

Supporting Statement
OMB Control Number 1506-0035

Anti-Money Laundering Programs for Insurance Companies, Non-Bank Residential Mortgage Lenders and Originators, and Banks Lacking a Federal Functional Regulator

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 Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001¹ (“USA PATRIOT Act”) and other legislation. This legislative framework is commonly referred to as the “Bank Secrecy Act” (“BSA”).² 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.³ 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.”⁴

Section 352 of the USA PATRIOT Act added subsection (h) to 31 U.S.C. 5318 of the BSA that requires the Secretary of the Treasury to require financial institutions to establish and maintain anti-money laundering (“AML”) programs. Pursuant to section 352, FinCEN issued regulations requiring insurance companies and non-bank residential mortgage lenders and originators to develop and implement a written AML program, respectively 31 CFR 1025.210 and 31 CFR 1029.210. The program must be reasonably designed to prevent these financial institutions from being used for money laundering or the financing of terrorist activities, and to achieve and monitor compliance with applicable BSA requirements.

FinCEN is requesting a revision of the information collection associated with regulations covering the AML program requirements. FinCEN is issuing this statement to support the request for OMB approval of an information collection with respect to the final rule that will require banks that lack a Federal functional regulator to comply with the AML program requirements, among other things. This statement adds the estimated burden hours increase for this OMB control number, as a result of the final rule. The increase in burden hours is being added to the existing OMB approved burden hours for this control number as reflected in this supporting statement.⁵

¹ Public Law 107-56.

² 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).

³ Treasury Order 180-01 (January 14, 2020).

⁴ 31 U.S.C. 5311.

⁵ FinCEN issued a Federal Register notice on August 13, 2020 to renew all of the OMB control numbers associated with the AML program regulations, including OMB control number 1506-0035 (the “2020 Notice”). The 2020 Notice requests comments from the public until October 13, 2020. The 2020 Notice

On September 14, 2020, FinCEN issued a final rule implementing sections 352, 326 and 312 of the USA PATRIOT Act and removing the AML program exemption for banks that lack a Federal functional regulator, including, but not limited to, private banks, non-federally insured credit unions, and certain trust companies (the “Final Rule”).⁶ The Final Rule requires minimum standards for AML programs for banks without a Federal functional regulator to ensure that all banks, regardless of whether they are subject to Federal regulation and oversight, are required to establish and implement AML programs, and extends customer identification program (“CIP”) requirements and beneficial ownership requirements to those banks not already subject to these requirements.⁷

2. Method of collection and use of data.

The AML program requirements are used by insurance companies, non-bank residential mortgage lenders and originators, and will be used by banks lacking a Federal functional regulator, to detect the occurrence of transactions required to be recorded or reported under the BSA and to ensure that such institutions are not used to facilitate money laundering or terrorist financing. The AML program will be reviewed by regulatory agencies during the course of BSA compliance examinations.

3. Use of improved information technology to reduce burden.

Financial institutions are permitted to automate their AML program to meet their requirements. 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.

All financial institutions are required to document their AML programs and are permitted to use the method most suitable to their requirements.

6. Consequences to the Federal government of not collecting the information.

The Federal government requires reporting of a financial institution’s AML program only upon request of appropriate law enforcement agencies and supervisory agencies.

proposes to renew without change the currently approved information collections, proposes for review and comment a renewal of the portion of the PRA burden that has been subject to notice and comment in the past, and proposes for review and comment a future expansion of the scope of the PRA burden. Following the close of the comment period, FinCEN will issue a new supporting statement for OMB control number 1506-0035, reflecting the burden estimates proposed in 2020. See 85 FR 49418 (Aug. 13 2020).

⁶ 85 FR 57129 (September 14, 2020).

⁷ The final rule revised 31 CFR 1020.210 to add an AML program requirement for banks lacking a Federal functional regulator.

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

Under 31 CFR 1010.430(d), all records that are required to be retained by 31 CFR Chapter X must be retained for a period of five years. Records must be kept for five years because such records may relate to substantive violations of law that are subject to statutes of limitation longer than three 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 August 25, 2016, FinCEN issued an NPRM proposing to amend certain definitions and to amend the AML, CIP, and beneficial ownership regulations to include coverage for banks lacking a Federal functional regulator.⁸

The comment period on the NPRM ended on October 24, 2016. FinCEN received eight comments. Comments were submitted by one anonymous source, three industry representatives, and four trade associations. FinCEN has reviewed and considered all the comments to the extent they addressed aspects of the proposed rulemaking. All the comments supported the issuance of the Final Rule. The Final Rule adopts the proposal in its entirety, but establishes a later date by which affected banks must be in compliance. One commenter requested a two-year implementation period. Another suggested an implementation date in May 2018, to coincide with that the implementation date of the beneficial ownership requirements. A third commenter suggested an implementation period of six months to a year, and a fourth commenter suggested a minimum of six months.

The proposals set forth in the NPRM were adopted largely without change in the Final Rule. As FinCEN emphasized in the Final Rule, banks lacking a Federal functional regulator are already obligated to comply with a number of BSA regulations. In addition, banks lacking a Federal functional regulator generally are required by state banking regulation and guidance to have policies, management oversight, personnel training, and internal compliance review and various procedures and systems in place to comply with regulation and guidance. Even banks not subject to these state regulatory requirements must develop such policies and procedures to properly function and comply with their BSA obligations and state banking regulations. FinCEN views the existence of such policies and procedures as minimizing the amount of time needed to prepare for implementation of the Final Rule's requirements. Accordingly, FinCEN does not expect the transition to compliance with the Final Rule to be unreasonably difficult or costly, and does not believe a two-year implementation period is needed or warranted. However, in light of these comments, FinCEN has determined that it would be appropriate to provide affected banks more time to comply with the Final Rule. Banks lacking a Federal functional regulator, therefore, will have 180 days from the day the Final Rule is published to be in compliance. FinCEN believes that this time frame is

⁸ See 81 FR 58425 (Aug. 25, 2016).

reasonable and adequate to ensure compliance with these requirements, given the framework that these banks are expected to already have in place.

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 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 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.

FinCEN estimates that approximately 1,200 insurance companies, 31,000 non-bank residential mortgage lenders and originators, and 567 banks lacking a Federal functional regulator are required to comply with the AML program requirements, for a total of 32,767 respondents. FinCEN further estimates that the time burden for each respondent to maintain their AML program will be 1 hour, for a total of 32,767 hours. In addition, in the Final Rule, FinCEN estimated that for each bank lacking a Federal functional regulator, the average burden associated with obtaining board approval of the AML program is one hour per bank annually, for a total of 567 hours. The new total burden for this control number is 33,334 hours (32,767 + 567 = 33,334).

Estimated burden cost: 33,334 hours X \$49.80 per hour = \$1,660,033.⁹

Total burden hours: 33,334.

Total cost: \$1,660,033.

⁹ U.S. Bureau of Labor Statistics, Occupational Employment Statistics-National, May 2019, available at <https://www.bls.gov/oes/tables.htm>. The most recent data from the BLS corresponds to May 2019. For the benefits component of total compensation, see U.S. Bureau of Labor Statistics, Employer's Cost per Employee Compensation as of December 2019, available at <https://www.bls.gov/news.release/ecec.nr0.htm>. The ratio between benefits and wages for financial activities is \$15.95 (hourly benefits)/\$32.05 (hourly wages) = 0.50. The benefit factor is 1 plus the benefit/wages ratio, or 1.50. Multiplying the hourly wage by the benefit factor produces the fully-loaded hourly wage per position. The median hourly wage for a Compliance Officer is \$33.20 (\$33.20 x 1.50 = \$49.80).

Information Collection	Number of Respondents	Annual Number of Responses per Respondent	Total Responses	Hours per Response	Total Hours	Labor Cost per Hour	Total Labor Costs
Update, maintain, and or implement an AML program	32,767	1	32,767	1	32,767	\$49.80	\$1,631,797
Obtain board approval of the program	567	1	567	1	567	\$49.80	\$28,236
TOTAL			33,334		33,334	\$49.80	\$1,660,033

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

14. Estimated annual cost to the Federal government.

The Federal government requires reporting of a financial institution’s AML program only upon request of appropriate law enforcement agencies and supervisory agencies; therefore, the estimated annual cost to the Federal government is \$0.

15. Reason for change in burden.

The increase in burden hours is a result of the Final Rule, which requires that approximately 567 banks that lack a Federal functional regulator comply with the AML program requirements.

The additional burden calculations as outlined in the preamble of the Final Rule are as follows:

Description of Recordkeepers: Banks that lack a Federal functional regulator, including, but not limited to, state-chartered non-depository trust companies, non-federally insured credit unions, non-federally insured state-chartered banks and savings and loan or building and loan associations, private banks, and international banking entities.

Estimated Number of Recordkeepers: 567 financial institutions.¹⁰

Estimated Annual Records: 567 AML programs.

¹⁰ Approximately 297 state-chartered non-depository trust companies, 228 non-federally insured credit unions, 12 non-federally insured state-chartered banks and savings and loan or building and loan associations, 1 private bank, and 29 international banking entities will be required to implement written AML programs as a result of the Final Rule.

*Estimated Annual Burden Hours: 1,134 hours.*¹¹

Estimated Total Annual Burden for AML Program Requirements: 1,134 hours.

This burden is added to the existing burden listed under OMB control number 1506-0035 currently titled “Anti-Money Laundering Programs for Insurance Companies and Non-Bank Residential Mortgage Lenders and Originators.” The new title for this control number will be “Anti-Money Laundering Programs for Insurance Companies, Non-Bank Residential Mortgage Lenders and Originators, and Banks Lacking a Federal Functional Regulator.” The new total estimated annual burden for this control number is 33,334 hours.¹²

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 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 to the certification statement.

There are no exceptions to the certification statement.

¹¹ The estimated average burden associated with the development of a written AML program is one hour per recordkeeper annually. Although this is a new requirement for banks lacking a Federal functional regulator, they are already obligated to comply with a number of BSA regulations and state banking regulations. For example, FinCEN regulations require all banks, regardless of whether they have a Federal functional regulator, to file CTRs and SARs, as well as to make and maintain certain records. These banks likely maintain procedures to comply with such BSA and state banking regulations. For that reason, FinCEN estimates that the burden associated with the development of a written AML program is one hour because the impacted financial institutions will be able to incorporate existing applicable procedures. In addition, the estimated average burden associated with obtaining board approval of the AML program is one hour per recordkeeper annually. This equates to 2 hours of annual burden per impacted financial institution to comply with these requirements (567 financial institutions × 2 hours = 1,134 hours).

¹² The current annual burden hours estimate for OMB control number 1506-0035 is 32,200. One thousand one hundred thirty four (1,134) burden hours will be added to this control number as a result of the Final Rule (32,200 + 1,134 = 33,334).