



## OCC Regulatory Impact Analysis 2021-3

# Final Rulemaking: Exemptions to Suspicious Activity Report Requirements

November 22, 2021

**Purpose:** The Policy Analysis Division of the Economics Department prepares a regulatory impact analysis for proposed and final rules. This Regulatory Impact Analysis pertains to the final rule for Exemptions to Suspicious Activity Report Requirements.

**Related Link:**

[OCC News Release 2022-23](#) |

OCC Issues Final Rule Addressing Authority for Exemptions to Suspicious Activity Report Requirements

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### I. Summary Assessment

The Office of the Comptroller of the Currency (OCC) is issuing a final rule to modify the requirements for national banks and federal savings associations (FSAs) to file Suspicious Activity Reports (SARs). The final rule will amend the OCC's SAR regulations to allow the OCC to issue exemptions from the requirements of those regulations.

As you requested, we have assessed the impact of the final rule to determine if, pursuant to the Regulatory Flexibility Act (RFA), the rule will have a significant economic impact on a substantial number of small entities. In addition, consistent with the Unfunded Mandates Reform Act of 1995 (UMRA), our review considers whether mandates imposed by the final rule will result in an annual expenditure of \$100 million or more, adjusted for inflation (currently \$158 million) by state, local, and tribal governments or by the private sector.<sup>1</sup> Our review also considers whether the rule qualifies as a major rule under the Congressional Review Act (CRA).

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<sup>1</sup> We estimate the UMRA inflation adjustment using the change in the annual U.S. GDP Implicit Price Deflator between 1995 and 2020, which are the most recent annual data available. The deflator was 71.868 in 1995 and 113.610 in 2020, resulting in an inflation adjustment factor of 1.58 ( $113.610 / 71.868 = 1.58$ , and  $\$100 \text{ million} \times 1.58 = \$158 \text{ million}$ ).

Because the final rule does not impose any new mandates, we estimate that the costs, if any, associated with the final rule will be *de minimis*. Thus, we believe the final rule will not result in an expenditure of \$158 million or more annually by state, local, and tribal governments or by the private sector. Furthermore, we believe the final rule will not have a significant economic impact on a substantial number of OCC-supervised small entities. Finally, we believe the rule does not qualify as a major rule under the CRA.

## **II. Background**

OCC regulations require national banks and FSAs to file 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 FSAs.

In 2018 the OCC, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, Financial Crimes Enforcement Network of the Department of the Treasury (FinCEN), and the National Credit Union Administration issued a statement encouraging banks to take innovative approaches to meet their Bank Secrecy Act/anti-money laundering (BSA/AML) compliance obligations. That statement explained that banks are encouraged to consider, evaluate, and where appropriate, responsibly implement innovative approaches in this area. Today, innovative approaches and technological developments in the areas of SAR monitoring, investigation and filings may involve, among other things: (i) automated form population using natural language processing, transaction data, and customer due diligence information, (ii) automated or limited investigation processes depending on the complexity and risk of a particular transaction and appropriate safeguards, and (iii) enhanced monitoring processes using more and better data, optical scanning, artificial intelligence, or machine learning capabilities.

## **III. The final rule**

The OCC is amending 12 CFR 21.11 and 12 CFR 163.180 to allow the OCC to issue exemptions from the regulations' SAR requirements. Specifically, the final rule will add a provision to 12 CFR 21.11 and 12 CFR 163.180 that will provide that the OCC may exempt a national bank or FSA (collectively, "banks") from the requirements of those sections. Under the final rule, the OCC will consider whether an exemption is consistent with the purposes of the Bank Secrecy Act, if applicable, and with safe and sound banking, and may consider other appropriate factors. Under the final rule, the OCC could also revoke previously granted exemptions if circumstances change related to the factors used to grant the exemption.

Under the final rule, when the OCC uses the rule to grant exemptions, such exemptions will not relieve banks from the obligation to comply with FinCEN's SAR regulation, if applicable. To the extent a bank is subject to requirements imposed by both the OCC's SAR regulations and FinCEN's SAR regulation, the bank will need to seek an exemption from both the OCC and FinCEN. The OCC expects to coordinate with FinCEN when handling such parallel exemptions. However, the OCC's SAR regulation imposes additional

requirements not included in FinCEN’s regulation. To the extent a bank is subject to a requirement imposed by the OCC’s SAR regulations alone (and not a parallel FinCEN requirement), the final rule will allow the OCC to exempt a bank or savings association from that requirement.

#### **IV. Impact on OCC-supervised banking entities**

The OCC currently supervises 1,117 institutions (commercial banks, trust companies, federal savings associations, and branches or agencies of foreign banks).<sup>2</sup> Because the final rule expands the list of allowable exemptions and does not impose new mandates, we believe the costs associated with it, if any, will be *de minimis*. To the extent that the final rule allows the OCC to take a more risk-sensitive approach to SARs requirements, the rule could benefit affected banks and the U.S. economy by making BSA/AML requirements more efficient and effective. Because the realization of these benefits will depend on the effective application of the rule where appropriate, and we do not see widespread BSA/AML reporting inefficiencies creating a need for widespread exemptions, we expect the benefits of the rule to be modest.

#### **V. UMRA**

Consistent with the UMRA, our review considers whether the mandates imposed by the final rule may result in an expenditure of \$158 million or more by state, local, and tribal governments, or by the private sector, in any one year. The final rule does not impose new mandates. Therefore, the final rule will not result in an expenditure of \$158 million or more annually by state, local, and tribal governments, or by the private sector.

#### **VI. RFA**

As part of our analysis, we consider whether the final rule will have a significant economic impact on a substantial number of small entities, pursuant to the RFA. The OCC currently supervises approximately 669 small entities.<sup>3</sup> Because the rule applies to all OCC-supervised institutions, the final rule will affect all small OCC-supervised entities, and thus a substantial number of them. However, because we estimate that the costs, if any, associated with the final rule will be *de minimis*, the final rule will not have a significant economic impact on any small OCC-supervised entities. Additionally, we believe that savings, if any, will be *de minimis*. Therefore, the final rule will not have a significant economic impact on a substantial number of small entities.

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<sup>2</sup> Based on data accessed using FINDRS on November 17, 2021.

<sup>3</sup> We base our estimate of the number of small entities on the SBA’s size thresholds for commercial banks and savings institutions, and trust companies, which are \$600 million and \$41.5 million, respectively. Consistent with the General Principles of Affiliation 13 CFR §121.103(a), we count the assets of affiliated financial institutions when determining if we should classify an OCC-supervised institution as a small entity. We use 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*.

## VII. CRA

The CRA defines a “major rule” as a rule that the Administrator of the Office of Management and Budget’s Office of Information and Regulatory Affairs (OIRA) 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. 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.

### An annual effect on the economy of \$100 million or more

As noted above, we estimate the overall annual costs of the final rule will be *de minimis* and annual benefits modest. Therefore, we believe the final rule will not have an annual effect on the economy of \$100 million or more.

### A major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions

Because of the highly competitive markets for banking and credit intermediation services, only a major increase in costs that applies to all banks, such as an increase in interest rates or deposit insurance fees, or requiring a specific product-related incremental cost (e.g., an appraisal) would be likely to result in a measurable increase in costs or prices. The substantial number of banks, thrifts, and savings associations operating in the United States creates a competitive environment, which limits the extent to which a subset of depository institutions could increase prices without losing customers. Thus, any incremental costs associated with rules that apply only to specific types of banking organizations are unlikely to be passed along to customers. Rather, these costs are more likely to be absorbed into the overhead (non-interest expenses) of affected institutions. This is especially true in cases where the direct costs of a rule are *de minimis*, and we expect the direct compliance costs associated with this final rule to be *de minimis*. Therefore, we do not expect the rule to result in an increase in costs or prices for consumers or any other entities or geographic regions.

### 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

A significant adverse effect on competition, employment, or investment is more likely to occur when a rule specifically prohibits an activity, restricts access to a market, or significantly increases the production costs of certain institutions that provide the good or service. None are a factor in this final rule.

Thus, for the reasons discussed above, we believe the final rule is not a major rule under the CRA.