opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(vi) A statement as to whether the audit disclosed any audit findings that the auditor is required to report under § 910.516 Audit findings, paragraph (a);

(vii) Not applicable.

(viii) Not applicable.

(ix) Not applicable.

(2) Findings relating to the financial Statements (if available) which are required to be reported in accordance with GAGAS.

(3) Findings and questioned costs for DOE awards which must include audit findings as defined in § 910.516 Audit findings, paragraph (a).

(i) Audit findings (*e.g.,* internal control findings, compliance findings, questioned costs, or fraud) that relate to the same issue should be presented as a single audit finding.

(ii) Audit findings that relate to both the financial statements (if available) and DOE awards, as reported under paragraphs (d)(2) and (3) of this section, respectively, should be reported in both sections of the schedule. However, the reporting in one section of the schedule may be in summary form with a reference to a detailed reporting in the other section of the schedule.

(e) Nothing in this part precludes combining of the audit reporting required by this section with the reporting required by § 910.512 Report submission, paragraph (b), when allowed by GAGAS.

■ 17. Section 910.519 is revised to read as follows:

§ 910.519 Criteria for Federal program risk.

(a) *General.* The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring that could be material to the DOE program. The auditor must consider criteria, such as described in paragraphs (b), (c), and (d) of this section, to identify risk in Federal programs. Also, as part of the risk analysis, the auditor may wish to discuss a particular DOE program with auditee management and DOE.

(b) *Current and prior audit experience.* (1) Weaknesses in internal control over DOE programs would indicate higher risk. Consideration should be given to the control environment over DOE programs and such factors as the expectation of management's adherence to Federal statutes, regulations, and the terms and conditions of DOE awards and the competence and experience of personnel who administer the DOE programs.

(i) A DOE program administered under multiple internal control structures may have higher risk. The auditor must consider whether weaknesses are isolated in a single operating unit (*e.g.,* one college campus) or pervasive throughout the entity.

(ii) When significant parts of a DOE program are passed through to subrecipients, a weak system for monitoring subrecipients would indicate higher risk.

(2) Prior audit findings would indicate higher risk, particularly when the situations identified in the audit findings could have a significant impact on a DOE program or have not been corrected.

(3) DOE programs not recently audited as major programs may be of higher risk than Federal programs recently audited as major programs without audit findings.

(c) *Oversight exercised by DOE.* (1) Oversight exercised by DOE could be used to assess risk. For example, recent monitoring or other reviews performed by an oversight entity that disclosed no significant problems would indicate lower risk, whereas monitoring that disclosed significant problems would indicate higher risk.

(2) Federal agencies, with the concurrence of OMB, may identify Federal programs that are higher risk. OMB will provide this identification in the compliance supplement.

(d) *Inherent risk of the Federal program.* (1) The nature of a Federal program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds through third party contracts or have eligibility criteria may be of higher risk. Federal programs primarily involving staff payroll costs may have high risk for noncompliance with requirements of 2 CFR 200.430 Compensation—personal services, but otherwise be at low risk.

(2) The phase of a Federal program in its life cycle at the Federal agency may indicate risk. For example, a new Federal program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in Federal programs, statutes, regulations, or the terms and conditions of Federal awards may increase risk.

(3) The phase of a Federal program in its life cycle at the auditee may indicate risk. For example, during the first and last years that an auditee participates in a Federal program, the risk may be higher due to start-up or closeout of program activities and staff.

(4) Programs with larger Federal awards expended would be of higher risk than programs with substantially smaller Federal awards expended.

■ 18. Section 910.520 is revised to read as follows:

§ 910.520 Criteria for a low-risk auditee.

An auditee that meets all of the following conditions for each of the preceding two audit periods may qualify as a low-risk auditee and be eligible for reduced audit coverage.

(a) Compliance audits were performed on an annual basis in accordance with the provisions of this Subpart, including submitting the data collection form to DOE within the timeframe specified in § 910.512 Report submission. A for-profit entity that has biennial audits does not qualify as a low-risk auditee.

(b) The auditor's opinion on whether the financial statements (if available) were prepared in accordance with GAAP, or a basis of accounting required by state law, and the auditor's in relation to opinion on the schedule of expenditures of DOE awards were unmodified.

(c) There were no deficiencies in internal control which were identified as material weaknesses under the requirements of GAGAS.

(d) The auditor did not report a substantial doubt about the auditee's ability to continue as a going concern.

(e) None of the DOE programs had audit findings from any of the following in either of the preceding two audit periods:

(1) Internal control deficiencies that were identified as material weaknesses in the auditor's report on internal control as required under § 910.515 Audit reporting, paragraph (c);

(2) Not applicable.

(3) Not applicable.

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 21 and 163

[Docket No. OCC–2020–0037]

RIN 1557–AE77

Exemptions to Suspicious Activity Report Requirements

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Final rule.

SUMMARY: This final rule modifies the requirements for national banks and

Federal savings associations, including Federal branches and agencies of foreign banks licensed or chartered by the OCC, to file suspicious activity reports (SARs). It amends the OCC's SAR regulations to allow the OCC to issue exemptions from the requirements of those regulations upon request from a financial institution subject to those regulations. The rule harmonizes the OCC's legal authority with the preexisting exemption authority of the Financial Crimes Enforcement Network (FinCEN) of the U.S. Department of the Treasury. This rule will make it possible for the OCC to facilitate changes required by the Anti-Money Laundering Act of 2020. The final rule will also make it possible for the OCC to grant relief to national banks or Federal savings associations that develop innovative solutions intended to meet Bank Secrecy Act requirements more efficiently and effectively.

DATES: This rule is effective on May 1, 2022.

FOR FURTHER INFORMATION CONTACT: Jina Cheon, Counsel; Henry Barkhausen, Counsel; or Scott Burnett, Counsel, Chief Counsel's Office (202) 649–5490; Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Introduction

OCC regulations require national banks and Federal savings associations to file suspicious activity reports (SARs) under certain conditions. These regulations also provide for (i) board of director notification; (ii) filing exceptions; (iii) SAR confidentiality; (iv) recordkeeping requirements; (v) supporting documentation requirements; and (vi) limitations on liability. Requirements related to SARs are codified at 12 CFR 21.11 for national banks and 12 CFR 163.180 for Federal savings associations. On January 22, 2021, the OCC, the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA) (collectively, the agencies or Federal banking agencies) published substantially similar proposed rules that would amend their respective SAR regulations to allow the agencies to issue exemptions from the requirements of those regulations.[1] The OCC is adopting its proposed rule in final form.

II. Background

The OCC has long required its regulated institutions to report potential violations of law arising from transactions that flow through those institutions.[2] The OCC required such reporting 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 system generally.[3]

In 1992 Congress passed the Annunzio-Wylie Anti-Money Laundering Act, which redesigned the criminal referral process applicable to financial institutions including OCC-supervised entities and made the reporting of certain suspicious transactions a requirement of the Bank Secrecy Act (BSA).[4] The Act permitted the U.S. Department of the Treasury (Treasury) to require financial institutions, including national banks and Federal savings associations, to ''report any suspicious transaction relevant to a possible violation of law or regulation.'' [5] As a result, the Treasury, in consultation with the 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, the Financial Crimes Enforcement Network of Treasury (FinCEN) issued its implementing SAR regulations in 1996 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 BSA's reporting requirements.[6] To further implement this new reporting process and reduce unnecessary reporting burdens, the OCC 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.[7]

As a result of this redesign and FinCEN's implementing regulations, national banks and Federal savings associations now must file SARs under both OCC and FinCEN regulations. The OCC's regulations are not identical but are substantially similar to the BSA reporting obligations required by FinCEN. Both the OCC's and FinCEN's SAR regulations require banks to file SARs relating to money laundering, transactions that are designed to evade the reporting requirements of the BSA, and transactions that have no business or apparent lawful purpose or are not the sort in which the particular customer would normally be expected to engage and the bank knows of no reasonable explanation for the transactions after examining the available facts, including the background and possible purpose of the transactions.[8] Furthermore, with respect to the SAR confidentiality requirements in the BSA, both the OCC's and FinCEN's SAR regulations require banks to maintain the confidentiality of a SAR and any information that would reveal the existence of the SAR unless an exception applies.[9]

While the OCC and FinCEN regulations contain substantively similar requirements, including requiring reporting in certain common contexts and requiring institutions to maintain the confidentiality of SARs, the OCC and the other Federal banking

[1] 86 FR 6572 (Jan. 22, 2021) (OCC); 86 FR 6576 (Jan. 22, 2021) (Board); 86 FR 6580 (Jan. 22, 2021) (FDIC); 86 FR 6586 (Jan. 22, 2021) (NCUA).

[2] The OCC first codified this requirement in 1971 at 12 CFR 7.5225, which required national banks to submit a report of ''any state of facts growing out of the affairs of the bank known or suspected to involve criminal violation of any other section of the United States Code'' to the OCC, the Federal Bureau of Investigations (FBI), the U.S. attorney for the bank's district, and the bank's bonding company. 36 FR 17000, 17012 (Aug. 26, 1971). In 1986 the OCC repealed 12 CFR 7.5225 and adopted its criminal referral form regulation, 12 CFR 21.11, which required national banks to report specified suspicious transactions on a standardized criminal referral form. 51 FR 25866 (July 17, 1986). As explained below, the OCC revised 12 CFR 21.11 in the 1990s to conform to the new SAR reporting form and system.

[3] 54 FR 25839 (June 20, 1989).

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

[5] 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.

[6] 61 FR 4326 (Feb. 5, 1996). Before FinCEN's SAR regulation was adopted in 1996 and the accompanying revisions to the OCC's regulation, the OCC's criminal referral regulation did not have a specific provision that required the reporting of money laundering transactions. However, the criminal referral regulation broadly encompassed money laundering and structuring transactions as explained in the **SUPPLEMENTARY INFORMATION** section to the final rule enhancing the criminal referral process. 54 FR 25839, 25840 (June 20, 1989). Congress authorized the Secretary of the Treasury to administer the BSA, and the Secretary has delegated to the Director of FinCEN the authority to implement, administer, and enforce compliance with the Act. Treasury Order 180–01 (Jan. 14, 2020).

[7] 61 FR 4332 (Feb. 5, 1996) (OCC).

[8] *See* 12 CFR 21.11(c)(4) and 163.180(d)(3)(i)–(iv) (OCC); 31 CFR 1020.320(a)(2).

[9] 12 CFR 21.11(k) and 163.180(d)(12) (OCC); 31 CFR 1020.320(e) (FinCEN).

agencies require reporting in broader circumstances (*e.g.,* insider abuse at any dollar amount).[10] These violations and abuse situations can pose serious threats to financial institutions' continued viability and, if unchecked, can undermine the public confidence in the Nation's financial industry.

The OCC and FinCEN SAR regulations 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) for SAR recordkeeping requirements 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.[11] The regulations also provide a limitation on liability for any national bank, Federal savings association, or other financial institution and any director, officer, employee, or agent of a national bank, Federal savings association, or other financial institution that makes a voluntary disclosure of any possible violation of law or regulation to a government agency, or files a SAR pursuant to the regulations or pursuant to any other authority.[12] The OCC's regulations contain a provision requiring that national banks and Federal savings associations promptly notify their board of directors when a SAR has been filed.[13]

Although neither the OCC's SAR regulations nor FinCEN's SAR regulation expressly address exemptions, FinCEN has general authority to grant exemptions from the requirements of the BSA, which includes granting exemptions under its SAR reporting regulations.[14] 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.'' [15] The Secretary delegated this exemption authority to FinCEN.[16]

The OCC's authority to issue SAR exemptions derives from its authority to require national banks and Federal savings associations to comply with OCC-imposed SAR requirements. The OCC has broad statutory authority to issue regulations for national banks and Federal savings associations. Among other relevant sources of authority, 12 U.S.C. 161 provides that the Comptroller may call for ''special reports.'' Twelve U.S.C. 93a also provides that the Comptroller ''is authorized to prescribe rules and regulations to carry out the responsibilities of the office.'' [17] The OCC has long viewed SAR requirements and their predecessor reporting requirements to be part of the OCC's mission of assuring safety and soundness.[18] The OCC's legal authority to require reports necessarily includes the authority to modify those reporting requirements, including the authority, if necessary, to issue exemptions. However, the OCC's SAR regulations currently contain no express exemption provisions similar to FinCEN's general authority to grant exemptions from the requirements of the BSA.

This disparity in exemption authority makes it more difficult for the OCC to grant relief if a national bank or Federal savings association has a novel SAR-related proposal that does not squarely fit within the regulatory requirements but would be consistent with anti-money laundering regulatory and safety and soundness standards. As financial technology and innovation continue to develop in the area of monitoring and reporting financial crime and terrorist financing, the OCC has identified a need for regulatory flexibility to grant exemptive relief when appropriate. In 2018 FinCEN and the Federal banking agencies issued a statement encouraging banks to take innovative approaches to meet their BSA/anti-money laundering (BSA/AML) compliance obligations.[19] That statement explained that banks are encouraged to consider, evaluate, and, when appropriate, responsibly implement innovative approaches for BSA/AML compliance. Today, innovative approaches and technological developments in 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. The OCC anticipates that 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, outsourcing of SAR processes, the role of agents of national banks and Federal savings associations, the use of shared utilities and data, and the use and sharing of de-identified data (commonly referred to as anonymized data).

The OCC expects that new technologies will continue to prompt additional innovative approaches related to SAR filing and monitoring. Some of these approaches may not strictly comply with certain provisions of the OCC's SAR regulations. For example, certain approaches involving SAR-sharing across institutions may violate prohibitions against disclosures of SARs in 12 CFR 21.11(k) but would enable an institution to file more complete, useful SARs without substantively undermining the purposes of the SAR disclosure prohibition.

After the posting of the proposed rule on the OCC website, but before its publication in the **Federal Register**, Congress passed the Anti-Money Laundering Act of 2020 (AMLA of 2020).[20] The AMLA of 2020 included multiple provisions that will affect suspicious activity reporting. Section 6202 of the AMLA of 2020 provides that SARs ''filed under this subsection shall be guided by the compliance program of a covered financial institution with respect to the Bank Secrecy Act, including the risk assessment processes of the covered institution.'' Section 6212 of the AMLA of 2020 directs Treasury to establish a pilot program on SAR sharing. Section 6204 of the AMLA Act of 2020 requires the Treasury Secretary, in consultation with various relevant stakeholders, to conduct a formal review of the financial institutions' Currency Transaction Report (CTR) and SAR reporting requirements, including processes for submission, regulations implementing the BSA, and any

[10] *See* 12 CFR 21.11; 163.180 (OCC); 12 CFR 208.62 (Board); 12 CFR 390.353 (FDIC); 12 CFR 748.1 (NCUA).

[11] 12 CFR 21.11 and 163.180 (OCC); 31 CFR 1020.320 (FinCEN).

[12] 12 CFR 21.11(l) and 163.180(d)(12)(iv) (OCC); 31 CFR 1020.320(l) (FinCEN).

[13] 12 CFR 21.11(h) and 163.180(d)(9).

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

[15] 31 CFR 1010.970(a).

[16] Treasury Order 180–01 (Jan. 14, 2020).

[17] *See also* 12 U.S.C. 1463(a)(2).

[18] 12 U.S.C. 1.

[19] Joint Statement on Innovative Efforts to Combat Money Laundering and Terrorist Financing (Dec. 3, 2018), available at *https://www.occ.gov/news-issuances/news-releases/2018/nr-occ-2018-130a.pdf.*

[20] Public Law 116–283 (Jan. 1, 2021).

proposed changes to those reports to reduce unnecessary burdens while ensuring that the reports continue to serve their intended purpose. Certain provisions of the AMLA of 2020 may require the OCC to apply SAR requirements in ways that may potentially conflict with the OCC's current SAR regulation. While FinCEN has authority to address conflicts between the AMLA of 2020 and FinCEN's regulations, either through FinCEN's preexisting exemption authority or through authority granted by the AMLA of 2020, the OCC's SAR regulations do not expressly permit parallel exemptions. For example, FinCEN's pilot program on SAR sharing might allow sharing of SARs in ways that would arguably be inconsistent with the OCC's requirements on SAR confidentiality.[21] The OCC's adoption of exemption authority in its SAR regulation will remove any legal uncertainty related to national banks and Federal savings associations participation in such FinCEN programs.

III. The Proposal and Final Rule

The proposed rule would have allowed the OCC to issue exemptions from the requirements of its SAR regulations. Specifically, the proposed rule would have added a provision to 12 CFR 21.11 and 12 CFR 163.180 that would provide that the OCC may exempt a national bank or Federal savings association from requirements in those regulatory provisions. The OCC is finalizing the proposed rule with some modifications, which are described below.[22]

IV. Comments

The OCC received seven comments on its proposed rule.[23] Some commenters supported the proposed rule while others opposed it. Some commenters noted that they support a regulatory framework that encourages innovation and that the proposed rule would foster responsible innovation and improve the quality of reporting over time.

A. Comments Opposing the Proposed Rule

Commenters opposing the proposed rule asserted that the proposed rule provided no persuasive justification or authority to issue an exemption. These commenters also suggested that the history of money laundering and SAR deficiencies at major financial institutions is inconsistent with the OCC adopting exemptions to the SAR requirements. Commenters opposing the proposed rule also noted that criminals may seek out financial institutions that have been granted exemptions and that the proposed rule may jeopardize U.S. officials' access to a key investigative tool. Also, according to these commenters, the rule should address a significant Government Accountability Office (GAO) report on SARs and CTRs.[24]

The OCC has evaluated these concerns and does not believe the final rule will weaken reporting processes. The amendments in the final rule will conform the OCC's exemption authority to FinCEN's exemption authority. The OCC's SAR regulations and FinCEN's SAR regulation feature significant overlap. Many SARs are required to be filed by both FinCEN's SAR regulation and the OCC's SAR regulations. The final rule will only allow the OCC to issue exemptions from the requirements of the OCC's SAR regulations. Under the final rule, national banks and Federal savings associations will continue to be required to comply with FinCEN's SAR regulation. For requests requiring separate FinCEN and OCC approvals, the OCC intends to coordinate with FinCEN, and FinCEN would have to issue a parallel exemption. Currently, if FinCEN issues an exemption or uses other authority to modify the application of the requirements of its SAR regulations, the OCC may not be able to issue a parallel exemption.

The final rule will maintain national banks' and Federal savings associations' core reporting responsibilities. The final rule's exemption authority, like FinCEN's exemption authority, is drafted broadly and flexibly to handle unexpected situations. However, the OCC does not expect to use this exemption authority to issue sweeping exemptions that would undermine the value provided by SARs. The final rule includes factors the OCC will consider before granting an exemption, which will help ensure that any exemptions are appropriate.

While some commenters suggested that the OCC lacks legal authority to issue the final rule, as discussed above, the OCC has broad statutory authority to issue regulations for national banks and Federal savings associations. For example, 12 U.S.C. 161 provides that the Comptroller may call for ''special reports'' and 12 U.S.C. 93a provides that the Comptroller ''is authorized to prescribe rules and regulations to carry out the responsibilities of the office.'' [25] The OCC has long viewed SAR requirements and their predecessor reporting requirements to be part of the OCC's mission of assuring safety and soundness.[26] The OCC's legal authority to require reports includes the authority to modify reporting requirements and issue exemptions, if appropriate.

One commenter suggested that the OCC consider GAO's 2020 report on anti-money laundering compliance.[27] The OCC considered this report, which recommended that FinCEN better support the use of SARs by law enforcement. This final rule will not affect the mechanisms that law enforcement agencies use to access SARs. Also, the OCC could approve exemptions that would result in additional SARs being filed, for example, through the use of automation.[28] The OCC will consider whether any exemption request is consistent with the purposes of the BSA, and these purposes include requiring reports or records that are ''highly useful'' in ''criminal, tax, or regulatory investigations.'' [29] Accordingly, the OCC will consider the usefulness of potential SARs that would be affected by an exemption request. In determining whether an exemption request is consistent with the purposes of the Bank Secrecy Act, the OCC intends to consult with FinCEN, as appropriate.

The exemption authority in the final rule is consistent with the OCC's support for the reallocation of bank

[21] 12 CFR 21.11(k); 12 CFR 163.180(d)(12).

[22] This final rule, like the OCC's general SAR requirements, applies to Federal branches and agencies of foreign banks licensed or chartered by the OCC. *See* 12 CFR 21.11(a).

[23] The other agencies that simultaneously published proposed rules received two additional comment letters that were not received by the OCC; however, the OCC has considered and addressed those comments in this **SUPPLEMENTARY INFORMATION** section. One comment suggested that the agencies extend the comment period. The OCC concluded that a longer comment period was not necessary, and an extension of the comment period is not legally required.

[24] GAO, *Anti-Money Laundering: Opportunities Exist to Increase Law Enforcement Use of Bank Secrecy Act Reports, and Banks' Costs to Comply with the Act Varied* (Sept. 22, 2020), available at *https://www.gao.gov/products/gao-20-574.*

[25] *See also* 12 U.S.C. 1463(a)(2).

[26] 12 U.S.C. 1.

[27] GAO, *Anti-Money Laundering: Opportunities Exist to Increase Law Enforcement Use of Bank Secrecy Act Reports, and Banks' Costs to Comply with the Act Varied* (Sept. 22, 2020), available at *https://www.gao.gov/products/gao-20-574.*

[28] *See* OCC Interpretive Letter 1166 (Sept. 27, 2019) (recognizing automated SAR generation as consistent with SAR regulation).

[29] 31 U.S.C. 5311; 12 U.S.C. 1818(s)(1) (''Each appropriate Federal banking agency shall prescribe regulations requiring insured depository institutions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such depository institutions with the requirements of subchapter II of chapter 53 of Title 31.'').

compliance resources to their most effective uses. The AMLA of 2020 provided that compliance programs should ensure that ''more attention and resources of financial institutions should be directed toward higher-risk customers and activities, consistent with the risk profile of a financial institution, rather than toward lower risk customers and activities.'' [30] Accordingly, it may be appropriate to allow national banks and Federal savings associations to tailor their monitoring for suspicious activity so banks might not file SARs in certain specified situations involving lower risk customers and activities. The agencies' SAR regulations already contemplate lower risk scenarios by having specific dollar thresholds below which financial institutions are not required to file SARs. Similarly, it is unlikely that criminals will target national banks and Federal savings associations that have received exemptions, as one commenter suggested, because the OCC does not expect to issue exemptions that would relieve national banks and Federal savings associations of their general obligation to monitor for suspicious activity or file appropriate SARs. The OCC will weigh any potential for criminals to target a national bank or Federal savings association in evaluating particular exemption requests. Should information come to light after the OCC approves an exemption that criminals are potentially targeting an institution because of its exemption, the final rule provides the OCC with authority, at its sole discretion, to revoke the exemption.

Some commenters suggested that the proposal was not supported by adequate evidence and was therefore inconsistent with the requirements of the Administrative Procedure Act. One commenter argued that the proposed rule did not provide any data on costs or cost savings that might accrue at a financial institution if a SAR exemption were granted or on what financial institutions, if any, have requested SAR exemptions in the past. The commenter noted that the proposed rule estimates that only five financial institutions per year would request SAR exemptions but provided no basis in research or data for that prediction since it is possible that all financial institutions would want an exemption.

The OCC acknowledges that it is difficult to predict exactly how many or what type of exemptions might be requested or ultimately granted. That is why the exemption language in the final rule, like FinCEN's exemption language, is drafted broadly and flexibly. As discussed above, this rule is intended to make the limited changes necessary to match the exemption authority already possessed by FinCEN. The OCC is not committing to offer or grant any particular exemptions. The final rule only creates the authority to issue exemptions in the future. The proposed rule included an estimate of five exemption requests per year for purposes of the burden estimates required by the Paperwork Reduction Act. However, this estimate of future exemption requests is approximate and does not represent an estimate of exemption requests that the OCC expects to actually grant. The OCC will carefully examine any exemption requests received and may issue few or no exemptions if they do not satisfy the OCC's scrutiny.

B. Process for Issuing Exemptions

The final rule contains some requirements that are not included in FinCEN's SAR regulation. Under the final rule, for exemption requests involving OCC-only SAR requirements, a national bank or Federal savings association will be required to seek an exemption only from the OCC. For exemption requests that will also require an exemption from FinCEN's SAR regulation (for example, exemption requests related to SAR filings required by 12 CFR 21.11(c)(4), related to SAR timing requirements in 12 CFR 21.11(d), or related to SAR confidentiality in 12 CFR 21.11(k)), a national bank will need to seek and obtain an exemption from both the OCC and FinCEN to be afforded exemptive relief.[31]

Commenters suggested that the OCC work together with the other Federal banking agencies and FinCEN to create one standard and one system for any institution to use when applying for an exemption. Similarly, commenters suggested that the OCC work together with the other Federal banking agencies and FinCEN to create a single-filing process whereby an OCC-supervised institution files solely with OCC and any need for a FinCEN approval involving the same application would be obtained by OCC. Commenters suggested that the agencies should streamline the application process so that it is only necessary to seek approval from a bank's prudential regulator. Commenters recommended that the agencies not require institutions to duplicate work when multiple agencies' approval is required.

One commenter suggested that the agencies use an interagency rulemaking to create a single, streamlined SAR regulation that includes a process for obtaining an exemption. According to this commenter, when a bank requests an exemption, it should only have to submit a single application to its primary prudential supervisor and not multiple agencies. Other commenters recommended that the agencies provide templates of application forms or similar tools to facilitate applications.

The OCC acknowledges the value of a simple, straightforward application process and the importance of coordination among the agencies administering SAR requirements. The agencies are currently coordinating and considering whether to provide specific forms or issue guidance describing application processes in more detail. However, the final rule only makes the limited textual changes to the OCC's SAR regulations necessary to provide exemption authority paralleling FinCEN's exemption authority. These limited changes do not preclude the OCC or other agencies from taking additional action later to streamline the process for requests for SAR exemptions.

Under the final rule, for exemption requests involving OCC-only SAR requirements, a national bank or Federal savings association only needs to seek an exemption from the OCC. For exemption requests that also require an exemption from FinCEN's SAR regulation, a national bank or Federal savings association will need to seek an exemption from both the OCC and FinCEN.

One commenter suggested that the agencies reconcile differences between their SAR exemption proposals. The proposed rule provided that a national bank or Federal savings association ''requesting an exemption that also requires an exemption from the requirements of FinCEN's SAR regulation must submit a request in writing to both the OCC and FinCEN for approval.'' The rules proposed by the Board, FDIC, and NCUA provided that those agencies would have sought FinCEN's concurrence for any exemption request that will also require an exemption from FinCEN's SAR regulations. The OCC's final rule, like the proposed rule, does not specifically provide for concurrence from FinCEN, but this difference should not functionally affect applications for exemptions. Under the proposed rules of any of the agencies, financial

[30] Section 6101(b)(2)(B)(ii), codified at 31 U.S.C. 5318(h)(2)(B)(iv)(II).

[31] The final rule, like the proposed rule, uses the term ''exemption'' while FinCEN's exemption authority in 31 CFR 1010.970 uses both the terms ''exemption'' and ''exception.'' The OCC does not believe there is a substantive distinction between exemptions and exceptions in this context.

institutions would have have been required to submit applications to both FinCEN and their functional regulator and receive approvals from both.

The OCC intends to coordinate with the other agencies to develop standardized procedures or forms for handling certain exemption requests. This is consistent with past practice where the agencies have developed such processes or forms after issuing underlying regulations. For example, certain OCC regulations require OCC ''prior approval'' before national banks and Federal savings associations take particular actions, and the OCC has separately issued the licensing forms and procedures necessary to obtain this approval.[32] The final rule only makes the limited changes to the OCC's SAR regulations necessary to clarify its authority to issue exemptions.

Under the final rule, a national bank or Federal savings association requesting an exemption from the requirements of 12 CFR 21.11 or 12 CFR 163.180 must submit a request in writing to the OCC.

C. Standards for Issuing an Exemption

The proposed rule listed separate factors that the OCC would consider for exemptions involving OCC-only exemptions versus exemptions that would also require exemptions from FinCEN. The final rule, however, provides a single set of factors that the OCC will consider for all exemption requests. Specifically, upon receipt of any exemption request, the OCC will consider whether the exemption is consistent with the purposes of the BSA and with safe and sound banking, and may consider other appropriate factors.

Commenters raised a variety of concerns about these factors. One commenter stated that the proposed exemption authority contains no limitations or caveats and argued that the absence of additional standards, criteria, and procedures renders the proposed rule unworkable and susceptible to legal challenge. Similarly, this commenter stated that the proposed rule did not address how supervisory concerns related to BSA/AML deficiencies or a lower supervisory rating due to repeated deficiencies would affect the exemption process. The commenter also observed that the proposed rule provided no process for an internal supervisory review or audit of the SAR exemption decisions being made by the OCC, which raises concerns about consistent decision-making. Similarly, another commenter stated that the proposed rule is overly broad and could inadvertently permit the wholesale exemption of entire institutions or categories of institutions from SAR requirements. According to this commenter, the proposed rule does not provide concrete standards or a clear process, and the deficiencies could be exploited, running counter to the interests of financial transparency and anti-money laundering objectives.

Another commenter suggested that the agencies specify additional factors they may consider when evaluating exemption requests. Specifically, the commenter suggested that the agencies should consider whether the bank's exemption request would, if granted, improve law enforcement and other end users' use of SAR data (*e.g.,* the request increases submission speed and enhances data consistency) or allow the requesting bank to reallocate resources to higher value monitoring and reporting processes. Another commenter suggested that, in reviewing a request, the agencies should consider whether the exemption would, if granted, enhance usefulness to law enforcement and whether the exemption would, if granted, enable the institution to redeploy resources in a manner suitable for the institution.

Another commenter expressed concern that the proposal's singular focus on high-tech solutions will disadvantage small and mid-sized institutions that cannot afford, build, or implement such novel, innovative solutions to meet their SAR requirements. According to this commenter, smaller institutions still struggle under manual SAR processes and lower-tier technology. Another commenter stated that it was unclear how the proposed rule would cover other institutions besides traditional national banks and Federal savings associations, including branches and agencies of foreign banks, trust companies, and service corporations.

Another commenter suggested that the agencies provide clear guidance governing how exemption requests will be evaluated and how the various considerations will be weighed, such as whether more weight will be given to broad machine learning applications and algorithms or whether the agencies will favor requests that focus on cost and time savings, regardless of technical sophistication. The commenter expressed concerns that requests submitted by small institutions may not be able to match the technology used by larger institutions.

The OCC acknowledges the concerns raised by these commenters and expects to consider various potential factors when evaluating requests. However, it is difficult to anticipate every possible exemption request, and, as a consequence, rigid or inflexible procedures could limit the OCC's future ability to consider, and deny or issue, exemptions. FinCEN's regulation authorizing exemptions does not contain a prescribed list of factors that will be considered before exemptions are issued.[33] Nor does FinCEN's regulation describe the process FinCEN will use when evaluating an exemption request. It would create inconsistency and be potentially problematic for the OCC's regulation to include factors or processes that are not included in FinCEN's regulation. That would make the exemption provisions not truly parallel and could pose difficulties for financial institutions applying for exemptions. For example, financial institutions might have to submit different applications to the OCC and FinCEN to address different potential factors and processes. This would create an additional burden and would undermine the value of creating parallel exemption processes.

The final rule contains a set of factors that the OCC will consider in reviewing all requests in addition to considering ''any other appropriate factor.'' Specifically, the OCC will consider whether the exemption is consistent with the purposes of the BSA and with safe and sound banking, and may consider other appropriate factors. Although FinCEN's general exemption provision, 31 CFR 1010.970(a), does not have these factors, these are the same factors that the OCC and FinCEN consider as part of exemption determinations involving customer identification program requirements.[34] The OCC has determined that it is appropriate to commit to considering them in the context of suspicious activity reporting because they should be relevant to any request for an exemption. The OCC's commitment to considering these factors should not promote inconsistency with FinCEN since the OCC does not expect FinCEN to issue exemptions that would be inconsistent with these factors. Requiring consideration of these factors

[32] *See, e.g.,* 12 CFR 5.45 and 5.46 (requiring prior approval for certain increases in capital). Separate licensing forms provide a mechanism for this approval, available at *https://www.occ.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/licensing-filing-forms.html.*

[33] 31 CFR 1010.970(a).

[34] 31 CFR 1020.220(b) (''The Federal functional regulator and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act and with safe and sound banking, and may consider other appropriate factors.'').

will help ensure that any issued exemptions are appropriate. Although the OCC acknowledges the relevance of other factors raised by the commenters (such as the different technological resources of large versus small financial institutions), it is not appropriate or necessary to embed such factors into the regulation itself. Many of the additional factors suggested by commenters are already covered by the three factors in the final rule.

The final rule provides that the OCC will consider ''any other appropriate factors,'' and the OCC expects to consider other factors that may be relevant to particular exemption requests. The OCC's SAR regulations apply to all national banks and Federal savings associations, and the new exemption language will similarly cover all national banks and Federal savings associations. Although it is possible that the terms of certain exemptions may be tailored to particular types of national banks or Federal savings associations (for example, trust banks), the OCC will not pre-judge how exemptions may be applied to different types of national banks and Federal savings association. FinCEN's exemption provision does not distinguish between different types of banking organizations, and it would be inconsistent for the OCC's exemption provision to do this. The final rule, like the OCC's SAR regulations, applies to Federal branches and agencies of foreign banks licensed or chartered by the OCC.

In the proposed rule, the list of factors that the OCC would consider for exemption requests that would not require an exemption from FinCEN did not include considering whether the exemption was consistent with the purposes of the BSA. (The proposal included this factor for requests that would also require an exemption from FinCEN.) The reporting requirements now contained in the OCC's SAR regulations predate the BSA and continue to be broader than FinCEN's SAR requirements in certain ways (*i.e.,* requiring SARs in certain situations that would not require SARs under FinCEN's SAR regulation). However, the OCC agrees with the arguments made by certain commentators and has determined it is reasonable to consider whether any exemption request is consistent with the purposes of the BSA, regardless of whether the exemption request implicates FinCEN's SAR regulation. The proposed rule explained how the BSA and successive legislation has shaped reporting requirements and developed the current SAR regime. Also, it could be inconsistent and confusing to consider separate sets of factors for OCC-only SAR exemptions versus requests requiring exemptions from both the OCC and FinCEN. The proposed rule specified that the OCC would consider any ''appropriate factors,'' and the OCC is now specifying that whether a request is consistent with the purposes of the BSA is such an appropriate factor for all exemption requests. The proposed rule explained the background and history of the SAR requirements and detailed the interaction between the OCC's SAR requirements and the BSA, which establishes how the BSA is still relevant to OCC-only SAR requirements.

Some commenters recommended that the OCC consider additional factors as part of exemption determinations. However, the final rule already covers many of the factors identified by commenters. One commenter suggested that the agencies should consider whether an exemption request will improve law enforcement and other BSA end users' use of SAR data. However, the statutory purposes of the BSA include requiring reports that are ''highly useful'' to various users of SARs, including law enforcement. Another commenter suggested that the proposed rule did not explain how supervisory concerns related to BSA/AML deficiencies or a lower CAMELS rating [35] due to repeated deficiencies would affect the exemption process. Those supervisory concerns would implicate all of the factors listed in the final rule. The OCC would not likely approve an exemption request when a national bank or Federal savings association previously failed to prevent money laundering or if granting the exemption could contribute to unsafe or unsound practices. ''[O]ther appropriate factors'' could also include outstanding supervisory concerns regarding BSA/AML compliance.

The OCC and other agencies have already provided guidance on the principles relevant to responsible innovation that are applicable to innovative approaches for complying with SAR requirements. Specifically, the OCC has ''define[d] Responsible Innovation as the use of new or improved financial products, services and processes to meet the evolving needs of consumers, businesses, and communities in a manner that is consistent with sound risk management and is aligned with the bank's overall business strategy.'' [36] Similarly, in 2018 FinCEN and the Federal banking agencies issued a statement encouraging banks to take innovative approaches to meet their BSA/AML compliance obligations.[37] That statement explained that banks are encouraged to consider, evaluate, and, when appropriate, responsibly implement innovative SAR compliance approaches.

Pursuant to the final rule, a national bank or Federal savings association requesting an exemption from the requirements of the OCC's SAR regulations will have to submit a request in writing to the OCC (and potentially also to FinCEN). Upon receiving a written request from a national bank or Federal savings association, the OCC will consider the request and provide a written response.

The OCC may notify the other Federal banking agencies or FinCEN and consider their comments before granting any exemption. The final rule provides that the OCC may grant an exemption for a specified time period. One commenter stated that the proposed rule's broad statement that it ''may be conditional or unconditional, may apply to particular persons or to classes of persons, and may apply to transactions or classes of transactions'' offered no guidance on the menu of available relief measures or which measures should be used in which circumstances. This language arises from the regulation that includes FinCEN's exemption authority.[38] The OCC removed this language from the final rule to avoid any confusion and because the OCC has not used language like this in exemption provisions in other regulations.[39] The removal of this language should not have any substantive effect in the context of the OCC's SAR regulations or limit the OCC's ability to issue exemptions.

D. Issuance of Exemptions, Publication, and Modifications

The proposed rule provided that the OCC would provide a written response to a national bank or Federal savings association that submits an exemption request. Commenters suggested that the OCC provide a clear timeline for responding to a request for an

[35] The Uniform Financial Institutions Rating System, commonly referred to as the CAMELS rating system.

[36] *https://www.occ.gov/topics/supervision-and-examination/responsible-innovation/index-responsible-innovation.html.*

[37] Joint Statement on Innovative Efforts to Combat Money Laundering and Terrorist Financing (Dec. 3, 2018), available at *https://www.occ.gov/news-issuances/news-releases/2018/nr-occ-2018-130a.pdf.*

[38] 31 CFR 1010.970.

[39] *See, e.g.,* 12 CFR 100.2 (''The Comptroller of the Currency may, for good cause and to the extent permitted by statute, waive the applicability of any provision of parts 1 through 197 of this chapter I, as applicable, with respect to Federal savings associations.''). Similarly, other FinCEN exemption provisions have not used language like this. *See, e.g.,* 31 CFR 1020.220(b).

exemption, for example 30 days or 45 days. Several commenters suggested that the OCC should publish approved exemption decisions so that other financial institutions are aware of the OCC's analysis regarding a particular process or new technology (and would not have to apply separately for exemptions). One commenter recommended that the agencies clarify how they will handle requests may contain trade secrets, proprietary information, and other sensitive business information.

The OCC recognizes the value of a timely, transparent review and decision process, and the OCC, in consultation with the other agencies, may develop standardized timelines for the consideration of requests or the publication of any exemptions. However, at present, including such procedures within the OCC's regulation would be inconsistent with FinCEN's exemption regulation. The OCC, in consultation with the other agencies, also is reviewing and potentially revising SAR requirements as part of changes made by the AMLA of 2020. The OCC, in consultation with the other agencies, may refine SAR requirements in ways that align with the commenters' concerns, but it is not possible to make these commitments while other potential SAR changes are still ongoing. This final rule only makes the limited and incremental changes necessary for the OCC's exemption authority to be consistent with FinCEN's rule. The OCC routinely handles sensitive or confidential information submitted by national banks and Federal savings associations, and the OCC expects to follow appropriate protocols in handling any such information submitted along with exemption requests.

The OCC acknowledges commenters' concerns about making approved exemptions public and transparent. The final rule does not resolve whether or not the OCC will publish approved exemptions or redacted versions of them. The OCC expects to determine whether publication is appropriate in the course of developing standardized procedures for handling exemptions and in coordination with FinCEN and the other Federal banking agencies. The OCC also notes that, to the extent that an exemption request involves a substantive legal interpretation or action, such determinations are regularly published by the OCC with appropriate redactions.

Several comments addressed the process for issuing an exemption, including recommending governance mechanisms to ensure the accountability of OCC officials making exemption decisions. The OCC takes such process concerns seriously but does not believe it is appropriate to address them in this regulation. The OCC has separate governance mechanisms to address the appropriate delegation of authority within its organizational structure. It would be anomalous to embed additional internal rules of agency procedure within the OCC's SAR regulations. Additionally, such process requirements would be inconsistent with FinCEN's exemption provision and would undermine the value of consistent exemption provisions.

One commenter recommended that the agencies should make it clear that banks are not required to run parallel systems by running both their existing process and the innovative process simultaneously. Although the OCC expects to resolve this issue in specific exemption requests, the OCC notes that the Interagency Statement on Innovative Efforts to Combat Money Laundering and Terrorist Financing states ''that pilot programs undertaken by banks, in conjunction with existing BSA/AML processes, are an important means of testing and validating the effectiveness of innovative approaches.'' [40]

Under the proposed rule, the OCC also could have revoked previously granted exemptions. The proposed rule provided that the OCC would provide written notice to a national bank or Federal savings association of the OCC's intention to revoke an exemption. The notice would have included the basis for the revocation and would provide an opportunity for the national bank or Federal savings association to submit a response to the OCC. One commenter stated that the proposed rule offers no standards or criteria for determining when to extend or revoke a SAR exemption. Another commenter suggested that the OCC create an appeal process so an applicant may make changes and re-submit without having to completely re-apply for an exemption. One commenter recommended giving financial institutions a timeline for revocation so they have the opportunity to prepare and re-direct resources. Another commenter recommended that, before an exemption is revoked, the agencies should provide reasonable notice to allow the institution ample time to reinstitute and test their pre-existing SAR monitoring processes. Another commenter recommended that the rule's procedures should include an appeal mechanism or second review so that a denied application can be revised or amended to address any objections raised by an agency. Another commenter suggested that the agencies should provide a sufficient timeline before revoking an exemption.

The OCC is finalizing the revocation provisions as proposed. FinCEN's exemption provision provides that exemptions ''shall be revocable in the sole discretion of the Secretary.'' [41] The OCC similarly believes it is appropriate to communicate in the final rule that exemptions are not permanent and may be revoked. Although the OCC recognizes the potential value of the additional procedures or checks suggested by the commenters (for example, an appeal mechanism), it is unnecessary to include such features and internal processes in the regulation. The final rule provides for an opportunity for notice and response before revocation, which would promote fairness and due process. In addition, additional procedures or checks would be inconsistent with FinCEN's regulation. To support a coordinated regulatory response, the OCC intends to cooperate with FinCEN when considering whether to revoke an exemption, to the extent possible. Although the OCC plans to carefully evaluate exemption requests so as to avoid where possible the need for revocation, it would be inappropriate to add other mandatory pre-revocation procedures because the procedures could interfere with the potential need for expedited revocation.

E. Other Comments

Several commenters raised issues not directly relevant to this rulemaking. One commenter supported a broader effort to review and harmonize supervisory expectations, perhaps even through a single rulemaking. Another commenter supported other efforts to improve SAR regulations, including a streamlined form, narrative improvements, and reporting thresholds. Another commenter recommended that the agencies recognize the new priorities in the AMLA of 2020, including the goal to update and modernize the overall AML system. One commenter suggested that the agencies change the focus in their proposed rules to recognize that the goal is providing useful information for law enforcement through the risk-based approach while also protecting the financial institution and confidence in the banking system.

[40] *See* ''Joint Interagency Statement on Innovative Efforts to Combat Money Laundering and Terrorist Financing 2,'' (Dec. 3, 2018), available at *https://www.occ.gov/news-issuances/news-releases/2018/nr-occ-2018-130a.pdf.*

[41] 31 CFR 1010.970(a).

The OCC is undertaking reviews of, and potentially changes to, reporting requirements as part of implementing the AMLA of 2020. The OCC will evaluate these comments in the context of this broader review of SAR requirements and AML requirements generally. This final rule only makes the limited, incremental changes necessary to conform the OCC's SAR exemption authority to FinCEN's.

V. Administrative Law Matters

A. Congressional Review Act

For purposes of the Congressional Review Act, the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a ''major'' rule.[42] If OMB deems a final rule is ''major,'' the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[43] The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies or geographic regions, or (3) a significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic and export markets.[44] As required by the Congressional Review Act, the OCC will submit the final rule and other appropriate reports to Congress and the GAO for review.

B. Solicitation of Comments and Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act[45] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies sought to present the final rule in a simple, straightforward manner and did not receive any comments on the use of plain language in the proposed rule.

C. Paperwork Reduction Act

Certain provisions of the final rule contain are a ''collection of information'' within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the act's requirements, agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC reviewed the rule and determined that it revises information collection requirements previously approved by the OMB under OMB Control No. 1557–0180. The OCC submitted the revised information collection to the OMB for review under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and § 1320.11 of the OMB's implementing regulations (5 CFR 1320).

Current Actions. The rule revises 12 CFR 21.11 and 12 CFR 163.180 to allow national banks and Federal savings associations to submit written requests for exemptions from the requirements of the OCC's SAR regulations. The burden estimates below are based on the estimated number of national banks and Federal savings associations that might request exemptions each year and the estimated number of hours required to submit a request.

Title of Information Collection: Minimum Security Devices and Procedures, Reports of Suspicious Activities, and Bank Secrecy Act Compliance Program.

Frequency: Event generated.

Affected public: Businesses or other for-profit.

Estimated number of respondents: 5.

Total estimated annual burden: 250 hours.

D. Regulatory Flexibility Act

In general, the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires an agency, in connection with a final rule, to prepare a final regulatory flexibility analysis describing the rule's impact on small entities (defined by the Small Business Administration for purposes of the RFA to include commercial banks and savings institutions with total assets of $600 million or less and trust companies with total assets of $41.5 million or less). However, under section 605(b) of the RFA, this analysis is not required if an 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** along with its rule.

The OCC currently supervises approximately 1,117 institutions (national banks, trust companies, Federal savings associations, and branches or agencies of foreign banks, collectively banks), of which 669 are small entities.[46] Because the final rule imposes no new mandates, it will have only de minimis costs to OCC-supervised small entities. Therefore, the OCC certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a final regulatory flexibility analysis is not required.

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) of 1994 (12 U.S.C. 4802(a)) in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, the OCC must consider, consistent with principles of safety and soundness and the public interest (1) any administrative burdens that the final rule would place on depository institutions, including small depository institutions and customers of depository institutions, and (2) the benefits of the final rule. 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.[47] The OCC considered the changes made by this final rule and believes that the effective date of May 1, 2022, will provide OCC-regulated institutions with adequate time to comply with the rule. The final rule will not impose any new administrative compliance requirements, and the OCC believes that the burdens of preparing a request for exemption are justified by the agency's need to evaluate information and factors relevant to the exemption request and to promote consistency.

F. OCC Unfunded Mandates Reform Act of 1995

The OCC analyzed the final rule under the factors in the Unfunded Mandates Reform Act (UMRA) of 1995

[42] 5 U.S.C. 801 *et seq.*

[43] 5 U.S.C. 801(a)(3).

[44] 5 U.S.C. 804(2).

[45] Public Law 106–102, sec. 722, 113 Stat. 1338, 1471 (1999), codified at 12 U.S.C. 4809.

[46] Consistent with the General Principles of Affiliation 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining whether it should classify an institution as a small entity. The OCC used December 31, 2020, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* footnote 8 of the U.S. Small Business Administration's *Table of Size Standards.*

[47] 12 U.S.C. 4802(b).

2 U.S.C. 1501 *et seq.* Under this analysis, the OCC considered whether the final rule includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year ($157 million as adjusted annually for inflation). The UMRA does not apply to regulations that incorporate requirements specifically set forth in law.

The final rule will not impose new mandates on any national banks or Federal savings associations. Therefore, the OCC concludes that the final rule will not result in an expenditure of $157 million or more annually by state, local, and tribal governments, or by the private sector. As a result, the OCC finds that the final rule does not trigger the UMRA cost threshold. Accordingly, the OCC has not prepared the written statement described in section 202 of the UMRA.

List of Subjects

12 CFR Part 21

Crime, Currency, National banks, Reporting and recordkeeping requirements, Security measures.

12 CFR Part 163

Accounting, Administrative practice and procedure, Advertising, Crime, Currency, Investments, Mortgages, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons stated in the **SUPPLEMENTARY INFORMATION**, chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 21—MINIMUM SECURITY DEVICES AND PROCEDURES, REPORTS OF SUSPICIOUS ACTIVITIES, AND BANK SECRECY ACT COMPLIANCE PROGRAM

■ 1. Revise the authority citation for part 21 to read as follows:

Authority: 12 U.S.C. 1, 93a, 161, 1462a, 1463, 1464, 1818, 1881–1884, and 3401–3422; 31 U.S.C. 5318.

■ 2. In § 21.11, add paragraph (m) to read as follows:

§ 21.11 Suspicious Activity Report.

* * * * *

(m) *Exemptions.* (1) The Office of the Comptroller of the Currency (OCC) may grant a national bank an exemption from the requirements of this section. A national bank requesting an exemption must submit a request in writing to the OCC. In reviewing such requests, the OCC will consider whether the exemption is consistent with the purposes of the Bank Secrecy Act (if applicable) and safe and sound banking, and may consider other appropriate factors. Any exemption will apply only as expressly stated in the exemption. (A national bank requesting an exemption that also requires relief from the requirements of applicable regulations issued by the Department of the Treasury at 31 CFR chapter X must submit a request in writing to both the OCC and FinCEN for approval.)

(2) The OCC will respond in writing to a national bank that submits a request pursuant to paragraph (m)(1) of this section after considering whether the exemption is consistent with the factors in paragraph (m)(1) of this section. Any exemption granted by the OCC under paragraph (m)(1) of this section will continue for the time specified by the OCC.

(3) The OCC may extend the period of time or may revoke an exemption granted under paragraph (m)(1) of this section. Exemptions or extensions may be revoked in the sole discretion of the OCC. Before revoking an exemption, the OCC will provide written notice to the national bank of the OCC's intention to revoke an exemption. Such notice will include the basis for the revocation and will provide an opportunity for the national bank to submit a response to the OCC. The OCC will consider any response before deciding whether or not to revoke an exemption and provide written notice to the national bank of the OCC's final decision to revoke an exemption.

(4) With respect to requests for exemptions that will also require relief from the requirements of applicable regulations issued by the Department of the Treasury at 31 CFR chapter X, upon receiving approval from both the OCC and FinCEN, the requestor will be relieved of its obligations under this section to the extent stated in such approvals.

PART 163—SAVINGS ASSOCIATIONS—OPERATIONS

■ 3. Revise the authority citation for part 163 to read as follows:

Authority: 12 U.S.C. 1, 93a, 1462a, 1463, 1464, 1467a, 1817, 1820, 1828, 1831o, 3806, 5101 *et seq.,* 5412(b)(2)(B); 31 U.S.C. 5318; 42 U.S.C. 4106.

■ 4. In § 163.180, add paragraph (f) to read as follows:

§ 163.180 Suspicious Activity Reports and other reports and statements.

* * * * *

(f) *Exemptions.* (1) The OCC may grant a Federal savings association or service corporation an exemption from the requirements of this section. A Federal savings association or service corporation requesting an exemption must submit a request in writing to the OCC. In reviewing such requests, the OCC will consider whether the exemption is consistent with the purposes of the Bank Secrecy Act (if applicable) and safe and sound banking, and may consider other appropriate factors. Any exemption will apply only as expressly stated in the exemption. (A Federal savings association or service corporation requesting an exemption that also requires relief from the requirements of applicable regulations issued by the Department of the Treasury at 31 CFR chapter X must submit a request in writing to both the OCC and FinCEN for approval.)

(2) The OCC will respond in writing to the Federal savings association or service corporation that submits a request pursuant to paragraph (f)(1) of this section after considering whether the exemption is consistent with the factors in paragraph (f)(1) of this section. Any exemption granted by the OCC under paragraph (f)(1) of this section will continue for the time specified by the OCC.

(3) The OCC may extend the period of time or may revoke an exemption granted under paragraph (f)(1) of this section. Exemptions or extensions may be revoked in the sole discretion of the OCC. Before revoking an exemption, the OCC will provide written notice to the Federal savings association or service corporation of the OCC's intention to revoke an exemption. Such notice will include the basis for the revocation and will provide an opportunity for the Federal savings association or service corporation to submit a response to the OCC. The OCC will consider any response before deciding whether or not to revoke an exemption and provide written notice to the Federal savings association or service corporation of the OCC's final decision to revoke an exemption.

(4) With respect to requests for exemptions that will also require relief from the requirements of applicable regulations issued by the Department of the Treasury at 31 CFR chapter X, upon receiving approval from both the OCC and FinCEN, the requestor will be relieved of its obligations under this section to the extent stated in such approvals.

Michael J. Hsu,

Acting Comptroller of the Currency.

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