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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 748

RIN 3133-AD23

Filing Requirements for Suspicious Activity Reports

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final Rule

SUMMARY: NCUA is issuing a final rule to describe in greater detail the requirements for reporting and filing a Suspicious Activity Report (SAR) and to address prompt notification of the board of directors of SAR filings, the confidentiality of reports, and liability protection. NCUA also is changing the heading for this part so it more accurately describes its scope. NCUA seeks to enhance credit union compliance with SAR reporting requirements by providing greater detail in its rule on the thresholds and procedures for filing a SAR.

DATES: This rule is effective November 27, 2006.

FOR FURTHER INFORMATION CONTACT: Linda K. Dent, Staff Attorney,
Office of General Counsel, at (703) 518-6540.

SUPPLEMENTARY INFORMATION:

Background

On June 28, 2006, the NCUA Board requested comments on a proposed rule to amend part 748 to more clearly describe the reportable activity covered by the Suspicious Activity Report (SAR) filing requirements, identify important filing procedures, and highlight record retention requirements. The proposed rule addressed several other key aspects of the SAR process including the confidentiality of the reports, safe harbor information, and notification of the credit union's board of directors of its SAR reporting activity.

Discussion

NCUA periodically reviews a third of its existing regulations to update, clarify, and simplify these regulations where necessary and to eliminate redundant and unnecessary provisions. Interpretative Ruling and Policy Statement (IRPS) 87-2, Developing and Reviewing Government Regulations. The proposed changes resulted from such a review and were intended to provide basic information addressing mandatory reporting requirements and other important provisions in a single location. The changes also were intended to establish a regulation consistent with the suspicious activity report (SAR) regulations of the other

Federal Financial Institutions Examination Counsel (FFIEC) regulators and Treasury's regulation at 31 C.F.R. §103.18. The proposed changes were not intended to eliminate the need for credit unions to review more specific information when considering potentially suspicious activity or completing a SAR. Resources such as §103.18, the SAR form instructions, guidance provided in the FFIEC Bank Secrecy Act / Anti-Money Laundering Examination Manual, NCUA's web site, and the Financial Crimes Enforcement Network's (FinCEN) web site, among others, continue to be useful tools in the SAR process.

Summary of Comments

The NCUA Board (Board) received twenty-four comment letters regarding the proposed rule: thirteen from natural person credit unions, two from corporate credit unions, eight from credit union trade associations, and one from an individual. The comments almost exclusively concern the proposal to require prompt notice to the credit union's board or its designated committee of any SAR filed. Twenty of the twenty-four commenters addressed this requirement.

Approximately a third of the commenters believed the requirement unnecessary for a variety of reasons, among these its being a regulatory burden and not statutorily required. NCUA believes notifying a credit union's board, or its designated committee, of the credit union's SAR activity is important to ensure a board receives sufficient information to properly discharge its responsibilities. For example, awareness of suspicious activity can identify vulnerabilities and

strengths in a credit union's operations and inform its board with respect to decisions regarding funding priorities and requirements for systems and training.

Several commenters wanted a description of the type of information to include in the notice. The Board determined the final rule should not require a particular format for notice to a board of directors to allow credit unions and their boards the flexibility necessary to tailor the format to their particular needs and circumstances. The FFIEC Bank Secrecy Act / Anti-Money Laundering Examination Manual lists several formats but credit unions are not limited to these.

A majority of commenters on this section also felt the Board should define the term prompt. Commenters provided several suggestions ranging from annual notification, to specific time frames from the date reportable activity occurs, to allowing the credit union to decide which SARs to report and when. The Board recognizes the need for some flexibility in interpreting "prompt" given differences among credit unions regarding the nature and frequency of SAR activity. The Board believes prompt means a board of directors should receive notice of the credit union's SAR activity at least monthly, for example at the monthly board meeting, if there is activity to report unless the seriousness of an activity merits immediate reporting.

NCUA also received various comments seeking additional guidance for identifying suspicious activity, direction for specific products and services, instruction on fact-specific scenarios, and recommendations of useful reference materials. While the rule provides general statements of the filing requirements and other key provisions for the SAR process, it cannot cover every possible activity or situation without becoming unwieldy and ineffective. Consequently, the rule references NCUA's and FinCEN's web sites where information such as Frequently Asked Questions, the SAR form and accompanying instructions, the FFIEC Bank Secrecy Act / Anti-Money Laundering Examination Manual, and other materials are housed. NCUA's effort to provide credit unions with useful guidance is ongoing.

One commenter asked the Board to include language in the rule permitting SAR processing within shared branch networks. The commenter stated shared branches currently prepare the report and send it to the member's credit union for processing. The Board appreciates the issue the commenter has raised but believes more information and input are necessary before any regulatory changes are in order.

There are a few changes in the final rule from the proposed rule. The final rule includes technical corrections for consistency for references to the FFIEC Bank Secrecy Act / Money-Laundering Examination Manual. The final rule revises the first sentence under §748.1(c) to clarify that reporting is also required where the

credit union has reason to suspect a crime or suspicious transaction has occurred. The Board added a sentence to the end of §748.1(c)(2)(ii) providing information on the location of useful SAR guidance. The phrase “but must notify all directors who are not suspects” was revised in Section 748.1(c)(4)(ii) to read “but must notify all directors, or a committee designated by the board of directors to receive such notice, who are not suspects.” The change expands a credit union’s notification options in this circumstance by also allowing the board to designate a committee for this purpose. Lastly, the Board added a sentence to §748.1(c)(5) to clarify a credit union’s obligation to make the filed report and supporting documentation available to appropriate law enforcement and its regulatory supervisory authority when requested.

REGULATORY PROCEDURES

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (those under \$10 million in assets). This proposed rule modifies the language of a preexisting requirement for federally-insured credit unions to file reports of suspected crimes and suspicious activity. The proposed rule, therefore, will not have a significant economic impact on a substantial number of small credit unions and a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The Office of Management and Budget assigned 3133-0094 as the control number for NCUA's Form 2362. NCUA has determined that the proposed amendments will not increase paperwork requirements and a paperwork reduction analysis is not required.

Executive Order 13132

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

The Treasury and General Government Appropriations Act, 1999 - Assessment of Federal Regulations and Policies on Families

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

List of Subjects

12 CFR part 748

Credit unions, Suspicious Activity Report

By the National Credit Union Administration Board on October 19, 2006.

Mary Rupp

Secretary of the Board

For the reasons stated in the preamble, the National Credit Union Administration amends 12 CFR part 748 as set forth below:

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

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

Authority: 12 U.S.C. 1766(a) and 1786(q); 31 U.S.C. 5311.

2. The heading of part 748 is revised to read as set forth above.

3. Section 748.1(c) is revised to read as follows:

Sec. 748.1 Filing of reports.

* * * * *

(c) Suspicious Activity Report. A credit union must file a report if it knows, suspects, or has reason to suspect that any crime or any suspicious transaction related to money laundering activity or a violation of the Bank Secrecy Act has occurred. For the purposes of this paragraph (c) credit union means a federally-insured credit union and official means any member of the board of directors or a volunteer committee.

(1) Reportable activity. Transaction for purposes of this paragraph means a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, share certificate, or other monetary instrument or investment security, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected. A credit union must report any known or suspected crime or any suspicious transaction related to money laundering or other illegal activity, for example, terrorism financing, loan fraud, or embezzlement, or a violation of the Bank Secrecy Act by sending a completed suspicious activity report (SAR) to the Financial Crimes Enforcement Network (FinCEN) in the following circumstances:

(i) Insider abuse involving any amount. Whenever the credit union detects any known or suspected federal criminal violations, or pattern of criminal violations, committed or attempted against the credit union or involving a transaction or transactions conducted through the credit union, where the credit union believes it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the credit union was used to facilitate a criminal transaction, and the credit union has a substantial basis for identifying one of the credit union's officials, employees, or agents as having committed or aided in the commission of the criminal violation, regardless of the amount involved in the violation;

(ii) Transactions aggregating \$5,000 or more where a suspect can be identified. Whenever the credit union detects any known or suspected federal criminal violation, or pattern of criminal violations, committed or attempted against the credit union or involving a transaction or transactions conducted through the credit union, and involving or aggregating \$5,000 or more in funds or other assets, where the credit union believes it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the credit union was used to facilitate a criminal transaction, and the credit union has a substantial basis for identifying a possible suspect or group of suspects. If it is determined before filing this report that the identified suspect or group of suspects has used an alias, then information regarding the true identity of the suspect or group of suspects, as well as alias identifiers, such as drivers'

licenses or social security numbers, addresses and telephone numbers, must be reported;

(iii) Transactions aggregating \$25,000 or more regardless of potential suspects. Whenever the credit union detects any known or suspected federal criminal violation, or pattern of criminal violations, committed or attempted against the credit union or involving a transaction or transactions conducted through the credit union, involving or aggregating \$25,000 or more in funds or other assets, where the credit union believes it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the credit union was used to facilitate a criminal transaction, even though the credit union has no substantial basis for identifying a possible suspect or group of suspects; or

(iv) Transactions aggregating \$5,000 or more that involve potential money laundering or violations of the Bank Secrecy Act. Any transaction conducted or attempted by, at or through the credit union and involving or aggregating \$5,000 or more in funds or other assets, if the credit union knows, suspects, or has reason to suspect:

(A) The transaction involves funds derived from illegal activities or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law;

(B) The transaction is designed to evade any regulations promulgated under the Bank Secrecy Act; or

(C) The transaction has no business or apparent lawful purpose or is not the sort of transaction in which the particular member would normally be expected to engage, and the credit union knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

(v) Exceptions. A credit union is not required to file a SAR for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities, or for lost, missing, counterfeit, or stolen securities and the credit union files a report pursuant to the reporting requirements of 17 C.F.R. 240.17f-1.

(2) Filing Procedures. (i) Timing. A credit union must file a SAR with FinCEN no later than 30 calendar days from the date the suspicious activity is initially detected, unless there is no identified suspect on the date of detection. If no suspect is identified on the date of detection, a credit union may use an additional 30 calendar days to identify a suspect before filing a SAR. In no case may a credit union take more than 60 days from the date it initially detects a reportable transaction to file a SAR. In situations involving violations requiring immediate attention, such as ongoing money laundering schemes, a credit union must immediately notify, by telephone, an appropriate law enforcement authority and its supervisory authority, in addition to filing a SAR.

(ii) Content. A credit union must complete, fully and accurately, SAR form TDF 90-22.47, Suspicious Activity Report (also known as NCUA Form 2362) in

accordance with the form's instructions and 31 C.F.R. Part 103.18. A copy of the SAR form may be obtained from the credit union resources section of NCUA's website, www.ncua.gov, or the regulatory section of FinCEN's website, www.fincen.gov. These sites include other useful guidance on SARs, for example, forms and filing instructions, Frequently Asked Questions, and the FFIEC Bank Secrecy Act / Anti-Money Laundering Examination Manual.

(iii) Compliance. Failure to file a SAR as required by the form's instructions and 31 C.F.R. Part 103.18 may subject the credit union, its officials, employees, and agents to the assessment of civil money penalties or other administrative actions.

(3) Retention of Records. A credit union must maintain a copy of any SAR that it files and the original or business record equivalent of all supporting documentation to the report for a period of five years from the date of the report. Supporting documentation must be identified and maintained by the credit union as such. Supporting documentation is considered a part of the filed report even though it should not be actually filed with the submitted report. A credit union must make all supporting documentation available to appropriate law enforcement authorities and its regulatory supervisory authority upon request.

(4) Notification to board of directors. (i) Generally. The management of the credit union must promptly notify its board of directors, or a committee designated by the board of directors to receive such notice, of any SAR filed.

(ii) Suspect is a director or committee member. If a credit union files a SAR and the suspect is a director or member of a committee designated by the

board of directors to receive notice of SAR filings, the credit union may not notify the suspect, pursuant to 31 U.S.C. 5318(g)(2), but must notify the remaining directors, or designated committee members, who are not suspects.

(5) Confidentiality of reports. SARs are confidential. Any credit union, including its officials, employees, and agents, subpoenaed or otherwise requested to disclose a SAR or the information in a SAR must decline to produce the SAR or to provide any information that would disclose that a SAR was prepared or filed, citing this part, applicable law, for example, 31 U.S.C. 5318(g), or both, and notify NCUA of the request. A credit union must make the filed report and all supporting documentation available to appropriate law enforcement authorities and its regulatory supervisory authority upon request.

(6) Safe Harbor. Any credit union, including its officials, employees, and agents, that makes a report of suspected or known criminal violations and suspicious activities to law enforcement and financial institution supervisory authorities, including supporting documentation, are protected from liability for any disclosure in the report, or for failure to disclose the existence of the report, or both, to the full extent provided by 31 U.S.C. 5318(g)(3). This protection applies if the report is filed pursuant to this part or is filed on a voluntary basis.