

Supporting Statement for the Suspicious Activity Report (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 minor revisions, the interagency Suspicious Activity Report (FR 2230; OMB No. 7100-0212). Since 1996, the federal banking supervisory agencies 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 financial institutions file Suspicious Activity Reports (SARs).¹ Law enforcement agencies use the information reported on the form to initiate investigations, and Federal Reserve staff use the information in the examination and oversight of supervised institutions.

The proposed revisions would make no substantive changes to the content of the information collection. They include adding two new check boxes to Part III of the SAR for noting terrorist financing and identity theft as suspicious activities² and updating the "safe harbor" language in the SAR instructions to reflect changes made by the USA PATRIOT Act.³ Copies of the current and proposed SAR and instructions are attached.

The Board'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. The Federal Reserve estimates that the average burden per SAR will remain at thirty minutes. The total annual burden for the Federal Reserve respondent institutions is estimated to be 5,581 hours.

Background and Justification

The current SAR process became effective on April 1, 1996. Prior to the effective date, the Board, the other federal banking supervisory agencies, and FinCEN each issued new and nearly identical rules mandating the use of the interagency SAR for the reporting

¹ In 1996, the Federal Reserve together with the other federal banking supervisory agencies (the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the National Credit Union Administration and the Department of the Treasury's Financial Crimes Enforcement Network) issued nearly identical regulations to implement the SAR process for banking organizations. These agencies will publish a joint notice of the proposed revisions to the SAR.

² Currently, financial institutions are instructed to check the "other" box on SARs to report potential identity theft and terrorist financing.

³ The USA PATRIOT Act clarified the "safe harbor" provision relating to the non-disclosure of SARs in arbitration proceedings.

of suspicious activities. To date, financial institutions have filed over 200,000 SARs. Recently, FinCEN has finalized regulations requiring additional types of financial institutions such as securities broker-dealers to file mandatory reports on suspicious activities as required by the USA PATRIOT Act. Division staff will ask the Board to amend the provision of Regulation Y that requires broker-dealer subsidiaries of bank holding companies to file SARs under the Board's rules. The amendment would be effective on January 1, 2003, the date the Treasury rule becomes effective.

Description of Information Collection

State member banks, U.S. branches and agencies of foreign banks, Edge and agreement corporations, and bank holding companies and their nonbank subsidiaries follow the SAR instructions to determine when a SAR should be filed and what information should be included on the SAR. The SAR instructions contain all regulatory reporting requirements, therefore, they are also used to determine compliance.

Reporting Criteria

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

- 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. In addition, an institution need not file a SAR for missing or counterfeit securities that are the subject of a report pursuant to Rule 17f-1 under the Securities Exchange Act of 1934.

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 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 institution. If the suspect is an insider, the 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 reporting financial 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 as a result of the activity prior to any recovery, the amount recovered, whether the activity has affected the institution's financial soundness, whether the 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

To help improve the usefulness of the SAR, law enforcement, the federal banking supervisory agencies and FinCEN propose several revisions to the form and its instructions. The proposed revisions would make no substantive changes to the content of the information collection. They include adding two new check boxes to Part III of the SAR, Suspicious Activity Information, question 35 for noting terrorist financing and identity theft as suspicious activities. The proposed revisions also would include updating the "safe harbor" language in the SAR instructions to reflect changes made by the USA PATRIOT Act. The Act clarified the "safe harbor" provision related to the non-disclosure of SARs in arbitration proceedings.

Reporting and Recordkeeping Procedures

An institution must retain a copy of the SAR and the original or business record equivalent of supporting documentation for a period of five years. The institution must identify and maintain supporting documentation in its files and must make such documentation available to law enforcement agencies upon their request. Supporting documentation is deemed to have been filed with the SAR, even though it is maintained by the respondent, and is available to law enforcement officials without the need for judicial process, such as a search warrant or subpoena.

The management of an institution must report the filing of all SARs to the board of directors of the bank or a designated committee thereof. Institutions are encouraged to file SARs with state and local law enforcement agencies.

SARs are confidential. Institutions must deny requests for SARs or the information contained therein. A request for a SAR or the information contained therein must be reported to the Board and maintained for a period of five years from the date of filing. Failure to file a SAR, in accordance with the requirements of the regulation, may subject the respondent, or its directors, officers, employees, agents, or other institution-affiliated parties to supervisory action.

Section 5318(g) of Title 31 of the United States Code, provides a "safe harbor" that protects the respondent from civil liability under any federal, state, or political subdivision of any state or under any contract or other legally enforceable agreement (including any arbitration agreement) for the filing of a SAR.

Time Schedule for Information Collection

Generally, a SAR must be filed within thirty days of the detection of the suspicious activity that warrants the filing. In certain circumstances, the respondent may extend the time for filing to sixty days. Respondents may file their reports on paper or by magnetic media. FinCEN makes blank copies of the forms available for downloading from the Internet at (<http://www.treas.gov/fincen/f9022-47-1.pdf>).

Legal Status

The Board's Legal Division has previously determined the following rules authorize the Federal Reserve to require the SAR:

- 12 C.F.R. 208.62(c) (state member banks),
- 12 C.F.R. 211.5(k) (Edge and agreement corporations),
- 12 C.F.R. 211.24(f) (branches, agencies, and representative offices of foreign banks), and
- 12 C.F.R. 225.4(f) (entities subject to the Bank Holding Company Act).

The information collected on a SAR is confidential pursuant to exemption seven of the Freedom of Information Act (5 U.S.C. 552(b)(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 supervisory 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 10,000 state member banks, bank holding companies, Edge and agreement corporations, and U.S. branches and agencies of foreign banks filed 11,162 SARs from May 2001 through May 2002. The burden per respondent varies depending on the nature of the activity being reported. The annual reporting burden for the Federal Reserve regulated entities is estimated to be 5,581 hours, as set forth in the following table. This represents less than one 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>
FR 2230	10,000	1.1162	30 minutes	5,581

Based on an hourly rate of \$35 per hour for bank officers or professional staff, the annual cost to the public is estimated at \$195,335.

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 go directly to FinCEN, which acts as the data base manager and makes the information available to the Federal Reserve electronically.