

United States Department of the Treasury
Financial Crimes Enforcement Network

FinCEN Interpretive Guidance

Subject: Interpretation of Suspicious Activity Reporting Requirements to Permit the Unitary Filing of Suspicious Activity and Blocking Reports

Date: December 2004

This FinCEN interpretive guidance clarifies that reports filed with the Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) of blocked transactions with Specially Designated Global Terrorists, Specially Designated Terrorists, Foreign Terrorist Organizations, Specially Designated Narcotics Trafficker Kingpins, and Specially Designated Narcotics Traffickers will be deemed by FinCEN to fulfill the requirement to file suspicious activity reports on such transactions for purposes of FinCEN’s suspicious activity reporting rules. However, the filing of a blocking report with OFAC will not be deemed to satisfy a financial institution’s obligation to file a suspicious activity report if the transactions would be reportable under FinCEN’s suspicious activity reporting rules even if there were no OFAC match. Moreover, to the extent that the financial institution is in possession of information not included on the blocking report filed with OFAC, a separate suspicious activity report should be filed with FinCEN including that information.

Background

The Bank Secrecy Act authorizes the Secretary of the Treasury to require financial institutions to report “any suspicious transaction relevant to a possible violation

of law or regulation.”¹ Under this authority, FinCEN has issued regulations requiring banks, securities broker-dealers, introducing brokers, casinos, futures commission merchants, and money services businesses, to report suspicious activity that meets a particular dollar threshold.² Each rule includes filing procedures requiring that a suspicious transaction shall be reported by completing a suspicious activity report and filing it with FinCEN in a central location to be determined by FinCEN. Generally, the rules provide a financial institution with thirty days from the date of the initial detection of suspicious activity to file a report, with an additional thirty days if the financial institution is unable to identify a suspect. Reports are filed on forms developed for each industry subject to the reporting requirement.³

OFAC administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction. OFAC’s Reporting, Procedures and Penalties Regulations at 31 CFR part 501 require U.S. financial institutions to block and file reports on accounts, payments, or transfers in which an OFAC-designated country, entity, or individual has any interest.⁴ These reports must be filed with OFAC within ten business days of the blocking of the property.⁵

¹ See 31 U.S.C. 5318(g)(1).

² See 31 CFR 103.17-21. The threshold for most financial institutions is \$5,000; transactions conducted at points of sale for money services businesses have a reporting threshold of \$2,000. See 31 CFR 103.20.

³ See TD F 90-22.47 (depository institutions); TD F 22.56 (money services businesses); FinCEN Form 101 (securities and futures industries); FinCEN Form 102 (casinos and card clubs).

⁴ 31 CFR 501.603.

⁵ 31 CFR 501.603(b)(1)(i).

Prior Guidance

Transactions involving an individual or entity designated on OFAC's list of Specially Designated Nationals and Blocked Persons as a global terrorist, terrorist, terrorist organization, narcotics trafficker, or narcotics kingpin⁶ may be in furtherance of a criminal act, and therefore relevant to a possible violation of law. Thus, blocking reports related to such persons also describe potentially suspicious activity. In the November 2003 edition of its "SAR Activity Review,"⁷ FinCEN instructed financial institutions to file suspicious activity reports on verified matches of persons designated by OFAC. While this guidance ensured that the relevant information would be available to law enforcement, it also resulted in financial institutions being required to make two separate filings with the Department of the Treasury – one with OFAC pursuant to its Reporting, Procedures and Penalties Regulations, and one with FinCEN pursuant to its suspicious activity reporting rules.

Revised Guidance

FinCEN is hereby revising its prior guidance to eliminate the need for duplicative reporting in cases where a financial institution identifies a verified match with individuals or entities designated by OFAC. As of the date of publication of this interpretation, FinCEN will deem its rules requiring the filing of suspicious activity reports to be satisfied by the filing of a blocking report with OFAC in accordance with OFAC's Reporting, Penalties and Procedures Regulations. OFAC will then provide the information to FinCEN for inclusion in the suspicious activity reporting database where it

⁶ The specific designations are as follows: specially designated terrorist; foreign terrorist organization; specially designated global terrorist; specially designated narcotics trafficker; specially designated narcotics trafficker kingpin. *See* 31 CFR Parts 595, 597, 598 and the Foreign Narcotics Kingpin Act, 21 U.S.C. 1901-08, 8 U.S.C. 1182. These categories of designations are subject solely to blocking requirements.

⁷ Issue 6 (Nov. 2003).

will be made available to law enforcement. This construction of the suspicious activity reporting rules will serve the public interest by enabling FinCEN to obtain and provide potentially important information about terrorists and major drug traffickers to law enforcement on an expedited basis without imposing duplicative reporting burdens on the regulated industry.

Accordingly, a financial institution that files a blocking report with OFAC due to the involvement in a transaction or account of a person designated as a Specially Designated Global Terrorist, a Specially Designated Terrorist, a Foreign Terrorist Organization, a Specially Designated Narcotics Trafficker Kingpin, or a Specially Designated Narcotics Trafficker, shall be deemed to have simultaneously filed a suspicious activity report on the fact of the match with FinCEN, in satisfaction of the requirements of the applicable suspicious activity reporting rule. This interpretation does not affect a financial institution's obligation to identify and report suspicious activity beyond the fact of the OFAC match. To the extent that the financial institution is in possession of information not included on the blocking report filed with OFAC, a separate suspicious activity report should be filed with FinCEN including that information. This interpretation also does not affect a financial institution's obligation to file a suspicious activity report even if it has filed a blocking report with OFAC, to the extent that the facts and circumstances surrounding the OFAC match are independently suspicious – and are otherwise required to be reported under existing FinCEN regulations. In those cases, the OFAC blocking report would not satisfy a financial institution's suspicious activity report filing obligation.

Further, nothing in this interpretation is intended to preclude a financial institution from filing a suspicious activity report to disclose additional information concerning the OFAC match,⁸ nor does it preclude a financial institution from filing a suspicious activity report if the financial institution has reason to believe that terrorism or drug trafficking is taking place, even though there is no OFAC match. Finally, this interpretation does not apply to blocking reports filed to report transactions and accounts involving persons owned by, or who are nationals of, countries subject to OFAC-administered sanctions programs. Such transactions should be reported on suspicious activity reports under the suspicious activity reporting rules if, and only, if, the activity itself appears to be suspicious under the criteria established by the suspicious activity reporting rules.

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⁸ Such a report would be a voluntary report under the statute and regulations. *See* 31 U.S.C. 5318(g)(3) (extending safe harbor protection from civil liability to voluntary filings).