

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.

FinCEN is requesting a revision of the information collection associated with regulations covering the beneficial ownership requirements for legal entity customers. 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 beneficial ownership 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.

On September 14, 2020, FinCEN issued a final rule implementing sections 352, 326 and 312 of the USA PATRIOT Act of 2001 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

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).

companies (the “Final Rule”).⁶ The Final Rule imposes 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.

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 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 implementing beneficial ownership requirements (the “Beneficial Ownership Rule”),⁷ FinCEN took a number of steps in response to comments to minimize the economic impact on small entities subject to the Beneficial Ownership 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

⁶ 85 FR 57129 (September 14, 2020).

⁷ See 81 FR 29398, May 11, 2016.

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(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 a notice of proposed rulemaking (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 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 from the date of publication of the Final Rule, and a fourth commenter suggested a minimum of six months.

⁸ 81 FR 58425 (Aug. 25, 2016).

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

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 BSA 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: 24,182.⁹

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 INSURANCE: Credit Unions Largely Complied with Disclosure Rules, but Rules Should Be*

Estimated annual responses: 9,068,250.¹⁰

Estimated annual burden hours: 12,190,880 hours.¹¹

13. Estimated annual cost to respondents for hour burdens.

12,190,880 hours X \$49.80¹² per hour = \$607,105,824.

14. Estimated annual cost to the Federal government.

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].
- 567 banks that lack a Federal functional regulator.

¹⁰ Based on research conducted to publish the Beneficial Ownership 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. (24,182 financial institutions X 1.5 accounts per day X 250 business days per year = 9,068,250 new legal entity accounts opened per year).

¹¹ In the 60-day notice to renew the OMB control number associated with the beneficial ownership requirements (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). 84 FR 72137, Dec. 30, 2019. Based on comments received, FinCEN revised its estimate to an average of 80 minutes per legal entity customer. 9,068,250 new legal entity customer accounts multiplied by 80 minutes per account established and divided by 60 minutes per hour equals 12,091,000 burden hours. In the Beneficial Ownership 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 Beneficial Ownership 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). In the Notice, FinCEN determined that approximately 1,238 covered financial institutions were established after the Beneficial Ownership 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 was not able to determine which of these financial institutions were small entities, FinCEN conservatively estimated, in the Notice, that each new covered financial institution would 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. In the Final Rule, based on FinCEN’s data, banks lacking a Federal functional regulator are generally considered small entities. For that reason, FinCEN estimates it will take 40 hours for financial institutions impacted by the Final Rule to develop and document initial beneficial ownership identification procedures (567 × 40 = 22,680). The total estimated annual burden hours in this supporting statement as a result of the Final Rule and the existing burden hours approved under this OMB control number is the sum 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 for financial institutions with existing beneficial ownership requirements, the burden from the Notice for newly established financial institutions to develop initial beneficial ownership procedures, and the burden in the Final Rule for financial institutions impacted by the Final rule to develop and document beneficial ownership procedures. (12,091,000 + 7,872 + 69,328 + 22,680 = 12,190,880 hours).

¹² 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

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 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 beneficial ownership requirements.

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

Description of New 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.

1. Develop and maintain beneficial ownership identification procedures

Estimated Number of Recordkeepers: 567 financial institutions.¹³

Estimated Annual Records: 567 beneficial ownership identification procedures.

Estimated Annual Burden Hours: 22,680 hours.¹⁴

2. Customer identification, verification, and review and recordkeeping of the beneficial ownership information

Estimated Number of Recordkeepers: 567 financial institutions.

Estimated Annual Records: 212,625 beneficial ownership identification records.¹⁵

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/eccec.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).

¹³ 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 beneficial ownership identification procedures as a result of this Final Rule.

¹⁴ The Beneficial Ownership Rule recognized a burden of 56 hours to develop the initial procedures (40 hours for small entities). See 81 FR at 29451. Based on FinCEN's data, banks lacking a Federal functional regulator are generally considered small entities. For that reason, FinCEN estimates it will take 40 hours for financial institutions impacted by the Final Rule to develop and document initial beneficial ownership identification procedures (567 x 40 = 22,680).

¹⁵ The Beneficial Ownership Rule recognized a burden of 20 to 40 minutes (average of 30 minutes) to obtain identification records for each legal entity customer. The Beneficial Ownership Rule also estimated that a financial institution would open 1.5 new legal entity accounts per business day. There are 250 business days per year. 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. As a result of public comments received on the notice,

*Estimated Annual Burden Hours: 283,500 hours.*¹⁶

3. Total annual burden applicable to beneficial ownership requirements

Estimated Total Annual Burden Hours for Beneficial Ownership Requirements: 306,180 hours (22,680 + 283,500).

- 22,680 hours – Develop and maintain beneficial ownership identification procedures.
- 283,500 hours – Customer identification, verification, and review and recordkeeping of the beneficial ownership information.

This burden is added to the existing burden listed under OMB control number 1506-0070 titled Beneficial Ownership Requirements for Legal Entity Customers. The new total estimated annual burden for this control number is 12,190,880 hours.¹⁷

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 to the certification statement.

There are no exceptions to the certification statement.

FinCEN increased its estimate of the burden from an average of 30 minutes to an average of 80 minutes per new account opened for a legal entity customer. (1.5 accounts per day × 250 days per year = 375 accounts per financial institution). (567 financial institutions × 375 accounts per year = 212,625 accounts per year).

¹⁶ 212,625 accounts × 80 minutes per account and converted to hours = 283,500 hours.

¹⁷ The annual burden hours estimate for OMB control number 1506-0070 was 11,884,700. 306,180 burden hours will be added to this control number as a result of the Final Rule (11,884,700 + 306,180 = 12,190,880).