the Board's granting of relief to a bank seeking relief from the requirements of the Board's SAR regulations, when such relief would be beneficial from a safety-and-soundness and anti-money laundering regulatory perspective. The proposed rule would be issued pursuant to the Board's safety-and-soundness authority over supervised institutions. The proposed rule will apply to small bank holding companies and their nonbank subsidiaries and small state member banks as well as Edge and agreement corporations, and U.S. offices of foreign banking organizations supervised by the Federal Reserve. The Board does not expect that the proposal would impose a significant cost on small banking organizations due to compliance, recordkeeping, and reporting updates from this proposal. The Board does not believe that the proposal would result in any significant economic impact on banking organizations as there are no projected recordkeeping, reporting, or other compliance requirements associated with the proposal. Moreover, the proposal does not impose any new requirements on banking organization, as applying for an exemption under the proposal would be entirely voluntary. In addition, the Board is not aware of any federal rules that duplicate, overlap, or conflict with the proposed rule. For these reasons, the Board believes that the proposed rule will not have a significant economic impact on a substantial number of small entities supervised by the Board, and believes that there are no significant alternatives to the proposed rule that would reduce the economic impact on small banking organizations supervised by the Board.

D. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA), in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, each federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on insured depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations.[13] In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[14] The proposed rule would not impose additional reporting, disclosure, or other requirements; therefore the requirements of the RCDRIA do not apply.

However, the agencies invite comments that further will inform the agencies' consideration of RCDRIA.

List of Subjects in 12 CFR Part 208

Accounting, Agriculture, Banks, Banking, Confidential business information, Consumer protection, Crime, Currency, Federal Reserve System, Flood insurance, Insurance, Investments, Mortgages, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons stated in the preamble, the Board of Governors of the Federal Reserve System proposes to amend 12 CFR part 208 as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

■ 1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1817(a)(3), 1817(a)(12), 1818, 1820(d)(9), 1833(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, 3905–3909, 5371, and 5371 note; 15 U.S.C. 78b, 78I(b), 78l(i), 780–4(c)(5), 78q, 78q–1, 78w, 1681s, 1681w, 6801, and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

■ 2. In § 208.62, add a new paragraph (l) to read as follows:

§ 208.62 Suspicious activity reports.

* * * * *

(*l*) *Exemptions.*

(1)(i) The Board may exempt any member bank from the requirements of this section. Upon receiving a written request from a member bank, the Board will consider whether the exemption is consistent with safe and sound banking and may consider other appropriate factors. The Board also would seek FinCEN's determination whether the exemption is consistent with the purposes of the Bank Secrecy Act, 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 classes of persons, and may apply to transactions or classes of transactions.

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

(2) The Board will provide a written response to the member bank 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 member bank that has received an exemption under paragraph (1) of this section may rely on the exemption for a period of time to be communicated by the Board in its granting of the exemption, which may be indefinite.

(3) The Board may extend the period of time or may revoke an exemption granted under paragraph (1) of this section. Exemptions may be revoked at the sole discretion of the Board. The Board will provide written notice to the member bank of the Board's intention to revoke an exemption. Such notice will include the basis for the revocation and will provide an opportunity for the member bank to submit a response to the Board. The Board will consider the response prior to deciding whether to revoke an exemption, and will notify the member bank of the Board's final decision to revoke an exemption in writing.

By order of Board of Governors of the Federal Reserve System.

Ann Misback,

Secretary of the Board.

[FR Doc. 2021–00033 Filed 1–21–21; 8:45 am]

BILLING CODE 6210–01–P

[13] 12 U.S.C. 4802(a).

[14] 12 U.S.C. 4802(b).

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 353

RIN 3064–AF56

Exemptions to Suspicious Activity Report Requirements

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is inviting comment on a proposed rule that would modify

the requirements for FDIC-supervised institutions to file Suspicious Activity Reports (SARs). The proposed rule would amend the FDIC's SAR regulation to allow the FDIC to issue exemptions from the SAR requirements. The proposed rule would make it possible for the FDIC to grant relief to FDIC-supervised institutions that develop innovative solutions to meet Bank Secrecy Act (BSA) requirements more efficiently and effectively.

DATES: Comments are due on or before February 22, 2021. Comments on the Paperwork Reduction Act burden estimates are due on or before March 23, 2021.

ADDRESSES: You may submit comments, identified by RIN 3064–AF56, by any of the following methods:

- *FDIC Website: https:// www.fdic.gov/regulations/laws/federal/.* Follow instructions for submitting comments on the agency website.
- *FDIC Email: Comments@fdic.gov.* Include RIN 3064–AF56 on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street building (located on F Street) on business days between 7 a.m. and 5 p.m.

Please include your name, affiliation, address, email address, and telephone number(s) in your comment. All statements received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. You should submit only information that you wish to make publicly available.

Please note: All comments received will be posted generally without change to *http://www.fdic.gov/regulations/laws/federal,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Lisa Arquette, Associate Director, (202) 898–8633, *larquette@fdic.gov,* Division of Risk Management Supervision; John Dorsey, Acting Supervisory Counsel, (202) 898–3807, *jdorsey@fdic.gov,* Legal Division; or Constantine Lizas, Counsel, (202) 898–6925, *clizas@fdic.gov,* Legal Division.

SUPPLEMENTARY INFORMATION:

I. Policy Objectives

The policy objective of the proposed rule is to allow the FDIC to grant SAR filing exemptions, in conjunction with the Financial Crimes Enforcement Network of the Department of the Treasury (FinCEN), to FDIC-supervised institutions that develop innovative solutions to meet BSA requirements more efficiently and effectively. The FDIC is proposing this rule as a proactive measure to address the likelihood that FDIC-supervised institutions will leverage existing or future technologies to report information concerning suspicious activity in a different manner or time frame or to share SAR-related information. This change would more closely align the FDIC's regulation with FinCEN's regulation. FinCEN, unlike the FDIC, has broad statutory authority to issue exemptions from the SAR filing requirements. Because the FDIC's SAR regulations do not currently contain any provision by which the FDIC can issue case-by-case exemptions, a situation could arise in which FinCEN grants an exemption from the SAR filing requirements to an FDIC-supervised institution, but the institution would still need to file a SAR if the circumstance fell within the FDIC's SAR rule. The proposed rule would allow the FDIC to grant exemptions from SAR filing requirements in conjunction with FinCEN to reduce potential regulatory burden when a request involves the SAR filing requirements of both FinCEN and the FDIC.

II. Background

The FDIC has long required its supervised institutions to report potential violations of law arising from transactions that flow through those institutions. From 1986 to 1996, FDIC-supervised institutions filed criminal referral forms with the FDIC, Federal Bureau of Investigation, and the local U.S. Attorney's office.[1] The FDIC required reporting through criminal referral forms to facilitate the reporting of potential violations to law enforcement.

In 1992, Congress passed the Annunzio-Wylie Anti-Money Laundering Act, which redesigned the criminal referral process applicable to FDIC-supervised institutions and made the reporting of certain suspicious transactions a requirement of the BSA.[2] The Annunzio-Wylie Anti-Money Laundering Act permitted the Department of the Treasury to require financial institutions, including FDIC-supervised institutions, to ''report any suspicious transaction relevant to a possible violation of law or regulation.'' [3] Thereafter, the Department of the Treasury, in consultation with the FDIC, the other federal banking agencies, and law enforcement, developed the modern 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, FinCEN implemented its SAR regulation in 1996 [4] for financial institutions subject to BSA requirements to address, among other things, the reporting of money laundering transactions and transactions designed to evade the reporting requirements of the BSA.[5] To further implement this new reporting process and reduce unnecessary reporting burdens, the FDIC 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 reporting requirements, and further refine the reporting processes.[6]

As a result of this redesign and FinCEN's implementing regulation, FDIC-supervised institutions are currently required under both FDIC and FinCEN regulations to file SARs. These regulations are not identical but are substantially similar. Both SAR regulations require, among other things, FDIC-supervised institutions to file SARs relating to money laundering and transactions that are designed to evade the reporting requirements of the BSA, as well as maintain the confidentiality of a SAR in most circumstances.[7] However, the FDIC's SAR regulation covers a slightly broader range of transactions, for example, by requiring SARs to be filed for any known or suspected instance of insider abuse in any amount, and further requiring the

[1] The FDIC first codified this requirement in 1986 at 12 CFR part 353 (1986), which required FDIC insured state non-member banks to report ''apparent violation[s]'' of federal criminal law. 51 FR 16485, 16486 (May 5, 1986).

[2] Public Law 102–550, 106 Stat. 3672 (Oct. 28, 1992).

[3] 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.

[4] FinCEN is the Administrator of the Bank Secrecy Act.

[5] 61 FR 4326 (Feb. 5, 1996). Prior to the adoption of FinCEN's SAR regulation in 1996 and the accompanying revisions to the FDIC's regulation, the FDIC's criminal referral regulation had no specific provision requiring the reporting of money laundering transactions. *See* footnote 1. However, the FDIC's criminal referral regulation prior to the SAR regulation broadly encompassed money laundering and structuring transactions. *See* 58 FR 28757, 28772 (May 17, 1993).

[6] 61 FR 6095 (Feb. 16, 1996) (FDIC); 61 FR 6100 (Feb. 16, 1996) (OTS); 61 FR 4326 (Feb. 5, 1996) (FinCEN).

[7] *See* 12 CFR part 353; 31 CFR 1020.320(a)(2).

prompt notification to the institution's board of directors when a SAR has been filed.

FinCEN has general authority to grant exemptions from the BSA's requirements, which includes granting exemptions under its SAR reporting regulation.[8] FinCEN's regulation provides that ''[t]he Secretary [of Treasury], in his sole discretion, may by written order or authorization make exceptions to or grant exemptions from the requirements of [the BSA]. Such exceptions or 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 of Treasury delegated this exemption authority to FinCEN. In contrast, the FDIC's SAR regulations contain a discrete set of filing exemptions pertaining to physical crimes (robberies and burglaries), and lost, missing, counterfeit, or stolen securities.

This disparity in exemptions makes it more difficult for the FDIC to grant relief if an FDIC-supervised institution has a novel SAR filing proposal that does not squarely fit within the FDIC's regulatory requirements, but would nonetheless be consistent with safe and sound banking and with the BSA. As financial technology and innovation continue to develop in the area of monitoring and reporting financial crime and terrorist financing, the FDIC will need the express regulatory flexibility to grant exemptive relief when appropriate in this area.

Moreover, in 2018, the FDIC, the Board of Governors of the Federal Reserve System, the National Credit Union Administration, the Office of the Comptroller of the Currency, and FinCEN issued a statement encouraging banks to take innovative approaches to meet their BSA/Anti-Money Laundering compliance obligations.[9] The statement explained that banks[10] 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 filing 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 responsibilities and practices, the role of agents of FDIC-supervised institutions, the use of shared utilities and shared data, and the use and sharing of de-identified data (commonly referred to as anonymized data). The FDIC expects that new technologies will continue to prompt additional innovative approaches related to suspicious activity monitoring and SAR filing.

If the FDIC adopts the proposed rule and uses it to grant exemptions, the exemptions would not relieve FDIC-supervised institutions from the obligation to comply with FinCEN's SAR regulation when applicable. To the extent an exemption request from an FDIC-supervised institution involves both the FDIC's SAR regulation and FinCEN's SAR regulation, the FDIC-supervised institution would need an exemption from both the FDIC and FinCEN. The FDIC expects to coordinate with FinCEN when handling parallel exemptions. As explained above, however, the FDIC'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 FDIC's SAR regulation alone (and not a parallel FinCEN requirement), the proposed rule would allow the FDIC to exempt a supervised institution from that requirement.

III. Proposed Regulation Changes

The proposed rule would add three paragraphs to 12 CFR 353.3(d) of the FDIC Rules and Regulations that would permit the FDIC to exempt a supervised institution from the requirements, in full or in part, of 12 CFR 353.3. Under the proposed rule, the FDIC in evaluating an exemption request would determine whether the request is consistent with safe and sound banking, and may consider other appropriate factors. The FDIC would also seek FinCEN's determination whether the exemption request is consistent with the purposes of the BSA, as applicable, where an exemption request involves the filing of a SAR for potential money laundering, violations of the BSA, or other unusual activity covered by FinCEN's SAR regulation. When a request involves the SAR filing requirements of both FinCEN and the FDIC, the proposed rule would require the FDIC to seek FinCEN's concurrence. In addition, the proposed rule provides that the FDIC may grant an exemption for a specified time period. The supervised institution would then be able to rely on the exemption for a period of time as determined and communicated by the FDIC. Under the proposed rule, the FDIC could also extend or revoke previously granted exemptions if circumstances change related to the factors set out above (consistent with the BSA and safety and soundness), or any imposed conditions.

A. Part 353.3(d) Exemptions

Section 353.3(d) sets forth exemptions from the FDIC's SAR regulation. Currently, Section 353.3(d)(1) exempts FDIC-supervised institutions from filing a SAR for a committed or attempted robbery or burglary that is reported to the appropriate law enforcement authorities. Section 353.3(d)(2) exempts an FDIC-supervised institution from filing a SAR for lost, missing, counterfeit, or stolen securities if the institution files a report pursuant to the reporting requirements of 17 CFR 240.17f–1. The proposed rule would add three paragraphs to § 353.3(d).

B. Part 353.3(d)(3)

The proposed paragraph (d)(3) would permit the FDIC to exempt any FDIC-supervised institution from the requirements of 12 CFR 353.3. Upon receiving a written request from an FDIC-supervised institution, the FDIC would determine whether the exemption is consistent with safe and sound banking. The FDIC would also seek FinCEN's determination whether the exemption is consistent with the purposes of the BSA, as applicable, where an exemption request also requires an exemption from FinCEN's SAR regulation. 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.

The proposed paragraph (d)(3) would require the FDIC to seek FinCEN's concurrence regarding an exemption request that also requires an exemption from FinCEN's SAR regulation. The proposed paragraph (d)(3) would permit the FDIC to consult with FinCEN regarding other exemption requests. The FDIC may also consult with the other

[8] *See* 31 U.S.C. 5318(a)(7), with implementing regulations at 31 CFR 1010.970.

[9] *See https://www.fdic.gov/news/news/press/2018/pr18091a.pdf*.

[10] Under the Bank Secrecy Act, the term ''bank'' is defined in 31 CFR 1010.100(d) and includes each agent, agency, branch, or office within the United States of banks, savings associations, credit unions, and foreign banks.

state and federal banking agencies before granting any exemption.

C. Part 353.3(d)(4)

The proposed paragraph (d)(4) would require that, after the FDIC has received FinCEN's concurrence and consulted with appropriate agencies, the FDIC provide a written response to the FDIC-supervised institution that submitted the exemption request. An FDIC-supervised institution that has received an exemption under paragraph (d)(3) may rely on the exemption for a period of time to be communicated by the FDIC in its granting of the exemption, which may be indefinite.

D. Part 353.3(d)(5)

The proposed paragraph (d)(5) would permit the FDIC to revoke or extend the period of time for an exemption granted under paragraph (d)(3). Under the proposed paragraph (d)(5), the FDIC would have discretion to revoke exemptions. The proposed paragraph (d)(5) would require the FDIC to provide written notice to the FDIC-supervised institution of the FDIC's intention to revoke an exemption. The proposed paragraph (d)(5) would require the written notice to include the basis for the revocation and provide the FDIC-supervised institution an opportunity to respond. The proposed paragraph (d)(5) would require the FDIC to consider the institution's response before deciding to revoke an exemption. The proposed paragraph (d)(5) would require the FDIC to notify, in writing, the FDIC-supervised institution of the FDIC's final decision to revoke an exemption.

IV. Summary

If the proposal is finalized, 12 CFR 353.3(d) would be amended to add paragraphs (d)(3) through (5), and would apply to all FDIC-supervised institutions. These initiatives would permit the FDIC to grant SAR exemptions to FDIC-supervised institutions to promote innovation, reduce burden, and meet BSA requirements more efficiently and effectively.

V. Expected Effects

As explained previously, the proposed rule would amend 12 CFR 353.3(d) to add paragraphs (d)(3) through (5), and would apply to all FDIC-supervised institutions. As of June 30, 2020, the FDIC supervised 3,270 institutions.[11] The proposal would permit the FDIC to grant relief to FDIC-supervised institutions that leverage existing or future technologies to gather and submit the information contained in SARs to the appropriate law enforcement authorities and regulatory agencies in a more efficient and cost effective manner. This change would more closely align the FDIC's regulations with those of FinCEN, which has broad statutory authority to issue exemptions from SAR filing requirements. Because the FDIC's SAR regulations do not currently contain any provision by which the FDIC can issue case-by-case exemptions, a situation could arise in which FinCEN grants an exemption from SAR filing requirements to an FDIC-supervised institution that has developed innovative methods for meeting SAR filing requirements, but the institution would still need to file a SAR. The proposed rule would allow the FDIC to grant exemptions from SAR filing requirements in conjunction with FinCEN to reduce potential regulatory burden.

The FDIC does not have the ability to forecast the number of requests for exemptions that FDIC-supervised institutions will file as a result of this rule, or the number of requests that the FDIC will grant. The proposed rule is likely to pose some increase in compliance costs associated with submitting an exemption request to the FDIC, however the FDIC believes that the costs are likely to be small. The FDIC expects this proposed rule will result in cost savings for FDIC-supervised institutions that obtain exemptions from SAR filing requirements. However, the cost savings are projected to be relatively modest. For example, using the methodology for calculating the cost associated with filing SARs that FinCEN published in May 2020,[12] the FDIC estimates that FDIC-supervised institutions incurred roughly $3.8 million [13] in costs in the second quarter of 2020 related to reviewing alerts, and drafting, writing, submitting, and storing SAR filings and documentation, which amounts to annual estimated costs of $15.2 million for FDIC-supervised institutions in aggregate.

The FDIC estimated the recordkeeping, reporting, and disclosure costs of filing SARs for each FDIC-supervised institution in the second quarter of 2020 using data on SAR filings for each institution in combination with FinCEN's methodology for estimating costs associated with SAR filings.[14] The annualized estimated recordkeeping, reporting, and disclosure costs of filing SARs in the second quarter of 2020 do not represent more than 1.9 percent of annual non-interest expense for any FDIC-supervised institution. Additionally, only one FDIC-supervised institution incurred estimated annualized recordkeeping, reporting, and disclosure costs associated with SAR filing that amounted to more than 5 percent of annual wage and salary expense with the costs equaling 5.2 percent.[15] Therefore, the economic benefit of this proposed rule on FDIC-supervised institutions is likely to be relatively small. Further, this proposed rule would only allow the FDIC to grant exemptions in instances where safety and soundness and Bank Secrecy Act regulatory requirements would not be compromised, so the proposed rule is also not expected to have any broader negative economic impacts.

The FDIC invites comments on all aspects of this analysis. In particular, would the proposed rule have any costs or benefits to covered entities that the FDIC has not identified?

VI. Alternatives

The FDIC has considered alternatives to the proposed rule but believes that the proposed amendments represent the most appropriate option for covered institutions. As discussed earlier,

[11] FDIC-supervised institutions are set forth in 12 U.S.C. 1813(q)(2).

[12] See 85 FR 31598 (May 26, 2020).

[13] This estimate uses the May 2019 75th percentile hourly wage rate for Financial Managers ($73.48), Compliance Officers ($43.70), Financial Clerks ($18.20), and Tellers ($17.49) reported by the Bureau of Labor Statistics, National Industry-Specific Occupational Employment, and Wage Estimates. These wage rates have been adjusted for changes in the Consumer Price Index for all Urban Consumers between May 2019 and June 2020 (0.67 percent) and grossed up by 51 percent to account for non-monetary compensation as reported by the June 2020 Employer Costs for Employee Compensation Data. The mix of professions varies depending on the task associated with filing SARs including reviewing alerts, documenting reasons why some alerts do not merit a SAR filing, drafting, writing, and submitting SARs, and storing SARs and supporting documentation. For this calculation the FDIC assumed that the mix of professions involved in each task, the percentage of SAR alerts that result in a SAR filing, and the percentage of SARs that are batch filed or filed discretely, and the percentage of SARs that contain extended content matches what FinCEN reported in its recent estimates of the costs associated with SAR filing requirements (85 FR 31598).

[14] FDIC analysts queried data on SAR filings by institution from a SAR database that FinCEN makes available to regulators and law enforcement agencies.

[15] This estimate uses FinCEN data on the SAR filings of each FDIC-supervised institution, in combination with FinCEN's methodology for estimating costs associated with SAR filings, to estimate the SAR-related costs that each FDIC-supervised institution incurred in the second quarter of 2020. That estimate is then multiplied by four, and compared to each institution's previous four quarters of merger-adjusted noninterest expense and wages and salary expense reported in Call Report filings from September 2019–June 2020.

FinCEN has statutory authority to grant relief from SAR filing requirements to FDIC-supervised institutions, and this proposed rule would amend the FDIC's regulations so that the FDIC may issue exemptions to SAR filing requirements in conjunction with FinCEN. This change could reduce regulatory burden for FDIC-supervised institutions by allowing institutions that develop innovative techniques for meeting BSA requirements to obtain exemptions from SAR filing requirements. The FDIC considered maintaining its regulations in their current form, but chose not to do so because the FDIC believes that doing so would be unnecessarily burdensome and may discourage institutions from developing innovative approaches to meeting BSA requirements.

VII. Request for Comments

The FDIC invites comments on all aspects of this proposed rulemaking. In particular, the FDIC requests comments on the following questions:

Question 1. *The FDIC invites comments on the proposed exemptions to 12 CFR 353.3.*

Question 2. *The FDIC invites comments on whether any additional detail relating to the procedures that would be followed in considering, granting, or revoking exemptions are necessary.*

Written comments must be received by the FDIC no later than February 22, 2021.

VIII. Administrative Law Matters

A. The Paperwork Reduction Act

Certain provisions of the proposed rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the FDIC 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. The information collection requirements contained in this notice of proposed rulemaking have been submitted to OMB for review and approval by FDIC under section 3507(d) of the PRA and § 1320.11 of OMB's implementing regulations (5 CFR part 1320) as a new information collection. The proposed rule contains voluntary reporting requirements, or exemption requests, in 12 CFR 353.3(d)(3).

Title of Proposed Information Collection: Exemptions to Suspicious Activity Report Requirements.

OMB Control Number: 3064—[NEW].

Frequency of Response: On Occasion.

Affected Public: Businesses or other for-profit.

Respondents: Any FDIC-supervised institution wishing to obtain an exemption from the Suspicious Activity Report requirements.

Estimated Number of Annual Respondents: 3.

Estimated Burden per Response: 8 hours.

Total estimated annual burden: 24 hours.

To derive these estimates, the FDIC assumed that the FDIC-supervised institutions that file the most SARs will be the most likely to request exemptions from SAR filing requirements. There are ten FDIC-supervised institutions that filed 1,000 or more SARs in the second quarter of 2020. The FDIC expects roughly one-third of those institutions to request an exemption per year, so the FDIC expects 3 annual respondents to this information collection. The FDIC estimates the hourly burden of an exemption request to be 8 hours.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, 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 collection 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 will become a matter of public record. Comments on aspects of this notice that may affect reporting or recordkeeping requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section of this preamble. A copy of the comments may also be submitted to the FDIC OMB desk officer by mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503 or by facsimile to 202–395–5806, Attention, Federal Banking Agency Desk Officer.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 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 the proposed rule on small entities.[16] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will 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 Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million.[17] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. For the reasons provided below, the FDIC certifies that the proposed rule would not have a significant economic impact on a substantial number of small banking organizations. Accordingly, a regulatory flexibility analysis is not required.

As of June 30, 2020, the FDIC supervised 3,270 institutions,[18] of which 2,492 are considered small entities for the purposes of RFA.[19] Using the methodology for calculating the cost associated with filing SARs that FinCEN published in May 2020,[20] the FDIC estimates that small FDIC-supervised institutions incurred $460,565.08 [21] in

[16] 5 U.S.C. 601, *et seq.*

[17] The SBA defines a small banking organization as having $600 million or less in assets, where ''a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See 13 CFR 121.201 (as amended by 84 FR 34261, effective August 19, 2019). ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' *See* 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the FDIC-supervised institution is ''small'' for the purposes of RFA.

[18] FDIC-supervised institutions are set forth in 12 U.S.C. 1813(q)(2).

[19] Call Report data, March 2020.

[20] *See* 85 FR 31598.

[21] This estimate uses the May 2019 75th percentile hourly wage rate for Financial Managers ($73.48), Compliance Officers ($43.70), Financial Clerks ($18.20), and Tellers ($17.49) reported by the Bureau of Labor Statistics, National Industry-Specific Occupational Employment, and Wage Estimates. These wage rates have been adjusted for changes in the Consumer Price Index for all Urban Consumers between May 2019 and June 2020 (0.67 percent) and grossed up by 51 percent to account for non-monetary compensation as reported by the June 2020 Employer Costs for Employee Compensation Data. The mix of professions varies depending on the task associated with filing SARs including reviewing alerts, documenting reasons why some alerts do not merit a SAR filing, drafting,

costs in the second quarter of 2020 related to reviewing alerts, documenting the reasons why certain alerts do not merit a SAR filing, and drafting, writing, submitting, and storing SAR filings and documentation, which amounts to annual estimated costs of $1,842,260.32 for small FDIC-supervised institutions in aggregate.

The FDIC estimated costs of filing SARs for each FDIC-supervised institution in the second quarter of 2020 using data on SAR filings for each institution in combination with FinCEN's methodology for estimating costs associated with SAR filings.[22] The annualized estimated recordkeeping, reporting, and disclosure costs of filing SARs in the second quarter of 2020 do not represent more than 1.9 percent of annual non-interest expense for any small FDIC-supervised institution. Additionally, only one small FDIC-supervised institution incurred estimated annualized costs associated with SAR filing that amounted to more than 5 percent of annual wage and salary expense with the costs equaling 5.2 percent.[23] While the total estimated costs of filing SARs represent a significant expense for one FDIC-supervised small entity, the costs do not represent a significant amount for all other FDIC-supervised small entities. Thus, the cost savings from this proposal for all other FDIC-supervised small entities will likely not be significant. In addition, the cost savings from receiving a SAR exemption would be at least partially offset by the costs associated with requesting an exemption and the costs associated with developing a method for meeting SAR requirements. Further, this proposed rule would only allow the FDIC to grant exemptions in instances where safety and soundness and BSA regulatory requirements would not be compromised, so the proposed rule is also not expected to have any broader negative economic impacts.

Based on the information above, the FDIC certifies that the rule would not have a significant economic impact on a substantial number of small entities.

The FDIC invites comments on all aspects of the supporting information provided in this section, and in particular, whether the proposed rule would have any significant effects on small entities that the FDIC has not identified.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[24] requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the proposed rule in a simple and straightforward manner. The FDIC invites comments on whether the proposal is clearly stated and effectively organized, and how the FDIC might make the proposal easier to understand.

D. The Economic Growth and Regulatory Paperwork Reduction Act

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), the FDIC is required to review all of its regulations, at least once every 10 years, in order to identify any outdated or otherwise unnecessary regulations imposed on insured institutions.[25] The FDIC, along with the other federal banking agencies, submitted a Joint Report to Congress on March 21, 2017 (EGRPRA Report) discussing how the review was conducted, what has been done to date to address regulatory burden, and further measures the FDIC will take to address issues that were identified.[26] By providing the ability to issue exemptions and reduce burdens on FDIC-supervised institutions, this rule complements other actions that the FDIC has taken, separately and with the other federal banking agencies, to further the EGRPRA mandate.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[27] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that the regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of the regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[28] The FDIC invites comments that further will inform its consideration of RCDRIA.

List of Subjects in 12 CFR Part 353

Banks, banking, Crime, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation proposes to amend 12 CFR part 353 as follows:

PART 353—SUSPICIOUS ACTIVITY REPORTS

■ 1. The authority citation for part 353 continues to read as follows:

Authority: 12 U.S.C. 1818, 1819; 31 U.S.C. 5318.

■ 2. Revise § 353.3 paragraph (d) to read as follows:

§ 353.3 Reports and records.

* * * * *

(d) *Exemptions.* (1) An FDIC-supervised institution need not file a suspicious activity report for a robbery or burglary committed or attempted, that is reported to appropriate law enforcement authorities.

(2) An FDIC-supervised institution need not file a suspicious activity report for lost, missing, counterfeit, or stolen securities if it files a report pursuant to the reporting requirements of 17 CFR 240.17f–1.

(3) The FDIC may exempt any FDIC-supervised institution from the requirements of this section. Upon receiving a written request from an FDIC-supervised institution, the FDIC will determine whether the exemption is consistent with safe and sound banking and may consider other appropriate factors. The FDIC will also

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writing, and submitting SARs, and storing SARs and supporting documentation. For this calculation the FDIC assumed that the mix of professions involved in each task, the percentage of SAR alerts that result in a SAR filing, and the percentage of SARs that are batch filed or filed discretely, and the percentage of SARs that contain extended content matches what FinCEN reported in its recent estimates of the costs associated with SAR filing requirements (85 FR 31598).

[22] FDIC analysts queried data on SAR filings by institution from a SAR database that FinCEN makes available to regulators and law enforcement agencies.

[23] This estimate uses FinCEN data on the SAR filings of each FDIC-supervised institution, in combination with FinCEN's methodology for estimating costs associated with SAR filings, to estimate the SAR-related costs that each FDIC-supervised institution incurred in the second quarter of 2020. That estimate is then multiplied by four, and compared to each institution's previous four quarters of merger-adjusted noninterest expense and wages and salary expense reported in Call Report filings from June 2019 to March 2020.

[24] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999).

[25] Public Law 104–208, 110 Stat. 3009 (1996).

[26] 82 FR 15900 (March 31, 2017).

[27] 12 U.S.C. 4802(a).

[28] *Id.*

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 FDIC will seek FinCEN's concurrence with regard to any exemption request that also requires an exemption from FinCEN's SAR regulation, and may consult with FinCEN regarding other exemption requests. The FDIC also may consult with the other state and federal banking agencies before granting any exemption.

(4) The FDIC will provide a written response to the FDIC-supervised institution 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. An FDIC-supervised institution that has received an exemption under paragraph (d)(3) of this section may rely on the exemption for a period of time to be communicated by the FDIC in its granting of the exemption, which may be indefinite.

(5) The FDIC may extend the period of time or may revoke an exemption granted under paragraph (d)(3) of this section. Exemptions may be revoked at the sole discretion of the FDIC. The FDIC will provide written notice to the FDIC-supervised institution of the FDIC's intention to revoke an exemption. The notice will include the basis for the revocation and will provide an opportunity for the FDIC-supervised institution to submit a response to the FDIC. The FDIC will consider the response prior to deciding whether or not to revoke an exemption, and will notify the FDIC-supervised institution of the FDIC's final decision to revoke an exemption in writing.

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Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on December 15, 2020.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2021–00037 Filed 1–21–21; 8:45 am]

BILLING CODE 6714–01–P

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 February 22, 2021.

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 emailing *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.[1] 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.[2]

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.[3] 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.'' [4]

[1] *See* 50 FR 53294–01 (Dec. 31, 1985).

[2] 58 FR 5663 (Jan. 22, 1993).

[3] Public Law 102–550, 106 Stat. 3672, 4059 (1992).

[4] 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.