

Supplemental Statement

1. Circumstances Necessitating Collection of Information.

The statute generally referred to as the Bank Secrecy Act, Titles I and II of Public Law 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5332, authorizes the Secretary of the Treasury, to require, *inter alia*, financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism.¹ Regulations implementing Title II of the Bank Secrecy Act 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.

Pursuant to the BSA and its implementing regulations, financial institutions are required to file currency transaction reports (CTRs) on transactions in cash that total over \$10,000 by any person over one day. Depository institutions are permitted to exempt the transactions of certain eligible customers from the CTR reporting requirement after complying with a number of requirements, including among other things filing a designation of exempt person (DOEP) form with FinCEN and annually reviewing the customer's eligibility for exemption. We are submitting for publication in the Federal Register a notice of proposed rulemaking (NPRM) that proposes eliminating many of the requirements that depository institutions must comply with to exempt the transactions of their eligible customers from CTR reporting. More specifically, the NPRM proposes removing the following current regulatory requirements:

- 1- That depository institutions annually review and file a DOEP for otherwise eligible customers who are governments, other depository institutions, or entities acting with governmental authority;
- 2- That depository institutions biennially renew a DOEP filing for otherwise eligible business that are either customers not-listed on one of three named major stock exchanges or payroll customers; and
- 3- That depository institutions wait 12 months before designating otherwise eligible customers that are not-listed on one of three named major stock exchanges or payroll customers for exemption.

These proposals are made with the intention of greatly reducing the regulatory requirements that depository institutions must comply with to treat an eligible customer as exempt. The BSA and its implementing regulations, though, still require that a change in control of a customer be reported. As a result, while the NPRM proposes to remove the requirement that a depository institution biennially renew a DOEP filing, depository institutions would still need to report any change of control in a customer that is a non-listed business entity or a payroll customer once every two years.

¹ Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, P.L. 107-56.

2. Method of Collection and Use of Data.

The collection of information is reported to the federal government on FinCEN Form 110, the Designation of Exempt Persons (DOEP) Form. The information collected in that form helps protect the U.S. financial system from abuse by money launderers and others engaged in financial crimes and terrorist financing. The information that would no longer be collected in the CTRs and DOEP filings, which would no longer be required if the proposals in the NPRM become effected through a final rule, have been deemed to be of little usefulness to law enforcement efforts.

3. Use of Improved Information Technology to Reduce Burden.

Financial institutions are permitted to automate their records system to meet these requirements. There is no specific government mandate to do so.

4. Efforts to Identify Duplication

Not applicable.

5. Methods to Minimize Burden on Small Businesses or Other Small Entities

All financial institutions are required, when appropriate, to file CTRs, but depository institutions are not required to avail themselves of the ability to exempt their eligible customer's transactions from CTR reporting requirements. FinCEN anticipates that, if implemented, the proposed amendments would result in an initial increase in the number of DOEPs filed as more depository institutions chose to exempt eligible customers, as well as a reduction in the total number of CTRs filed. FinCEN also anticipates that the proposed removal of the need for depository institutions to file biennial reviews would lead to a decrease in the number of subsequent DOEPs filed.

6. Consequences to the Federal Government of Not Collecting the Information.

Without the information gathered through CTR and DOEP filings, the federal government's efforts to prevent money laundering and terrorist financing would be weakened. CTRs filings, as a result of their objective nature, provide law enforcement with very useful information in a unique manner. If implemented, the proposed amendments would reduce the number of CTRs and DOEPs filed. FinCEN believes, however, that the reduction in the amount of information collected will not result in a reduction in the quality of information available to law enforcement, and may, in fact, improve the overall usefulness of the data that will still be collected.

7. Special Circumstances Requiring Data Collection Inconsistent with Guidelines.

Under 31 CFR 103.38, records must be kept for 5 years. This retention period is necessary to substantiate violations that have occurred within the Statute of Limitations (5 or 6 years).

8. Consultation with Individuals Outside of the Agency on Availability of Data, Frequency of Collection, Clarity of Instructions and Forms, and Data Elements.

We consulted with the Federal Banking Agencies, representatives from Federal law enforcement agencies, and others on this notice of proposed rulemaking. A request for public comment regarding this NPRM will be published in the Federal Register. Before any proposals in this NPRM are implemented through a final rulemaking, FinCEN will evaluate all public comments received on both the regulatory amendments proposed and the information collection requirements.

9. Payments and Gifts

No payments or gifts were made to respondents.

10. Assurance of Confidentiality of Responses.

Information collected under 31 U.S.C. 5318(i) may be made available to appropriate law enforcement agencies and supervisory agencies, pursuant to legal process.

11. Justification of Sensitive Questions.

No sensitive questions are asked.

12. Estimated Annual Hourly Burden.

Frequency: As required.

Estimated Number of Respondents: 19,000

Estimated Annual Responses: 19,000

We are estimating an average of one and a half (1.5) burden hours in the Notice of Proposed Rulemaking for a total of 97,500 hours.

13. Estimated Annual Cost to Respondents for Hour Burdens.

Not required.

14. Estimated Annual Cost to the Federal Government.

Not required.

15. Reason for Change in Burden.

The NPRM's proposed amendments would likely increase the initial number of DOEPs filed, which would shortly thereafter result in a decrease in the number of CTRs and biennially renewed DOEPs filed.

16. Plans for Tabulation, Statistical Analysis, and Publication.

Not applicable.

17. Request not to Display Expiration Date of OMB Control Number.

We request approval not to display the expiration date in order to avoid amending the regulation every three years.

18. Exceptions.

There are no exceptions to the certification statement on OMB Form 83-1.