

SUPPORTING STATEMENT
Bank Secrecy Act Suspicious Activity Report
OMB Control Number 1506-XXXX

1. Circumstances Necessitating Collection of Information

In 1992, the Treasury was granted broad authority to require suspicious transaction reporting under the Bank Secrecy Act. (See 31 U.S.C. 5318(g)). FinCEN, which has been delegated authority to administer the Bank Secrecy Act, joined with the bank regulators in 1996 in requiring, on a consolidated form (the SAR form), reports of suspicious transactions. See 31 CFR 1020.320.

FinCEN and the bank regulators adopted the SAR in 1996 to simplify the process through which depository institutions ("banks") inform their regulators and law enforcement about suspected criminal activity. The SAR was updated in 1999 and again in 2003, (See 1020.320) In separate actions FinCEN expanded the SAR reporting to Money Services Businesses (March, 2000, See 31 CFR 1022.320), broker dealers (July, 2002, See 31CFR 1023.320), casinos (September 2002 See 1021.320) certain Future Commission Merchants (November, 2003, See 1026.320), life insurance companies (November 2005, See 1025.320), and mutual funds (May, 2006, See 1024.320).

All reporting financial institutions are required to retain a copy of any SAR filed and supporting documentation for the filing of the SAR for five years. See the above listed 31 CFR references and 31 CFR 1010.430. These documents are necessary for criminal investigations and prosecutions.

The filing of a SAR is necessary to prevent and detect the laundering of money and other funds at the filing institutions.

2. Method of Collection and Use of Data.

Information about suspicious transactions conducted or attempted by, at, through, or otherwise involving the reporting financial institution(s) is collected through the filing by the financial institution(s) with FinCEN of the SAR. FinCEN is developing a new system of record (SOR) to store the information collected. FinCEN has also developed and is currently using an e-filing system to collect the reported information and store the information in the SOR. The new system is planned to be operational in the fall of 2011. This new dynamic electronic unified collection tool will be an integral part of the new SOR. FinCEN will provide on-line access to the information collected to representatives of the various financial institution regulators and appropriate law enforcement agencies.

FinCEN, the financial institution regulators, and law enforcement agencies use the information on the SARs and the supporting documentation retained by the banks for criminal investigation and prosecution purposes.

3. Use of Improved Information Technology to Reduce Burden.

Using a computerized dynamic form provided by BSA E-filing, a financial institution may reduce the time required for its compliance staff to complete the information collection tool. A “fill-in” version is also available on the FinCEN public web site at <http://www.fincen.gov/forms>. This collection tool is a back-up to the BSA E-Filing dynamic version. The public website version may be printed should a filer require a paper version.

4. Efforts to Identify Duplication.

Prior to the SAR system, each of the bank regulators required collection of similar information independently and on separate forms and Treasury collected similar information on its separate currency transaction report. The SAR takes the place of all these separate reports and thus eliminates duplication.

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

The design of the BSA SAR is such that only the information normally associated with the filing institution is displayed. This design minimizes the time require to complete the report and thus the impact on small businesses.

6. Consequences of Less Frequent Collection on Federal Programs or Policy Activities.

With the automated dynamic BSA SAR system, the financial institution regulators, law enforcement, and industry alike benefit from improved detection of financial crime, analysis of trends, coordination of investigative efforts and improved data quality. If the BSA SAR were no longer required, law enforcement and regulatory efforts to fight crime and protect the safety and soundness of US Financial system would be severely hampered.

7. Special Circumstances Requiring Data Collection Inconsistent with Guidelines.

The reporting of suspicious activity on a BSA SAR may occur more frequently than quarterly, depending on the frequency of the activity. For reasons explained in paragraph 6 above, this information must be reported in a timely manner to enable law enforcement to take appropriate investigative action. Records must be kept more than 3 years because substantive violations of the law that may be indicated by the activity reported on the BSA SAR are generally subject to statutes of limitations longer than 3 years.

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

The BSA SAR¹ was developed in conjunction with the financial institution regulators, the

¹The requirement to file a BSA SAR and maintain records of the supporting documentation is embodied in 31 CFR

Department of Justice and its law enforcement agencies, and the Department of Homeland Security and its law enforcement agencies. The BSA SAR supports the action taken by the agencies in furtherance of the goals of the Attorney General's Bank Fraud Working Group. Additional input was received from the Bank Secrecy Act Advisory Group.

Approval of a dynamic information collection tool under the Paperwork Reduction Act (PRA) required a different approach. After consultation with Treasury's Office of Information Management and the Office of Management and Budget (OMB), it was decided that since a single Information Collection Request (ICR) would apply to seven separate reporting financial institutions (an possibly more in the future) that requesting public comment on the entire proposed BSA SAR database proposed data fields was in order. FinCEN issued a Federal Register notice (60-day notice, see 75 FR 63545, Oct. 15, 2010) detailing the requirement and requesting public comment. The comments received in response to the 60-day notice (discussed below) were carefully considered. The second public notice (issued by Treasury's Office of Information Management) advises the public that FinCEN is submitting the BSA SAR comments to OMB for review, and explains agency action taken as a result of the comments. FinCEN received 140 comments from 19 respondents. The comments have been posted to the FinCEN website for public review. (See the December 15, 2010, posting at http://www.fincen.gov/statutes_regs/frn/) An overview of the comments is provided below. The summarized comments along with the FinCEN and the FinCEN stakeholders disposition are in the MS Word document posted on ROCIS under this ICR's public comments tab.

General FinCEN/stake holder response to several comments received.

Based on the comments received, the dynamic form concept appears not to be fully understood by many filers. Several comments focused on the completion of all of the data elements. In fact, a filing institution will only complete those items that apply to that filing institution's report. For example, a securities filer completing a single BSA SAR would identify itself through a series of opening questions that would in response make available certain data elements specific to that filer (an existing example of this type of filing is the popular tax filing software provided by several companies). The filer would then select only those items available from the database that pertain to that filing. In this case, a BSA SAR securities filer could expect to complete up to 70 items including the narrative of the total available in the database of 282 possible items. This is in comparison to the current report where the filer would complete approximately 58 items including the narrative. It should be noted that when a filer registers with FinCEN as a BSA E-Filer many of the fields could be auto-filled, further reducing the reporting time. FinCEN will use third party databases to enable auto completion or enhance many of the entries. FinCEN will conduct several webinars to guide filing institutions through the dynamic filing process.

Among the most common comments were as follows:

Chapter X in the following sections 1020.320, 1021.320, 1022.320, 1023.320, 1024.320, 1025.320, and 1026.320. Chapter X became effective March 1, 2011.

Comment: Several respondents indicated concern that burden hours did not reflect the time required to complete and file a BSA SAR.

Response: FinCEN understands that this is a new reporting process and we recognize that the possibility of “joint reporting/filing” could increase the filing burden. After careful review and taking into account the respondents comments FinCEN believes that a 30 minute increase in the reporting burden is warranted to reflect the “joint filing” possibility (Currently, joint filling is less than 1% of total filings). The revised reporting burden will be 90 minutes and the recordkeeping burden will remain 60 minutes for a total PRA burden of 2 and ½ hours per joint filed report. The single institution filing will remain 60 minutes reporting and 60 minutes recordkeeping for a total of 2 hours.

Comment: In view of the availability of a wide variety of check boxes to describe the suspicious activity, several respondents suggested eliminating the BSA SAR narrative (Part V).

Response: While sometimes problematic, the value and flexibility of the narrative to law enforcement outweighs restricting the form to only check boxes. The financial institution regulators, FinCEN, and law enforcement believe that focus only on the suspicious activity check boxes could be seen as a limitation or restriction by filing institutions. Recommendation is not accepted.

Comment: Several respondents commented on the cost for implementing the BSA SAR reporting.

Response: FinCEN is very much aware of the cost involved in moving to a new system of record (SOR). In view of the severe limitations currently experienced with the existing database and reporting system, FinCEN, Treasury (Including IRS), and OMB all agreed that a move to a modern database and SOR was required. This change will require an investment not only by the government but by industry as well. In order to minimize the cost to industry, FinCEN will make available at no cost, the computer file specifications (XML Schema and ACSII) and formats.

Comment: Several commenters indicated that it would require 12 to 18 months to implement this change.

Response: FinCEN agrees that a transition period will be required but believes the estimate of 12 to 18 months is overstated in part because industry believes that it will have to undertake the same amount of coding that it has undertaken with respect to the rollout or update of other BSA forms. In this instance, however, as an aid to all BSA filers and to minimize the transition period as much as possible, FinCEN will make available to all filers the electronic file specifications and necessary coding to enable both ACSII and the XML Schema formats to support filing discrete reports and bulk or SDMC (computer-to-computer) reporting through the BSA E-File system. Special arrangements

will be provided to support paper filers of BSA reports in the interim as they transition to electronic reporting.

As reflected in the tables of attached disposition sheets, FinCEN treated the 140 comments as follows²:

- a. Accepted without change 16 comments (12%).
- b. Accepted with a modification (Recommendation amended) to meet system specifications 38 comments (28%).
- c. No database action required (suggestions that are noted or will be addressed in the instructions) 58 comments (42%).
- d. Deferred (comments involving planning actions such as paper filings that have not been made by management) 7 comments (0.5%).
- e. Noted. (Commenter pointed out a situation that we were aware of and will address when appropriate) 2 comments (0.2%).
- f. Declined. Comments that could not be accommodated by the database or were outside the scope of the CFR. 19 comments (14%).

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 BSA SAR is expressly prohibited from disclosure under 31 U.S.C. 5318(g)(2), and the participating agencies' Privacy Act notice makes clear that the system of records is intended for the official use of law enforcement and financial institution regulators. Appropriate system security safeguards are in place to protect against unauthorized access.

11. Justification of Sensitive Questions.

No sensitive questions are asked.

12. Estimated Annual Hourly Burden.

Estimated number of respondents: 83,455 (Broker-dealers, Casinos and Card Clubs, Depository institutions, Future Commission Merchants, Insurance companies, Money Services Businesses, and Mutual Funds)³

² See public comments posted in ROCIS under the public comments section

³ The following OMB Control numbers will be reduced to a burden of one (1) hour each in order to maintain the rule active: 1506-0006 (31 CFR 1021.320), 1506-0015 (31CFR 1022.320), 1506-0019 (31 CFR 1023.320, 1024.320,1026.320), and 1506-0029 (1024.320)

Estimated total annual responses: 1,335,280⁴

Estimated total annual burden hours: FinCEN has estimated 60 minutes for reporting and an additional 60 minutes for recordkeeping as required under the SAR rules and 31 CFR 1010.430.

2,670,560⁵ hours

A joint filing⁶ will increase the burden to 90 minutes reporting and 60 minutes recordkeeping for a total of 1 and ½ hours per report.

13. Estimated Annual Cost.

Not applicable.

14. Estimated Annualized Cost to Federal Government.

Not applicable.

15. Reasons for change in Burden.

The PRA burden for the BSA SAR retains the current two-hour burden for each individual filed report. This request is to reallocate that currently approved burden of each individual SAR to this new OMB control number. The total number of burden hours requested is increasing, but this is due to an increase in responses.

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 just to show a new date, FinCEN is requesting permission not to display the OMB expiration date on the SAR form.

18. Exceptions.

Not applicable.

⁴ Based on actual filings for calendar year 2010

⁵ The estimated burden for completing a single report by a single institution.

⁶ Two separate financial institutions filing a single SAR. This type of filing constitutes less than 1% of total filings.