

Supporting Statement
OMB Control Number 1506-0070

Beneficial Ownership Requirements for Legal Entity Customers

1. Circumstances Necessitating Collection of Information.

The Financial Crimes Enforcement Network (“FinCEN”) exercises regulatory functions primarily under the Currency and Financial Transactions Reporting Act of 1970, as amended by the USA PATRIOT Act of 2001 and other legislation. This legislative framework is commonly referred to as the “Bank Secrecy Act” (“BSA”).¹ The Secretary of the Treasury has delegated to the Director of FinCEN the authority to implement, administer, and enforce compliance with the BSA and associated regulations.² Pursuant to this authority, FinCEN may issue regulations requiring financial institutions to keep records and file reports that “have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.”³ Additionally, FinCEN is authorized to issue regulations requiring financial institutions to maintain procedures to comply with the BSA anti-money laundering (“AML”) program requirements.⁴ The regulatory requirements guard against money laundering and include due diligence requirements. Pursuant to 31 CFR 1010.230, covered financial institutions⁵ are required to establish and maintain written procedures that are reasonably designed to identify and verify beneficial owners of new accounts opened by legal entity customers and to include such procedures in their AML programs.

2. Method of Collection and Use of Data.

Covered financial institutions may obtain the required identifying information by either obtaining from the individual opening the account on behalf of a legal entity customer (i) a prescribed certification form, or (ii) the information required by the form by another means, provided the individual certifies the accuracy of the information. Covered financial institutions must also maintain a record of the identifying information obtained, and a description of (i) any document relied on, (ii) any non-documentary methods, (iii) the results of any measures undertaken, and (iv) the resolutions of substantive discrepancies.

These requirements will assist law enforcement in financial investigations, advance counterterrorism and broader national security interests, improve financial institutions’ ability to assess and mitigate risk, help prevent evasion of financial sanctions, facilitate tax compliance, enhance financial transparency of legal entities, and

¹ The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, 31 U.S.C. 5311–5314 and 5316–5332 and notes thereto, with implementing regulations at 31 CFR Chapter X. See 31 CFR 1010.100(e).

² Treasury Order 180-01 (January 14, 2020).

³ 31 U.S.C. 5311.

⁴ 31 U.S.C. 5318(a) and (h).

⁵ Covered financial institutions include banks, brokers or dealers in securities, mutual funds, futures commission merchants, and introducing brokers in commodities. See 31 CFR 1010.230(f).

advance U.S. compliance with international standards and commitments. Compliance with these requirements will be reviewed by Federal agencies during the course of BSA examinations.

3. Use of Improved Information Technology to Reduce Burden.

Financial institutions are permitted to automate their AML program to meet their requirements, including the requirement to collect beneficial ownership information for legal entity customers. There is no specific government mandate to do so.

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.

As noted in the Regulatory Flexibility Analysis of the final rule (“Rule”),⁶ FinCEN took a number of steps in the Rule in response to comments to minimize the economic impact on small entities subject to the Rule. These steps included (i) clarifying the definition of “legal entity customer,” (ii) extending the effective date of the Rule from one year to two years, (iii) eliminating the requirement that financial institutions use the Certification Form to obtain the beneficial ownership information, (iv) expanding the categories of excluded legal entities not subject to the requirement, (v) simplifying the requirements related to the charity and nonprofit exemption, and (vi) clarifying that financial institutions are only required to update beneficial ownership information on an event-driven basis, when in the course of their normal monitoring they detect information about the customer that may be relevant to assessing the risk posed by the customer. Such information could include a change in the customer’s beneficial ownership.

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

To help the Federal government fight financial crime, these regulations require certain financial institutions to obtain, verify, and record information about beneficial ownership of legal entity customers. Legal entities can be abused to disguise involvement in terrorist financing, money laundering, tax evasion, corruption, fraud, and other financial crimes. Requiring the disclosure of certain individuals who own or control a legal entity (i.e., the beneficial owners) helps law enforcement investigate and prosecute these crimes.

7. Special Circumstances Requiring Data Collection Inconsistent with Guidelines.

Under 31 CFR 1010.430, records must be kept for 5 years. This retention period is necessary to substantiate violations that have occurred within the statute of limitations (5 years).

⁶ See 81 FR 29398, May 11, 2016.

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

On December 30, 2019, FinCEN published in the Federal Register a notice of intent to renew without change, information collection requirements in connection with beneficial ownership requirements for legal entity customers (*See* 84 FR 72137) (“Notice”). The comment period for the Notice closed on February 28, 2020. FinCEN received six comment letters from one individual; a trade association; a policy, research and advocacy institute; two financial institutions and a third-party service provider. FinCEN reviewed and considered all of the comments it received. One of the comment letters was not relevant, as it did not address the questions raised in the Notice. While some of the commenters provided valuable input regarding implementation of the beneficial ownership requirements, comment letters also highlighted aspects of the Rule that were previously addressed during the extensive rulemaking process, and FinCEN does not believe that it is necessary to re-address those comments in connection with the renewal of the control number for the information collections in the Rule.

Four commenters suggested that beneficial ownership information should be collected at the customer level, rather than each time a customer later opens an account at the financial institution, to reduce burden. One of the commenters recommended that FinCEN establish beneficial ownership collection and certification requirements at the customer level, with additional collection required on a risk-basis. The commenter suggested, in the short-term, FinCEN could provide this relief via its exceptive relief authority. Another commenter recommended the Rule be modified to allow financial institutions a reasonable time after account opening to identify beneficial owners, and permit financial institutions to reconfirm beneficial ownership no more frequently than annually, regardless of how many new accounts an existing customer opens throughout the year. A different commenter recommended that there should be a defined set of triggering events to collect beneficial ownership information, because currently financial institutions are defining triggering events differently.⁷ The commenter further suggested that FinCEN should clarify how long a financial institution can rely on beneficial ownership information once it is collected. The commenter gave the example of a 6-month safe harbor for reliance on information collected. The fourth commenter suggested the collection and certification requirements should be set at the legal entity customer level, with additional collection on a risk-basis using existing ongoing review practices consistent with other attributes of customer due diligence.

Three commenters requested FinCEN clarify which legal entities are exempt from the beneficial ownership requirements. In addition, these commenters requested that FinCEN expand the categories of exempted entities that covered financial institutions are not required to identify and verify beneficial owners of. Two of the commenters recommended exemptions for lower risk customers such as non-U.S.

⁷ With respect to the triggering event, FinCEN noted in the preamble of Rule that “[t]he obligation to update customer information as a result of monitoring would generally only be **triggered** when the financial institution becomes aware of information about the customer in the course of normal monitoring relevant to assessing the risk posed by a customer.” (*See* 81 FR 29420, May 11, 2016)

publicly traded companies, foreign subsidiaries of U.S. publicly traded companies, and supranational entities (i.e., entities (i) comprised of governments and created for the purpose of funding public service projects, or (ii) recognized as an intergovernmental or supranational organization, by Executive order). One commenter noted that the Rule excludes a subsidiary that is at least 51 percent owned by certain domestic publicly traded companies, but it does not exclude subsidiaries of other excluded entities, such as entities registered with the Securities and Exchange Commission. Another commenter suggested that FinCEN clarify the applicability of the Rule's requirements and exemptions to foreign financial institutions and financial institutions providing loans through a syndicate, noting that the beneficial ownership information collection expectations should only apply to the lead bank of the syndicate.

Four commenters noted that the Federal and state governments, rather than financial institutions, should collect beneficial ownership information. Two of the commenters support legislative proposals to implement a federal beneficial ownership directory that financial institutions can access for due diligence and verification purposes. One commenter suggested that governmental authorities at the Federal or state levels are better placed to collect the information, or are already collecting the information, and that the information they receive would likely be more reliable. Another commenter supports the idea of secure digital access to a wide range of customer data attributes from reputable sources such as governments, banks, utilities, telecommunication companies, and credit bureaus.

Two commenters are opposed to the renewal of the beneficial ownership requirements. One of the commenters suggested that because a financial institution cannot rely on its customer's representation regarding the identity of beneficial owners, the requirement to verify such identities does not safeguard against misrepresentation by customers. Another commenter stated that the beneficial ownership information gathered pursuant to the requirement has no practical utility, because it is easy for an individual acting on behalf of an entity to lie to the financial institution about beneficial owners and provide false documentation, such as operating agreements.

Two commenters opined that FinCEN's estimate of 20 to 40 minutes to collect beneficial ownership information when opening an account for a new legal entity customer is below average. One commenter noted that its average processing time to onboard a new legal entity customer is 90 to 120 minutes. Another commenter indicated that its members indicated the collection of beneficial ownership information can take between 40 to over 120 minutes. One of the commenters attributed the higher burden estimate to the Rule's requirement to collect personally identifiable information for up to five individuals, who may not be personally known by the individual opening the account. The commenter explained that institutions encounter additional burden because beneficial owners may be hesitant to relay their personally identifiable information to the institution via the individual opening the account on behalf of the legal entity customer.

FinCEN appreciates these comments concerning ways to clarify and modify the beneficial ownership requirements. In addition, based on burden estimates to collect beneficial ownership information of (i) 90 to 120 minutes, and (ii) 40 to over 120 minutes provided by two respondents, FinCEN is increasing its estimate of the burden from an average 30 minutes to an average of 80 minutes per new account opened for a legal entity customer.⁸ This estimate accounts for the time it takes to collect, record, verify, and maintain records of beneficial ownership information for each new account opened for a legal entity customer.

9. Payments and Gifts.

No payments or gifts were made to respondents.

10. Assurance of Confidentiality of Responses.

Information collected under 31 U.S.C. 5318(h) may be made available to appropriate law enforcement agencies and supervisory agencies.

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 Bank Secrecy Act is strictly controlled as outlined in FinCEN's Systems of Records Notice.

https://www.fincen.gov/sites/default/files/shared/FinCEN_79_FR_20969.pdf.

12. Estimated Annual Hourly Burden.

Frequency: As required.

Estimated number of respondents: 23,615.⁹

Estimated annual responses: 8,855,625.¹⁰

⁸ A public policy, research and advocacy group, whose membership includes a broad range of U.S. and U.S. based banks, provided the estimate of 40 to 120 minutes. Because of its broad membership of banks impacted by the Rule, FinCEN chose to take the average of the range of 40 to 120 minutes to estimate a new burden of 80 minutes per new account opened by a legal entity customer.

⁹ The above Estimated Number of Respondents is based on sum of the following numbers:

- 5,358 banks [Federal Deposit Insurance Corporation, *Key Statistics* webpage, April 25, 2019];
- 5,375 federally-insured credit unions [National Credit Union Administration, *Quarterly Credit Union Data Summary*, December 31, 2018];
- 125 privately-insured credit unions [General Accountability Office, *PRIVATE DEPOSIT INUSRANCE: Credit Unions Largely Complied with Disclosure Rules, but Rules Should Be Clarified*, March 2017];
- 1,130 introducing brokers [National Futures Association website, March 31, 2019];
- 64 futures commission merchants [National Futures Association website, March 31, 2019];
- 3,607 securities firms [Financial Industry Regulatory Authority website, December 31, 2018]; and,
- 7,956 U.S. mutual funds [Investment Company Institute, *2018 Factbook*, 2018].

¹⁰ Based on research conducted to publish the Rule in 2016, it is estimated that each covered financial institution will open, on average, 1.5 new legal entity accounts per business day. There are 250 business days per year. (23,615 financial institutions X 1.5 accounts per day X 250 business days per year =

Estimated annual burden hours: 11,884,700 hours.¹¹

13. Estimated Annual Cost to Respondents for Hour Burdens.

11,884,700 hours X \$50.20¹² per hour = \$596,611,940.

14. Estimated Annual Cost to the Federal Government.

There are no costs to the Federal Government as all information is reported to and retained by financial institutions.

15. Reason for Change in Burden.

The estimated total annual burden hours in the Rule were 7,041,289 hours. The estimated total annual burden hours is increasing to 11,884,700 hours in this renewal because FinCEN is increasing its estimate of the burden from an average 30 minutes to an average of 80 minutes per new account opened for a legal entity customer. This estimate accounts for the time it takes to collect, record, verify, and maintain records of beneficial ownership information for each new account opened for a legal entity customer. FinCEN made the decision to increase its burden estimate based on burden estimates of (i) 90 to 120 minutes, and (ii) 40 to over 120 minutes provided by two respondents. The increase in total annual burden hours for this OMB control number,

8,855,625 new legal entity accounts opened per year).

¹¹ In the Notice, FinCEN estimated that it would take a financial institution between 20 to 40 minutes to collect, record, verify, and maintain records of beneficial ownership information for each account opened for a legal entity customer. (An average of 30 minutes per legal entity customer). Based on comments received, FinCEN is revising its estimate to an average of 80 minutes per legal entity customer. 8,855,625 new legal entity customer accounts multiplied by 80 minutes per account established and divided by 60 minutes per hour equals 11,807,500 burden hours. In the Rule and the Notice, FinCEN estimated that it will take a financial institution 20 minutes annually to update and maintain beneficial ownership procedures within its AML program. FinCEN did not receive any comments in response to the Notice contradicting this estimate. Twenty minutes multiplied by 23,615 covered financial institutions and divided by 60 minutes equals 7,872 burden hours annually. In addition, in the Rule, FinCEN estimated it will take a financial institution 56 hours to develop initial procedures for the beneficial ownership requirements (40 hours for small entities). FinCEN has determined that approximately 1,238 covered financial institutions were established after the rule took effect in May 2018. (38 banks, 6 credit unions, 198 brokers or dealers in securities, 996 mutual funds, 0 futures commissions merchants, and 0 introducing brokers in commodities). Because FinCEN is not able to determine which of these financial institutions are small entities, FinCEN conservatively estimates that each new covered financial institution will have an additional burden of 56 hours to develop initial beneficial ownership procedures. 1,238 covered financial institutions multiplied by 56 hours equals 69,328 burden hours. The total estimated annual burden hours is the summation of the burden to collect, verify, and maintain records of beneficial ownership information for each new account opened for a new legal entity customer, the burden to update and maintain beneficial ownership procedures annually, and the burden for newly established financial institutions to develop initial beneficial ownership procedures. (11,807,500 + 7,872 + 69,328 = 11,884,700 hours).

¹² The average hourly wage Rate is calculated using the May 2018 Bureau of Labor Statistics average hourly wage for “13-1041 Compliance Officer” of \$34.86, and adding 44% for benefits to produce a fully-loaded rate of \$50.20. See <https://www.bls.gov/oes/current/oes131041.htm> and <https://www.bls.gov/news.release/ecec.t04.htm>.

because of the increase in burden associated with each account, is offset by a reduction in burden resulting from the exclusion of burden hours associated with the initial development of beneficial ownership procedures for financial institutions established before May 2018. The Rule recognized a burden of 56 hours per financial institution to develop the initial procedures (40 hours for small entities). Since the compliance date of May 11, 2018 has passed, no burden hours for the development of initial procedures are estimated in this information collection renewal for financial institutions established before May 2018. (See 81 FR 29398, May 11, 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 OMB Control Number.

FinCEN requests that it not be required to display the expiration date so that the regulations will not have to be amended for the new expiration date every three years.

18. Exceptions.

There are no exceptions to the certification statement.