

U.S. Department of the Treasury  
Financial Crimes Enforcement Network (FinCEN)

Supporting Statement

OMB Number 1506-NEW  
Suspicious Activity Report Filing Requirements for Residential  
Mortgage Lenders and Originators

Summary of Action

A notice of proposed rulemaking (NPRM) was published in the *Federal Register* on December 9, 2010 @ 75 FR 76677 which intends to codify anti-money laundering (AML) and suspicious activity reporting (SAR) requirements for residential mortgage lenders into the CFR:

**Title 31 CFR Part 103** (RIN 1506-AB02)  
*Anti-Money Laundering Program and Suspicious Activity Reporting Filing  
Requirements for Residential Mortgage Lenders and Originators*

This new information collection request (ICR) covers only the burden associated with §103.14, *Reports by loan or finance companies of suspicious transaction*, of the NPRM:

Collection Activity	31 CFR 103	No. Respondents	No. Responses Per Respondent	No. Annual Responses	Hours Per Response	Total hours
SAR	§103.14	31,000	1	31,000	2.00	62,000

The burden associated §103.142, “*Anti-money laundering programs for loan or finance companies*”, of the NPRM will be claimed under existing OMB control number 1506-0035, “*AML Programs for Insurance Companies*” through a revision (associated with rulemaking) once the rule is published final. The ICR title will also be changed to “*AML Programs for Insurance Companies and Loan and Finance Companies*” at the time of revision:

Collection Activity	No. Respondents	No. Responses Per Respondent	No. Annual Responses	Hours Per Response	Total hours
#1506-0035 current burden: AML – Insurance Co.	1,200	1	1,200	1	1,200
Proposed new burden associated with §103.142: AML – Loan or finance companies	31,000	1	31,000	3.00	93,000
Total			32,200	2.93	94,200

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1. Circumstances Necessitating Collection of Information

The Bank Secrecy Act, Titles I and II of Pub. L. 91-508, as amended, codified at 12 U.S.C. 1829, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5330, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring records and reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S. C. 5311-5330) appear at 31 CFR part 103. The authority of the Secretary to administer the Bank Secrecy Act regulations has been delegated to the Director of the Financial Crimes Enforcement Network.

In 1992, section 5318 of the Bank Secrecy Act was amended to add provisions concerning reporting by financial institutions of suspicious transactions. In particular, section 5318(g) grants the Secretary of the Treasury the authority to require the reporting of such transactions by financial institutions subject to the Bank Secrecy Act, and contains a provision that prohibits the notification of any person involved in the transaction that a suspicious activity report (SAR) has been filed. Section 5318(g) was added to the Bank Secrecy Act by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act, Title XV of the Housing and Community Development Act of 1992, Pub. L. 102-550.

FinCEN, which has been delegated the authority to administer the Bank Secrecy Act, has determined that reports of suspicious transactions is necessary to prevent and detect the laundering of money and other funds at residential mortgage lenders and originators (See 31 CFR 103.14(a)).

Residential mortgage lenders and originators are required to report suspicious transactions to Treasury. A transaction would require reporting under the rule if the transaction is conducted or attempted by, at, or through the residential mortgage lenders and originators, involves or aggregates funds of at least \$5,000 and the residential mortgage lenders and originators suspects, or has reason to suspect that the transaction or the pattern of transactions of which the transaction is a part:

- (i) involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal-activity;
- (ii) is designed to evade a recordkeeping or reporting requirement of a regulation promulgated under the Bank Secrecy Act;
- (iii) serves no business or apparent lawful purpose; or

(iv) involves the use of the business to facilitate criminal activity.

Under 31 CFR 103.14(c), and 31 CFR 103.38(d) residential mortgage lenders and originators are required to retain a copy of the any Suspicious Activity Report filed and supporting documentation for the filing of the Suspicious Activity Report for five years. These documents are necessary for criminal investigations and prosecution.

This rule will specifically add the reporting of mortgage fraud, mortgage loan fraud, and various mortgage fraud scams as a suspicious activity for reporting. This rule will provide the reporting institution with specific data items that should be included in any SAR filed to report suspected fraudulent mortgage loan or scam activity.

2. Method of Collection and Use of Data.

Information about suspicious transactions conducted or attempted by, at, through, or otherwise involving residential mortgage lenders and originators will be collected through the filing of these forms in a central location to be determined by the Financial Crimes Enforcement Network. The Financial Crimes Enforcement Network and law enforcement agencies will use the information on the Suspicious Activity Report by residential mortgage lenders and originators for criminal investigation and prosecution purposes.

3. Use of Improved Information Technology to Reduce Burden.

The collection of information will be by a dynamic tool that is computer fillable and may be printed or saved electronically. The tool may also be electronically filed through the BSA E-Filing system. For further details see 75 FR 63545 (October 15, 2010).

4. Efforts to Identify Duplication.

No other similar information exists.

5. Methods to Minimize Burden on Small Businesses or Other Small Entities.

The information collection will not have a significant economic impact on a substantial number of small entities. These companies may build on their existing risk management procedures and prudential business practices to ensure compliance with this rule. Finally, residential mortgage lenders and originators may have an established and limited customer base whose transactions are well known to those residential mortgage lenders and originators.

6. Consequences to the Federal Government of not Collecting the Information.

With the Suspicious Activity Report both law enforcement and industry benefit from improved detection of financial crime, analysis of trends, and coordination of investigative efforts. Failure to collect this information would limit law enforcement's ability to

investigate and prosecute money laundering and other financial crimes conducted at or through these businesses.

7. Special Circumstances Requiring Data Collection Inconsistent with Guidelines.

Respondents must report a suspicious transaction within 30 days but not later than 60 days after the transaction, which may result in reporting more frequently than quarterly. Prompt reporting is vital to the detection of money laundering and other financial crime, including the financing of terrorism, mortgage loan fraud or mortgage loan scams.

8. Consultation with Individuals Outside of the Agency on Availability of Data. Frequency of Collection, Clarity of Instructions and Forms, and Data Elements.

This is a new request for approval to add to the SAR specific data regarding mortgage loan fraud and other mortgage scams. FinCEN published a *Federal Register* notice on October 15, 2010 @ 75 FR 63545 inviting comment on the proposed data fields within the new Bank Secrecy Act (BSA) database that will support SAR filings by financial institutions required to file such reports under the BSA. Further, FinCEN published a notice of proposed rulemaking (NPRM) in the *Federal Register* to include the AML and SAR reporting and recordkeeping requirements on residential mortgage lenders and originators on December 9, 2010 @ 75 FR 76677.

9. Payments or Gifts.

No payments or gifts will be made to respondents.

10. Assurance of Confidentiality of Responses.

Information provided to the government on the Suspicious Activity Report form is expressly prohibited from disclosure to any person involved in the transaction under 31 U.S.C. 5318(g) (2), and implementing regulations, and the participating agencies' Privacy Act notice makes clear that the system of records is intended for the official use of law enforcement. Appropriate system security safeguards will be put in place to protect against unauthorized access.

11. Justification of Sensitive Questions.

No sensitive questions were asked.

12. Estimated Annual Burden.

Suspicious Activity Reporting (SAR) for loan and finance companies will be codified under 31 CFR 102.14. This information will be required to be provided pursuant to 31 USC 5312(g) and 31 CFR 103.14 and will be used by law enforcement agencies in the

enforcement of criminal and regulatory laws and to prevent loan and finance companies from engaging in illegal activities. This collection of information is mandatory.

No. Respondents	No. Responses Per Respondent	No. Annual Responses	Hours Per Response	Total hours
31,000	1	31,000	2.00	62,000

*NOTE:* The AML reporting associated with the loan and finance companies contained in this rule will be added to currently approved information collection OMB number 1506-0035, at the time this rule is published final.

13. Estimated Annual Cost to respondents.

Not applicable.

14. Estimated Annual Cost to the Federal Government

Not applicable.

15. Reasons for Change in Burden.

This is a new requirement.

16. Plans for Tabulation, Statistical Analysis, and Publication.

Not applicable.

17. Request not to Display Expiration Date of OMB Control Number.

To avoid having to reprint the form to show a new date, we are requesting permission not to display the Office of Management and Budget expiration date on the Suspicious Activity Report by the Securities and Futures Industries form.

18. Exceptions.

Not applicable.