

SAR / AML

SUSPICIOUS ACTIVITY REPORT FILING REQUIREMENTS For Residential Mortgage Lenders and Originators

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Suspicious Activity Report Filing Requirements for Residential Mortgage Lenders and Originators

The Financial Crimes Enforcement Network (FinCEN) has issued the Final Rule expanding the Suspicious Activity Report (SAR) filing requirement under the Bank Secrecy Act (BSA) to include Residential Mortgage Lenders and Originators (RMLOs).

The BSA applies to loan or finance companies, which FinCEN has now interpreted to include non-bank residential mortgage lenders and originators (RMLOs).

Previously, RMLOs were exempted from SAR and AML (anti-money laundering) requirements of the BSA, however upon review FinCEN discovered that “...the absence of SAR rules for RMLOs has resulted in a substantial gap in mortgage fraud related SAR reporting”.

Important Dates

EFFECTIVE DATE: April 16, 2012

COMPLIANCE DATE: August 13, 2012



Identification of Suspicious Transactions or Activities

RMLOs are required to report suspicious transactions and activities evidencing a possible violation of law or regulation where the transaction “involves or aggregates funds of other assets of at least \$5,000.00 [and a RMLO] ... knows, suspects, or has reason to suspect that the transaction ... :

- (i) Involves funds derived from illegal activity or is intended or conducted to hide or disguise funds or assets derived from illegal activity;**
- (ii) is designed, whether through structuring or other means, to evade the requirements of the BSA;**
- (iii) has no business or apparent lawful purpose; or**
- (iv) involves the use of the loan or finance company to facilitate criminal activity.”**

Identification of Suspicious Transactions or Activities

However, if a RMLO uncovers evidence of possible violation of law of regulation that does not fit with the reporting requirement definition, they may also file a SAR for this purpose and are encouraged to do so.

Under the SAR reporting requirements, RMLOs are not responsible for the investigation or the determination of a crime, only for reporting any sufficiently suspicious activity uncovered in the loan transaction or servicing process.

Suspicious Transactions or Activities

FinCEN acknowledges that there is no way to provide a complete and substantive list of every possible suspicious activity that must be reported.

RMLOs must utilize all of the information available to make the determination whether the activity in question requires a SAR filing given the individual circumstances of the transaction.

The Final Rule provides some guidance, explaining that a SAR must be filed by RMLOs to report “fraudulent attempts to obtain a mortgage or launder money by use of the proceeds of other crimes to purchase residential real estate.”

FinCEN’s fraud trend reports provide a few examples of instances where SAR reports have been filed upon suspicion of mortgage fraud. Many of the recent SAR filings are a result of loan re-purchase demands.

Suspicious Transactions or Activities

Recent SAR reporting trends include:

- **Foreclosure rescue schemes and identity theft in relation to mortgage fraud**
- **Income misrepresentation uncovered prior to loan approval in the underwriting process**
- **Fraudulent documents submitted to cancel mortgage obligations or pay off loan balance**
- **Bankruptcy filing related mortgage fraud**

When to File a SAR

A SAR must be filed within 30 days after the RMLO becomes aware of a suspicious activity or transaction.

The filing deadline may be delayed an additional 30 days if the relevant party is not yet identified, however the total time may be no longer than 60 days.

In addition to filing a SAR, the RMLO must notify law enforcement for violations that require immediate attention, such as suspected terrorist activity.

RMLOs may also voluntarily report suspicious activity to FinCEN by phone at 1-866-556-3974 in addition to filing a SAR.

How to File a SAR

RMLOs will utilize substantially the same SAR filing form as depository institutions have been using in the past (Form TD F 90-22.47, found on FinCEN's website)

However, use of these individual forms is being phased out in favor of a new all-inclusive e-filing system. E-Filing will be mandatory as of July 1, 2012 and use of the new form system will be required by March 13, 2013.

The new form system will include more specific characterizations of suspicious activities and types of financial services. The user will have the option of choosing their specific industry which will then automatically complete the portions of the form not applicable to that particular industry as n/a.

The new form is expected to include and incorporate the information included on the paper "Legacy" Form TD F 90-22.47 which in addition to basic institution information and the SAR narrative will include sections to complete Suspect Information and Suspicious Activity Information.

Suspect Information

Form TD F 90-22.47

Part II Suspect Information			<input type="checkbox"/> Suspect Information Unavailable	
15 Last Name or Name of Entity		16 First Name		17 Middle
18 Address			19 SSN, EIN or TIN	
20 City	21 State	22 Zip Code		23 Country (Enter 2 digit code)
24 Phone Number - Residence (include area code)		25 Phone Number - Work (include area code)		
26 Occupation/Type of Business		27 Date of Birth		28 Admission/Confession?
29 Forms of Identification for Suspect:				
a <input type="checkbox"/> Driver's License/State ID		b <input type="checkbox"/> Passport		c <input type="checkbox"/> Alien Registration
d <input type="checkbox"/> Other				
Number		Issuing Authority		
30 Relationship to Financial Institution:				
a <input type="checkbox"/> Accountant	d <input type="checkbox"/> Attorney	g <input type="checkbox"/> Customer	j <input type="checkbox"/> Officer	
b <input type="checkbox"/> Agent	e <input type="checkbox"/> Borrower	h <input type="checkbox"/> Director	k <input type="checkbox"/> Shareholder	
c <input type="checkbox"/> Appraiser	f <input type="checkbox"/> Broker	i <input type="checkbox"/> Employee	l <input type="checkbox"/> Other	
31 Is the relationship an insider relationship?		a <input type="checkbox"/> Yes		b <input type="checkbox"/> No
If Yes specify:		c <input type="checkbox"/> Still employed at financial institution		e <input type="checkbox"/> Terminated
d <input type="checkbox"/> Suspended		f <input type="checkbox"/> Resigned		32 Date of Suspension, Termination, Resignation

SAR FILING REQUIREMENTS



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Changes to E-Filing

The new all-inclusive e-form will include:

- **Fields marked 'Critical' which means they may not be left blank. If the information requested by the field is unknown, there is an option to choose 'unknown', rather than fill in N/A.**
- **Gender field information is not mandatory, however law enforcement has indicated it is helpful information in their investigations.**
- **SAR Narrative section which allows spreadsheet attachments only.**
- **NAICS (North American Industry Classification System) code, contained in a drop down menu, not mandatory.**
- **Fields related to internet presence if available: email addresses, website URLs, IP Addresses. Collection of this information is not mandatory.**
- **Spreadsheet attachments in CSV format.**
- **Tool completion allowing auto population of fields.**

Completing the SAR Narrative

Include the who, what, where , when, why and how of the suspicious activity.

- **Who are the parties involved in the suspicious activity?**
- **What is the nature of the transaction, what is the suspicious activity?**
- **When and where did the suspicious activity occur, when did the transaction originate?**
- **Why is the activity suspicious?**
- **How was the suspicious activity uncovered and how did the institution respond?**

**FinCEN provides narrative guidance including example narratives online:
http://www.fincen.gov/news_room/rp/files/sar_guidance_narrative.pdf**

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SUSPICIOUS ACTIVITY REPORT RECORD RETENTION AND CONFIDENTIALITY

Recording Retention

Records must be maintained for 5 years from the date of SAR filing. Records should include both SAR and supporting documentation.

Confidentiality

The rule also includes the requirement that the SAR filing and disclosure of SAR information be kept confidential, except to comply with state, federal regulation, local law enforcement.

It is the existence of the SAR that must be kept confidential under the Rule, not the underlying facts, transactions and documents giving rise to the filing of the SAR.