

Supporting Statement
Office of Management and Budget (“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 (“RMLOs”) to develop and implement a written AML program.⁵ 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.

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 exemptions 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

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.

⁵ See 31 CFR 1025.210 (insurance company AML program regulations) and 31 CFR 1029.210 (RMLO AML program regulations).

⁶ 85 FR 57129 (September 14, 2020).

programs, and extends customer identification program requirements and beneficial ownership requirements to those banks not already subject to these requirements.⁷

2. Method of collection and use of data.

AML programs help to ensure that insurance companies, RMLOs, and banks lacking a Federal functional regulator detect the occurrence of transactions required to be recorded or reported under the BSA and 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.

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.

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

The 60-day notice was published on August 13, 2020.⁸ 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 insurance companies and RMLOs.⁹ 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 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.¹⁰ 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.

⁸ 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>.

⁹ The requirement for banks lacking a Federal functional regulator to implement an AML program was published on September 14, 2020, after the 60-day notice was published on August 13, 2020. For that reason, banks lacking a Federal functional regulator were not included in the 60-day notice.

¹⁰ 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).

- 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.

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	Insurance companies, ¹¹ RMLOs, ¹² and Banks lacking Federal functional regulators ¹³	32,767	32,767	\$48 ¹⁴	\$1,572,816
B. Storing the written AML program	1 per financial institution	5 minutes	Insurance companies, RMLOs, and Banks lacking Federal functional regulators	32,767	2,730	\$33 ¹⁵	\$90,090
C. Producing the AML program upon request	1 per financial institution	5 minutes	Insurance companies, RMLOs, and Banks lacking Federal functional regulators	32,767	2,730	\$33 ¹⁶	\$90,090
Total Hourly Burden and Cost					38,227		\$1,752,996

Estimated Total Number of Respondents: 32,767

Estimated Total Burden Hours: 38,227

Estimated Total Cost: \$1,752,996

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.

¹¹ Based on estimates provided for the 2018 notice to renew OMB control number 1506-0035 (83 FR 34298 (July 19, 2018)).

¹² *Id.*

¹³ *Supra* note 6.

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

¹⁵ *Id.* at Table 5.

¹⁶ *Id.*

15. Reason for change in burden.

In 2018 the estimated total burden hours was 32,000. The increase in the estimated burden hours in this renewal is a result of the inclusion of 567 banks that lack a Federal functional regulator, and the inclusion of the estimate of 5 minutes per respondent to store the written AML program and 5 minutes per respondent to produce the written AML program upon request.

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.