

Supporting Statement
OMB Control Number 1506-0072

Imposition of Special Measure Against Bank of Dandong as a Financial Institution of Primary Money Laundering Concern Under 31 CFR Chapter X

A. JUSTIFICATION

1. Circumstances that make the collection necessary:

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

In a Notice of Proposed Rulemaking (NPRM) published in the Federal Register on July 7, 2017, FinCEN found that reasonable grounds exist for concluding that Bank of Dandong Co., Ltd. (Bank of Dandong) is a financial institution of primary money laundering concern pursuant to 31 U.S.C. 5318A.⁵ On November 8, 2017, FinCEN published in the Federal Register a final rule to impose a special measure with respect to Bank of Dandong pursuant to 31 U.S.C. 5318A.⁶ Specifically, FinCEN imposed the fifth special measure—prohibiting covered financial institutions from opening or maintaining in the United States a correspondent account for, or on behalf of, Bank of Dandong—as a necessary step to ensure that Bank of Dandong is not able to access the U.S. financial system.

2. Use of the information:

The collection of information in the rule relates to both disclosure and recordkeeping. The information required to be disclosed by domestic financial institutions to a third-party—i.e., a one-time notice to correspondent account holders—is

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 82 FR 31537.

6 82 FR 51758.

intended to ensure cooperation from correspondent account holders in denying access to the U.S. financial system, as well as to increase awareness within the international financial community of the risks and deficiencies of Bank of Dandong. The information required to be maintained by domestic financial institutions will be used by federal agencies and certain self-regulatory organizations to verify compliance with the requirement that a domestic financial institution notify its correspondent account holders that they may not provide Bank of Dandong with access to the correspondent account maintained at the institution.

3. Use of improved information technology to reduce burden:

Under the rule, satisfactory notice could be given by including a one-time notice by mail, fax, e-mail, or by including the notice in the next regularly occurring transmittal from the covered financial institution to its correspondent account holders. Financial institutions may use any method of improved information technology to document its compliance with the notice requirement in the rule, including keeping an electronic copy of the actual notice that is sent to financial institutions.

4. Efforts to identify duplication:

The rule is unique in that it would be the only federal rule prohibiting domestic financial institutions from maintaining correspondent accounts for Bank of Dandong.

5. Methods used to minimize burden on small businesses or other small entities:

Typically, financial institutions engaged in correspondent banking are larger financial institutions. The one-time notice to correspondent account holders and the requirement to document compliance with that notice requirement are not expected to impose a significant economic burden on covered financial institutions. For these reasons, the information requirements in the rule will not have a significant impact on a substantial number of small entities.

6. Consequences to Federal program or policy activities if collection is not conducted or is conducted less frequently:

Under the rule, a financial institution must notify its correspondent account holders that they may not provide Bank of Dandong with access to the correspondent account maintained at the financial institution. The failure to transmit such notice will make it more difficult for the special measure to achieve its goal of denying Bank of Dandong access to the U.S. financial system. A financial institution, further, must document its compliance with the requirement that it notify its correspondent account holders that they may not provide Bank of Dandong with access to the correspondent account maintained at the covered financial institution. The failure to maintain such documentation will make it impossible to verify compliance with this notice requirement, and by extension, to guard against the use of the U.S. financial system by a financial institution found to be of primary money laundering concern.

7. Special circumstances requiring data collection inconsistent with the 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. Efforts to consult with persons outside the agency:

On August 10, 2020, FinCEN published in the Federal Register a notice and request for comments of its intention to renew, without change, information collection requirements in connection with the imposition of a special measure concerning Bank of Dandong as a financial institution of primary money laundering concern. (See 85 FR 48327). The comment period for that notice closed on October 9, 2020, and two comments were received. Neither comment was germane to either the information collection requirement imposed by the final rule or its renewal.

9. Payment or gift to respondents:

No payment or gift will be provided to respondents.

10. Assurance of confidentiality provided to respondents and basis for the assurance in statute, regulation, or agency policy:

The information collected would be available to Treasury or its designee to verify compliance with the notice requirement; all such information collections under the BSA must further a criminal, tax, regulatory, or intelligence purpose, in accordance with 31 U.S.C. 5311.

11. Justification for questions of a sensitive nature:

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. Burden estimate:

Frequency: The rule requires a financial institution to provide a one-time notice to its correspondent account holders and to document its compliance with that notice requirement.

Estimated number of affected financial institutions: 17,063.⁷

⁷ The above Estimated Number of Affected Financial Institutions is based on the sum of the following

Estimated average annual burden per affected financial institution: 1 hour.

Estimated annual hour burden: 17,063 hours.

FinCEN's estimated number of affected financial institutions accounts for all domestic financial institutions that could potentially maintain correspondent accounts for foreign banks, and to ensure that all U.S. financial institutions are conducting their due diligence and not processing transactions that may involve Bank of Dandong.

There are approximately 17,063 such financial institutions doing business in the United States. This should not have a significant impact on a substantial number of small entities.

13. Estimated total annual cost burden:

$$17,063 \text{ hours} \times \$52.62^8 \text{ per hour} = \$897,855$$

numbers:

- 5,306 banks—according to the Federal Deposit Insurance Corporation (FDIC) there were 5,103 FDIC-insured banks as of March 31, 2020. According to the Federal Reserve Board (FRB), there were 203 other entities supervised by the FRB, as of June 16, 2020, that fall within the definition of bank. (20 Edge Act institutions, 15 agreement corporations, and 168 foreign banking organizations).
- 5,236 federally-insured credit unions—according to the National Credit Union Administration, there were 5,236 federally regulated credit unions as of December 31, 2019.
- 125 privately-insured credit unions—according to the General Accountability Office, PRIVATE DEPOSIT INSURANCE: Credit Unions Largely Complied with Disclosure Rules, but Rules Should Be Clarified, March 2017.
- 1,104 introducing brokers—according to the Commodities and Futures Trading Commission (CFTC), there were 1,104 introducing brokers in commodities registered with the CFTC as of March 31, 2020.
- 61 futures commission merchants—according to the CFTC, there were 61 futures commission merchants registered with the CFTC, as of March 31, 2020.
- 3,640 broker/dealers—according to the Securities and Exchange Commission (SEC), there were 3,640 brokers or dealers in securities registered with the SEC, as of March 31, 2020.
- 1,591 mutual funds—according to the SEC, there were approximately 1,591 mutual funds in 2017, based on forms filed with the SEC. The SEC provided the estimate to FinCEN for the last renewal of OMB control number 1506-0033 (83 FR 46012, September 11, 2018). FinCEN was unable to obtain a more recent estimate.

⁸ The average hourly wage rate is calculated using the May 2019 Bureau of Labor Statistics average hourly wage for “13-1041 Compliance Officer” of \$35.03. See U.S. Bureau of Labor Statistics, Occupational Employment Statistics-National, May 2019, available at <https://www.bls.gov/oes/tables.htm>. 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, credit intermediation and related activities is \$15.80 (hourly benefits)/\$31.45 (hourly wages) = 0.502. The benefit factor is 1 plus the benefit/wages ratio, or 1.502. Multiplying the hourly wage by the benefit factor produces the fully-loaded hourly wage. (\$35.03 multiplied by 1.502 equals \$52.62).

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

14. Estimated annualized cost to the Federal government:

There is no estimated annualized cost to the Federal Government.

15. Change in burden:

When the final rule was published in November 2017, the number of financial institutions affected by the rule was estimated at 5,000. FinCEN has since revised the estimated number of affected financial institutions upward to account for all domestic financial institutions that could potentially maintain correspondent accounts for foreign banks, and recognizing that, under the final rule, all U.S. financial institutions are required to conduct special due diligence with respect to, and are prohibited from processing transactions involving, financial institutions named in the final rule.

There are approximately 17,063 such financial institutions doing business in the United States. As noted, this should not have a significant impact on a substantial number of small entities.

16. Plans for tabulation or publication:

There are no plans for tabulation or publication.

17. Reason why display of expiration date for OMB approval is not appropriate:

Treasury requests that it not be required to display the expiration date, in order to avoid amending the regulation every three years.

18. Exception to the certification statement in OMB Form 83-I:

This collection will not have a significant impact on a substantial number of small entities, for the reasons discussed above in item 5. The collection also does not employ statistical survey methodology.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.