



Lisa Tate
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Via E-mail

Regulatory Policy and Programs Division
Financial Crimes Enforcement Network
Department of the Treasury
P.O. Box 39
Vienna, Virginia 22183
Attention: PRA Comments—BSA-SAR Database

Subject: Bank Secrecy Act Suspicious Activity Report Database Proposed Data Fields

Dear Sir/Madam:

On behalf of our member companies, the American Council of Life Insurers [ACLI] submits comments on the Bank Secrecy Act Suspicious Activity Report Database Proposed Data Fields published by the Financial Crimes Enforcement Network [FinCEN] in the Federal Register on October 15, 2010. ACLI represents more than 300 member companies operating in the United States. These member companies represent over 90% of the assets and premiums of the U.S life insurance and annuity industry. ACLI members are leading providers of financial and retirement security products covering individual and group markets. Most of our member companies will be directly affected by proposed changes to Suspicious Activity Reports [SARs] as they are actively engaged in the business of selling products covered by FinCEN regulations and are required to file SARs.

In its release of the proposed data fields in the Federal Register, FinCEN requests comments on five aspects of its proposal. Having consulted with our member companies, we address these matters below.

a) 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

ACLI generally supports FinCEN's SAR modernization project. Since the introduction of the SAR form, the financial services industries have evolved in terms of the products offered as well as the technology, corporate structures, and regulatory regimes that support them. The capacities of those who seek to commit financial crimes have also evolved. As a result, modernizing the SAR is a timely and useful project. We have detailed below at section c and the attachment our concerns as to the practical utility and permissible legal scope of certain data fields.

b) Whether the agency's estimate of the burden of the collection of information is accurate

Given the extent of our comments below, it is difficult to estimate the accuracy of estimates with respect to the burden of collecting the information solicited through the proposed data fields. However, in reviewing the proposed data fields, we believe that the administrative and financial burdens of the

current proposal have been underestimated. The current SAR form is relatively uncomplicated with the time-consuming work being in drafting the narrative. Notwithstanding the commendable efforts of FinCEN staff to format the proposed SAR form to standardize and make searchable certain aspects of the narrative, we anticipate that drafting the narrative will remain a significant aspect of completing the SAR. In addition, the proposed SAR data fields result in a much longer, more complicated form with many more options and the anticipation of greater specificity among those options. Technology and quality-control by themselves represent areas in which administrative and financial burdens will be increased. Also of concern is the ongoing cost of training AML compliance staff as well as reporting business units, affiliates, agents, and others due, for example, to staff rotations, attrition, etc.

c) Whether the quality, utility, and clarity of the information to be collected can be enhanced

ACLI strongly believes that efforts need to be taken to enhance the quality, utility, and clarity of the information to be collected through the proposed data fields. The attachment details our specific concerns. Generally, we note that adding so many data fields and underlying options without accompanying definitions and guidance will not accomplish the stated purposes of the SAR modernization project to promote clarity and understanding and provide law enforcement with consistent, useful information. The proposed form needs to be simplified and more clearly organized, particularly with respect to Parts II and III, with a standardization of terms and expectations created.

Also of serious concern is the apparent expansion through release of the proposed data fields of SAR obligations beyond what is required under current AML regulations. Currently, life insurers (and other financial institutions) are required to report and describe 'suspicious activities.' They are not required to investigate and identify whether or not a specific crime appears to have been committed. To the extent that the proposed data fields imply such an obligation, they are beyond the permissible scope of current regulatory reporting obligations and should be revised.

d) Whether the burden of the collection of the information on respondents can be minimized, including through the use of automated collection techniques

As noted above, the current SAR form, apart from the narrative, is a relatively uncomplicated form and for many of our member companies, may be prepared and reviewed by the life insurance staff manually. Automation may significantly minimize in certain ways the burdens of collecting information through a SAR. To the extent that it can, we reiterate and underscore our comments above at section c.

e) Whether estimates can be provided of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information

Given the extent of our comments above and in the attachment (relating to section c, above), we cannot provide meaningful cost estimates at this time. We believe, however, that they will be significant. Life insurers strongly support efforts to combat money laundering and terrorist financing and have demonstrated, we believe, diligence in complying with both the letter and spirit of our AML obligations. However, our effective partnership with the public sector can best be maintained when the expectations on both sides are realistic and cost-effective, not idealistic or cost-prohibitive. We caution against the well-intentioned efforts of some international and domestic regulatory and law enforcement organizations that appear at times to be interested in transferring certain investigatory and information collection functions onto the private sector without a meaningful comprehension of costs and competitive pressures. During roughly the same period in which insurers filed 1,267 SARs, we note that a 2008 survey of ACLI member companies (representing 56% of the industry's assets) indicated that each life insurance fleet (on an asset-weighted basis) spent in excess of \$1.1 million on AML compliance per fleet and 68 % expected to spend more in 2008 than they did in 2007; 73% of the industry reported

that multiple employees were tasked with the primary responsibility of ensuring AML compliance.* We commend FinCEN staff for its consideration of administrative and financial burdens as part of the SAR modernization project and request that they continue to do so as the project advances.

ACLI appreciates the opportunity to comment on the Bank Secrecy Act SAR Database Proposed Data Fields. If you have any questions or need additional information, please feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "Lisa Tate". The signature is written in a cursive, slightly slanted style.

Lisa Tate

Attachment

* FinCEN's *Insurance Industry Suspicious Activity Reporting* (January 2010) states at page 3 that, from May 2, 2007 through April 30, 2008, insurance companies filed 1,276 SARs with "virtually half of the filings—628 reports—[coming] from the subsidiaries of two parent companies." (The study states in the prior reporting year, the first year during which insurance companies were required by regulation to file SARs, insurers filed 641 SARs.) The study also states, however, that some institutions may not yet be exhibiting "the breadth of focus that others have incorporated into their compliance programs."

ATTACHMENT

Specific Comments on Proposed Bank Secrecy Act SAR Database Fields

- **Type of Filing**

*** 1. Check all that apply:**

a. Initial report

b. Correct/Amend prior report

c. Continuing activity report

d. Joint report

f. Prior report internal control/file number if items 1b or 1c are checked

g. DCN (*electronic view only*)

Comments for # 1:

--The addition of 'continuing activity report' and 'DCN' is helpful. However, we recommend that the phrase itself should appear: Document Control Number.

--There is no box to check for multiple subjects, and no clear explanation as to where multiple subjects would be entered. An option for multiple subjects should be available within this box. The summary of the changes at page 6 states "[a]ll filing institutions will complete Part I, "Subject Information," for each subject. Part I may be repeated as many times as necessary to cover all subjects. If item 2b is checked this Part may be left blank." No explanation is provided, however, of how this will work.

- **Part I: Subject Information**

7. Occupation or type of business

a. NAICS Code

Comments for # 7:

--Inclusion of a link to the NAICS codes from the SAR form would be useful.

--Inclusion of a 'b. Other:' option is recommended. Since the NAICS job codes seem to be very specific, their exclusive use may limit the occupational information that can be provided. For example, it is our understanding that 'retired' is not a listed occupation and that term has been used on current insurer SAR forms.

*** 11. ZIP/Postal Code**

a. (*check if*) unknown

ZIP + 4 should be derived through third party data as enhanced data if not provided or verified through third party data if provided

New Data Element of County – Derived through third party data as enhanced data

New Data Elements for GEO Coding – Derived through third party data as enhanced data

New Data Element of HIFCA code – Derived through third party data as enhanced data.

New Data Element of HIDTA code – Derived through third party data as enhanced data

Comments for # 11:

--It is our understanding that the only required field is the ZIP/Postal Code and that the ZIP + 4 and the 'new data elements' are fields that will be populated by FinCEN, law enforcement, etc., after submission. If not, it will be time-consuming to obtain this information for each SAR, particularly as most insurers are not in a position to know the codes and should not be required to add third-party data that is not a part of current business records. If the data fields are required to be populated by the SAR filer, a link or drop-down access to them should be provided.

--As an observation on HIFCAs and HIDTAs: These are both county-based, and in many parts of the U.S., counties can be quite large and demographically diverse with respect to population, income levels, crime levels, etc. In our experience, zip codes are smaller and generally more precisely linked to financial and, especially, drug-trafficking crimes.

*** 12. Country Code**
a. (check if) unknown

Comments for # 12:

--It is necessary to have a standard list of country abbreviations made available. Our insurers with international business operations have found that, without use of such a reference, many countries are incorrectly coded.

14. TIN type (* if 13 is completed)

- a. EIN**
- b. SSN-ITIN**
- c. Foreign**

Comments for # 14:

--Inclusion of this data field is a good addition to the form.

--As the SSN and ITIN are assigned under different circumstances, it may be useful to have them listed separately.

*** 15. Form of identification for subject:**

- a. (check if) unknown (or not obtained)**
- b. (check if) Driver's license/state ID**
- c. (check if) Passport**
- d. (check if) Alien registration**
- e. Number**
- f. Issuing state**
- g. Country**
- z. (check if) Other (and specify type in space provided)**

Comments for # 15:

--'Unknown' and 'not obtained' are different concepts and should be separated on the form.

--A field for an expiration date could be useful.

--We assume that 'Other' can include identification through non-documentary methods. If not, that option should be included.

17. Phone number – type (multiple entries allowed for electronic filers)

- a. (check if) Home
- b. (check if) Work
- c. (check if) Mobile
- d. (check if) Fax

Comments for # 17:

--The additional options are an improvement, particularly the ability to add a mobile phone number.

19a. Website (URL) address (if available) (multiple entries allowed for electronic filers)

Comments for # 19a:

--This is another useful addition to the form.

20. Corroborative statement to filer?

- a. (check if) Yes
- b. (check if) No

Comments for # 20:

--The meaning of '[c]orroborative statement' is unclear and should be clarified. It seems to be a question as to whether the subject has provided information that confirms suspicious activity identified in the SAR. If so, the field should be made more intuitive with an explanation as to whether legal protections otherwise afforded SAR filers extends to this data field.

21. Relationship of the subject to the filing institution (check all that apply)

- a. Institution EIN (multiple related institution entries allowed for electronic filers)
- b. Accountant
- c. Agent
- d. Appraiser
- e. Attorney
- f. Borrower
- g. Customer
- h. Director
- i. Employee
- j. Officer
- k. Owner/Shareholder
- l. No relationship to institution
- z. Other (and specify type in space provided)

Comments for # 21:

--# 21a: The institution EIN has already been provided at Box 12.

--Without clear terms and definitions, 'checking all that apply' is confusing and will lead to reporting inconsistencies among SAR filers and across the various financial sectors. For example, does 'attorney' mean that the subject is an attorney for a firm, a customer of the SAR filer, or both? Is an

'owner' someone who owns stock of the filer, is an account owner, or is a policy owner? Is a 'borrower' the same as a 'debtor,' and what is its meaning apart from its use by a depository or other lending institution? Is a 'director' a member of a board or a director-level employee? The term 'agent' has many different definitions depending on the industry or financial institution and will, without additional guidance, not yield meaningful information for law enforcement.

--It is possible to file a SAR related to a financial product such as an insurance policy where the subject has also committed fraud against the financial institution itself. We recommend that this be included as a 'relationship' category.

22. If item 21h, 21i, 21j, or 21k is checked, indicate status of relationship

a. (check if) Relationship continues

b. (check if) Terminated

c. (check if) Suspended/barred

d. (check if) Resigned

Comments for # 22:

--We recommend that the wording of this data field be revised to state: 'if the subject was affiliated with the filer, indicate status of the relationship.' This change would be less restrictive than its current wording. Doing so would provide more information, for example, on a SAR subject who is/was affiliated with, but not employed by, an insurance company.

--'Other' might be a useful option to add.

--Other than the above comments, this is a useful addition to the form.

*** 24. Financial Institution EIN and account number(s) affected that are related to subject, if any.**

a. (check if) No known account involved

b. (check if) Non-US Financial Institution

c. EIN

d. account number

e. (check if) closed

f. account number

g. (check if) closed

h. EIN

i. account number

j. (check if) closed

k. account number

l. (check if) closed

(paper filers have space to enter a second financial institution EIN and two more associated account numbers – items 24h through l; multiple financial institution and account number entries allowed for electronic filers)

Comments for # 24:

--Although designated a critical data field, it appears to be directed more toward banking scenarios than insurance. If not, additional guidance should be provided.

25. Subject's role in suspicious activity (if applicable)

- a. *(check if)* Purchaser/Sender
- b. *(check if)* Payee/Receiver
- c. *(check if)* Both a & b

Comments for # 25:

--An option of 'other' is needed for this data field. Having such an option would provide clearer information distinguishing a 'purchaser' and, for example, third-party payees. Also, it would permit identification of a SAR subject who may be outside of the payment process (e.g., an insurance agent, or an insured under an insurance policy that is owned and paid for by another).

--We recommend that this data field be revised to accommodate multiple subjects.

- **Part II Suspicious Activity Information**

*** 26. Amount involved in this report**

a. *(check if)* unknown

*** 27. Date or date range of suspicious activity for this report**

a. From: mm/dd/yyyy

b. To: mm/dd/yyyy

28. Cumulative amount only if box 1c (continuing activity report) is checked

Comments for # 26-28:

--These are useful additions to the form.

29. Were any of the following instrument/product type(s) involved in the suspicious activity?

Check all that apply:

- a. Bank/cashier's check
- b. Bonds/Notes
- c. Commercial paper
- d. Credit card
- e. Debit card
- f. Foreign currency
- g. Forex transactions
- h. Funds transfer
- i. Futures/Options on futures
- j. Gaming instruments
- k. Government checks or EFT
- l. Hedge fund
- m. Insurance/annuity products
- n. Money orders
- o. Mortgage/Deed of Trust
- p. Mutual fund
- q. Options on securities
- r. Penny stocks / microcap securities
- s. Personal/Business check
- t. Prepaid access
- u. Security futures products

- v. Stocks
- w. Swap, hybrid or other derivative
- x. Travelers checks
- y. U.S. Currency
- z. Other (*specify type in space provided*) (*multiple entries allowed*)

Comments for # 29:

--To improve clarity of responses and provide meaningful information to law enforcement, we recommend that this question be broken out into two separate questions, one concerning payment instruments and another concerning product types. (For insurers, many of the items listed are payment types, not 'products.')

Another way to consider the two questions is to have one question dealing with payments/instruments/receipts that would be reported on either a Form 8300 or a CTR and then another dealing with financial products, such as insurance, annuities, stocks, etc.

--We also recommend that there be greater consistency and clarity among the terms listed. For example, 'government remittance/payment' might avoid any confusion between 'funds transfer' and 'government checks or EFT.'

--It may also be helpful to include wire transfers, payments by ACH, and third-party checks (e.g., viz. third-party checks, one person makes a check payable to another who then signs it over to the institution receiving the payment). In addition, consideration may be appropriate as to the origin of a money order (e.g., bank money order, convenience store money order, etc.)

36. Structuring

- a. Alters transaction to avoid BSA recordkeeping requirement.
- b. Alters transactions to avoid CTR requirement.
- c. Customer cancels transaction to avoid BSA reporting and recordkeeping requirements
- d. Multiple transactions below BSA recordkeeping threshold.
- e. Multiple transactions below CTR threshold.
- f. Suspicious inquiry by customer regarding BSA reporting or recordkeeping requirements
- z. Other (*specify type of suspicious activity in space provided*)

Comments for # 36:

--Options a and b should be defined. Otherwise, they could be interpreted to be the same as options d and e.

38. Fraud

- a. Check
- b. Commercial loan
- c. Commercial mortgage loan
- d. Consumer loan
- e. Credit/Debit card
- f. Elder financial abuse
- g. Healthcare
- h. Mail
- i. Mass-marketing

- j. Pyramid scheme**
- k. Residential mortgage loan**
- l. Wire**
- z. Other (specify type of suspicious activity in space provided)**

Comments for # 38:

--This data field mixes fraudulent activities together with financial products. Better organization of the data field would yield greater clarity.

--‘Elder financial abuse’ appears to be a broadening of current AML reporting requirements. Also, without more guidance, it also appears to be extremely vague. We note that the term has various definitions among the states.

--We recommend inclusion of an item identifying fraud against the financial institution itself.

40. Insurance

- a. Excessive insurance**
- b. Excessive or unusual cash borrowing against policy/annuity**
- c. Little or no concern for product performance, penalties, fees, or tax consequences**
- d. Proceeds sent to unrelated third party**
- e. Suspicious life settlement sales (e.g. STOLI’s, Viaticals)**
- f. Suspicious termination of policy or contract**
- g. Unclear or no insurance interest**
- z. Other (specify type of suspicious activity in space provided)**

Comments for # 40:

--Among our members, ‘excessive insurance’ is not a particularly relevant option for the SAR. Apart from definitional challenges, the fact that someone has ‘excessive insurance’ is not inherently suspicious. Most insurers will not issue ‘excessive insurance’ and regard the review of that matter as an underwriting concern; for annuities, where financial disclosure is not a requirement, it cannot be determined by the insurer. In our experience, someone applying for too much insurance is more likely to misunderstand how life insurance works than trying to launder money by buying excessive insurance.

--Item 40c seems to be redundant with 43k.

--We recommend additional guidance with respect to the inclusion of STOLIs and viaticals.

--As with ‘excessive insurance,’ ‘[u]nclear or no insurance interest’ is again an underwriting matter and not inherently suspicious.

--Overall, we recommend that this section should instead focus on:

- Money-in/Money-out: Using a policy like a bank account to accomplish layering, or early termination (including the use of ‘free looks’ that have suspicious characteristics)
- Suspicious payments to and from third-parties
- Payments from multiple sources or by multiple instruments

- Source or amount of payment inconsistent with other financial information
- Subpoena received relating to the person or their transaction(s)

41. Securities / Futures / Options

- a. Insider trading**
- b. Market manipulation/wash trading**
- c. Misappropriation**
- d. Unauthorized pooling**
- z. Other (*specify type of suspicious activity in space provided*)**

Comments on # 41:

--Several of these items (*e.g.*, misappropriation) are not unique to this industry and should be included elsewhere (*e.g.*, fraud or other suspicious activity).

42. Terrorist Financing

- a. Known or suspected terrorist / terrorist organization**
- z. Other (*specify type of suspicious activity in space provided*)**

Comments for # 42:

--Does this suggest that SARs should be filed on OFAC matches regardless of amount or only if the subject is an OFAC-Specially Designated Global Terrorist (SDGT)?

--We assume that this data field is intended to convey whether or not a person or entity is a match to a name on the OFAC list. If so, we recommend that options be provided to identify the type of relationship of the match (*e.g.*, employee, customer, vendor, lawyer, etc.) Also pertinent would be whether or not a payment was received from, or requested to be directed to, a person or entity on the OFAC list, or from or to a sanctioned country for which the sanctions program would be applicable.

43. Money laundering

- 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**
- i. Suspicious use of third-party transactors (straw-man)**
- j. TBML/BMPE**
- k. Transaction with no apparent economic, business, or lawful purpose.**
- l. Transaction out of pattern for customer(s)**
- z. Other (*specify type of suspicious activity in space provided*)**

44. Other suspicious activities

- a. Bribery or gratuity**
- b. Counterfeit checks**
- c. Embezzlement/theft/disappearance of funds**

- d. Forgeries**
- e. Identity theft**
- f. Misuse of position or self-dealing**
- g. Suspected public/private corruption (domestic)**
- h. Suspected public/private corruption (foreign)**
- i. Suspicious use of informal value transfer system**
- j. Suspicious use of multiple locations**
- k. Two or more individuals working together**
- l. Unauthorized electronic intrusion**
- m. Unlicensed or unregistered MSB**
- z. Other (specify type of suspicious activity in space provided)**

Comments for # 43 and 44:

--A number of these seem to be redundant with other data fields, most notably the fraud data field and certain industry-specific data fields.

--Options g and h should be specific to a particular matter. For example, a political figure may be suspected of corruption generally (*e.g.*, as reported in a newspaper article), but a SAR would not be filed unless the corruption were in some manner related to or specifically known to the financial institution.

--This data field is representative of a number of data fields beginning with # 26 at the start of Part II. It is a curious and often redundant list that mixes types of suspicious activities (structuring, money laundering, fraud, identification, etc.) with types of institutions, payment methods, and financial products. A re-consideration of the purpose and structure of Part II in its entirety may be appropriate.

- **Part III Information Concerning Financial Institution Where Activity Occurred**

- * **45. Type of financial institution (check only one)**
 - a. Casino/Card club**
 - b. Depository institution**
 - c. Insurance company**
 - d. MSB**
 - e. Securities/Futures**
 - z. Other (specify type of institution in space provided)**

Comments on # 45:

--It seems that this data field would work better at the beginning of the SAR, with the following data fields flowing from that. Otherwise, it appears to be redundant with providing an EIN at data field # 14.

--How would this data field work with joint filings or with 'mixed models' such as insurance and securities? We note that insurers often file jointly with a broker-dealer.

48. If item 45a is checked, indicate type of gaming institution

- a. State licensed casino**
- b. Tribal authorized casino**
- c. Card club**
- z. Other (specify type of gaming institution in space provided)**

49. If item 45e is checked, indicate type of Securities and Futures institution or individual where activity occurred—check box(es) for functions that apply to this report

- a. Clearing broker - securities**
- b. Futures commission merchant**
- c. Holding company**
- d. Introducing broker - commodities**
- e. Introducing broker - securities**
- f. Investment advisor**
- g. Investment company**
- h. Retail foreign exchange dealer**
- i. Subsidiary of financial/bank holding company**
- z. Other (specify type of institution or individual in space provided)**

Comments on # 48 and 49:

--These data fields should immediately follow data field # 45.

*** 50. Legal name of financial institution**

51. Alternate name, e.g., AKA - individual or trade name, DBA - entity

*** 52. TIN (enter number in space provided and check appropriate type below)**

a. (check if) unknown

53. TIN type (* if 52 is completed)

- a. EIN**
- b. SSN-ITIN**
- c. Foreign**

*** 54. Address**

a. (check if) unknown

*** 55. City**

a. (check if) unknown

56. State

State should be derived through third party data as enhanced data if not provided and Country is US, Mexico or Canada and ZIP/Postal Code is provided

*** 57. ZIP/Postal Code**

a. (check if) unknown

ZIP + 4 should be derived through third party data as enhanced data if not provided or verified through third party data if provided

New Data Element of County – Derived through third party data as enhanced data

*** 58. Country (2 letter code – list provided)**

Comments for # 50-58:

--To the extent that these data fields replicate information previously requested in the form, they should be streamlined accordingly.

59. Internal control/file number

Comments for # 59:

--Since Box 24 is for the account number, it is unclear as to what additional information should be provided here.

61. Financial institution's role in transaction (if applicable)

- a. (check if) Selling location**
- b. (check if) Paying location**
- c. (check if) Both a & b**

Comments for # 61:

--An 'other' option is needed for insurance companies as these options are inadequate with respect to their roles in a transaction.

68. Branch's role in transaction (if applicable)

- a. (check if) Selling location**
- b. (check if) Paying location**
- c. (check if) Both a & b**

(paper filers have space to enter 2 branches – items 69-75; electronic filers can enter multiple branches)

Comments for # 68:

Branch location is not relevant to insurance companies except for those whose sale offices are considered 'branches.'

▪ **Part IV Filing Institution Contact Information**

- * **76. Primary Federal Regulator (instructions specify banking agencies, SEC, CFTC, CFTC Federal Reserve, FDIC, FinCEN (Including where IRS or another FinCEN delegate examines for compliance), NCUA, OCC, OTS, SEC, Not Applicable)**

Comments for # 76:

--This data field appears to be redundant with data field # 46.

90. LE contact agency

Comments for # 90:

--The current SAR form provides options of agencies and offices that may have been contacted; these should be included as selections for this question on the new form.

- **Part V Suspicious Activity Information--Narrative
(text field 17,000 characters)**

Comments for Part V:

--The capability to format the narrative would be very useful.