

Supporting Statement for the Suspicious Activity Report by Depository Institutions (FR 2230; OMB No. 7100-0212)

Summary

The Board of Governors of the Federal Reserve System, under delegated authority from the Office of Management and Budget (OMB), proposes to extend for three years, with revision, the interagency Suspicious Activity Report by Depository Institutions (FR 2230; OMB No. 7100-0212). Since 1996, the federal banking agencies¹ and the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) have required certain types of financial institutions to report known or suspected violations of law and suspicious transactions. To fulfill these requirements, supervised banking organizations file Suspicious Activity Reports (SARs).² Law enforcement agencies use the information submitted on the reporting form to initiate investigations and the Federal Reserve uses the information in the examination and oversight of supervised institutions.

The proposed revisions make no substantive changes to the content of the information collection. The agencies propose to add new questions and eliminate questions that have proven to be less valuable to law enforcement for a net gain of eight data items. The agencies also propose to expand the scope of some questions as well as expand and clarify the instructions. In addition, the data items on the SAR would be rearranged, per law enforcement request, to supply the subject and suspicious activity information at the beginning of the reporting form. Copies of the current and proposed SAR and instructions are attached.

The Federal Reserve's SAR rules apply to state member banks, bank holding companies and their nonbank subsidiaries, Edge and agreement corporations, and the U.S. branches and agencies of foreign banks supervised by the Federal Reserve. The Federal Reserve is only responsible for the paperwork burden imposed on these institutions. Other federal banking agencies account for the paperwork burden for the institutions they supervise. The annual burden per respondent varies depending on the nature of the activity being reported. The agencies estimate that the proposed revisions would increase the estimated average hours per response to one hour from the current thirty minutes. Total SAR filings for year-end 2005 are not yet available. Based on November 30, 2005, data that shows 85,796 SARs filed by Federal Reserve supervised institutions, the current total annual burden for the Federal Reserve respondent institutions is estimated to be 46,800 hours and would increase to approximately 93,600 hours with the proposed revisions.

Background and Justification

In 1985, the Federal Reserve, along with the other federal banking agencies, issued voluntary procedures to be used by banks and other financial institutions operating in the United States to report known or suspected criminal activities to the appropriate law enforcement authorities and bank supervisors. The SAR filing requirement became effective on April 1,

¹ The federal banking agencies are the Federal Reserve Board, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the National Credit Union Administration.

² In 1996, the federal banking agencies and FinCEN issued nearly identical regulations to implement the SAR process for banking organizations.

1996. Prior to the effective date, the Federal Reserve, the other federal banking agencies, and FinCEN each issued new and nearly identical rules mandating the use of the interagency SAR for the reporting of suspicious activities. FinCEN has regulations requiring other types of financial institutions, such as brokers or dealers in securities and futures; money services businesses (money transmitters; issuers, redeemers and sellers of money orders and travelers' checks; check cashers, and currency exchangers); casinos and card clubs; and insurance companies³ to file reports on suspicious activities.

In January 2003, check boxes were added to Part III of the SAR for noting terrorist financing and identity theft as suspicious activities and updating the safe harbor language in the instructions to reflect changes made by the USA PATRIOT Act. Subsequent to these revisions, the number of SARs filed by depository institutions increased 67 percent. The reasons for the increased number of filings may include a heightened awareness and knowledge of activity that requires the filing of a SAR, along with improved monitoring systems at banking organizations. FinCEN's publication *SARs by the Numbers* attributes other possible reasons for the overall increase in filings to a 93 percent increase in mortgage loan fraud filings; a 70 percent increase in debit card fraud filings; and the addition of identity theft as a suspicious activity category.

Description of Information Collection

State member banks, bank holding companies and their nonbank subsidiaries, Edge and agreement corporations, and the U.S. branches and agencies of foreign banks supervised by the Federal Reserve follow the SAR instructions to determine when a SAR should be filed and what information should be included on the SAR.

Reporting Criteria

A banking institution must report known or suspected violations of federal law and suspicious transactions. An institution is generally required to file a SAR with respect to:

- Suspicious activity of any amount involving an insider,
- Violations aggregating \$5,000 or more where a suspect can be identified,
- Violations aggregating \$25,000 or more regardless of a potential suspect, or
- Violations aggregating \$5,000 or more that involve potential money laundering or violations of the Bank Secrecy Act.

An institution need not file a SAR for an attempted or committed burglary or robbery reported to the appropriate law enforcement agencies.

³ The Bank Secrecy Act (31U.S.C.5312(2)) defines brokers or dealers in securities and futures; money services businesses; casinos and card clubs; and insurance companies as financial institutions.

Existing SAR Requirements

Currently there are five data collection parts to the SAR, as set forth below.

Part I - Reporting Financial Institution Information collects information that identifies the respondent institution (its name and address, primary federal regulator, employer identification number (EIN) or taxpayer identification number (TIN), and the date on which the respondent institution closed, if applicable), the branch where the activity took place, the affected account number(s), if any, and whether such accounts have been closed as a result of the suspicious activity.

Part II - Suspect Information requires the respondent institution to describe the suspect, if one has been identified. This part collects the suspect's name, address, telephone numbers, occupation, social security number, EIN or TIN, forms of identification, and the suspect's relationship to the respondent institution. If the suspect is an insider, the respondent institution must report whether the suspect is still affiliated with the institution and, if not, whether the suspect has resigned, was suspended or was terminated. The report also requests the date the suspect ceased to be an employee of the respondent institution and whether the suspect made an admission or confession.

Part III - Suspicious Activity Information requires the respondent institution to describe the suspicious activity including the date of the activity, the dollar amount involved, a categorization of the type of activity, the amount of loss to the respondent institution as a result of the activity prior to any recovery, the amount recovered, whether the activity has affected the respondent institution's financial soundness, whether the respondent institution's bonding company has been notified, which law enforcement agency, if any, has been notified, and the name and phone number of any person contacted at a law enforcement agency.

Part IV - Contact for Assistance requires the respondent institution to provide the date on which the SAR was prepared and the name, title, and phone number of a person to be contacted for additional assistance.

Part V - Suspicious Activity Information Explanation/Description requires the respondent institution to provide a chronological and complete narrative account of the activity, including what is unusual, irregular, or suspicious about the activity.

Proposed Revisions

The federal banking agencies and FinCEN propose several revisions to the reporting form and instructions in order to enhance the clarity of the instructions, allow for joint filing of SARs, and to improve the usefulness of the SAR for law enforcement.

Data item 1 would be expanded to add two check boxes to indicate whether the respondent institution is filing an updated report (data item 1a) and whether the report is being filed jointly with another financial institution (data item 1b).

Part I - Subject Information would be moved from Part II to Part I and would collect information on the subject of the SAR. The section title would be changed to “Subject Information” from “Suspect Information.” Other proposed revisions to Part I are:

- Proposed data item 2a would be added to indicate whether multiple subjects are involved.
- Proposed data item 6, “Also known as (AKA-individual) or doing business as (DBA-entity),” would be added in order to standardize the “Subject Information” section among all SAR reporting forms.

Part II - Suspicious Activity Information would be moved from Part III to Part II and would describe activity the being reported. Proposed revisions to Part II are:

- Current data item 34, “Total dollar amount involved in known or suspicious activity,” would be increased to twelve digits from ten and would be renumbered as data item 22.
- Current data item 38, which collects information about the financial soundness of the respondent institution, would be moved to Part V, “Suspicious Activity Information-Narrative,” data item a.
- Current data item 39, regarding bonding company notification, would be deleted.
- Current data items 40-44, law enforcement contact information, would be moved to Part V, “Suspicious Activity Information-Narrative,” data item g.

Part III - Reporting Financial Institution Information would be moved from Part I to Part III and would collect information that identifies the respondent institution, the branch where the activity took place, the affected account number(s), if any, and whether such accounts have been closed as a result of the suspicious activity. Proposed revisions to Part III are:

- Proposed data item 26b would be added to indicate whether two or more financial institutions are jointly filing a single SAR.
- Proposed data item 29 would collect the respondent institution’s internal control or file number. Respondent institutions would be encouraged, but not required, to report an internal control or file number.
- Three check boxes would be added to proposed data item 33, “Primary Federal Regulator,” to identify the Internal Revenue Service (IRS), the Security and Exchange Commission (SEC), and Commodity Futures Trading Commission (CFTC) as regulators for purposes of a SAR joint filing.
- Proposed data item 35, “Relationship of subject (Part I) to the above listed financial institution,” would be moved from Part II, current data item 30, to Part III.
- Proposed data items 41-55 would provide additional space to collect information regarding other branch locations. If more than four branches were involved, the additional information would be provided in Part V, “Suspicious Activity Information-Narrative.”
- Current data item 13, “If institution closed, date closed,” would be deleted.

Part IV - Contact for Assistance information is consolidated here. The proposed data item 56, “Designated contact office,” would replace current data items 45-48, contact name and

title information. This revised information, coupled with an internal control or file number, would still provide law enforcement with adequate contact information while protecting the name of the contact person.

Part V - Suspicious Activity Information-Narrative requires the respondent institution to provide a chronological and complete narrative account of the activity, including what is unusual, irregular, or suspicious about the activity. Because the narrative is considered the most important part of the SAR, the list of information that should be included in the narrative would be expanded to aid the respondent in the completion of the SAR.

Finally, the instructions for completing the SAR would be expanded to include specific instructions for each data item on the reporting form. Items considered critical for law enforcement purposes have been marked with an asterisk.

Time Schedule for Information Collection

Generally, a SAR must be filed within thirty days after the date of initial detection of facts that may constitute a basis for such filing. In certain circumstances, the respondent may extend the time for filing to sixty days. Respondents may file online at <http://bsaefiling.fincen.treas.gov/index.jsp>, on paper, or by magnetic media. FinCEN makes copies of the reporting forms available for downloading from the FinCEN website at <http://www.fincen.gov/f9022-47-1.pdf>.

Legal Status

The Board's Legal Division has determined the SAR is required by law, pursuant to authority contained in the following statutes: 12 U.S.C. 248(a)(1), 324, 334, 625, 1844(c), 3105(c)(2), and 3106(a). The obligation to file a SAR is set forth in the Board's rules, and is mandatory (12 C.F.R. 208.62(c) (state member banks), 12 C.F.R. 225.4(f) (entities subject to the Bank Holding Company Act), 12 C.F.R. 211.5(k) (Edge and agreement corporations), and 12 C.F.R. 211.24(f) (branches, agencies, and representative offices of foreign banks)).

Section 5318(g)(2)(a)(ii) of Title 31 prohibits an officer or employee of the federal government from disclosing the existence of a SAR to anyone involved in the transaction, and section 5319 of Title 31 provides that all reports, including SARs filed thereunder are exempt from disclosure under FOIA. The information collected on a SAR is covered by exemptions three and seven of the Freedom of Information Act (5 U.S.C. 552(b)(3)(7)) and exemption two of the Privacy Act (5 U.S.C. 552a(k)(2))

Consultation Outside the Agency

As set forth above, the SAR was originally designed in 1996 by an interagency group that consisted of the federal banking agencies, the U.S. Departments of Justice and Treasury, and several law enforcement agencies. Representatives of these same agencies developed and concur with the proposed revisions.

Estimate of Respondent Burden

Approximately 7,000 state member banks, bank holding companies, Edge and agreement corporations, and U.S. branches and agencies of foreign banks filed 85,796 SARs as of November 30, 2005. Because year-end numbers are not yet available, it is estimated 93,600 SARs would be filed for the 2005 calendar year. Based on this year-end estimate, as set forth in the following table, the annual reporting burden for the Federal Reserve-regulated entities is estimated to be approximately 46,800 hours. As a result of the proposed revisions, the estimated average hours per response would increase from thirty minutes to one hour. This increase would cause the estimated annual burden to increase from 46,800 hours to approximately 93,600 hours. The annual burden per respondent institution varies depending on the nature of the activity being reported. The proposed burden represents less than 2 percent of total Federal Reserve System burden.

	<i>Number of respondents</i>	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
Current	7,000	13.3714	0.5	46,800
Proposed	7,000	13.3714	1.0	93,600
<i>Change</i>				46,800

Based on an hourly rate of \$35 per hour for bank officers or professional staff, the annual cost to institutions supervised by the Federal Reserve is estimated at \$3,276,000.

Sensitive Questions

This reporting form contains no questions of a sensitive nature, as defined by OMB guidelines.

Estimate of Cost to the Federal Reserve System

The costs to the Federal Reserve System are negligible. The Federal Reserve, as well as the other federal supervisors of financial institutions, distributes the form both on paper and in an electronic format. The Federal Reserve System has minimal data collection costs associated with SAR filings, as the filings currently go directly to the Internal Revenue Service Detroit Computing Center, which acts as the data base manager for FinCEN and the other federal banking agencies and makes the information available to the Federal Reserve electronically.