

FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN
TRANSACTIONS, AND FINCEN FORM 114, REPORT OF FOREIGN BANK AND
FINANCIAL ACCOUNTS--1506-0009

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 (the "Secretary"), 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 (the "BSA"), (codified at 31 U.S.C. 5311-5330) appear at 31 CFR Chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of the Financial Crimes Enforcement Network ("FinCEN").

The Secretary has determined that the records and reports required by the BSA 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 FinCEN Form 114, (formerly 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, to the extent covered by this control number, require U.S. 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.

As discussed above, the information collected and retained under this regulation assists Federal, state and local law enforcement in the identification, investigation, and ultimately the prosecution of individuals involved in a variety of financial crimes. 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 U.S. economy, and could be more easily exported to other countries or offshore bank havens. All of these factors would result in 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.

The FBAR currently is electronically available through the FinCEN BSA E-Filing system in a discrete (individual report) format using a computer. The FBAR report will be revised to accept batch electronic filing for the 2013 reporting period due June 30, 2014. This revised version will be released for planning purposes in September 2013 to be effective January 1, 2014.

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.

Because the information collected identifies foreign financial accounts owned by individuals and organizations, a failure to collect 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 March 5, 2013, FinCEN published a 60-day notice in the Federal Register (78 FR 14415) inviting public comment on the proposed changes to the information collection to support electronic batch filing. There were five responses to the request for comment. FinCEN reviewed each response, which is summarized as follows:

a) One respondent commented on fraud activity in a particular state but did not comment on the proposed FBAR changes. The information was forwarded to Federal law enforcement representatives. In view of the sensitive information provided in the submission, it will not be made public.

b) A trade group provided extensive comment on recommended changes to the regulation which was beyond the scope of this notice. FinCEN will retain the submission for consideration during a regulatory review.

c) Two respondents made recommendations to enhance item 14 and the instructions to address both situations: a financial interest in an account and a signature authority but no financial interest in an account. FinCEN accepts this recommendation.

d) One respondent questioned why the FBAR could not be filed as part of a tax return. This suggestion would potentially require amending both Title 31 and Title 26. This comment is beyond the scope of this notice and therefore FinCEN declines to accept this recommendation.

e) Several comments were provided to clarify the title of items 15 and 34. FinCEN accepts

the recommendation for item 15 but not item 34. The term “organization” is the correct term for item 34.

f) One respondent recommended adding a definition for “Joint Account” to the instructions. FinCEN accepts the recommendation.

g) One respondent recommended adding “Reason Codes” for late filling the report. The codes have been added to the reports electronic header/cover page.

h) One respondent recommended adding a box to indicate that the report was being late filed due to a previous program extension. FinCEN has edited the reports instructions for late filing to provide for this information on the header/cover page.

i) One respondent suggested addressing “Indirect Account Ownership” and “Minor Children.” Both suggestions would require regulatory action which is beyond the scope of the notice and is not accepted. FinCEN will consider this recommendation during regulatory review.

j) One respondent suggested changes to accommodate two signatures on the FBAR in support of joint spouse filings. The BSA E-Filing system technically does not support and cannot accept two validated signatures. FinCEN has developed an alternate procedural approach to support joint spouse filings that the e-file system can accommodate. The July 2013 e-file release notice provides specific procedures to accommodate joint spouse filers.

k) One respondent suggested changes to the third party preparer section. After review with staff, the recommendations did not enhance the section and were not accepted. The section was enhanced to accommodate foreign third party preparers.

l) One respondent recommended that a “Centralized Authorization File (“CAF”)” number be accepted. Title 31 does not use or have access to IRS CAF numbers, which are issued in response to tax-related questions. FinCEN does not accept this recommendation.

m) One respondent suggested that FinCEN develop the ability to retain and display prior year financial information once the filer populated certain identifying information. The BSA E-Filing system was not designed as a recordkeeping system, it is a portal only. Redesigning the system to accommodate this suggestion is outside the scope of this initiative.

n) There were no comments received specific to burden.

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: 685,000.

Estimated Number of Annual Responses: 685,000.

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 30 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 the rule. We estimate that the average reporting burden will range from approximately 15 minutes to 50 minutes and that the average reporting burden will be approximately 30 minutes. The reporting burden is reflected in the burden listed for completing FinCEN Form 114 (See OMB Control Number 1506-0009). 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: 685,000 hours (one hour per report).

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.

The report is being expanded to include third party preparers filing for their clients. Reviews of current filing statistics for 2010/2011 and to date for 2012 reflect a more accurate filing picture. Based on this review a burden increase from 500,000 to 685,000 hours is warranted.

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 FinCEN Form 114 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).