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Via electronic submission

July 1, 2024

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

RE: OMB Control Numbers 1506-0001, 1506-0006, 1506-0015, 1506-0019, 1506-0029, 1506-0061, and 1506-0065

Dear Sir or Madam:

The Independent Community Bankers of America (“ICBA”)¹ appreciates the opportunity to respond to the Financial Crimes Enforcement Network’s (“FinCEN’s”) request for comment on the proposed renewal, without change, of currently approved information collections relating to suspicious activity reports. Under Bank Secrecy Act (“BSA”) regulations, financial institutions (“FIs”) are required to report suspicious transactions using FinCEN Report 111 (the suspicious activity report or SAR). Although no changes are proposed to the information collections themselves, ICBA believes FinCEN’s burden estimate of 1.98 hours per SAR is grossly undervalued.

In today’s rapidly ever-changing world, it is imperative that FIs and law enforcement work together to combat and prevent financial crime, money laundering, and terrorist financing. Community bankers are committed to supporting balanced, effective measures that will prevent terrorists from using the financial system to fund their operations and prevent money launderers from hiding the proceeds of criminal activities. However, anti-money laundering/combating the financing of terrorism and BSA compliance programs (collectively “AML/CFT”) consume a growing share of community banks’ scarce resources.

Since the inception of anti-money laundering laws in 1970 and anti-terrorist financing laws in 2001, the burdens placed on banks increasingly create an environment where FIs are essentially tasked with identifying, investigating, policing, and reporting potential criminal activity. Each year, community banks must invest more time, money, and resources to combat this threat. Yet, community banks report that the current outdated framework is an exercise of investigating and completing forms and strictly adhering to policies and procedures developed from regulatory requirements rather than making an impact in combating financial crime.

FinCEN’s estimate of 1.98 hours to file a SAR is substantially low. For each transaction a bank identifies as suspicious, a thorough investigation is conducted that typically includes monitoring and reviewing all

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documentation and account activity, interviewing appropriate personnel, a review of the investigation by a BSA-trained employee, and sometimes a second review by either a compliance or BSA committee, BSA officer, or senior level staff. The filing process also includes ensuring that the actual SAR form is complete with all appropriate boxes selected, and ensuring the SAR narrative is accurate. All investigations are documented, including those for which a SAR is filed, as well as for investigations for which a SAR is not filed. If a SAR is not filed, banks must document and subsequently justify to their examiner the reason a flagged transaction did not result in a filing. The process is meticulous and labor intensive. 1.98 hours to undergo a thorough and quality-based SAR process is wholly underestimated.

Furthermore, the filing of a SAR triggers a number of additional burdensome post-filing functions, such as

- Undergoing enhanced due diligence and more frequent account monitoring;
- Analyzing and reassessing previous transactions and patterns;
- Placing flags on accounts;
- Assessing whether to close an account, and if not, the exercise of continual filings every 90 days;
- Additional documentation and record-keeping; and
- Reporting to the Board.

This is not an exhaustive list. While some of these additional functions are driven by a bank's policies and procedures, they are nonetheless significant components of the SAR process. These additional post filing functions are underappreciated and unrepresented when assessing regulatory burden. We strongly urge the agency to take a comprehensive approach to calculating all the factors that determine the amount of time it takes to process a SAR, and not just completing questions on a form.

We also believe it prudent to reiterate our previous position at this time by advocating for the increase of the SAR threshold to \$10,000, which will place emphasis on quality of reporting over quantity in information collection. Suspicious activity reports are one of the cornerstones of the BSA and were established as a way for banks to provide leads to law enforcement. Because many FIs have a strong incentive to file SARs as a defensive measure to protect themselves from examiner criticism, SARs are filed in increasingly vast numbers without a commensurate benefit to law enforcement. As the government combats money laundering and terrorist financing, ICBA strongly recommends an emphasis on quality over quantity when filing SARs. ICBA recommends reforming the SAR process by increasing the reporting thresholds, which have not been adjusted since becoming effective in 1992, and by emphasizing those instances in which an institution may rely on risk-based reporting.

In the current regulatory environment, community banks are faced with a cumbersome and overly burdensome process to ensure they are protected, and no mistakes are made as it relates to their SAR process and decisioning. Our members consistently report that they are questioned about the number of SARs filed in relation to the number of accounts and transactions initially identified as suspicious rather than the quality of the bank's monitoring system or investigative process. Additionally, some of our members have shared that they are questioned regarding the total number of SARs filed since the last examination. As a result, bank employees often file SARs as a defensive measure. The current focus is also a daunting task for community banks because it usurps resources by requiring significant time monitoring for thresholds (quantity) and less time focused on actual suspicions (risk).

These regulations also lessen community banks' ability to attract capital, support the financial needs of their customers, serve their communities, and contribute to their local economies as many do not have dedicated legal and compliance departments. Adjusting the SAR threshold will produce more useful information for law enforcement while alleviating one of the most significant and costly sources of community bank compliance burdens.

FinCEN and the federal regulators have been working to identify areas in which burdens can be reduced while maintaining the effectiveness of the AML/CFT regime, for which ICBA applauds. We appreciate the opportunity to provide comments in response to this request, and welcome future engagement. If you have any questions, please do not hesitate to contact me at Rhonda.Thomas-Whitley@icba.org or (202) 659-8111.

Sincerely,

/s/

Rhonda Thomas-Whitley
Senior Vice President and Senior Regulatory Counsel