

SUPPORTING STATEMENT

1. Circumstances Necessitating Collection of Information

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 matters. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311-5330) (BSA) appear at 31 CFR part 103. The authority of the Secretary to administer the Bank Secrecy Act regulations has been delegated to the Director of the Financial Crimes Enforcement Network (FinCEN).

The Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. 108-458) (IRTPA) amended the BSA to require the Secretary to prescribe regulations “requiring such financial institutions as the Secretary determines to be appropriate to report to the Financial Crimes Enforcement Network certain cross-border electronic transmittals of funds, if the Secretary determines that reporting of such transmittals is reasonably necessary to conduct the efforts of the Secretary against money laundering and terrorist financing.”

Beginning in 2007, FinCEN conducted a study, *the Implications and Benefits of Cross-Border Electronic Transmittal of Funds Reporting*, to determine whether reporting of cross-border electronic transmittals of funds (CBETFs) is reasonably necessary for the Secretary to conduct its efforts against money laundering and terrorist financing. Based on the findings from that study, FinCEN has determined that the collection of CBETF data would be “reasonably necessary” as set forth in Section 6302 of IRTPA. This determination is based on the value FinCEN believes this information will have in our efforts to stem money laundering, tax evasion, and terrorist financing. FinCEN believes that a reporting requirement provides a significant advantage to the government’s efforts in these areas over the current recordkeeping requirement at a reasonable cost. These advantages are based on the central premise that proactive targeting is more effective with access to a larger dataset.

FinCEN’s determination that a reporting requirement is reasonably necessary also rests on the tenet that the government has greater access to information than any individual institution. For example, if a bank or money transmitter has a customer who routinely transfers funds to a foreign country in amounts that, considered alone, would not appear significant, this activity may never be reviewed. By instituting a reporting requirement, the government will be able to observe whether this customer is conducting similar transactions at many other institutions and, if so, can see that the person may be avoiding detection by spreading their transactions across many market participants. Additionally, the government has access to more information than banks and money transmitters. While the government cannot provide the private sector access to trade and tax databases, for example, matching information in these databases with cross-border wire records will further prosecutions in these areas, potentially leading to recouping revenue that may otherwise go uncollected. Lastly, the government will always have access to classified information that cannot be shared with the private sector, and the ability to run queries based on this information could have a significant impact on mapping a criminal or terrorist support network.

In addition, FinCEN will collect an annual report from each bank that acts as the ultimate

originator's or recipient's bank in the chain of a CBETF. This report will contain the taxpayer identification number (TIN) associated with the account number that originated or received a CBETF. The purpose of this proposal is to enhance the usefulness of the funds transfer data to better detect, investigate, and prosecute money laundering and terrorist financing to the extent such crimes also may involve tax evasion. The extent to which offshore bank accounts are used to evade U.S. income tax is considerable and well-documented.¹ The Administration, as part of a comprehensive effort to reduce the use of offshore accounts and entities to evade U.S. tax, has also proposed the collection of certain information regarding certain international transfers of funds.²

2. Method of Collection and Use of Data.

Copies of transmittal orders used to communicate a CBETF will be collected and sent to FinCEN either by third-party processors or through remote access to BSA e-filing. This information will be stored in a secure database and accessed by law enforcement and regulatory agencies to further their work in preventing money laundering and terrorist financing. FinCEN will accept the annual filing of TINs through electronic filings in a separated format.

3. Use of Improved Information Technology to Reduce Burden.

FinCEN is accepting current standardized messaging formats from third-party carriers thereby reducing the burden on institutions of having to file a separate form for each transmittal order.

4. Efforts to Identify Duplication.

No other similar information exists.

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

The information collection will not have a significant economic impact on a substantial number of small entities. In an effort to reduce the burden on small entities and on the industry as a whole, FinCEN, in regards to the CBETF report, will only require reporting from those institutions that act as intermediaries between domestic and foreign banks and money transmitters. These institutions are typically larger institutions that already have the technological ability to report the required information with minimal impact. The reporting of CBETFs will impact only 1.5% of small banks and 4% of small money transmitters.

For the annual collection of TINs, FinCEN estimates that the burden associated with such report is similar to the IRS series form 1099. This form has an annual collection burden of one hour per institution per year. FinCEN does not anticipate this report as overly burdening small businesses or entities.

¹ See generally Staff of Sen. Subcomm. on Investigations of the Comm. on Homeland Sec. and Govtl. Affairs, 110th Cong., *Tax Haven Banks and U.S. Tax Compliance*, (Sen. Subcomm. Print 2008); See generally Staff of Sen. Subcomm. on Investigations of the Comm. on Homeland Sec. and Govtl. Affairs, 109th Cong., *Tax Haven Abuses: The Enablers, the Tools and Secrecy*, (Sen. Subcomm. Print 2006).

² "General Explanations of the Administrations Fiscal Year 2011 Revenue Proposals, Miscellaneous Tax Policy Document, at 63 (Treasury, Feb. 2010) <http://www.ustreas.gov/offices/tax-policy/library/greenbk10.pdf>.

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

Failure to collect this information would limit law enforcement's ability to investigate and prosecute money laundering and other financial crimes, including tax-evasion, conducted through cross-border transactions.

7. Special Circumstances Requiring Data Collection Inconsistent with Guidelines.

FinCEN will require a weekly batched filing of CBETF records as is necessary to ensure timeliness in the availability of information for its effective and efficient use by law enforcement in detecting and deterring ongoing money laundering, terrorist financing, and other financial crime. Further delay in the collection of information would hamper investigations leaving law enforcement 90 days or more behind potential targets.

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

FinCEN consulted the Federal Banking Supervisory Agencies, Federal Law Enforcement Agencies, and International Financial Intelligence Units to determine the need and potential uses of the information. FinCEN consulted with third-party carriers to determine the appropriate form of the reporting. Lastly, FinCEN, through a contractor, surveyed 287 institutions that would be affected by the reporting requirement to identify the impacts and benefits of the requirement on the industry and identify potential cost-saving methods of reporting.

9. Payments or Gifts.

No payments or gifts will be made to respondents.

10. Assurance of Confidentiality of Responses.

A number of Federal laws directly control the collection and use of data by government agencies with the aim of protecting the privacy of individual persons – namely, the Right to Financial Privacy Act, the Privacy Act, the Federal Information Security Management Act, and the Bank Secrecy Act itself. Lastly, the E-Government Act of 2002 provides a further protection for personal information in government data systems, by requiring that agencies conduct “privacy impact assessments” prior to procuring or developing such systems.

FinCEN has developed policies and procedures for compliance with these requirements in accordance with the Department of the Treasury’s Information Technology Security Program Directive. Compliance with these government-wide and department-wide standards ensures that FinCEN designs and operates its information systems in accordance with government best practices for the maintenance and dissemination of sensitive data. In developing a system for the collection, storage, analysis, and sharing of CBETF reports, FinCEN will incorporate compliance with these standards into every phase of the design and implementation of the system. FinCEN has more than twenty years’ experience in handling sensitive financial information about persons through the reporting it currently receives from financial institutions in the United States. FinCEN imposes strict limits on the use and re-dissemination of the data it provides to its law enforcement, regulatory, and foreign counterparts and strictly monitors those persons and organizations to which it grants access to the data.

11. Justification of Sensitive Questions.

No sensitive questions were asked.

12. Estimated Annual Hourly Burden.

CBETF Report

Estimated number of respondents: 1,000.

Estimated number of responses: 52,000.

Estimated record keeping/filing per response: 1 hour.

Estimated total annual burden hours: 52,000 hours.

Annual TIN Report

Estimated number of respondents: 15,000.

Estimated number of responses: 15,000.

Estimated record keeping/filing per response: 1 hour.

Estimated total annual burden hours: 15,000 hours.

13. Estimated Annual Cost to respondents for hour burdens.

Not applicable.

14. Estimated Annual Cost to the Federal Government

FinCEN has incorporated the costs of this reporting requirement into the overall costs of its IT modernization plan.

15. Reasons for Change in Burden.

Not applicable.

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

Not applicable.

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

Not applicable.

18. Exceptions.

Not applicable.