

FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN
TRANSACTIONS, AND TD F 90-22.1, REPORT OF FOREIGN BANK AND FINANCIAL
ACCOUNTS--1506-0009

SUPPORTING JUSTIFICATION

1. The Bank Secrecy Act, Titles I and II of Pub. L. 91-508, as amended, codified at 12 U.S.C. 1829, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5330, authorizes the Secretary of the Treasury, inter alia, to issue regulations requiring records and reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311-5330) appear at 31 CFR Part 103. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of the Financial Crimes Enforcement Network ("FinCEN").

The Secretary of the Treasury has determined that the records and reports required by the Bank Secrecy Act have a high degree of usefulness in criminal, tax, or regulatory investigations. All of this required information aids in creating a paper trail to trace funds through the financial system; the information is essential for tracing drug and other illegal proceeds back to their illegal sources and helping to identify the sources, volume, and movements of domestic and international currency. The information collected and retained under these regulations and the information collected on form TD F 90-22.1 assist federal, state and local law enforcement in the identification, investigation, and prosecution of individuals involved in money laundering, tax evasion, narcotics trafficking, organized crime, bank, securities, and tax fraud, embezzlement and other crimes. The information also assists in the conduct of financial supervision and other regulatory matters, and in tax collection and examination. The implementing regulations have been issued in 31 CFR Part 103 and provide, to the extent covered by this control number, as follows:

(1). Title: Reports of transactions in currency (31 CFR 103.22(b)(1), 103.27(a), 103.27(d) and 103.28).

Financial institutions must report transactions in currency that exceed \$10,000 (31 CFR 103.22(b)(1)).¹ Before concluding any transaction with respect to which a report must be filed under section 103.22(b)(1), a financial institution must verify and record the name and address of the individual presenting the transaction and must record certain information about any person on whose behalf the transaction is conducted (31 CFR 103.28). Records of reports must be maintained for 5 years (31 CFR 103.27(a)).

¹ ? As explained below, 31 CFR 103.22(b)(2) requires casinos (and card clubs) to report these transactions.

(2). Title: Reports of transactions in currency (31 CFR 103.22(b)(2)), 103.27(a), 102.27(d), and 103.28).

Casinos (and card clubs) must report transactions in currency that exceed \$10,000 in one business day (31 CFR 103.22(b)(2)). Before concluding any transaction with respect to which a report must be filed under section 103.22(b)(2), a casino must verify and record the name and address of the individual presenting the transaction and must record certain information about any person on whose behalf the transaction is conducted (31 CFR 103.28). Records of reports must be maintained for 5 years (31 CFR 103.27(a)).

(3). Title: Transactions of exempt person (31 CFR 103.22(d), 103.27(a) and 103.27(d)).

Banks and other depository institutions ("banks") may exempt from reporting under 31 CFR 103.22(b)(1) currency transactions exceeding \$10,000 by certain customers referred to as eligible persons (31 CFR 103.22(d)). Banks exempt these customers by filing a form designating them as exempt persons and maintaining certain records necessary to document the basis for the exemption and compliance with the exemption procedures of section 103.22(d). For two categories of eligible persons--non-listed businesses and payroll customers--the exemption must be renewed every two years by certifying the application of the bank's suspicious activity reporting program to those customers and recording any changes in control of those customers on a newly filed designation form. Records must be maintained for five years.

(4). Title: Reports of transportation of currency or monetary instruments (31 CFR 103.23 and 103.27).

A person must file a report with Treasury if the person knowingly transports currency or monetary instruments of more than \$10,000 at one time into or out of the United States, or receives currency or monetary instruments of more than \$10,000 at one time transported into the United States from or through a place outside the United States (31 CFR 103.23 and 103.27).

(5). Title: Reports of foreign financial accounts (31 CFR 103.24, 103.27(d), 103.32) and Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts.

Every person having a financial interest in, or signature authority over, a foreign account over \$10,000 must file a report of the account (31 CFR 103.24, 103.27(d)) and must maintain records that contain the name in which the account is maintained, the number of the account, the name and address of the foreign bank, and the type of account and maximum value of the account (31 CFR 103.32).

(6). Title: Reports of transactions with foreign financial agencies (31 CFR 103.25).

Treasury may, by regulation, require specified financial institutions to report transactions by persons with designated foreign financial agencies.

(7) Title: Reports of certain domestic coin and currency transactions (31 CFR 103.26 and 103.33(d)).

Upon a finding that additional reporting or recordkeeping is necessary to carry out the purposes, or prevent the evasion, of the Bank Secrecy Act, Treasury may issue an order requiring financial institutions or groups of financial institutions in certain geographic locations to report certain transactions in prescribed amounts for a limited period of time (31 CFR 103.26). Financial institutions subject to a geographic targeting order must maintain records for such period of time as the order requires but not more than 5 years (31 CFR 103.33(d)).

(8). Title: Purchases of bank checks and drafts, cashier's checks, money orders and traveler's checks (31 CFR 103.29 and 31 CFR 103.38).

Financial institutions must maintain records of certain information related to the sale of bank checks and drafts, cashiers checks, money orders, or traveler's checks when the sale involves currency between \$3,000-\$10,000. The records must be maintained for a period of five years and be made available to Treasury upon request.

(9). Title: Records to be made and retained by financial institutions (31 CFR 103.33 and 103.38).

Each financial institution must retain an original or copy of records related to extensions of credit in excess of \$10,000 (other than those secured by real property), and records related to transfers of funds, currency, other monetary instruments, checks, investment securities, or credit of more than \$10,000 to or from the United States (31 CFR 103.33(a)-(c)). Banks and non-bank financial institutions must also maintain records related to, and include certain information as part of, funds transfers or transmittals of funds involving more than \$3,000 (31 CFR 103.33(e)-(f), and 103.33(g)). The required records must be maintained for five years (31 CFR 103.38).

(10). Title: Additional records to be made and retained by banks (31 CFR 103.34 and 103.38).

A bank must retain an original or copy of certain documents, as specified in section 103.34. The required records must be maintained for five years (31 CFR 103.38).

(11). Title: Additional records to be made and retained by brokers or dealers in securities (31 CFR 103.35 and 103.38).

A broker or dealer in securities must retain an original or copy of certain documents, as specified in section 103.35. The required records must be maintained for five years (31 CFR 103.38).

(12). Title: Additional records to be made and retained by casinos (31 CFR 103.36 and 103.38).

Casinos (and card clubs) must make and retain a record of the name, permanent address, and taxpayer identification number each person who deposits funds with the casino, opens an account at the casino, or to whom the casino extends a line of credit (and maintain a list, available to the Secretary upon request, of the names and addresses of persons who do not furnish a taxpayer identification number), and must retain the original or a copy of certain documents, as specified in section 103.36 (31 CFR 103.36(a)&(b)(1)-(8)). Casinos must also maintain a list of transactions with customers involving certain instruments (31 CFR 103.36(b)(9)). Card clubs must maintain records of currency transactions by customers and records of activity at cages (31 CFR 103.36(b)(11)). Casinos that input, store, or retain required records on computer disk, tape or other machine-readable media must maintain the records on such media (31 CFR 103.36(c)). Required records must be maintained for five years (31 CFR 103.38).

(13). Title: Additional records to be made and retained by currency dealers or exchangers (31 CFR 103.37 and 103.38).

A currency dealer or exchanger must make and maintain a record of the taxpayer identification number of certain persons for whom a transaction account is opened or a line of credit is extended, and must maintain a list containing the names, addresses, and account or credit line numbers of those persons from whom it has been unable to secure such information. A currency dealer or exchanger must retain the original or a copy of certain documents, as specified in section 103.37. The required records must be maintained for five years (31 CFR 103.38).

(14). Title: Nature of records and retention period (31 CFR 103.38).

Records required to be retained by a financial institution under 31 CFR part 103 must be retained for 5 years, except for records or reports required under 103.26 which shall be retained for the period of time specified in the targeting order imposing the recordkeeping or reporting requirement to which the particular retention period relates.

(15). Title: Special rules for casinos (31 CFR 103.64, 103.36(b)(10), and 103.38).

This section provides special rules for casinos, including the requirement that casinos maintain a written compliance program.

(16). Title: Administrative rulings (31 CFR 103.81-87).

These sections address administrative rulings under the Bank Secrecy Act. They explain how to submit a ruling request (103.81), how nonconforming requests are handled (103.82), how oral communications are treated (103.83), how rulings are issued (103.85), how rulings are modified or rescinded (103.86), and how information may be disclosed (103.87).

2. The information collected and retained under these regulations assists federal, state and local law enforcement in the identification, investigation, and prosecution of individuals involved in money laundering, tax evasion, narcotics trafficking, organized crime, bank, securities, and tax fraud, embezzlement and other crimes. The information also assists in the conduct of financial supervision and other regulatory matters, and in tax collection and examination. Without this information the proceeds from drug trafficking and other illegal activity and unreported tax income would be difficult to detect, could become more easily "legitimized" in the United States economy, and could be more easily exported to other countries or offshore bank havens. All of these factors would result in even greater profits for the criminal elements involved and preclude law enforcement from effectively attacking the prime motivation for all criminal activity.

3. This form (the FBAR) does not involve the use of automated electronic, or other technological collection techniques. The regulations relating to recordkeeping for wire transfers, 31 CFR 103.33, specifically allow records to be kept in electronic form. Other recordkeeping rules do not specifically address electronic recordkeeping but provide that records may be a microfilm or "other" copy or reproduction.

4. The regulations try to avoid duplication. Many of the recordkeeping requirements under 31 CFR 103 are already being fulfilled by financial institutions as part of their regular business procedures or to comply with other Federal and State regulations.

Similar data are not available from any other sources. While financial institutions generally maintain some records on non-cash transactions, only the Bank Secrecy Act requires information on currency transactions, and the particular recordkeeping required under the Bank Secrecy Act is implemented by these rules.

5. The reporting and recordkeeping requirements of these regulations should not pose any adverse impact on small businesses because the majority of the requirements are directed at cash transactions of significant size. Although these regulations will have the greatest impact on large financial institutions, some small financial institutions will be required to maintain certain records and report some transactions. Nonetheless, the recordkeeping impact should be minimal as these businesses generally retain these records as part of their regular business practice.

6. Because the information collected results from the movement of large amounts of

currency by individuals and organizations, any less frequent collection of this information could hamper law enforcement efforts to detect illegal activity while it is still ongoing and discernible. The timely reporting of this information allows law enforcement to take appropriate investigative action before the criminal elements have changed their schemes for disposing of the profits of their illegal activity.

7. The reporting requirements of 31 CFR 103 require respondents to file reports with Treasury more often than quarterly. For reasons explained in paragraph 6 above, this information must be reported in a timely manner to enable law enforcement to take appropriate investigative action. The recordkeeping requirements also specify that individuals and financial institutions retain records for five years. This retention period is necessary to substantiate violations that have occurred within the Statute of Limitations (5 or 6 years).

8. On January 30, 2008, FinCEN published a 60-day notice in the Federal Register (73 FR 5628) inviting public comment on these information collections. A copy of the notice is attached. There were no responses to the request for comment.

9. N/A

10. There is no assurance of confidentiality; however, the information contained in BSA reports is subject to stringent dissemination restrictions and is not subject to disclosure under the Freedom of Information Act.

11. There are no questions of a sensitive nature in the collection of information. The information requested concerns the identification of persons and circumstances surrounding financial transactions.

12. Estimated hourly annual burdens

(1). Title: Reports of transactions in currency (31 CFR 103.22(b)(1), 103.27(a), 103.27(d) and 103.28).

OMB Number: 1506-0009.

Current Action: There is no change to the existing regulations.

Type of Review: Extension of a currently approved information collection.

Affected Public: Businesses or for-profit institutions, and non-profit institutions.

Burden: The burden for the reporting requirement in the regulations is reflected in the burden for FinCEN Form 104. The estimated number of respondents is 19,000. The estimated annual number of responses is 12,400,000, with a reporting average of 19 minutes per response and a recordkeeping average of 5 minutes per response. The estimated total for the annual burden hours is 4,960,000.

(2). Title: Reports of transactions in currency (31 CFR 103.22(b)(2)), 103.27(a), 102.27(d), and 103.28).

OMB Number: 1506-0009.

Current Action: There is no change to the existing regulations.

Type of Review: Extension of a currently approved information collection.

Affected Public: Businesses or for-profit institutions.

Burden: The burden for the reporting requirement in the regulations is reflected in the burden for FinCEN Form 103. The estimated number of respondents is 550. The estimated number of responses is 198,000, with a reporting average of 19 minutes per response and a recordkeeping average of 5 minutes per response. The estimated total for the annual burden hours is 79,200.

(3). Title: Transactions of exempt person (31 CFR 103.22(d), 103.27(a) and 103.27(d)).

OMB Number: 1506-0009.

Current Action: There is no change to the existing regulations.

Type of Review: Extension of a currently approved information collection.

Affected Public: Businesses or for-profit institutions, and non-profit institutions.

Burden: The burden for the reporting requirement in the regulations is reflected in the burden for Form TD F 90-22.53. The estimated number of respondents is 19,000. The estimated number of responses is 180,000 with a combined reporting and recordkeeping average of 70 minutes per response. The estimated total for annual burden hours is 210,000.

(4). Title: Reports of transportation of currency or monetary instruments (31 CFR 103.23 and 103.27).

OMB Number: 1506-0009.

Current Action: There is no change to the existing regulations.

Type of Review: Extension of a currently approved information collection.

Affected Public: Individuals, businesses or for-profit institutions, and non-profit institutions.

Burden: The burden for the reporting requirement in the regulations is reflected in the burden for FinCEN Form 105. The estimated number of responses is 180,000, with a reporting average of 11 minutes per response. The estimated total for the annual burden hours is 33,000.

(5). Title: Reports of foreign financial accounts (31 CFR 103.24, 103.27(d), 103.32) and Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts.

OMB Number: 1506-0009.

Form Number: TD F 90-22.1.

Current Action: There is no change to the existing regulations or the form.

Type of Review: Extension of a currently approved information collection.

Affected Public: Individuals, businesses or other for-profit institutions, and non-profit institutions.

Burden: The burden for the reporting requirement in the regulations is reflected in the burden for Form TD F 90-22.1. The estimated number of respondents is 205,000. The estimated number of responses is 205,000, with a reporting average of 10 minutes per response and a recordkeeping average of 5 minutes per response. The estimated total for annual burden hours is 51,250.

(6). Title: Reports of transactions with foreign financial agencies (31 CFR 103.25).

OMB Number: 1506-0009.

Current Action: There is no change to the existing regulation.

Type of Review: Extension of a currently approved information collection.

Affected Public: Businesses or for-profit institutions, and non-profit institutions.

Burden: The estimated number of respondents per year is 1. The estimated number of responses is 1, with a reporting burden of 1 hour per respondent, for a total annual burden of 1 hour.²

(7). Title: Reports of certain domestic coin and currency transactions (31 CFR 103.26 and 103.33(d)).

OMB Number: 1506-0009.

Current Action: There is no change to the existing regulation.

Type of Review: Extension of a currently approved information collection.

Affected Public: Businesses or for-profit institutions, and non-profit institutions.

Burden: The estimated number of respondents per year is 3,200. The estimated number of responses is 17,000, with a reporting burden of 19 minutes per response and a recordkeeping burden of 5 minutes per response. The total estimated annual burden is 6,800 hours.³

(8). Title: Purchases of bank checks and drafts, cashier's checks, money orders and traveler's checks (31 CFR 103.29 and 31 CFR 103.38).

OMB Number: 1506-0009.

Current Action: There is no change to the existing regulation.

Type of Review: Extension of a currently approved information collection.

² ? Should FinCEN issue regulations under this authority, it will provide a burden estimate specific to those regulations.

³ ? Although the burden is stated as an annual burden in accordance with the Paperwork Reduction Act, the estimated annual burden is not intended to indicate that there is a geographic targeting order in effect throughout a year or in each year.

Affected Public: Businesses or for-profit institutions, and non-profit institutions.

Burden: The estimated number of recordkeepers is 60,900. The average burden per record-keeper is 7.5 hours, for a total estimated annual recordkeeping burden of 456,750 hours.

(9). Title: Records to be made and retained by financial institutions (31 CFR 103.33 and 103.38).

OMB Number: 1506-0009.

Current Action: There is no change to the existing regulation.

Type of Review: Extension of a currently approved information collection.

Affected Public: Businesses or for-profit institutions, and non-profit institutions.

Burden:

31 CFR 103.33(a)-(c). The estimated number of recordkeepers is 22,900. The estimated annual recordkeeping burden per recordkeeper is 50 hours, for a total estimated annual recordkeeping burden of 1,145,000 hours.

31 CFR 103.33(e)-(f). The estimated number of recordkeepers is 35,500. The estimated annual recordkeeping burden per recordkeeper is 16 hours, for a total estimated annual recordkeeping burden of 568,000.

31 CFR 103.33(g). The estimated number of recordkeepers is 35,500. The estimated annual recordkeeping burden per recordkeeper is 12 hours, for a total estimated annual recordkeeping burden of 426,000.

(10). Title: Additional records to be made and retained by banks (31 CFR 103.34 and 103.38).

OMB Number: 1506-0009.

Current Action: There is no change to the existing regulation.

Type of Review: Extension of a currently approved information collection.

Affected Public: Businesses or for-profit institutions, and non-profit institutions.

Burden: The estimated number of recordkeepers is 22,900. The estimated annual recordkeeping burden per recordkeeper is 100 hours for a total annual recordkeeping burden of 2,290,000 hours.

(11). Title: Additional records to be made and retained by brokers or dealers in securities (31 CFR 103.35 and 103.38).

OMB Number: 1506-0009.

Current Action: There is no change to the existing regulation.

Type of Review: Extension of a currently approved information collection.

Affected Public: Business and other for-profit institutions.

Burden: The estimated number of recordkeepers is 8,300. The estimated annual recordkeeping burden per recordkeeper is 100 hours, for a total estimated annual recordkeeping burden of 83,000 hours.

(12). Title: Additional records to be made and retained by casinos (31 CFR 103.36 and 103.38).

OMB Number: 1506-0009.

Current Action: There is no change to the existing regulation.

Type of Review: Extension of a currently approved information collection.

Affected Public: Business and other for-profit institutions.

Burden:

31 CFR 103.36(a)&(b)(1)-(8). The estimated number of recordkeepers is 480. The estimated annual recordkeeping burden per recordkeeper is 100 hours, for a total estimated annual recordkeeping burden of 48,000.

31 CFR 103.36(b)(9). The estimated number of recordkeepers is 480. The estimated annual recordkeeping burden per recordkeeper is 7.5 hours, for a total estimated annual recordkeeping burden of 3,600 hours.

31 CFR 103.36(b)(11). The estimated number of recordkeepers is 62. The estimated number of transactions is 215,000 annually and the total estimated annual recordkeeping burden is 686 hours.

31 CFR 103.36(c). The estimated number of respondents is 480. The estimated annual recordkeeping burden per recordkeeper is 4 hours, for a total estimated annual recordkeeping burden of 1,920 hours.

(13). Title: Additional records to be made and retained by currency dealers or exchangers (31 CFR 103.37 and 103.38).

OMB Number: 1506-0009.

Current Action: There is no change to the existing regulation.

Type of Review: Extension of a currently approved information collection.

Affected Public: Business and other for-profit institutions.

Burden: The estimated number of recordkeepers is 2,300. The estimated annual recordkeeping burden per recordkeeper is 16 hours, for a total estimated annual recordkeeping burden of 368,000 hours.

(14). Title: Nature of records and retention period (31 CFR 103.38).

OMB Number: 1506-0009.

Current Action: There is no change to the existing regulation.

Type of Review: Extension of a currently approved information collection.

Affected Public: Businesses or for-profit institutions, and non-profit institutions.

Burden: The burden for this regulation is reflected in the reporting and recordkeeping provisions of 31 CFR Part 103.

(15). Title: Special rules for casinos (31 CFR 103.64, 103.36(b)(10), and 103.38).

OMB Number: 1506-0009.

Type of Review: Extension of a currently approved information collection.

Affected Public: Business and other for-profit institutions.

Burden: The estimated number of recordkeepers is 480. The estimated annual recordkeeping burden per recordkeeper is 100, for a total estimated annual recordkeeping burden of 48,000 hours.

(16). Title: Administrative rulings (31 CFR 103.81-87).

OMB Number: 1506-0009.

Current Action: There is no change to the existing regulation.

Type of Review: Extension of a currently approved information collection.

Affected Public: Individuals, businesses or for-profit institutions, and non-profit institutions.

Burden: The estimated number of responses is 60 annually, with a burden of 1 hour per submission, for a total annual burden of 60 hours.

13. Not Applicable

14. Not Applicable

15. Not Applicable

16. Not Applicable

17. FinCEN requests that the expiration of the control number of the regulations not be displayed so that the regulations will not have to be amended in the Federal Register every three years to change the expiration date. In addition, FinCEN requests that the expiration of the control number for Form TD F 90-22.1 not be printed on the form to avoid having to reprint the form solely for changes in expiration dates.

18. N/A