary of the Board.

For the reasons discussed in the preamble, the Board proposes to amend 12 CFR Part 748, as follows:

**PART 748—SECURITY PROGRAM, REPORT OF SUSPECTED CRIMES,  
SUSPICIOUS TRANSACTIONS, CATASTROPHIC ACTS AND BANK SECRECY ACT  
COMPLIANCE**

1. The authority citation for part 748 continues to read as follows:

**Authority:** 12 U.S.C. 1766(a), 1786(q); 15 U.S.C. 6801-6809; 31 U.S.C. 5311 and 5318.

2. Amend §748.1(c) by adding new paragraph (7) to read as follows:

**§ 748.1 Filing of reports.**

\* \* \* \* \*

(c) Suspicious Activity Report. \* \* \*

(7) *Exemptions.*

(i) The NCUA may exempt any federally insured credit union from the requirements of paragraph (c) of this section. Upon receiving a written request from a federally insured credit union, the NCUA will determine whether the exemption is consistent with safe and sound practices, and may consider other appropriate factors. The NCUA will also seek FinCEN's determination whether the exemption is consistent with the purposes of the BSA, if applicable. The exemption shall be applicable only as expressly stated in the exemption, may be conditional or unconditional, may apply to particular persons or to classes of persons, and may apply to transactions or classes of transactions.

The NCUA will seek FinCEN's concurrence with regard to any exemption request that would also require an exemption from the requirements of FinCEN's SAR regulations, and may consult with FinCEN regarding other exemption requests. The NCUA also may consult with the other state and federal banking agencies and consider comments before granting any exemption.

(ii) The NCUA will provide a written response to the federally insured credit union that submitted the exemption request after considering whether the exemption is consistent with safe and sound banking, consulting with the appropriate agencies, and seeking concurrence when appropriate. A federally insured credit union that has received an exemption under paragraph (i) may rely on the exemption for a period of time to be communicated by the NCUA in its granting of the exemption, which may indefinite.

The NCUA may extend the period of time or may revoke an exemption granted under paragraph (i). Exemptions may be revoked at the sole discretion of the NCUA. The NCUA will provide written notice to the federally insured credit union of the NCUA's intention to revoke an exemption. Such notice will include the basis for the revocation and will provide an opportunity

for the federally insured credit union to submit a response to the NCUA. The NCUA will consider the credit union's response prior to deciding whether to revoke an exemption and will notify the federally insured credit union of the NCUA's decision to revoke an exemption in writing.

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