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December 14, 2010

Regulatory Policy and Programs Division  
Financial Crimes Enforcement Network  
Department of Treasury  
P.O. Box 39  
Vienna, VA 22183

Attention: PRA Comments – BSA-SAR Database

Dear Sir or Madam:

The Independent Community Bankers of America<sup>1</sup> (ICBA) welcomes the opportunity to comment on the Financial Crimes Enforcement Network's (FinCEN's) notice and request for comment on the list of proposed data fields within the new Bank Secrecy Act (BSA) database that will support Suspicious Activity Report (SAR) filings by financial institutions.

FinCEN's proposal does not propose any new regulatory requirements but is seeking comment on technical matters as it transitions from a system originally designed for collecting paper forms to a modernized IT environment for electronic reporting.

While FinCEN is not proposing changes to requirements related to suspicious activity reporting, changes to the SAR form include several additional suspicious activity categories and subcategories from which filers may choose. Additionally, an option for unlimited entries in the "other" subcategory for type of instrument or product information is provided. ICBA supports the additional categories as they will help further identify and clarify the suspicious activities being reported. The check-off options for the additional categories also will ease filing burdens, particularly for those community banks that continue to file paper forms.

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<sup>1</sup> The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an everchanging marketplace.

With nearly 5,000 members, representing more than 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold \$1 trillion in assets, \$800 billion in deposits, and \$700 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at [www.icba.org](http://www.icba.org).

As with the previous form, filers must provide filing institution contact information when reporting suspicious activity. ICBA suggests that identifiable contact information be coded so that an unauthorized third party that inadvertently gains access to a SAR will not be able to identify the financial institution or employee that reported the suspicious activity. The confidentiality of SARs has been longstanding, and it is well understood that the sensitive financial information that is being reported in a SAR must be protected. In rare instances, the disclosure of a SAR could inadvertently result in notification to an individual involved in the reported transaction and may risk a community bank's relationship with its customer. The effects to the disclosing bank and employee can be severe. Not only would a bank be placed in a precarious position of defending the SAR filing and regaining the trust of its customer, but the subject named in the SAR would also know the employee that filed the report, which can create safety concerns for the employee.

In the narrative section of the SAR, institutions filing electronically may attach a file providing details of transactions related to the suspicious activity. We suggest that FinCEN emphasize and make clear in the instructions that these files are not required to be attached by the bank. We are concerned that having this option would create an expectation that additional files are necessary for completing a SAR. We also believe that additional guidance on the types of transaction details that banks are permitted to attach would benefit banks and further protect them from privacy laws. If a bank attached details of a transaction that did not expressly relate to the suspicious activity, the submission may not be protected from the exclusion in the Right to Financial Privacy Act<sup>2</sup> regarding information required to be reported in accordance with a Federal statute or rule, possibly subjecting the bank to liability. By providing additional guidance on the transaction details that are permitted to be attached, banks will be further protected from this potential liability.

ICBA appreciates the opportunity to offer comments in connection with FinCEN's notice of proposed rulemaking on changes to the data fields in its SAR form. If you have any questions about our letter or need additional information, please do not hesitate to contact me at 202-659-8111 or by email at [Lilly.Thomas@icba.org](mailto:Lilly.Thomas@icba.org).

Sincerely,

/s/

Lilly Thomas  
Vice President and Regulatory Counsel

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<sup>2</sup> 12 U.S.C. 3413(d)