

Supporting Statement  
OMB Control Number 1506-0019

Suspicious Activity Reporting Requirements by Brokers or Dealers in Securities and Futures Commission Merchants and Introducing Brokers in Commodities.

1. Circumstances necessitating collection of information.

The statute generally referred to as the “Bank Secrecy Act” (“BSA”), 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, among other things, to require financial institutions to keep records and 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, and to implement counter-money laundering programs and compliance procedures.<sup>1</sup> Regulations implementing Title II of the BSA appear at 31 CFR Chapter X. The authority of the Secretary to administer the BSA regulations has been delegated to the Director of the Financial Crimes Enforcement Network (“FinCEN”).

Section 5318(g) of the BSA authorizes the Secretary to require financial institutions to report suspicious transactions. Section 5318(g) also prohibits the notification of any person involved in the transaction that a suspicious activity report has been filed. Section 5318(g) was added to the BSA by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act, Title XV of the Housing and Community Development Act of 1992, Pub. L. 102-550.

Brokers or dealers in securities under 31 CFR 1023.320 and futures commission merchants and introducing brokers in commodities under 31 CFR 1026.320 are required to report suspicious transactions to FinCEN. A transaction would require reporting under the rule if the transaction is conducted or attempted by, at, or through these brokers or dealers in securities, futures commission merchants, or introducing brokers in commodities which involve or aggregate funds of at least \$5,000 and these institutions know, suspect, or have reason to suspect that the transaction or the pattern of transactions of which the transaction is a part:

- (i) involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal-activity;
- (ii) is designed to evade a recordkeeping or reporting requirement of a regulation promulgated under the BSA;
- (iii) serves no business or apparent lawful purpose; or
- (iv) involves the use of the business to facilitate criminal activity.

Under 31 CFR 1023.320(d) and 31 CFR 1026.320(d), brokers or dealers in securities, futures commission merchants, and introducing brokers in commodities are required to retain a copy of any suspicious activity report (“SAR”) filed and any documentation supporting the filing

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<sup>1</sup> Language expanding the scope of the BSA 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 (“USA PATRIOT Act”).

of the SAR for five years. These documents are necessary for criminal investigations and prosecutions.

2. Method of collection and use of data.

Information about suspicious transactions conducted or attempted by, at, through, or otherwise involving brokers or dealers in securities, futures commission merchants, and introducing brokers in commodities is collected through the filing of the SAR form via FinCEN's BSA e-Filing system. FinCEN and law enforcement agencies will use the information on the SAR for criminal investigation and prosecution purposes.

3. Use of improved information technology to reduce burden.

By using FinCEN's computerized filing system (BSA E-filing), a financial institution can reduce the time required for its compliance staff to complete the report. Discrete and batch versions are available on the FinCEN BSA E-File web site at <http://bsaefiling.fincen.treas.gov/main.html>.

4. Efforts to identify duplication.

No other similar information exists.

5. Methods to minimize burden on small businesses or other small entities.

The design of the SAR is such that only the fields normally associated with the filing institution type are displayed. This design reduces the time required to complete the report and thus the impact on small businesses.

6. Consequences of less frequent collection on Federal programs or policy activities.

The information submitted on a SAR assists both law enforcement, regulatory authorities, and industry with improved detection of financial crime, analysis of trends, and coordination of investigative efforts. Failure to collect this information would, among other things, limit law enforcement's ability to investigate and prosecute money laundering and other financial crimes conducted at or through these businesses.

7. Special circumstances requiring data collection to be inconsistent with guidelines in 5 CFR 1320.5(d)(2).

Respondents must report a suspicious transaction no later than 30 calendar days after the date of the initial detection by the reporting financial institution of facts that may constitute a basis for filing a SAR. If no suspect is identified on the date of the initial detection, a financial institution may delay filing a SAR for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection, which may result in reporting more frequently than quarterly. Prompt reporting is vital to the detection of money laundering and other financial crime, including the financing of terrorism.

8. Consultation with individuals outside of the agency on availability of data, frequency of collection, and clarity of instructions and forms, and data elements.

On August 22, 2018, FinCEN published in the *Federal Register* a notice inviting comment for 60 days on the reporting of suspicious activity by brokers or dealers in securities, futures commission merchants, and introducing brokers in commodities in accordance with 31 CFR 1023.320 and 1026.320. See 83 FR 42556. FinCEN received no comments in response to the notice.

9. Explanation of decision to provide any payment or gift to respondents.

No payments or gifts were made to respondents.

10. Assurance of confidentiality of responses.

Information provided to the government on the SAR form is expressly prohibited from disclosure to any person involved in the transaction under 31 U.S.C. 5318(g)(2), and implementing regulations, and the participating agencies' Privacy Act notices make clear that the systems of records are intended for the official use of law enforcement and regulators. Appropriate system security safeguards are in place to protect against unauthorized access.

11. Justification of sensitive questions.

There are no questions of a sensitive nature in the collection of information. Any personally identifiable information collected under the BSA is strictly controlled as outlined in FinCEN's Systems of Records Notice, which was most recently published at <https://www.federalregister.gov/documents/2016/11/07/2016-26662/privacy-act-of-1974-systems-of-records>.

12 & 13. Estimated burden & cost of information collection.

<b>Information Collection</b>	<b># of Respondents</b>	<b>Annual # of Responses per Respondent</b>	<b>Total Responses</b>	<b>Hours per response</b>	<b>Total Hours</b>	<b>Labor Cost per Hour</b>	<b>Total Labor Costs</b>
SAR Form	5,428	0	1	1	1	\$63.53	\$64
<b>TOTAL</b>			<b>1</b>		<b>1</b>		<b>\$64</b>

The actual reporting and recordkeeping burden of the regulations (31 CFR 1023.320 and 1026.320) is reflected in the burden for the BSAR as approved under 1506-0065. The burden

listed in this renewal is assigned to maintain control number 1506-0019 active solely as a reporting requirement. Under control number 1506-0019, the burden is estimated at one response and one hour in order to avoid double-counting the same burdens that have already been estimated under control number 1506-0065.

Estimated burden cost: 1 hours X \$63.53 per hour = \$64.<sup>1</sup>

The estimated number of respondents: 5,428.<sup>2</sup>

Total burden hours: 1.

Total cost: \$64.

The estimated annual cost to respondents for this collection is reflected in OMB Control Number 1506-0065.

There are no non-labor costs associated with this collection of information.

14. Estimated annual cost to the Federal government.

The estimated cost to the Federal government for this collection is reflected under OMB Control Number 1506-0065.

15. Reasons for change in burden.

There is no change in burden.

16. Plans for tabulation, statistical analysis, and publication.

The information will not be tabulated or compiled for publication.

17. Request not to display the OMB expiration date.

FinCEN requests that the expiration date of the control number of the regulation not be displayed so that there is no confusion as to whether the certification form is still valid. This request will not affect the normal 3-year Paperwork Reduction Act renewal process.

18. Exceptions to the certification statement

There are no exceptions to the certification statement.

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<sup>1</sup> The above Average Hourly Wage Rate is calculated from the May 2017 Bureau of Labor Statistics average hourly wage for “13-2061 Financial Examiners” of \$44.12, plus an additional 44% for benefits to produce a fully-loaded rate of \$63.53.

<sup>2</sup> According to the Securities Exchange Commission's 2017 Annual Report, there are over 4,000 registered broker-dealers; FinCEN will use the number 4,200 as an estimate. According to the National Futures Association, there are 64 registered futures commission merchants and 1,164 introducing brokers. Added together, the total estimated number of respondents is 5,428.