



Department of the Treasury Financial Crimes Enforcement Network

Guidance

FIN-2012-G002

Issued: March 29, 2012

Subject: Filing FinCEN's new Currency Transaction Report and Suspicious Activity Report

Today, the Financial Crimes Enforcement Network (FinCEN) began to accept the new Currency Transaction Report (CTR) and Suspicious Activity Report (SAR) into FinCEN's BSA E-Filing System. Together, these two new reports will replace FinCEN Form 104 (CTR), FinCEN Form 103 (CTR by Casinos), and all of the industry-specific SARs (TD F 90-22.47, FinCEN Form 101, FinCEN Form 102, and FinCEN Form 109), hereinafter referred to as "legacy reports."

While the new CTR and SAR forms do not create any new obligations or otherwise change existing statutory and regulatory expectations of financial institutions, this guidance is intended to assist institutions filing the new reports.

Timeline and Filing Method

FinCEN is now accepting the new CTR and SAR filings through the BSA E-Filing System. The BSA E-Filing System will continue to accept submissions of the legacy reports until March 31, 2013. Accordingly, until such time, financial institutions may choose to electronically file either the legacy or new reports, or any combination thereof.

In a separate action, FinCEN has mandated electronic filing of most reports through the BSA E-Filing System, beginning July 1, 2012.¹ While FinCEN strongly recommends that financial institutions begin to file electronically before the mandate takes effect, financial institutions may continue to file, via paper, the most currently available versions of the legacy reports before July 1, 2012.² The new CTR and SAR reports may only be submitted electronically.

¹ See Agency Information Collection and Reporting Activities; Electronic Filing of Bank Secrecy Act (BSA) Reports, Final Notice, 77 Fed. Reg. 12367 (2012), at <http://www.gpo.gov/fdsys/pkg/FR-2012-02-29/pdf/2012-4756.pdf>.

² See Important Notice for Financial Institutions, FinCEN Extends Deadline for Adopting New CTR and SAR (2011), at <http://www.fincen.gov/whatsnew/pdf/20111220.pdf>. The following are the currently available forms: FinCEN 101 (SAR-SF), dated March 2011, at http://www.fincen.gov/forms/files/fin101_sar-sf.pdf; FinCEN 102 (SAR-C), dated March 2011, at http://www.fincen.gov/forms/files/fin102_sar-c.pdf; FinCEN 103 (CTR-C), dated March 2011, at http://www.fincen.gov/forms/files/fin103_ctr-c.pdf; FinCEN 104 (CTR), dated March 2011, at http://www.fincen.gov/forms/files/fin104_ctr.pdf; TD F 90-22.47 (SAR-DI), dated March 2011, at http://www.fincen.gov/forms/files/f9022-47_sar-di.pdf; and FinCEN 109 (SAR-MSB), dated March 2011, at http://www.fincen.gov/forms/files/fin109_sarmsb.pdf.

Background

FinCEN's new CTR and SAR were developed through dialogue with our federal law enforcement and regulatory partners. The modernized information technology (IT) system is driven by the data collection instead of form design. The modernized IT system incorporates additional data elements for certain fields on the new CTR and SAR. Some of the data elements will trigger third-party data enhancements after the new reports are received by FinCEN, such as postal geographic validation of entries in address fields, which will help ensure consistency in reporting and allow users of FinCEN's modernized IT system to benefit from the enhanced information. All of these updates to the IT system will allow more advanced and sophisticated querying for our law enforcement and regulatory partners.

As part of the consultation process, FinCEN also requested public comments on the proposed report fields.³ Comments received regarding the development of the new modernized IT system have been incorporated to the extent possible. For more information on comments and dispositions, please see http://www.fincen.gov/forms/bsa_forms/.

This guidance clarifies certain inquiries posed by industry regarding the new reports. FinCEN recognizes that it may need to develop further guidance regarding the filing of the new reports to address additional questions. FinCEN will develop any future guidance through continued dialogue with the industry, law enforcement and regulatory communities. In addition, FinCEN will continue working with supervisory regulatory authorities as part of its ongoing efforts to promote consistent examination of these filing requirements.

On September 8, 2011, FinCEN released electronic filing requirements for the new CTR and electronic filing requirements for the new SAR. These technical specifications were released to allow the development of batch files of the new CTR and SAR for upload or transmission to the BSA E-Filing System.⁴ On February 17, 2012, FinCEN announced the availability of the BSA E-Filing System's User Test System Website to allow for testing submissions of batch and computer-to-computer filings of the new CTR and SAR.⁵ Additionally, the site offered a preview of the PDF versions of these new reports, for discrete filing. In the near future, FinCEN will be announcing additional educational webinars on the new reports to ensure all financial institutions are prepared to utilize the new reports no later than March 31, 2013.

³ See Proposed Collection; Comment Request; Bank Secrecy Act Unified Currency Transaction Report Proposed Data Fields, 76 Fed. Reg. 4747 (2011), at <http://edocket.access.gpo.gov/2011/pdf/2011-1587.pdf>; see also Proposed Collection; Comment Request; Bank Secrecy Act Suspicious Activity Report Database Proposed Data Fields, 75 Fed. Reg. 63545 (2010), at <http://edocket.access.gpo.gov/2010/pdf/2010-26038.pdf>.

⁴ See Important Notices to E-Filers: FinCEN Releases Technical E-Filing Specifications for New CTR and SAR (2011), Announces Informational Webinar, at http://www.fincen.gov/news_room/nr/pdf/20110902.pdf.

⁵ See Important Notice for Financial Institutions, FinCEN Releases Test Site for the New CTR and SAR (2012), at http://www.fincen.gov/news_room/nr/pdf/20120217.pdf.

Guidance

Characterizations of Suspicious Activity

FinCEN's new CTR and SAR are designed to accommodate all the different types of industries that will file these reports. As such, the new SAR contains certain sections of suspicious activity characterizations, which will generally be most relevant to a specific industry. When the filing institution's industry is selected, in the discrete version of the report, those sections specific to other industries will automatically be noted as not applicable, by being grayed out.⁶

In addition, the new CTR and SAR include a number of additional data elements pertaining to the type of suspicious activity and the financial services involved. The decision to include these additional data elements in the new SAR arose from extensive discussions with law enforcement officials. It was determined that the inclusion of such elements would facilitate more effective use of the information collected in the reports. FinCEN acknowledges that the expansion of these characterizations may create the need for clarification on how to select among the choices provided to depict the activity, as well as how to describe this information in Part V, the narrative.

FinCEN does not intend the issuance of the new SAR to create new obligations for filing institutions, or to change existing requirements or expectations. When evaluating suspicious activity and completing a SAR, institutions should report the characteristics of the suspicious activity and types of financial services that best apply, based on information that readily comes available during the course of their case reviews. FinCEN is making available the additional and more specific data elements (i.e., characterizations of suspicious activity and types of financial services) as a more efficient way to bring information about suspicious activity to FinCEN's and law enforcement's attention. Other than the Critical Fields (see the below section entitled "Critical Fields") filers should not consider the presence of the new and expanded lists of data elements as requiring them to determine as part of their reviews whether any and/or all apply to the matter being reported. As before, financial institutions should report the information that they know, or that otherwise arises, as part of their case reviews. Moreover, the addition of the new and expanded data elements does not create an expectation that financial institutions will revise internal programs, or develop new programs, to capture information that reflects the expanded lists. FinCEN continues to reiterate that institutions are not responsible for investigating the underlying suspected (or alleged) crime; investigations remain the responsibility of law enforcement. Institutions are responsible for reporting the information they know at the time they conclude that suspicious activity is present.

⁶ As an example, if the filer is a broker-dealer, then insurance and casino selections may be grayed out; if the filer is a depository institution, then casino and the broker-dealer selections are grayed out. The full implementation of this capability is still being developed. Filers may choose to enable and use these fields, as necessary, for example, in reporting activity that involves affiliated institutions across industry sectors. Institutions that batch file their reports may not have this feature, based on software design.

Critical Fields

Certain fields in the new CTR and SAR are marked as “critical” for technical filing purposes;⁷ this means that the BSA E-Filing System will not accept filings in which these fields are left blank. For these items, the filing institution must either provide the requested information or affirmatively check the “unknown” (Unk.) box that is provided with each critical field. This unknown box will thus supersede FinCEN’s previous guidance where we have requested that filers input “N/A” or “XX” in certain fields. For those fields that are not marked as “critical” for technical filing purposes, the BSA E-Filing System will accept reports, in which these fields have been left blank. FinCEN expects, however, that financial institutions will provide the most complete filing information available within each report consistent with existing regulatory expectations, regardless of whether or not the individual fields are deemed critical for technical filing purposes.

SAR Narrative

The SAR Narrative will remain a critical component of the SAR filing. However, with the flexibility of the suspicious activity section, it was determined that less characters may be necessary in the narrative section. Thus, the number of narrative characters has been limited to 17,000 characters (as compared to approximately 39,000 characters, in the legacy forms). However, the new SAR narrative also allows filers to include an attachment that the financial institution believes would be useful to law enforcement (see the below section entitled “Spreadsheet Attachments”).

Gender Field

FinCEN has been asked for guidance on the “Gender” Field (Item 4 of Part I: Subject Information on the SAR and Item 5 of Part I Person Involved in Transaction on the CTR). Based on feedback from law enforcement officials, information related to the gender of the subject could be an important characteristic for query purposes. As stated previously, for both the critical and noncritical elements, institutions should complete those items, for which they have relevant information. However, use of this field is not mandatory, and as the instructions indicate, this does not create an obligation for a financial institution to collect gender information, either manually or through an enterprise-wide IT management system, especially when such collection would be in conflict with the financial institution’s obligations under any other applicable law.

NAICS Code

FinCEN has also been asked for guidance on the use of the North American Industry Classification System (NAICS) code field (Item 7a on the SAR and Item 9a on the CTR). Law

⁷ Critical fields are denoted with an “*.” This differentiation between critical and noncritical items is consistent with the most current versions of certain legacy reports. *See, e.g.*, FinCEN Form 101, Suspicious Activity Report by the Securities and Futures Industries, and FinCEN Form 103, Currency Transaction Report by Casinos. This differentiation is also consistent with how the BSA E-Filing System currently accepts the legacy reports, requiring that certain fields be filled in before accepting a filing.

enforcement officials have indicated that the NAICS code is beneficial in CTR and SAR data; however, FinCEN emphasizes that financial institutions will continue to be expected to provide only that information, for which they have direct knowledge. Again, the issuance of the new CTR and SAR does not create any new obligation or otherwise change existing statutory and regulatory requirements for the filing institution. In addition, financial institutions are not required to become familiar with NAICS codes, as the appropriate list of codes is contained in a drop down menu that automatically populates the field. In addition, use of a NAICS code is not mandatory, and a financial institution may still provide a text response with respect to this information.

Fields Related to Internet Presence

The new SAR includes certain new elements related to the internet presence of subjects and suspicious activity, specifically the “E-mail address” and “Website (URL) address” fields within Part I: Subject Information and “IP address (if available),” in Part II: Suspicious Activity Information. These are items which many filers have previously included in the narratives of the legacy SARs in the context of describing suspicious activity. For example, to show that suspected criminal activity was being conducted from a specific internet site location. By providing a discrete space into which such information may additionally be entered, the new reports will facilitate FinCEN’s and law enforcement’s ability to make connections between elements reported across separate filings and external data sources. In doing so, FinCEN does not intend to create any obligation or expectation that financial institutions would collect this information as a matter of course. The narrative section of the report may be used to provide more information as to how an internet presence relates to the suspicious activity or to provide any other relevant email or IP addresses that may pertain to non-subjects.

Spreadsheet Attachments

The new SAR will accept a single, comma separated value (CSV) attachment as part of the report. The CSV is a standard Microsoft file format that aids in reporting tabular data into a file format. This capability allows an institution to include data (such as specific financial transactions and funds transfers or other analytics), which is more readable and usable in this format than it would be if otherwise included in the narrative. Such an attachment will be considered a part of the narrative and is not considered to be a substitute for the narrative. As with other information that may be prepared in connection with the filing of a SAR, it can also be considered supporting documentation when not attached to the SAR and should be accorded confidentiality to the extent that it indicates the existence of a SAR.

Tool Completion

Financial institutions will note that the line item instructions for the new SAR from Part I to Part V differ from the order that the discrete electronic collection tool is completed. Specifically, the automated discrete collection tool begins with Part IV, Filing Institution. For the majority of SARs filed, the filing institution and the location where the suspicious activity occurred are the same. By completing Part IV first, the collection tool is able to auto populate Part III, Location Where Activity occurred, if it is the same, thereby saving the filer having to re-enter the same

information again. Additionally, with the deployment of the enhanced e-filing registration process, the use of additional auto population options will be available, to further reduce manual entry of certain fields, in the electronic collection tool.

Timeframe for Filing CTRs

FinCEN announced a change in the CTR electronic filing specification for the CTR from the current 25-days to 15-days.⁸ FinCEN regulations have consistently maintained a regulatory requirement that CTRs be filed within 15 days.⁹ Notwithstanding this requirement, in connection with its receipt of magnetic media files initiated in late 1987, and ending in December 2008, FinCEN issued electronic specifications referencing a 25-day period, to assist institutions seeking to take advantage of this filing method via a common business practice of submitting magnetic media files on a fixed schedule. The 25-day period was implemented to account for physically transporting (shipping) the magnetic media to the processing center in Detroit, Michigan. FinCEN understands that this business practice has continued with respect to batch e-filing, particularly considering public guidance referencing the 25-day period. In light of the comments received and acknowledging that some financial institutions may need to change their business processes to become compliant with the rules, FinCEN has determined that it will temporarily maintain the 25-day compliance period referenced in its earlier specifications until March 31, 2013. This temporary extension to the filing requirements should allow sufficient time for filers to adjust submission schedules to meet established regulatory requirements.

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Questions or comments regarding the contents of this Guidance should be addressed to the FinCEN Regulatory Helpline at 800-949-2732.

⁸ The FinCEN CTR filing specifications may be viewed at <http://bsaeifiling.fincen.treas.gov/news/FinCENCTRElectronicFilingRequirements.pdf>. See Appendix D, page 49.

⁹ See 31 CFR 1010.306(a)(1).