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To: [Comments_Regulation](#)
Subject: BSA-SAR Database
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Ladies and Gentlemen:

Although I support efforts to streamline the SAR process by making SARs simpler and easier to complete, and efforts to increase the utility of information to law enforcement, I am concerned that FinCEN's proposed changes do not satisfy either of these goals.

Despite the notice's statement to the contrary, it is evident that the notice has the effect of imposing several entirely new, de facto regulatory requirements, and of substantially changing and increasing the already considerable requirements related to suspicious activity reporting. If hundreds of new fields and sub-fields are created, then during examinations of institutions, regulators will treat each of those fields and sub-fields as non-optional and as critical pieces of information. They will treat SAR attachments similarly, as non-optional, crucial components of a complete and accurate SAR, under the newly revised, moving target known as "best practices."

FinCEN requested comments on whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility. Many of the new requirements appear to be neither necessary for the proper performance of the functions of the agency, nor do they have practical utility as information. The most troubling aspect is the proposed capability to attach a file containing transaction details (account history) in tabular form. Excel spreadsheets are frequently completed manually, and may often contain errors and omissions that are not present in the official institution records such as copies of relevant transactions. For this reason, such spreadsheets should not be the basis for law enforcement's analysis of a subject's financial activity; instead, they should rely on official institution records (already available upon request, as FinCEN considers them to be "filed with" the reports). In instances where law enforcement finds the spreadsheets to be a valuable tool, the responsibility for correctly creating the spreadsheet should remain with law enforcement, and not be irrevocably shifted to the financial industry by the mere inclusion of an electronic paperclip.

Further, I remind readers that the only transactions to which law enforcement gains access by means of a SAR are the transactions identified and reported as suspicious. Thus, monthly statements – or other compilations such as spreadsheets identifying all account activity – are, in almost every case, not subject to lawful disclosure to law enforcement in connection with the filing of a SAR. The only transactions that can be disclosed – either in the report or its supporting documents – are those that the institution has specifically and intentionally decided are "suspicious." If a monthly statement contains additional transactions – purchases of cups of coffee or gasoline, payments to utility companies, rent payments, additional items or deposits – that have not been deemed "suspicious," then the monthly statement must be redacted to

exclude this information. It is much more expedient to simply not include monthly statements – or spreadsheets containing non-suspicious transactions – as supporting documents.

The excel attachment idea also represents vast amounts of additional effort and expense, on the part of the financial industry. Shortly after such capability becomes an option, the industry's regulators will begin to assert that a spreadsheet attachment is a new requirement for reports concerning more than two or three transactions. They will carefully scrutinize the spreadsheets to look for any missing transactions that they subjectively believe "should have been" included, or transactions that were keyed into the spreadsheet incorrectly (i.e., \$9,898.98 instead of \$9,898.89). There will also be substantial opportunity to criticize the data chosen by the institution for inclusion in the spreadsheet (i.e., why are dates provided but not times of day, or branch identifiers but not branch addresses, or amounts of cash in each deposit but not total deposit amounts for each deposit). The sources and types of possible criticism for a spreadsheet are nearly endless.

The spreadsheet attachment capability, by causing new errors and omissions in filings, will become a tool for citing violations of the BSA, and will lead to further regulatory enforcement actions against the financial industry. This would be the result no matter how much guidance was issued to state that inclusion of an attachment was theoretically optional. Thus, this attempt to expand the quantity of information available to law enforcement in each report, since it will vastly increase the difficulty of accurately completing a SAR, will paradoxically be a motivator to institutions to file fewer SARs, leading to less information available to law enforcement. Institutions will be likely to cope with these new requirements by deeming some transactions non-suspicious rather than suspicious, or in other cases by closing accounts as soon as the first SAR is filed, or, even more effectively, by closing accounts before the \$5,000 reporting threshold is reached. Expanding the SAR reporting requirements could actually have the reverse of the intended effect of helping law enforcement identify and track suspicious activity.

FinCEN invites comment on the accuracy of the agency's estimate of the time burden of the collection of information. Though the current electronic report contains an estimate of 30 minutes per report (which almost any filer would say is a gross underestimate), and FinCEN's notice hazards an estimate of 60 minutes, our institution estimates that the typical report costs 3 hours of labor, and in some cases report completion time has exceeded 8 hours. This is because the reports are not just prepared in a manner that would satisfy the needs of law enforcement, but must instead be prepared in a manner that satisfies the expectations of examiners. Also, some initial reports detect activity that has been occurring for months or years, which must be tracked and identified in intricate detail, leading to many hours of labor for preparation prior to writing. We estimate that the new requirements outlined in FinCEN's notice – which more than triple the number of fields from 51 to well over 170 - will approximately double these time requirements, to an average of 6 hours per report.

The proposal states, "Given that the current proposal does not

change the SAR filing requirement itself, FinCEN does not anticipate that the current proposal will change the number of SARs being filed.” However, as the requirements would triple, and the likelihood for errors and therefore the regulatory risk would greatly increase with these new requirements, our institution would probably file fewer recurring reports. Since filing a report would be such a burden, the institution probably would be much more likely to close the account of the subject of the report, in order to prevent having to file the required continuing reports every 90 days.

FinCEN invites comments on ways to enhance the quality, utility, and clarity of the information to be collected. We propose the simplest way would be to entirely eliminate the narrative section. If FinCEN adopts the over approximately one hundred new data fields, many of which address highly specific transaction-type information, the relevance of the narrative will be eliminated. FinCEN should offer its proposed multiple-choice system, but only in place of the narrative. The multiple choice system will suffice for a narrative as long as FinCEN includes a very brief “other” space for creative answers, limited to, for instance, 150 characters. The dozens of sub-sets of information this proposal would require would take the place of a narrative. For instance, a narrative need not be written if the institution will be required to indicate, for reports of suspected money laundering, in addition to dates and amounts and subject information:

- a. Exchanges small bills for large bills or vice versa,
- b. Suspicion concerning the source or physical condition of funds,
- c. Suspicious currency exchanges,
- d. Suspicious designation of beneficiaries, assignees or joint owners,
- e. Suspicious EFT/Wire transfers,
- f. Suspicious receipt of government payments/benefits,
- g. Suspicious use of multiple accounts,
- h. Suspicious use of noncash monetary instruments, or
- i. Suspicious use of third-party transactors (straw-man).

With information of such detail in the data fields, there would be nothing of additional value to be described in the narrative. Similarly, there is no value to a narrative if the required multiple-choice selection for structuring reports (by far, the most common report type) will require the institution to indicate, outside of the narrative, whether the activity involved altering transactions, canceling transactions, multiple below-threshold transactions, or suspicious inquiries. There is additional regulatory risk that the narrative could be written to unintentionally contradict the dozens of new multiple choice fields. With this overhaul of the SAR, the narrative should be eliminated.

Some of the proposed data fields represent substantial burdens on time and resources. One is the requirement to input an NAICS code. Small-to midsize institutions (the vast majority of institutions) do not usually have this data, and the inclusion of this data field would lead to a requirement to determine the NAICS codes for each subject. This data field alone may take 15 to 30 minutes per subject, for institutions that do not routinely use such codes. I question whether most law enforcement agencies

routinely rely on NAICS codes. If they don't, why have filers provide them? Also, institutions are not required to know the "type" of TIN (whether it is EIN, SSN-ITIN, or Foreign), so an "unknown" box should be added there, at a minimum. Preferably, the "type" of TIN field should be eliminated. I question the utility of this information to law enforcement. The specific law enforcement agencies that could, in some instances, have an interest in TIN type, also currently enjoy the capability to determine the TIN type using their own resources. With this data field and numerous others, I question whether utility in some occasional reports triggers a need to include the data on all reports. I also feel that the filing institution's "designated email" field, for a contact person at the institution, should be entirely eliminated, as email is not a secure or acceptable manner of corresponding with an institution about suspicious activity.

FinCEN invites comments on ways to minimize the burden of the collection of information on respondents. I propose that for all cases other than "emergency" cases of national importance of a type to be specified by FinCEN, the first SAR should be due 60 days from the time the activity is deemed suspicious, rather than 30. Also, instead of continuous reports being due once every 90 days, in cases where the activity continues to be of the same type initially reported, filing every 180 days should be more than sufficient to meet the needs of law enforcement. The requirement to file every 90 days should be reconsidered in light of the frequency with which law enforcement is actually reviewing and taking action on reports filed. Further, FinCEN should issue some guidance clarifying (and lessening) interagency examination methods so that it is not up to individual, subjective interpretation at exam time. For instance, FinCEN should clarify that a SAR could be deemed adequate for examination purposes if: no required fields indicated by an asterisk on the form are omitted or left blank, and if timing requirements were met. FinCEN should take care to emphasize which data fields are entirely optional (if any), and to make it crystal clear that there is no requirement to include an attachment. There is currently too much opportunity for subjective criticism of SAR content, especially in the narrative, which is a motivator for financial institutions to file fewer SARs.

In conclusion, I feel that FinCEN should entirely reconsider its proposed changes, should choose not to include the capability to file an attachment, and should eliminate the narrative section if requiring several dozen new multiple-choice data fields.