

July 27, 2020

Policy Division
Financial Crimes Enforcement Network
P.O. Box 39, Vienna, VA 22183

Re: Docket Number FINCEN–2020–0004 and OMB control numbers 1506–0001, 1506–0006, 1506–0015, 1506–0019, 1506–0029, 1506–0061, and 1506–0065, Renewal Without Change of the Bank Secrecy Act Reports by Financial Institutions of Suspicious Transactions

Dear Sir or Madam:

The American Bankers Association (ABA)¹ appreciates the opportunity to comment on the Financial Crimes Enforcement Network (FinCEN) proposal to reassess the burdens associated with reporting suspicious activity through the Suspicious Activity Report (SAR) process.² The Bank Secrecy Act (BSA)³ requires financial institutions to file SARs to report suspected illicit activity, transactions which have no apparent or lawful purpose, or which are not the type of transaction a particular customer would be expected to conduct. The SAR form is critical to the nation's efforts to combat money laundering and terrorist financing, or as stated by the federal banking agencies, "Suspicious activity reporting forms the cornerstone of the BSA reporting system."⁴ Therefore, the burdens imposed by the SAR are not inconsequential. This request is to comply with the Paperwork Work Reduction Act of 1995 (PRA) which requires government agencies to receive approval from the Office of Management and Budget (OMB) before collecting data, including SAR data.

For the SAR form now in use, FinCEN estimates one hour as the average amount of time needed to process the form. This estimate includes the time needed to collect pertinent information, assess the activity, complete and file the form, and retain records. This estimate applies to all types of filers and all types of illicit activity. ABA supports FinCEN's decision to reconsider this one-size-fits-all approach.

To refine the current analysis, FinCEN proposes two key changes. First, the PRA estimate will include the cost to determine whether an alert merits a SAR filing, or the cost to document a decision not to file a SAR—factors that ABA members have identified as significant and that should be included.⁵ Second, FinCEN proposes to calibrate burden more accurately by

¹ The American Bankers Association is the voice of the nation's \$20.3 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard \$15.8 trillion in deposits, and extend more than \$11 trillion in loans. Learn more at www.aba.com.

² 85 *Federal Register* 31598, May 26, 2020, <https://www.govinfo.gov/content/pkg/FR-2020-05-26/pdf/2020-11247.pdf>

³ The Currency and Foreign Transactions Reporting Act of 1970, 31 U.S.C. 5311 et seq., commonly referred to as the Bank Secrecy Act, requires U.S. financial institutions to keep records of cash purchases of negotiable instruments, file reports of cash transactions exceeding \$10,000, and to report suspicious activity that might signify money laundering, tax evasion, or other criminal activities.

⁴ FFIEC BSA/AML Examination Manual, November 17, 2014, p. 60

⁵ See, e.g., ABA comment letter to Treasury, July 31, 2017, <https://www.aba.com/-/media/documents/comment-letter/cl-treas-revregs2017.pdf>

assigning estimates based on the type of institution doing the filing and the type of SAR being filed, basing these calculations on data from 2019 SAR filings.

Summary of the Comment

Bankers consistently identify BSA compliance as one of the most costly and burdensome regulatory mandates. Therefore, any steps to evaluate more precisely the burden is welcome, and ABA commends FinCEN for taking a closer look at the SAR filing process. While this effort is a good first step, we believe that more needs to be done to assess the true burden associated with SAR filing. FinCEN's assessment identifies significant costs and burdens, but it omits key components and miscalculates others. As a result, the revised SAR burden is imprecise; actual costs are greater than those FinCEN has identified; and more work is needed to accurately identify SAR burden. ABA stands ready to work with FinCEN to help with that analysis.

As part of the effort to re-assess and re-evaluate the SAR process, it will be important to identify elements and steps not yet included as well as re-evaluate others. For example, while the use of automation and technology has greatly expanded in the years since FinCEN last evaluated SAR burdens, FinCEN's approach greatly overstates the industry's reliance on automation. Evidence from the banking sector verifies that the process is still significantly manual and that should be reflected in the burden assessment.

In addition to the costs and burdens identified by FinCEN, ABA urges the agency to consider, and include in the calculation, the burdens created by inadequate communication between law enforcement and the financial industry, which degrades the efficiency and effectiveness of suspicious activity monitoring. For many years, ABA has urged FinCEN to promote law enforcement feedback to the financial sector.⁶ Although FinCEN has taken steps to improve communication, including the creation of FinCEN Exchange⁷ and advisories for the industry based on SAR data,⁸ much more is needed. Providing regular information about law enforcement priorities and criminal activities would facilitate more focused allocation of bank resources, which would generate better and timelier information to law enforcement—and reduce burden. Feedback also is critical to sustain a true public-private partnership in the war against illicit finance, money laundering, and terrorist financing.

One of the policy goals of the PRA is to “Ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared, and disseminated by or for the Federal Government.”⁹ This standard recognizes that a PRA analysis

⁶ In October 2008, ABA published a *Framework for Partnership*, a series of recommendations to improve the BSA process from a blue-ribbon panel of experts in the field, including several former FinCEN directors, <https://www.aba.com/-/media/documents/reports-and-surveys/ababsareport2008.pdf>. The *Framework* strongly encouraged greater feedback from law enforcement, a point that ABA again reiterated in a letter to Treasury on July 31, 2017 on BSA reform, <https://www.aba.com/-/media/documents/comment-letter/cl-treas-revregs2017.pdf>

⁷ See <https://www.fincen.gov/news/news-releases/fincen-launches-fincen-exchange-enhance-public-private-information-sharing> and <https://www.fincen.gov/resources/fin-exchange/fincen-exchange-frequently-asked-questions>

⁸ See, e.g., FinCEN's advisory on imposter scams and money mules, issued July 7, 2020, <https://www.fincen.gov/news/news-releases/fincen-issues-advisory-imposter-scams-and-money-mule-schemes-related-covid-19>

⁹ See Office of Personnel Management Paperwork Reduction Act Guide, version 2.0, April 27, 2011, <https://www.opm.gov/about-us/open-government/digital-government-strategy/fitara/paperwork-reduction-act-guide.pdf>

must weigh the burdens imposed with the benefit to the public of the information collection. However, the current analysis lacks and an estimate of the benefits of SAR filing. Without an understanding of the benefits, it is impossible to fully understand the SAR filing burden.

Reviewing SAR Data is a Good Beginning

In 2019, 12,148 financial institutions filed a total of 2,751,694 SARs. Of that total, banks filed over half of all SARs (54.4%).¹⁰ Approximately 85% of SARs were original reports as opposed to reports of continuing activity, and approximately 85% of SARs were filed using a batch filing method. Consistent with the Currency Transaction Report (CTR) burden analysis, FinCEN has used the data on SAR filings to group filers into tranches based on the volume of SARs filed. Using this approach, the top 10 filers (6 banks and 4 money services businesses) were assigned to the first tranche of large volume filers, and this group accounted for nearly half of all the SARs filed in 2019. The first three tranches, which accounted for the 52 top filers, represented only 2% of all filers, but were responsible for 81% of all SARs filed. At the other end of the scale, 56% of filers submitted fewer than 10 SARs annually. In other words, as with CTRs, the largest volume filers accounted for the bulk of reports and carried a disproportionate level of the burden.

ABA supports this assessment of burden by volume of activity. Presumably, large volume filers have more sophisticated operations and greater resources to devote to SAR processing. At the same time, it is important not to lose sight of the fact that smaller volume filers, which do not file SARs as frequently, often take longer to process an individual SAR because they are less familiar with the process and lack the sophisticated resources of larger companies.

Unlike a CTR, which is more objective in nature, each SAR requires an entirely different amount of research and decision-making. Each SAR requires analysis to determine whether to report and how to categorize the type of activity, to identify the main characters involved, and to explain what makes the activity suspicious or out of the ordinary. With this in mind, to analyze the burden, FinCEN identified what it believes are the key elements of the SAR process: (1) the number of persons identified as suspects; (2) the number of distinct activities identified; (3) the length of the narrative; and (4) whether the report includes an attachment. Based on the existing data, FinCEN identified two levels of SAR complexity for analysis: a standard SAR and a more complicated or extended SAR.

ABA agrees that the first two elements, the number of persons identified as suspects and the number of activities identified, are appropriate because both go to the complexity of the activity and the time and effort required to research what is transpiring to complete and file a SAR.¹¹

However, ABA disagrees that length of the narrative or use of an attachment are indicative in any way of the burdens associated with SARs. Analyzing the 2019 data, FinCEN found that approximately 44% of all SARs have narratives that do not exceed 2,000 characters (or about half of one page) while another 39% have narratives that are longer but that are still less than one page. In other words, 83% of all SARs have narratives of less than one page.

¹⁰ Money services businesses (MSBs) filed 32.9% of the SARs and credit unions filed 7.3% of the total.

¹¹ Analyzing the 2019 SAR data, FinCEN found that 60% of SARs identified one or two suspicious activities while another 38% listed between three and five suspicious activities.

To provide feedback to FinCEN, ABA conducted an informal survey¹² and received responses from approximately 60. Respondents disagreed that the length of the narrative is a good proxy for burden since the time and effort needed to investigate or analyze an underlying case may be completely unrelated to the length of the narrative. For instance, a SAR involving potential fraud may have a short narrative, but require much longer to investigate because the bank may have to contact customers to identify possible victims and perpetrators in order to understand the scope of the underlying fraud. Similarly, investigations that are large and complex may have a shorter narrative due to commonalities in activities and victim profiles, but they still require considerable time and effort to analyze the potentially suspicious activity. And, just as the narrative is an inappropriate proxy for burden, the use of attachments, which are optional, may have nothing to do with the underlying burden. Therefore, neither length of narrative nor use of attachments should be considered as proxies for SAR burden.

More is needed to understand the SAR Filing Burden

In addition to examining 2019 SAR data, FinCEN considered the overall process and analyzed some – but not all – of the steps involved. Acknowledging these to be part and parcel of the SAR system and burden, FinCEN identified the following steps: (1) maintaining a monitoring system, a process that varies in complexity based on the size and complexity of the institution; (2) reviewing alerts generated by the system; (3) transforming alerts into cases to gather additional information; (4) deciding whether to file; (5) documenting the analysis and determination, including documenting a decision to not file; (6) and filing the SAR, including the selection of supporting documents, completing the form, drafting the narrative and maintaining a record of the filing. Previously, only the last item (#6) was taken into account to assess the burden, clearly understating the actual burden imposed on filers.

For the current analysis, FinCEN has expanded the estimate to include stages 4 and 5. Although the first three stages are significant steps in the process, FinCEN is not including them due to the lack of sufficient information to estimate those burdens. However, more than 80% of ABA survey respondents reported that all six steps – not just the last three – should be factored in to a SAR burden estimate. Therefore, FinCEN should attempt to quantify the first three items, possibly by surveying representatives of the financial sector. Moreover, ABA members feel strongly that the six factors listed by FinCEN do not comprehensively measure SAR burden because there are additional factors that add significantly to the burden. Because FinCEN has omitted significant and critical elements of the SAR process from the analysis, ABA believes FinCEN's estimate is understated.

FinCEN's current analysis also distinguishes between original SARs and continuing SARs. The rationale for the distinction is that it should take less time to process a continuing SAR than it does to file an original SAR. Using the 2019 SAR data, FinCEN found that 2,335,559 SARs were original SARs, and 416,135 were continuing. However, ABA believes a finer distinction is needed. Bankers pointed out that while it takes less time to process a continuing SAR, when the bank investigates whether to file a continuing SAR and in the process identifies additional subjects or activities, the time and effort is more like an initial filing than a continuing SAR. Therefore, when assessing burden, continuing SARs should be limited to those which have the same subjects and activities as the original filing. It is not clear from the analysis whether FinCEN made this distinction.

¹² The anonymous survey was shared with ABA's National Best Practices Group representing approximately 100 bank institutions as well as ABA's Money Laundering Issues Groups. Response to the survey was voluntary.

Turning to original SARs, FinCEN wanted to identify the number of alerts that become full cases. Using statistics provided by the Bank Policy Institute (BPI) from a 2018 study, FinCEN determined that approximately 42% of alerts become cases subject to further analysis and, in turn, SARs. While ABA appreciates the use of data provided by the private sector for this analysis, we encourage FinCEN to broaden the scope of private sector groups that are included to ensure that the data reflects the experience of all industry participants, large and small. Less than 1/3 (30.91%) of the ABA survey respondents agreed that the percentages of alerts that result in actual cases is accurate. ABA recommends that FinCEN survey the industry to develop a representative sample of all types and sizes of financial institutions and from all geographies to develop a more representative percentage of the number of alerts that become cases and, in turn, SARs.

Using the available data and applying the 42% figure to SARs actually filed in 2019, FinCEN calculated that financial institutions would have had to review 5,560,854 cases to report the 2,335,559 original SARs. FinCEN estimates that the average burden to determine whether a case requires a SAR to be 20 minutes while the average burden associated with a continuing SAR will be much lower, or 3 minutes per case. Further, FinCEN estimates that it would only take 25 minutes on average to process an alert that did not lead to the filing of a SAR. Using these calculations, FinCEN determined the average hourly annual labor cost for the individuals involved in the process is \$49/hour (based on Bureau of Labor Statistics figures) and derived a total annual burden at 1,874,424 hours with a total cost of \$91,846,776. ABA believes these figures are significantly understated.

ABA survey respondents did not agree with FinCEN's time allocations. Nearly 95% answered that 20 minutes was not an accurate average for the amount of time needed to process a case. Similarly, they responded that three minutes does not accurately reflect the average time needed to process a continuing SAR. Less than half the bankers (44.64%) thought that 25 minutes to process an alert that did not lead to the filing of a SAR was accurate. Generally, respondents believe the time estimates should be significantly increased to reflect the actual amount of time needed to process a SAR.

Bankers offered a number of different estimates for the amount of time needed to process an alert and file a SAR. One banker suggested the time needed could be anywhere from 85 to 185 minutes depending on the complexity of the underlying activity. When a bank starts its investigation, initial findings can lead to a search for additional information, which can require analysis of information from different internal systems. In addition, external sources, such as public databases, may also need to be consulted. Also, during the process, each step has to be documented to support the final decision on whether or not to file a SAR, both for examiners and for internal investigators.

Beyond the estimates associated with the time for processing cases and alerts, ABA believes that the labor costs are also understated. Until now, FinCEN had based its time and labor estimates on 2010 data when most processing was manual. However, since 2011, FinCEN has required all filing to be through its e-filing system, which FinCEN believes reduces burden substantially. While ABA acknowledges that technology does reduce burden, we believe that FinCEN places too much emphasis on automation; bankers report that much of the process is still manual which in turn increases the labor costs associated with SAR filing.

As part of its assessment of the labor costs involved with analyzing SAR burden, FinCEN identified four staff level positions involved in the process: (1) general supervision (oversight);

(2) direct supervision; (3) clerical work to determine whether to file (i.e., information gathering); and (4) clerical work to complete the form, file the report, and maintain records.

Most of the survey respondents (57.89%) agreed with FinCEN that these are the appropriate roles to consider when analyzing SAR burdens. However, bankers question FinCEN's assumptions about the staff filling these roles—in particular, assumptions about the skills and training needed for each role. For example, 62.5% of the bankers thought that the initial processing required more than simple clerical skills. In addition, the unique skillset and experience required to determine whether a SAR should be filed is significantly greater than that contemplated by FinCEN. One banker from a large regional bank estimated the labor costs to be underestimated by 10 to 20% in Midwestern markets and as much as 50 to 60% for banks located on either coast. Therefore, ABA urges FinCEN to survey financial institutions to analyze the roles and skillsets banks require for processing SARs.

Additional Elements FinCEN Should Incorporate to Analyze Complexity

The complexity of the underlying activity affects SAR burden. The more complex the activity, the more burden associated with the SAR. FinCEN has begun to approach this, but there additional elements to incorporate to develop a means to calculate how complexity impacts SAR burden.

One element is the impact of risk on SAR processing. Because more time and effort is devoted to areas deemed riskier. Only last year, the federal banking agencies and FinCEN publicly emphasized the importance of risk in the AML process,¹³ something reiterated in the FFIEC BSA/AML examination manual released this past April 15.¹⁴ The risk factor is definitely a present factor in SAR processing as well, where the riskier the underlying factors, the greater effort and resources expended in investigating the activity.¹⁵ To a certain extent, this may correlate with greater complexity, but this is something that requires further analysis to quantify the impact that risk has on SAR processing and, in turn, SAR burden. FinCEN should survey the industry to quantify how risk affects SAR burden.

The source of the alert has an impact on the cost and burden of SAR processing. Nearly 85% of the bankers noted that monitoring systems are not the only source for alerts. In fact, one bank estimated that approximately 65% of its alerts are generated by bank staff and not monitoring systems, underscoring the importance of the need to distinguish burden based on the source of alerts. Anecdotally, bankers commented that the most productive and useful information often comes from alerts generated by business line staff. Those alerts often require additional time to investigate and analyze.

There are additional elements FinCEN should consider to understand complexity and, in turn, SAR burden. These include time spent to: to identify a suspect if one is not readily apparent, the extent and number of transactions involved in the activity, how recently the activity occurred, whether the activity took place over an extended period of time or was a single discrete transaction, and whether monitoring of account activity is needed before determining whether a SAR should be filed are all elements that determine burden. In addition, suspicious activities

¹³ April 2020 Updates to the Bank Secrecy Act/Anti-Money Laundering Examination Manual, <https://www.fincen.gov/news/news-releases/federal-bank-regulatory-agencies-and-fincen-improve-transparency-risk-focused>

¹⁴ Joint Statement on Risk-Focused Bank Secrecy Act/Anti-Money Laundering Supervision, issued July 22, 2019, <https://www.ffiec.gov/press/PDF/Interagency%20Statement.pdf>

¹⁵ For example, it takes less time and effort to investigate a suspicious activity involving a consumer account than it does to investigate a commercial account.

that are assessed by a team of bankers as opposed to a single individual adds time and effort to the process and when a bank needs to reach out to other financial institutions using the 314(b)¹⁶ process, that also should be factored into the equation. And, because FinCEN has encouraged banks to incorporate IP addresses into SAR filings when that information is available,¹⁷ researching and identifying that information is another factor to consider.

The Analysis is Missing Important Contributors to SAR Processing Burden

In addition to the preceding concerns with the approach used by FinCEN, ABA members also identified a number of elements that were not included but which should be factored into the burden analysis to derive a more accurate measure of SAR burden.

FinCEN's analysis includes estimates for the costs associated with installing and maintaining monitoring systems. However, FinCEN failed to factor in significant regulatory and operational costs associated with monitoring systems. They are subject to a host of regulatory requirements, including model validation and verification; operational risk governance; production support and performance monitoring, documentation, and remediation of model risk findings. 82.14% of survey respondents identified these obligations as a critical driver of monitoring system costs, and nearly 95% of the bankers believed that omitting them from the calculation seriously underestimates the burdens associated with SAR processing. FinCEN also has not factored in the costs associated with identification and vetting of software packages, installation of programs, maintenance, and updating programs as necessary. Because FinCEN is placing increasing emphasis on technology to meet BSA mandates, ABA believes that the SAR burden analysis must include the full range of the costs associated with automation and technology.

Another important element in any kind of government reporting which is missing from the FinCEN analysis is the quality control needed to ensure the accuracy of reports that are filed; one large bank estimated they conduct a quality analysis on 25 to 30% of all cases, spending 45 minutes on average on each quality control review.

There are other program factors that support the SAR filing process that also should be taken into account. As with any type of compliance program, there are costs associated with auditing the program, training to ensure bank staff understand the process and can detect unusual activity and alert appropriate bank staff when something unusual is detected.¹⁸ At the same time, keeping the board informed about SAR filings is another element that should be reflected in the burden analysis; one bank concluded that approximately 16 hours is spent each month producing information for the board. And apart from board reporting, internal reports, such as those to internal audit, can take an additional 30 hours each month. All these steps are required and should not be overlooked in the burden estimate. While it will be difficult to quantify the burden, some attempt should be made to incorporate these elements.

¹⁶ USA PATRIOT Act Section 314(b) lets financial institutions share information with one another to identify and report activities that may involve money laundering or terrorist activity.

¹⁷ See, e.g., FinCEN Advisory FIN-2016-A005, Cyber Threats Advisory, October 25, 2016, <https://www.fincen.gov/resources/advisories/fincen-advisory-fin-2016-a005>

¹⁸ For example, the recently updated sections of the Federal Financial Institutions Examination Council (FFIEC) *BSA/AML Examination Manual* includes detailed information on the type of training expected for bank personnel, including information about the type of suspicious activity that may affect a particular line of business, https://bsaaml.ffiec.gov/docs/manual/04_AssessingTheBSAAMLComplianceProgram/05.pdf ("Training programs should include examples of money laundering and suspicious activity monitoring and reporting that are tailored, as appropriate, to each operational area.")

Finally, one other factor that comes into play is when a SAR results in a request from a law enforcement agency to provide support documentation. This is a step that can be time consuming, especially for any review and analysis to ensure that only appropriate documents and data are released. One bank estimated this can consume several hours each month.

All of these are costs that are not reflected in the analysis but which are important to the SAR program and should be included. While difficult to identify, there should be a way for FinCEN to develop a logical estimate or proxy for this determination, as it has done in other areas. Reaching out to the industry, possibly through the Bank Secrecy Act Advisory Group (BSAAG),¹⁹ is certainly one approach that could be fruitful in developing a better understanding of the burden.

Conclusion

ABA appreciates and commends FinCEN for taking steps to better quantify the burdens associated with the SAR filing process. As the public and private sectors struggle to take steps to make the anti-money laundering and countering the financing of terrorism more effective and efficient, better understanding of the costs and burdens – as well as the benefits – of the existing regime, including SAR filing, is critically important. While FinCEN has taken a good first step, there are many additional factors that need to be included and others that should be adjusted. We look forward to working with FinCEN to reach that goal.

If you have any questions or need additional information, please contact the undersigned at rrowe@aba.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert G. Rowe", with a horizontal line extending from the end of the signature.

Robert G. Rowe, III
Vice President & Senior Counsel
Regulatory Compliance & Policy

¹⁹The Annunzio-Wylie Anti-Money Laundering Act of 1992 required the Secretary of the Treasury to establish a Bank Secrecy Act Advisory Group (BSAAG) consisting of representatives from federal regulatory and law enforcement agencies, financial institutions, and trade groups with members subject to the requirements of the BSA. BSAAG members advise the Treasury on the operations of the BSA.