



**America's
Credit Unions**

April 12, 2024

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

RE: Request for Comment Regarding Suspicious Activity Report Filing (Docket Number FINCEN-2024-0004)

Dear Sir or Madam:

On behalf of America's Credit Unions, I am writing in response to the Financial Crimes Enforcement Network's (FinCEN) request for comment (RFC) on its information collection associated with the Suspicious Activity Report (SAR).¹ America's Credit Unions is the voice of consumers' best option for financial services: credit unions. We advocate for policies that allow the industry to effectively meet the needs of their nearly 140 million members nationwide. As detailed below, we believe the burden estimate to complete a SAR of two hours is low, as members report the process taking closer to four hours per SAR. In addition, we support an increase in the SAR reporting threshold from \$5,000 to \$10,000.

General Comment

America's Credit Unions strongly supports FinCEN's efforts to track and investigate financial crimes involving money laundering and terrorist financing. Credit unions are not-for-profit financial cooperatives with a statutory mission to promote thrift and provide access to credit for provident purposes. Unlike other financial institutions, credit unions do not issue stock or pay dividends to outside stockholders. Instead, earnings are returned to members in the form of lower interest rates on loans, higher dividends on deposits, and lower fees. Credit unions exist only to serve their members, and as a result, credit unions' interest in their members' financial well-being and advancing the communities they serve takes on paramount importance.

Compliance with anti-money laundering and countering the financing of terrorism (AML/CFT) rules and regulations is expensive and places a tremendous burden on credit unions. While larger banks and non-bank mortgage lenders can afford to absorb the significant regulatory and compliance costs from the AML/CFT framework, these rules have made it significantly more difficult for credit unions to provide the affordable financial services credit union members depend on and deserve. The burden on credit unions is amplified by the fact that 45 percent of credit unions have fewer than ten employees.²

¹ Agency Information Collection; Comment Request; Suspicious Activity Report, 89 Fed. Reg. 9,913 (Feb. 12, 2024).

² Specifically, as of year-end 2023, 2,106 of the 4,700 credit unions have fewer than ten employees, and 2,149 (46 percent) had fewer than ten FTEs.

Suspicious Activity Report Burden Estimate

Reporting and recordkeeping requirements associated with FinCEN's AML/CFT rules are a significant (and increasing) strain on credit union compliance resources. In addition to the Currency Transaction Report (CTR),³ the SAR is frequently cited as a top compliance requirement that needs to be addressed. Specifically, FinCEN's rules require filing a SAR for several different types of transactions, including a transaction (or attempted transaction) that involves at least \$5,000 that the financial institution knows or suspects to involve funds associated with an illegal activity, is designed to evade Bank Secrecy Act (BSA) requirements, or generally has no apparent lawful purpose or is not of the variety the customer would normally engage in.⁴ Such transactions require the filing of FinCEN Form 111.⁵

Since completing a SAR places a reporting burden on impacted financial institutions, FinCEN is required under the Paperwork Reduction Act (PRA)⁶ to provide an estimate of the burden associated with filing a SAR.⁷ FinCEN has submitted a request to the Office of Management and Budget (OMB), as required under the PRA, to continue collecting information through the SAR from credit unions and other financial institutions that must comply with the AML/CFT reporting requirements. As part of this request, FinCEN estimates the average burden to complete a SAR is approximately two hours.

Based on recent outreach, it is America's Credit Unions' understanding that FinCEN's burden estimate is low. According to member credit unions, it takes around four hours for a credit union to complete a single SAR. The process involves more than simply filling in fields on the form. Each time a credit union receives an alert indicating that a SAR may be required, that credit union must conduct an initial review, followed by a detailed investigation prior to beginning the process of completing the actual SAR. While less time is required for a case of simple structuring, much more time is necessary to investigate complex cases, such as those involving multiple suspects and/or funds flowing through multiple accounts. Once the investigation is completed, then the SAR can be filled out, including the narrative and non-narrative fields. Further, some credit unions file SARs manually, increasing the time required to complete the process. As such, we ask FinCEN to adjust the burden estimate to accurately reflect the time necessary to complete a SAR, which we believe is four hours.

Outdated and Redundant Reporting and Recordkeeping

Credit unions report that of all the requirements for AML/CFT programs, the most burdensome and time consuming is working on open SAR investigative cases, monitoring members' accounts

³ 31 C.F.R. § 1010.311. On March 29, 2024, America's Credit Unions filed a letter with FinCEN in response to its Paperwork Reduction Act RFC pertaining to the CTR. As part of that letter, we urged FinCEN to reduce the reporting burden where possible, including by increasing the CTR reporting threshold from \$10,000 to \$30,000.

⁴ 31 C.F.R. § 1020.320(a)(2).

⁵ 31 C.F.R. § 1020.320(b).

⁶ Public Law 104-13, 44 U.S.C. 3506(c)(2)(A).

⁷ *Supra* note 1, at 9,914.

and transaction activity for unusual or suspicious activity, conducting the exhaustive research on potential suspicious activity scenarios, and filing the SARs (and CTRs). To relieve this disproportionate burden, the requirements related to the filing of these forms should be simplified and modernized.

Informing Risk-Based Reporting Through Feedback from Law Enforcement

Credit unions have repeatedly expressed a desire to understand how much of their reports are reviewed by law enforcement, contribute to investigations, and lead to prosecution. In any risk-based process, testing, reviewing, and updating assessments and assumptions is critical. However, credit unions rarely receive any information from law enforcement that would allow them to review, test, or confirm the credit unions' success in assisting law enforcement. As a result, credit unions have very little idea as to whether their AML/CFT compliance programs actually make positive contributions to the goals of the BSA.

Generally, credit unions are under the impression that the filings are of little use to law enforcement. If that is the case, the burden placed on credit unions by SAR (and CTR) filing requirements are unjustifiable and the current regime does not serve the goals of the BSA. If that is not the case, FinCEN should issue a report on these topics on an annual basis. These reports should include analytics indicating which types of reports, categories of information, and dollar amount thresholds are most useful to law enforcement. Where certain reports are not generating further investigation or prosecution, FinCEN or Congress must relieve credit unions of the burden of completing them, as they do not serve the purpose of the BSA.

Modernization of the Forms and Filing

Information from law enforcement should inform the reporting forms themselves. Fields that provide the information most useful to law enforcement should be identified. Some credit unions report that examiners have indicated that only the narrative at the end of the SAR form is used by law enforcement. If this is true, surely several fields in the forms can be incorporated into that narrative or eliminated and provided in response to requests for supporting documentation. If examiners are mistaken, guidelines for filing useful SARs that are informed by successful investigations would ensure everyone is on the same page. Fields of little or no use to law enforcement should be eliminated.

SAR and CTR forms should be combined into one form and submitted to a single place. This form should be streamlined and consolidated so the same information can be populated for either form, or the form can be used simultaneously for either a SAR or CTR. This relatively minor change in paperwork would greatly ease compliance burden and reduce the chance mistakes are made during reporting, without compromising efforts to prevent criminal activity. In addition, FinCEN should create a "simple structuring" SAR form instead of the standard Form 111, allowing credit unions to continue reporting relevant information to FinCEN but in a more streamlined manner.

Finally, the deadline to file a SAR should be extended from 30 days⁸ to 40 days for more complex cases. The more complex the case, the longer it takes to research the facts, which places substantial pressure on the credit union to timely file a SAR. These reforms would decrease the burden placed on smaller financial institutions by the BSA and the AML/CFT regime, without compromising the usefulness of reported information for law enforcement.

Outdated SAR Reporting Thresholds

Consistent with our advocacy efforts to increase the CTR threshold, we believe the SAR reporting thresholds should also be adjusted. As with CTRs, credit unions report that the number of SARs filed has increased over the last several years, close to the point of doubling. Unlike with the increase in CTR filings, the increase in SAR filings appears to actually be connected to an increase in suspicious activity of interest to law enforcement.

The inclusion of a threshold amount for triggering certain SAR filings clearly indicates a policy decision that some transactions are too *de minimis* to be useful to law enforcement or to justify the reporting burden for financial institutions. Without adjusting that threshold over time, inflation essentially defeats that policy decision, diluting the helpfulness of filed SARs and overburdening credit unions. We support an increase in the SAR reporting threshold from \$5,000 to \$10,000. Credit unions have indicated that such an increase would reduce the number of SARs filed, but at the same time would not reduce the quality of information to law enforcement, given that SARs would more likely only be filed on significant incidents requiring immediate attention.

Further, we continue to support legislative reform to the SAR thresholds, including increasing the \$5,000 threshold to \$10,000, which would have been achieved by the *Financial Reporting Threshold Modernization Act*.⁹ Such an increase would be conservative, appropriate, and more properly strike a balance between what is helpful to law enforcement and compliance burden for credit unions. As with the CTR threshold, America's Credit Unions supports the regular adjustment of the SAR thresholds. Given that SARs involve suspicious activity by definition, the appropriate thresholds should simply be driven by inflation to ensure the policy goal of the thresholds remain intact.

Redundant and Irrelevant Marijuana Limited SAR Filings

America's Credit Unions urges FinCEN to revisit the requirement to file marijuana limited SARs. Marijuana limited SARs are appropriate where a credit union is providing services to a marijuana-related business that it reasonably believes does not violate state law.¹⁰ While all parties recognize transactions violate Federal law, they are of little or no practical use to law

⁸ 31 C.F.R. § 1020.320(b)(3).

⁹ H.R. 2040, 117th Congress (2021), §2(a).

¹⁰ See, FinCEN Guidance, BSA Expectations Regarding Marijuana-Related Businesses, Fin-204-G001 (Feb. 14, 2014).

enforcement. The risk of money laundering or financing of terrorism associated with these transactions is not sufficient to justify the filings. These reports are essentially defensive, check-the-box filings that burden credit unions without making meaningful contributions towards the goals of the BSA and should be eliminated.

If the requirement cannot be wholly limited, FinCEN should consider allowing credit unions to file marijuana limited SARs once a year to indicate an ongoing relationship with the marijuana-related business, and intermittently when it becomes aware of significant changes such as changes in principals, location of the business, etc. This would achieve a better balance between the burden on credit unions and the goal to provide useful information in support of the BSA.

Conclusion

America's Credit Unions appreciates the opportunity comment on the information collection associated with the filing of a SAR. Should you have any questions or require any additional information, please contact Luke Martone, Senior Director of Advocacy & Counsel at LMartone@americascreditunions.org or (202) 508-6743.

Sincerely,

A handwritten signature in black ink that reads "Luke Martone". The signature is written in a cursive, flowing style.

Luke Martone
Senior Director of Advocacy & Counsel