

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. 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 investigations and proceedings. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311-5330) appear at 31 CFR Chapter X. 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 Chapter X and, to the extent covered by this control number, require United States persons to report their financial interest in or signature authority over foreign financial accounts such as bank and securities accounts.

2. Method of Collection and Use of Data.

The information collected and retained under this regulation 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. Use of Improved Information Technology to Reduce Burden.

This form (the FBAR) currently is available in a fill and print format using a computer. The FBAR is expected to be available for electronic filing (BSA E-Filing) for the 2011 reporting period due June 30, 2012.

4. Efforts to Identify Duplication.

There is no similar information available; thus, there is no duplication.

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

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 individuals and business that have foreign financial accounts that exceed \$10,000 at any time during the reporting period. Nonetheless, should a small business have to report, the recordkeeping impact should be minimal as these businesses generally retain these records as part of their regular business practice.

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

This information is collected annually. Because the information collected identifies foreign financial accounts owned 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. Special Circumstances Requiring Data Collection Inconsistent with Guidelines.

The reporting requirements of 31 CFR 1010.350 require respondents to file reports with Treasury on an annual basis. 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. Consultation with Individuals Outside of the Agency on Availability of Data, Frequency of Collection, Clarity of Instructions and Forms, and Data Elements.

On February 26, 2010, FinCEN published an NRPM and 60-day notice in the Federal Register (75 FR 8844) inviting public comment on the regulation the information collection. A copy of the notice is attached. There were 42 responses to the request for comment. FinCEN responded to the comments in the preamble to the final rule published February 24, 2011 (See 76 FR 10234). There were two comments specific to burden. See the FinCEN response at 76 FR 10244, VI. Paperwork Reduction Act Notices.

9. Payments and Gifts.

No payments or gifts are made to respondents.

10. Assurance of Confidentiality of Responses.

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. Justification of Sensitive Questions.

There are no questions of a sensitive nature in the collection of information. The information requested concerns the identification of foreign financial accounts owned by individuals and businesses.

12. Estimated Annual Hourly Burden.

Frequency: Annually or as required.

Estimated Number of Respondents: 400,000.

Estimated Number of Annual Responses: 400,000.

Estimate of Burden: The estimated average burden associated with the recordkeeping requirement in this rule will vary depending on the number of reportable accounts. We estimate that the recordkeeping burden will range from five minutes to sixty minutes, and that the average burden will be thirty minutes. The estimated average burden associated with the reporting requirement (FBAR form completion) will also vary depending on the number of reportable accounts and whether the filer will be able to take advantage of the exceptions provided in this rule. We estimate that the average reporting burden will range from approximately twenty minutes to one hour and that the average reporting burden will be approximately 45 minutes. The reporting burden is reflected in the burden listed for completing TD-F 90-22.1 (See OMB Control Number 1506-0009/1545-2038). The burden associated with reporting a financial interest in or signature or other authority over a foreign financial account to the Commissioner of Internal Revenue is reflected in the burden for the appropriate income tax return or schedule.

Estimate of Total Annual Burden on Respondents: 500,000 hours.
Estimates were based on time taken to read the instructions and complete the form.

13. Estimated Annual Cost to Respondents for Hour Burdens.

Not Applicable

14. Estimated Annual Cost to the Federal Government.

Not Applicable

15. Reason for Change in Burden.

There are no changes to the previous approved burden. This revision is being made in incorporate prescribing regulations codified under 31 CFR §1010.350, published final on February 24, 2011, at 76 FR 10234, on rules for the reporting of foreign financial accounts. These rules defined the scope of individuals and entities required to file the Foreign Bank and Financial Accounts – Form TD-F 90.22.1 (FBAR); delineate the types of reportable accounts, and exempt certain persons and accounts from the reporting requirement and provide certain additional relief.

A revised Form TD-F 90.22.1, Report of Foreign Bank and Financial Accounts, is also included in this submission, which incorporated proposed changes to the instructions, as identified in the NPRM on February 26, 2010 at 75 FR 8844.

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

Not Applicable

17. Request Not To Display Expiration Date of the Office of Management and Budget Control Number.

FinCEN requests that the expiration of the control number of the regulation not be displayed so that the regulation 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 date.

18. Exceptions.

There are no exceptions to the certification statement on Office of Management and Budget electronic reporting system (ROCIS).