

Supporting Statement
Office of Management and Budget (“OMB”) Control Number 1506-0020

Anti-Money Laundering Programs for Money Services Businesses (“MSBs”), Mutual Funds, and Operators of Credit Card Systems

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 money services businesses (“MSBs”), mutual funds, and operators of credit card systems to develop and implement a written AML program, respectively 31 CFR 1022.210, 31 CFR 1024.210, and 31 CFR 1028.210. 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.

2. Method of collection and use of data.

AML programs help to ensure that MSBs, mutual funds, and operators of credit card systems are not used to facilitate money laundering or terrorist financing. In the case of MSBs and mutual funds, AML programs also assist those institutions to detect the occurrence of transactions required to be recorded or reported under the BSA. 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.

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.

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

⁴ 31 U.S.C. 5311.

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.

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. AML program records must be kept for five years to verify compliance with the requirement to maintain such a program as such records may relate to civil penalty actions 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.

The 60-day notice was published on August 13, 2020.⁵ The notice requested public comments on the proposed renewal, without change, of currently approved information collections relating to AML program regulatory requirements for certain financial institutions, including MSBs, mutual funds, and operators of credit card systems. Although no changes were proposed to the information collections themselves, the notice proposed for review and comment (a) a renewal of the portion of the Paperwork Reduction Act ("PRA") burden that has been subject to notice and comment in the past (the "traditional annual PRA burden"), and (b) an expansion of the scope of the PRA burden in the future (the "supplemental annual PRA burden").

As explained in the notice, FinCEN does not have the necessary information to provide a tentative estimate of these supplemental annual PRA hourly burdens and costs within the current notice. FinCEN also recognizes that it does not have all the necessary information to precisely estimate the traditional annual PRA burden. For that reason, FinCEN is relying on estimates used in prior renewals of OMB control numbers and

⁵ 85 FR 49418 at <https://www.federalregister.gov/documents/2020/08/13/2020-17696/agency-information-collection-activities-proposed-renewal-comment-request-renewal-without-change-of>.

applicable regulations. FinCEN further recognizes that after receiving public comments, the burden and cost estimates for the traditional annual PRA burden may vary significantly. FinCEN intends to conduct more granular studies of the actions included in the proposed scope of a supplemental annual PRA burden in the near future, to arrive at accurate estimates of net BSA hourly burden and cost.⁶ The data obtained in these studies also may result in a significant variation in the estimated traditional annual PRA hourly burden.

FinCEN received two public comments in response to this notice. One commenter recommended that the Secretary of Treasury (the “Secretary”) and the Director of OMB (the “Director”) take specific steps, including the following:

- The Secretary and the Director should jointly ask the Inspector General of the Intelligence Community to prepare a report assessing whether and to what extent information obtained by FinCEN from financial institutions has a high degree of usefulness and practical utility, and whether the information could be obtained through means less burdensome to financial institutions and their customers.
- The Director should engage the services of a national accounting and auditing firm to provide an independent and comprehensive estimate of the operational and financial burden.
- The Secretary and the Director should jointly ask the Federal Privacy Counsel to review such records and procedures and recommend ways to reduce government intrusion into privacy of Americans.
- The Director should seek from Congress funds that would allow the Department of the Treasury to reimburse financial institutions for their reasonable cost of compliance with Treasury mandated records and procedures relating to anti-money laundering and anti-terrorism.

The other commenter recommended that BSA regulations be revised to require casinos and card clubs to require each customer to obtain a player club account and provide relevant identifying information. The commenter noted that this requirement would significantly reduce the recordkeeping burden for monitoring for cash in and cash out transactions.

FinCEN appreciates the specific recommendations and intends to use that information as part of a larger project FinCEN is undertaking to better understand the PRA hourly burden and cost of the BSA as a whole.

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

No payments or gifts were made to respondents.

⁶ Net hourly burden and cost are the burden and cost a financial institution incurs to comply with requirements that are unique to the BSA, and that do not support any other business purpose or regulatory obligation of the financial institution. Burden for purposes of the PRA does not include the time and financial resources needed to comply with an information collection if the time and resources are for things a business (or other person) does in the ordinary course of its activities if the agency demonstrates that the recordkeeping activities needed to comply are usual and customary. 5 CFR 1320.3(b)(2).

10. Assurance of confidentiality of responses.

Information collected under 31 U.S.C. 5318(h) may be made available to FinCEN, and other appropriate government 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.

Action	Instances per year	Time per instance	Type of financial institution	Number of financial institutions	Total hourly burden	Hourly cost	Total cost
A. Maintaining and updating the written AML program	1 per financial institution	1 hour	Principal MSBs, mutual funds, and operators of credit card systems	24,536	24,536	\$48 ⁷	\$1,177,728
B. Storing the written AML program	1 per financial institution	5 minutes	Principal and agent MSBs, mutual funds, and operators of credit card systems	253,697	21,141	\$33 ⁸	\$697,653
C. Producing the AML program upon request	1 per financial institution	5 minutes	Principal and agent MSBs, mutual funds, and operators of credit card systems	253,697	21,141	\$33 ⁹	\$697,653
D. Board of directors/trustee's approval of the AML program	1 per financial institution	1 hour	Mutual funds	1,591	1,591	\$133 ¹⁰	\$211,603

⁷ 85 FR 49418 (Aug 13, 2020) (Table 4).

⁸ *Id.* at Table 5.

⁹ *Id.*

¹⁰ *Id.* at Table 3.

Action	Instances per year	Time per instance	Type of financial institution	Number of financial institutions	Total hourly burden	Hourly cost	Total cost
E. Obtaining, verifying, and storing cardholder identifying information	2.6 million (once per card)	2 minutes	Providers or sellers of prepaid access	1,632	86,667	\$33 ¹¹	\$2,860,011
Total Hourly Burden and Cost					155,076		\$5,644,648

Estimated Total Number of Respondents: 253,697

Estimated Total Burden Hours: 155,076

Estimated Total Cost: \$5,644,648

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 decrease in burden is predominately due to a decrease in the number of financial institutions impacted by the AML program regulations. In 2018, we estimated that there were 327,106 respondents. The estimated number of respondents for this renewal is 253,697. The main reason for the decrease in the estimated number of respondents is a decrease in number of MSBs from 324,100 in 2018 to 252,100 in 2020.

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.

¹¹ *Id.* at Table 5.

There are no exceptions to the certification statement.