

Suspicious Activity Report Filing Requirements for Non-Bank Residential  
Mortgage Lenders and Originators

**1. Circumstances necessitating collection of information.**

The statute generally referred to as the “Bank Secrecy Act,” (“BSA”) Titles I and II of Public Law 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5332, authorizes the Secretary of the Treasury, among other things, to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.<sup>1</sup> Regulations implementing Title II of the Bank Secrecy Act appear at 31 CFR Chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of the Financial Crimes Enforcement Network (“FinCEN”).

Section 5318(g) of the BSA authorizes the Secretary to require financial institutions to report suspicious transactions. Section 5318(g) also prohibits the notification of any person involved in the transaction that a suspicious activity report has been filed. Section 5318(g) was added to the BSA 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.

Non-bank residential mortgage lenders and originators (“RMLOs”) are required to report suspicious transactions to the Department of the Treasury.<sup>2</sup> A transaction would require reporting under the rule if the transaction is conducted or attempted by, at, or through a RMLO, involves or aggregates funds of at least \$5,000 and the RMLO 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 BSA;
- (iii) serves no business or apparent lawful purpose; or
- (iv) involves the use of the business to facilitate criminal activity.

Under 31 CFR 1029.320(c) and 31 CFR 1010.430(d), RMLOs are required to retain a copy of the any Suspicious Activity Report (“SAR”) filed and supporting documentation for the filing of the SAR for five years. These documents are necessary for criminal investigations and prosecution.

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<sup>1</sup> Language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, P.L. 107-56 (“USA PATRIOT Act”).

<sup>2</sup> The regulation at 31 CFR 1029.320(c) is titled “Reports by loan or finance companies of suspicious transactions.” At 31 CFR 1010.100 (III), “Loan or finance company” is currently only defined as Non-Bank Residential Mortgage Lenders and Originators.

2. Method of collection and use of data.

Information about suspicious transactions conducted or attempted by, at, though, or otherwise involving RMLOs will be collected through the filing of these forms in a central location determined by FinCEN. FinCEN and law enforcement agencies will use the information on the SARs filed by RMLOs for criminal investigation and prosecution purposes. Institutions required to file SARs must use FinCEN's BSA E-filing system, available at <https://bsaefiling.fincen.treas.gov/main.html>.

3. Use of improved information technology to reduce burden.

By using FinCEN's computerized filing system (BSA E-filing), a RMLO can reduce the time required for its compliance staff to complete the report. Discrete and batch versions are available on the FinCEN BSA E-File web site at <http://bsaefiling.fincen.treas.gov/main.html>.

4. Efforts to identify duplication.

No other similar information exists.

5. Methods to minimize burden on small businesses or other small entities.

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

6. Consequences to the Federal government of not collecting the information.

With the SAR 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.

According to 31 CFR 1029.320(b)(3), a SAR shall be filed no later than 30 calendar days after the date of the initial detection by the reporting RMLO of facts that may constitute a basis for filing a SAR under this section. If no suspect is identified on the date of such initial detection, a RMLO may delay filing a SAR for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection.

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.

On July 19, 2018, FinCEN published in the Federal Register a notice inviting comment for 60 days on the reporting of suspicious activity by RMLOs, 31 CFR 1029.320. (See 83 FR 34300). FinCEN received no comments in response to the notice.

9. Explanation of decision to provide any payment or gift to respondents.

No payments or gifts will be made to respondents.

10. Assurance of confidentiality of responses.

Information provided to the government on the SAR 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 are in place to protect against unauthorized access.

11. Justification of sensitive questions.

There are no questions of a sensitive nature in the collection of information. Any personally identifiable information collected under the BSA is strictly controlled as outlined in the FinCEN's Systems of Records Notice [http://www.fincen.gov/foia/files/FinCEN\\_79\\_FR\\_20969.pdf](http://www.fincen.gov/foia/files/FinCEN_79_FR_20969.pdf).

12 & 13. Estimated burden & cost of information collection.

The administrative burden of 1 hour is assigned to maintain the regulatory requirement in force. The burden for actual reporting is reflected in OMB Control number 1506-0065, the Bank Secrecy Act Suspicious Activity Report ("BSA-SAR").

Estimated burden cost: 1 X \$63.53 per hour = \$64.<sup>3</sup>

Total burden hours: 1.

Total cost: \$64.

Information Collection	# of Respondents	Annual # of Responses per Respondent	Total Responses	Hours per Response	Total Hours	Labor Cost per Hour	Total Labor Costs
BSAR	1 <sup>4</sup>	1	1	1	1	\$63.53	\$64
<b>TOTAL</b>			<b>1</b>		<b>1</b>		<b>\$64</b>

There are no non-labor costs associated with this collection of information.

14. Estimated annual cost to the federal government.

<sup>3</sup> The above Average Hourly Wage Rate is calculated from the May 2017 Bureau of Labor Statistics average hourly wage for "13-2061 Financial Examiners" of \$44.12, plus an additional 44% for benefits to produce a fully-loaded rate of \$63.53.

<sup>4</sup> The estimated number of respondents have been included in the totals for OMB control number 1506-0065, and are omitted here to avoid double-counting.

The estimated annual cost to the Federal Government is already included in OMB Control Number 1506-0065, and is omitted here to avoid double-counting.

15. Reasons for change in burden.

There is no change.

16. Plans for tabulation, statistical analysis, and publication.

There are no plans for tabulation, statistical analysis and publication.

17. Request not to display the OMB expiration date.

FinCEN requests that the expiration date of the control number of the regulation not be displayed so that there is no confusion as to whether the certification form is still valid. This request will not affect the normal 3-year Paperwork Reduction Act renewal process.

18. Exceptions to the certification statement.

There are no exceptions.