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DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Privacy Act of 1974; System of Records

AGENCY:Departmental Offices, Treasury.

ACTION: Notice of a proposed New Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Financial Crimes Enforcement Network ("FinCEN"), Department of the Treasury (Treasury), gives notice of a proposed new Treasury-wide system of records entitled the "Suspicious Activity Reporting System (the "SAR System")—Treasury/DO.212."

DATES: Comments must be received no later than April 25, 1997. The proposed system of records will become effective without further notice April 25, 1997, unless comments are received that result in a contrary determination and notice is published to that effect.

ADDRESSES: Written comments should be sent to Office of Legal Counsel, FinCEN, 2070 Chain Bridge Road, Suite 200, Vienna, VA 22182-2536, Attention: SAR System of Records. Comments will be made available for inspection and copying by appointment. Persons wishing such an opportunity should call Eileen Dolan, (703) 905-3590.

FOR FURTHER INFORMATION CONTACT: Cynthia A. Langwiser, Attorney-Advisor, Office of Legal Counsel, FinCEN, (703) 905-3582.

SUPPLEMENTARY INFORMATION:

This new Privacy Act system of records is proposed to be established for the retention, retrieval, and dissemination of information, reported by financial institutions or certain of their affiliates to the Federal Government, concerning suspicious transactions and known or suspected criminal violations occurring by, at, or through such institutions. Suspicious transaction reporting is required by rules issued by FinCEN and the five supervisory agencies that examine and regulate the safety and soundness of financial institutions, namely the Board of Governors of the Federal Reserve System (the "Board"), the Office of the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC"), the Office of Thrift Supervision ("OTS"), and the

National Credit Union Administration ("NCUA") (collectively, the "Federal Supervisory Agencies").¹

The requirements of FinCEN and the Federal Supervisory Agencies create an integrated system for reporting suspicious activity and known or suspected crimes. Under these requirements, financial institutions file a single uniform Suspicious Activity Report (a "SAR") with FinCEN. Previously, a financial institution reporting a known or suspected violation of law was required to file multiple copies of criminal referral forms with its Federal financial regulatory agency and Federal law enforcement agencies. Each Federal financial regulatory agency had promulgated a different form. Under the new system, a financial institution meets its obligation to report a known or suspected violation of law by filing one copy of a SAR with FinCEN.

SAR records are maintained in an automated database that is operated by agreement among FinCEN and the Federal Supervisory Agencies. FinCEN manages the automated SAR System, which is housed at the Internal Revenue Service Computing Center in Detroit, Michigan. The SAR System contains the suspicious activity information filed by financial institutions and related information concerning criminal prosecutions, civil actions, enforcement proceedings and investigations of concern to FinCEN and the Federal Supervisory Agencies. Currently, these categories of records are included in an existing Privacy Act system of records, FinCEN Data Base, Treasury/DO .200.² However, in order to provide more current and detailed information about these categories of records, a new and separate Privacy Act system of records is being created.

This single information system for the use of such reports is a key part of the integrated system. The SAR System will permit enhanced analysis and tracking of the information contained in the

¹ FinCEN and the Federal Supervisory Agencies have all published rules requiring such reporting. See the rules published by FinCEN, the Board, OCC, FDIC, OTS and NCUA, respectively, at: 61 FR 4326 (February 5, 1996); 61 FR 4338 (February 5, 1996); 61 FR 4332 (February 5, 1996); 61 FR 6095 (February 16, 1996); 61 FR 6100 (February 16, 1996); 61 FR 11526 (March 21, 1996).

² In addition, the Federal Supervisory Agencies have modified their existing Privacy Act Systems of Records to reflect the new interagency suspicious activity reporting process and the use of the database maintained and managed by FinCEN pursuant to the agreement. See the notices published by the Board, OCC, FDIC, OTS, and NCUA, respectively, at 60 FR 44347 (August 25, 1995); 60 FR 64239 (December 14, 1995); 60 FR 52001 (October 4, 1995); 60 FR 64241 (December 14, 1995) and 61 FR 8689 (March 5, 1996).

reports, and rapid dissemination to appropriate Federal and state law enforcement and supervisory agencies. As a central repository for investigatory or enforcement information, the SAR System will permit analysis, retrieval, and dissemination of information by the Federal Supervisory Agencies, by appropriate Federal, state, and local law enforcement agencies, state banking supervisory agencies, and by FinCEN itself (SAR Users).³ In addition, the SAR System will permit dissemination of information, where appropriate, to non—United States financial regulatory agencies and law enforcement authorities. The SAR System will thereby improve efforts to prevent, identify, and enforce the laws against financial wrongdoing.

Because records in this database are generated under 31 U.S.C. 5318(g)(4), which authorizes the Secretary of the Treasury to designate a single agency to whom suspicious activity reports shall be made, access to and use of these records will be governed by the routine uses set forth in this notice. Accordingly, the routine uses reflect sharing among Federal Supervisory Agencies and law enforcement authorities. Additionally, the safeguards provide that on—line access to the computerized database is limited to authorized individuals who have been issued a password and nontransferable identifier.

Because information in the SAR System may be retrieved by personal identifier, the Privacy Act of 1974 requires the Treasury Department to give general notice and seek public comments about creation of this new separate system of records. A new system of records report, as required by 5 U.S.C. 552a(r), has been submitted to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget ("OMB"). See Appendix I to OMB Circular A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," 61 FR 6428, 6435 (February 20, 1996). The proposed system of records, Suspicious Activity Reporting System—Treasury/

³ In accordance with 31 U.S.C. 5318(g), data from the SAR System is exchanged, retrieved, and disseminated, both manually and electronically among FinCEN, the Federal Supervisory Agencies, appropriate Federal, state, and local law enforcement agencies, and state banking supervisory agencies. Section 5318(g)(4)(B) specifically require that the agency designated as the repository for suspicious transaction reports refer those reports to any appropriate law enforcement or supervisory agency.

DO 212, is published in its entirety below.

Dated: February 3, 1997.

Alex Rodriguez,

Deputy Assistant Secretary (Administration).

TREASURY/DO .212

SYSTEM NAME:

Suspicious Activity Reporting System (the "SAR System").

SYSTEM LOCATION:

The SAR System is housed at the Internal Revenue Service Computing Center ("DCC") in Detroit, Michigan and is managed by the Financial Crimes Enforcement Network ("FinCEN"), 2070 Chain Bridge Road, Suite 200, Vienna, VA 22182, with the assistance of the staff of DCC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The SAR System contains information about—(1) Individuals or entities that are known perpetrators or suspected perpetrators of a known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against a financial institution, or participants in a transaction or transactions conducted through the financial institution, that has been reported by the financial institution, either voluntarily or because such a report is required under the rules of FinCEN, one or more of the Federal Supervisory Agencies (the Board of Governors of the Federal Reserve System ("the Board"), the Office of the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC"), the Office of Thrift Supervision ("OTS"), and the National Credit Union Administration ("NCUA") (collectively, the "Federal Supervisory Agencies")), or both.

(2) Individuals or entities that are participants in transactions, conducted or attempted by, at or through a financial institution, that have been reported because the institution knows, suspects, or has reason to suspect that: (a) the transaction involves funds derived from illegal activities, the transaction is intended or conducted to hide or disguise funds or assets derived from illegal activities as part of a plan to violate or evade any law or regulation or to avoid any transaction reporting requirement under Federal law; (b) the transaction is designed to evade any regulations promulgated under the Bank Secrecy Act, Pub. L. 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5330; or (c) the transaction has no business or apparent lawful purpose or

is not the sort in which the particular customer would normally be expected to engage, and the financial institution knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction;

(3) Individuals who are directors, officers, employees, agents, or otherwise affiliated with a financial institution;

(4) Individuals or entities that are actual or potential victims of a criminal violation or series of violations;

(5) Individuals who are named as possible witnesses in connection with matters arising from any such report;

(6) Individuals or entities named as preparers of any such report;

(7) Individuals or entities named as persons to be contacted for assistance by government agencies in connection with any such report;

(8) Individuals or entities who have or might have information about individuals or criminal violations described above; and

(9) Individuals or entities involved in evaluating or investigating any matters arising from any such report.

CATEGORIES OF RECORDS IN THE SYSTEM:

The SAR System contains information reported to FinCEN by financial institutions on a Suspicious Activity Report ("SAR") required under the authority of FinCEN or one or more of the Federal Supervisory Agencies, or both. SARs contain information about the categories of persons or entities specified in "Categories of Individuals Covered by the System." The SAR System may also contain records pertaining to criminal prosecutions, civil actions, enforcement proceedings, and investigations resulting from or relating to SARs. Additionally, it will contain records pertaining to criminal prosecutions, civil actions, enforcement proceedings, and investigations relating to institutions required to file reports or under the supervision of one or more of the Federal Supervisory agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in accordance with 31 U.S.C. 5318(g); 31 CFR part 103; 31 U.S.C. 321; and Department of the Treasury Order 105-08.

PURPOSE(S):

The requirements of FinCEN and the Federal Supervisory Agencies create an integrated process for reporting suspicious activity and known or suspected crimes by, at, or through depository institutions and certain of their affiliates. The process is based on

a single uniform SAR filed with FinCEN.

The SAR System has been created, as a key part of this integrated reporting process, to permit coordinated and enhanced analysis and tracking of such information, and rapid dissemination of SAR information to appropriate law enforcement and supervisory agencies. The provisions of 31 U.S.C. 5318(g)(4)(B) specifically require that the agency designated as repository for SARs refer those reports to any appropriate law enforcement or supervisory agency.

Data from the SAR System will be exchanged, retrieved, and disseminated, both manually and electronically among FinCEN, the Federal Supervisory Agencies, appropriate Federal, state, and local law enforcement agencies, and state banking supervisory agencies. Agencies to which information will be referred electronically, which in certain cases may involve electronic transfers of batch information, include the Federal Supervisory Agencies, the Federal Bureau of Investigation (FBI), the Criminal Investigation Division of the Internal Revenue Service, the United States Secret Service, the United States Customs Service, the Executive Office of the United States Attorneys and the Offices of the 93 United States Attorneys, and state bank supervisory agencies and certain state law enforcement agencies, which have entered into appropriate agreements with FinCEN. (The FBI and Secret Service may receive electronic transfers of batch information as forms are filed to permit those agencies more efficiently to carry out their investigative responsibilities.) Organizations to which information is regularly disseminated are referred to as SAR System Users. It is anticipated that information from the SAR system will also be disseminated to other appropriate Federal, state, or local law enforcement organizations and regulatory agencies that enter into appropriate agreements with FinCEN. In addition, information may be disseminated to non-United States financial regulatory and law enforcement agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to:

(1) Provide information or records, electronically or manually, to SAR System Users relevant to the enforcement and supervisory programs and operations of those Users;

(2) Provide SAR System Users and their Executive Departments with

reports that indicate the number, amount, individual identity, and other details concerning potential violations of the law that have been the subject of Suspicious Activity Reports;

(3) Provide information or records to any appropriate domestic or non-United States governmental agency or self-regulatory organization charged with the responsibility of administering law or investigating or prosecuting violations of law, or charged with the responsibility of enforcing or implementing a statute, rule, regulation, order, or policy, or charged with the responsibility of issuing a license, security clearance, contract, grant, or benefit, when relevant to the responsibilities of these agencies or organizations.

(4) Provide information or records, when appropriate, to international and foreign governmental authorities in accordance with law and formal or informal international agreement;

(5) Disclose on behalf of a SAR System User, the existence, but not necessarily the content, of information or records to a third party, in cases where a SAR System User is a party or has a direct interest and where the SAR System User has concluded that such disclosure is necessary;

(6) Provide information or records to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the SAR System User is authorized to appear, when (a) the SAR System User, or any component thereof; or (b) any employee of the SAR System User in his or her official capacity; or (c) any employee of the SAR System User, where the Department of Justice or the SAR System User has agreed to represent the employee; or (d) the United States is a party to litigation or has an interest in such litigation, when the SAR System User determines that litigation is likely to affect the SAR System User or any of its components and the use of such records by the Department of Justice or the SAR System User is deemed by the SAR System User to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected;

(7) Disclose information or records to individuals or entities to the extent necessary to elicit information pertinent to the investigation, prosecution, or

enforcement of civil or criminal statutes, rules, regulations, or orders;

(8) In accordance with Executive Order 12968 (August 2, 1995), provide information or records to any appropriate government authority in connection with investigations and reinvestigations to determine eligibility for access to classified information to the extent relevant for matters that are by statute permissible subjects of inquiry.

(9) Provide, when appropriate, information or records to a bar association, or other trade or professional organization performing similar functions, for possible disciplinary action;

(10) Provide information or records to the Department of State and to the United States Intelligence Community, within the meaning of Executive Order 12333 (December 4, 1981) to further those agencies' efforts with respect to national security and international narcotics trafficking;

(11) Furnish analytic and statistical reports to government agencies and the public providing information about trends and patterns derived from information contained on Suspicious Activity Reports, in a form in which individual identities are not revealed; and

(12) Disclose information or records to any person with whom FinCEN, the DCC or a SAR System User contracts to provide consulting, data processing, clerical, or secretarial functions relating to the official programs and operations of FinCEN, DCC, or the SAR System User.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in magnetic media and on hard paper copy.

RETRIEVABILITY:

Data in the SAR System may be retrieved by sectionalized data fields (i.e., name of financial institution or holding company, type of suspected violation, individual suspect name, witness name, and name of individual authorized to discuss the referral with government officials) or by the use of search and selection criteria.

SAFEGUARDS:

The system is located in a guarded building that has restricted access. Access to the computer facilities and

any paper records is subject to additional physical safeguards that restrict access. Access to any electronic records in the system is restricted by means of passwords and non-transferable identifiers issued to authorized SAR System Users. The system complies with all applicable security requirements of the Department of the Treasury.

RETENTION AND DISPOSAL:

Records in this system will be updated periodically to reflect changes, and will be maintained in electronic form as long as needed for the purpose for which the information was collected. Records will then be disposed of in accordance with applicable law.

SYSTEM MANAGER AND ADDRESS:

Deputy Director, Financial Crimes Enforcement Network, United States Department of the Treasury, 2070 Chain Bridge Road, Suite 200, Vienna, Virginia 22182.

NOTIFICATION PROCEDURE:

This system is exempt from notification requirements, record access requirements, and requirements that an individual be permitted to contest its contents, pursuant to the provisions of 5 U.S.C. § 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Records in this system may be provided by or obtained from: individuals; financial institutions and certain of their affiliates; Federal Supervisory Agencies; State financial institution supervisory agencies; domestic or foreign governmental agencies; foreign or international organizations; and commercial sources. Pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2), this system is exempt from the requirement that the record source categories be disclosed.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

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