



Reminder about SARs Pertaining to Bank Insiders, Record Retention and Safe Harbor

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Part 353 of the FDIC's regulations (12 C.F.R. 353) contains the FDIC's requirements for filing a Suspicious Activity Report ("SAR") with FinCEN. Although there are monetary thresholds for reporting suspicious activity when a suspect can be identified (i.e., \$5,000) and when no suspect is identified (\$25,000), there is no monetary threshold for reporting a "known or suspected federal criminal violation" when the bank has a credible basis for believing that the criminal violation was committed by "one of the bank's directors, officers, employees, agents, or other institution-affiliated parties."

"Institution-affiliated party" is defined in the Federal Deposit Insurance Act to include not only directors, officers and employees but also any shareholder, consultant, attorney, accountant, appraiser and any other person whom the bank's primary federal regulator determines is a participant "in the conduct of the affairs" of the bank.

The FDIC's regulation states that a bank "shall" file a SAR in the specified circumstances, meaning that even if the criminal violation involved a minimal amount and the bank had reason to believe that it was committed by a shareholder, the bank has an obligation to file a SAR about the shareholder's suspicious conduct.

Also, when the bank files a SAR, it must "promptly notify its Board of Directors, or a designated committee of the Board, of the report that was filed."

The record retention requirement for **any** SAR, whether it involves an insider, an identifiable non-insider suspect (i.e., \$5,000 threshold), or no identifiable suspect (i.e., the \$25,000 threshold) is that the bank must maintain a copy of the SAR and any supporting documentation for five years from the date that the SAR was filed with FinCEN.

As a reminder, SARs are to be treated with the utmost confidentiality, even to the point that a subpoena for a SAR must be declined and the bank may not even disclose information that would indicate whether or not a SAR had even been filed. When declining to produce any information regarding a SAR that might have been included within a subpoena, the declining bank is to cite the FDIC's regulation [(12 C.F.R. 353.3(g)] and notify the appropriate FDIC Regional Office of the subpoena and the bank's declination.

The FDIC's regulation also grants safe harbor immunity from liability, both under federal and state laws, to any bank that files a SAR (including any information that might be contained within the bank's supporting documentation).

Feel free to contact me (e-mail: jerry@cbai.com) or CBAI Paralegal Levette Shade (e-mail: levettes@cbai.com) if you want any additional information.

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