

National Credit Union Administration
SUPPORTING STATEMENT

Suspicious Activity Report by Depository Institutions
OMB No. 3133-0094

Summary of Action:

The National Credit Union Administration (NCUA) is requesting approval from the Office of Management and Budget (OMB) for clearance of information collection requirement contained in the proposed rule 12 CFR part 748, Bank Secrecy Act (BSA), published on January 22, 2021, at 86 FR 6586. This proposed rule would add a provision to 12 CFR §748.1(c) that would provide that the NCUA may exempt a FICU from the requirements of that section. The NCUA would consider the purposes of the BSA, as applicable, where an exemption request involves the filing of a Suspicious Activity Report (SAR) for potential money laundering or violations of the BSA, such as when the request simultaneously requires relief under FinCEN's parallel regulations.

A. JUSTIFICATION

1. Circumstances that make the collection of information necessary.

In 1992, the Department of the Treasury (Treasury) was granted broad authority to require suspicious transaction reporting under the Bank Secrecy Act (BSA). See 31 U.S.C. 5318(g). Treasury's Financial Crimes Enforcement Network (FinCEN), which has been delegated authority to administer the BSA, joined with the bank regulators¹ in 1996 in adopting and requiring reports of suspicious transactions on a consolidated suspicious activity report (SARs) form.² This simplified the process through which banks³ inform their regulators and law enforcement about suspected criminal activity.

The SAR was updated in 1999, 2002, 2006, and 2009. In 2011, FinCEN transitioned from industry specific paper forms to one electronically filed dynamic and interactive BSA-SAR for use by all filing institutions. This e-filing portal became mandatory on July 1, 2012. (<http://bsaefiling.fincen.treas.gov/main.html>)

Credit unions are required to retain a copy of the BSA-SAR filed and supporting documentation for the filing of the BSA-SAR for five years. See 31 CFR 1020.320(d) and 31 CFR 1010.430. These documents are necessary for criminal investigations and prosecutions.

¹ The four federal functional institution supervisory agencies are the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller Currency, and the National Credit Union Administration.

² See 12 CFR 208.62, 211.5(k), 211.24(f), and 225.4(f) (Board of Governors of the Federal Reserve System); 12 CFR 353 (Federal Deposit Insurance Corporation); 12 CFR 748 (National Credit Union Administration); 12 CFR 21.11 (Office of the Comptroller of the Currency); and 31 CFR 1020.320 (FinCEN).

³ Under the BSA, as implemented by 31 CFR 1010.100, the term "bank" includes each agent, agency, branch or office within the United States of commercial banks, savings and loan associations, thrift institutions, credit unions, and foreign banks.

2. Purpose and use of the information collected.

Information about suspicious transactions conducted or attempted by, at, through, or otherwise involving credit unions are collected through FinCEN's BSA E-filing system (<http://bsaefiling.fincen.treas.gov/main.html>) by credit unions. A SAR is to be filed no later than 30 calendar days from the date of the initial detection of facts that may constitute a basis for filing a SAR. If no suspect can be identified, the period for filing a SAR is extended to 60 days.

A FICU may request an exemption for the requirements of the SARs reporting prescribed by paragraph (c) of §748.1, by providing a written request to NCUA. Exemption request will be considered in accordance with §748.1(c)(7).

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

3. Use of information technology.

The SAR system uses improved information technology to reduce burden on institutions and has been mandatory since 2012.

4. Duplication of information.

The required information is unique and not duplicated.

5. Efforts to reduce burden on small entities.

Not applicable. This collection does not have a significant impact on a substantial number of small credit unions.

6. Consequences of not conducting the collection.

With the automated SAR system, the banking regulators, law enforcement, and industry benefit from improved detection of financial crime, analysis of trends, and coordination of investigative efforts. The SAR requirement provides law enforcement and regulatory agencies with the ability to fight financial crime and ensures the safety and soundness of institutions.

7. Inconsistencies with guidelines in 5 CFR 1320.5(d)(2).

The reporting of suspicious activity on a BSA-SAR may occur more frequently than quarterly, depending on the frequency of the activity. This information must be reported in a timely manner to enable law enforcement to take appropriate investigative action. Records must be kept for 5 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. Efforts to consult with persons outside the agency.

A Paperwork Reduction Act (PRA) notice was published in the preamble of the proposed rule on January 22, 2021, at 86 FR 6586, providing an opportunity for the public to comment on the information collection requirements prescribed by this rule. Comments will be summarized and addressed in the PRA submission associated with the final rulemaking.

9. Payments or gifts to respondents.

There is no intent by NCUA to provide payment or gifts for information collected.

10. Assurance of Confidentiality.

Information provided to the government on BSA-SARs is expressly prohibited from disclosure under 31 U.S.C. 5318(g)(2). Appropriate system security safeguards have been put in place to protect against unauthorized access.

11. Questions of a sensitive nature.

There are no questions of a sensitive nature asked.

12. Burden of information collection.

The time spent by each credit union to file a SAR will vary, depending on the size and type of institution involved and the number of reportable transactions. The NCUA estimates that 2,932 credit unions will file approximately 188,087 SARs each year.

	12 CFR	Information Collection Activity	Type of Burden	# Respondents	# Responses per Respondent (frequency)	# Annual Response	Hours per Response	Total Annual Burden
1	748.1(c)	(c) Suspicious Activity Report. A credit union must file a report if it knows, suspects, or has reason to suspect that any crime or any suspicious transaction related to money laundering activity or a violation of the Bank Secrecy Act has occurred.	Reporting	2,932	64	188,087	1	188,087
2	748.1(c)(3)	A credit union must maintain a copy of any SAR that it files and	Recordkeeping	2,932	1	2,932	1	2,932

		the original or business record equivalent of all supporting documentation to the report for a period of five years from the date of the report.						
3	748.1(c)(7)(i)	PROPOSED NEW BURDEN: The NCUA may exempt any FICU from the requirements of paragraph (c) upon receiving a written request.	Reporting	50	1	50	2	100
Totals				2,932	65.16678	191,069	1.00026	191,119

Annual cost to respondent based on an hourly wage rate of \$35 is \$6,689,165.

13. Capital start-up or on-going operation and maintenance costs.

There are no capital/start-up or ongoing operations and maintenance costs associated with this information collection.

14. Annualized costs to Federal government.

There is no cost to the Federal government.

15. Changes in burden.

[Explain the reasons for any program changes or adjustments in the burden hours associated to your response to question 12 compared to previous. This response should address any changes from the previous approval of the collection. If no changes have been made then the following statement would be appropriate: "There are no changes to the information collection since the last OMB approval." If there are changes, then either a summary of those changes or a table describing each change should be included. The response should be detailed enough for the reader to track the reason for changes from the previously approved burden amount to the current burden request. Changes must be described as either:

- program changes - changes that were implemented proactively by the Agency (e.g., a regulatory change which eliminated or added reporting/recordkeeping requirements; a change in frequency of collection; a change in the method of collection) regardless of whether or not the changes were directed by legislation or
- adjustments - changes due to things not necessarily in the Agency's control (e.g., a change in the number of respondent, a change in program funding levels) or changes in the burden estimation approach (e.g., addition of a form currently in use, but not previously approved; a change in a burden estimate, changes due to previous miscalculations in the burden estimate).]

This proposed rule adds a provision to §748.1(c) that would allow FICUs to submit a written request to NCUA if it wishes to seek an exemption from the requirements of this section. There are 2,932 FICUs that currently file SARs annually. It is estimated that 50 of these FICUs would file for an exemption under the proposed new §748.1(c)(7); taking 2 hours per response, for a program change of an additional 100 burden hours. Total burden hours requests is 191,119.

16. Information collection planned for statistical purposes.

[For collections of information whose results are planned to be published, outline plans for tabulation and publication. If the Agency plans on performing certain analyses and developing statistics, reports, or other items summarizing the results of the collection activity, the response should describe each of these plans including a timeframe for development and publication. The response should clearly state whether the information will be distributed internally or externally.]

The information is not planned for publication.

17. Request non-display the expiration date of the OMB control number.

[If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate. Before responding to this question, the author should determine whether the Agency plans to include an expiration date of the information collection approval on the form. This is not to be confused with other dates printed on the form such as the form creation date or the last revision date.]

Not applicable.

18. Exceptions to the Certification for Paperwork Reduction Act Submission.

There are no exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods.

This collection does not employ statistical methods.