

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

SUPPORTING STATEMENT

Justification for Emergency Processing.

The Financial Crimes Enforcement Network (FinCEN) is requesting immediate emergency processing to reinstate the Office of Management and Budget (OMB) control number 1506-0009 pertaining to the Report of Foreign Bank and Financial Accounts (FBAR) regulations, 31 CFR 1010.350, 1010.420, and the FBAR form (FinCEN Form 114), to correct the inadvertent lapse in the control number.

The collection of foreign financial account information is essential to FinCEN's mission and to law enforcement. The potential misuse of foreign financial accounts to evade domestic criminal, tax, and regulatory laws has been a long-held congressional and law enforcement concern. More than four decades after the Bank Secrecy Act's (BSA) enactment, law enforcement and regulatory agencies continue to use critical information reported in FBARs to aid in criminal and regulatory investigations involving tax evasion, money laundering, terrorism, and other crimes. It is critical to FinCEN's mission that the FBAR OMB control number be reinstated as soon as possible. Calendar year 2017 foreign financial accounts are due to be reported no later than October 15, 2018.

1. Circumstances Necessitating Collection of Information.

The 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 (the Secretary), among other things, 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 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 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. U.S. persons are required 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, this collection of information 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 more 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 a prime motivation for criminal activity.

## 3. Use of Improved Information Technology to Reduce Burden.

The FBAR is electronically available through the FinCEN BSA E-Filing system in a discrete (individual report) and batch filing format using a computer.

## 4. Efforts to Identify Duplication.

The respondents are the only source of this information. There is no similar information available to FinCEN; 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 and form 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 is collected annually and 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 provides law enforcement with important investigative leads in order to take appropriate actions, including tracing criminal proceeds, gathering additional evidence, seizing funds, and stopping the movement of funds 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 recordkeeping requirements specify that individuals and financial institutions retain records for five years. This retention period is necessary to substantiate violations that have occurred within the applicable 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.

After OMB control number 1506-0009 is reinstated, FinCEN plans to publish in the *Federal Register* a notice for the regular 3-year extension of the control number. The *Federal Register* notice will provide the public with a 60-day comment period.

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 generally 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. Any personally identifiable information collected under the BSA is strictly controlled as outlined in FinCEN's Systems of Records Notice. See <https://www.gpo.gov/fdsys/pkg/FR-2014-04-14/pdf/2014-08254.pdf>.

12. & 13. Estimated Burden & Cost of Information Collection.

Frequency: Annually.

Estimated Number of Respondents: 1,090,774.<sup>1</sup>

Estimated Number of Annual Responses: 1,090,774.

Estimate of Burden: The estimated average burden associated with the recordkeeping requirements in the rules 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 (i.e., 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. This ICR does not include 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, which is reflected in the burden for the appropriate income tax return or schedule.

Estimate of Total Annual Burden on Respondents: 1,090,774 hours (one hour per report).

Estimates were based on time taken to read the instructions and complete the form.

Estimated Burden Cost: 1,090,774 hours X \$63.53 per hour = \$69,296,872.22.<sup>2</sup>

<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>
Regulatory requirement	1,090,774	1	1,090,774	1	1,090,774	\$63.53	\$69,296,872.22
<b>TOTAL</b>			<b>1,090,774</b>		<b>1,090,774</b>		<b>\$69,296,872.22</b>

14. Estimated Annual Cost to the Federal Government.

Electronic processing cost to the Federal Government for 1,090,774 responses X \$0.10 per

<sup>1</sup> The total number of FBARs reported for foreign financial accounts reported for calendar year 2016 is 1,090,774.

<sup>2</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.

response = \$109,077.40<sup>3</sup>

15. Reason for Change in Burden.

Reviews of current filing statics for calendar year 2016 (most current date) reflect a more accurate filing picture. Based on this review a burden increase is warranted. There is an increase in burden of 405,774 hours from that, which was previously approved by OMB in 2013 (685,000 hours). This is an adjustment in estimates due to an increase in filings, based on the most recent available data (2016).

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

The information will not be tabulated or compiled for publication.

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

FinCEN believes that displaying the OMB expiration date is inappropriate because it could cause confusion by leading FBAR filers to believe that the forms sunset as of the expiration date. FBAR filers are not likely to be aware that FinCEN intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. Exceptions.

There are no exceptions to the certification statement.

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<sup>3</sup> Cost per response received as listed in the BSA E-Filing Federal contract for 2018.