

Supporting Statement  
OMB Control Number 1506-0046

Anti-Money Laundering Programs; Due Diligence Programs for Correspondent Accounts for Foreign Financial Institutions and for Private Banking Accounts.

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 2001<sup>1</sup>(“USA PATRIOT Act”) and other legislation. This legislative framework is commonly referred to as the “Bank Secrecy Act” (“BSA”).<sup>2</sup> 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.<sup>3</sup> 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.”<sup>4</sup>

Section 312 of the USA PATRIOT Act added subsection (i) to 31 U.S.C. 5318 of the BSA. Section 312 mandates that each financial institution that establishes, maintains, administers, or manages a correspondent account or a private banking account in the United States for non-U.S. persons subject such accounts to certain anti-money laundering compliance measures. In particular, a financial institution must establish appropriate, specific, and, where necessary, enhanced, due diligence or enhanced scrutiny policies, procedures, and controls that are reasonably designed to detect and report instances of money laundering through those accounts. The regulations implementing the due diligence requirements for maintaining foreign correspondent accounts and private banking accounts are found at 31 CFR 1010.610 and 31 CFR 1010.620, respectively, and apply to covered financial institutions defined as banks, brokers or dealers in securities, futures commission merchants, introducing brokers in commodities, and mutual funds.<sup>5</sup>

2. Method of collection and use of data.

The collection of information is not reported to the Federal government. Instead, covered financial institutions are required to document and maintain records reflecting the due diligence they conducted on correspondent accounts for foreign financial institutions and private banking accounts they maintain. The information will help protect the U.S. financial system from abuse by money launderers and others engaged in

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<sup>1</sup> Public Law 107-56.

<sup>2</sup> 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).

<sup>3</sup> Treasury Order 180-01 (January 14, 2020).

<sup>4</sup> 31 U.S.C. 5311.

<sup>5</sup> 31 CFR 1010.605(e).

financial crimes and terrorism financing. These records are made available to appropriate government authorities only upon request. 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 systems 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 that maintain correspondent accounts for foreign financial institutions or private banking accounts for non-US persons are required to conduct due diligence on such accounts for financial institutions and document such due diligence. Financial institutions are permitted to use the method most suitable to their assessment of risk as it relates to the due diligence requirements.

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

The Federal government requires reporting of this information only upon request.

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. These due diligence program records must be kept for five years to verify compliance with the requirement to maintain such a program as they 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 September 29, 2020.<sup>6</sup> The notice requested public comments on the proposed renewal, without change, of currently approved information collections relating to due diligence programs for correspondent accounts for foreign financial institutions and for private banking accounts. 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

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<sup>6</sup> 85 FR 61104 at <https://www.federalregister.gov/documents/2020/09/29/2020-21441/agency-information-collection-activities-proposed-renewal-comment-request-renewal-without-change-of>.

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 burden and cost 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.<sup>7</sup> The data obtained in these studies also may result in a significant variation in the estimated traditional annual PRA hourly burden.

FinCEN received three relevant public comments in connection with this notice. All commenters are supportive of FinCEN’s efforts to better estimate the burden and cost associated with the regulations implementing due diligence requirements for foreign correspondent accounts and private banking accounts. All commenters noted that the actual burden and cost to comply with these regulations are significantly higher than FinCEN’s current estimates. Each commenter offered their assistance to help FinCEN obtain better estimates of burden and cost associated with the regulations. One commenter suggested that with a more realistic understanding of the challenges banks face, FinCEN will be better able to consider options to eliminate or streamline regulatory requirements, which the commenter suggested can make it uneconomical for banks to maintain certain relationships. The commenter noted this would further FinCEN’s efforts to develop a more effective and efficient anti-money laundering regime. Another commenter recommended that FinCEN, in consultation with the Federal Banking Agencies, consider changing expectations related to foreign correspondent banking to improve the efficiency, without materially reducing the effectiveness. The commenter suggested the emphasis should be placed on the risk-based nature and good faith effort to comply with the applicable regulations. A third commenter offered estimates in response to FinCEN’s specific questions for comment.

FinCEN appreciates the 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.

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<sup>7</sup> 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).

No payments or gifts were made to respondents.

10. Assurance of confidentiality of responses.

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

Frequency: As required.

Estimated Number of Respondents: 16,938

Type of Financial Institution	Number of Financial Institutions
Banks	10,542 <sup>8</sup>
Brokers or dealers in securities	3,640 <sup>9</sup>
Futures commission merchants	61 <sup>10</sup>
Introducing brokers in commodities	1,104 <sup>11</sup>
Mutual funds	1,591 <sup>12</sup>
<b>Total number of financial institutions</b>	<b>16,938</b>

Estimated Total Annual Burden Hours: 33,876.

<sup>8</sup> 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). According to the National Credit Union Administration there were 5,236 federally regulated credit unions as of December 31, 2019.

<sup>9</sup> 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.

<sup>10</sup> According to the Commodities and Futures Trading Commission (CFTC), there were 61 futures commission merchants registered with the CFTC, as of March 31, 2020.

<sup>11</sup> According to the CFTC, there were 1,104 introducing brokers in commodities registered with the CFTC as of March 31, 2020.

<sup>12</sup> 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 (Sept. 11, 2018). FinCEN was unable to obtain a more recent estimate.

**Burden associated with updating and maintaining the due diligence program and obtaining senior management approval of the program**

Type of Financial Institution	Number of Financial Institutions	Time Per Financial Institution		Total Burden Hours Per Step		Grand Total Burden Hours
		Maintenance	Approval	Maintenance	Approval	
Banks	10,542	1 hour	1 hour	10,542	10,542	21,084
Brokers or dealers in securities	3,640	1 hour	1 hour	3,640	3,640	7,280
Futures commission merchants	61	1 hour	1 hour	61	61	122
Introducing brokers in commodities	1,104	1 hour	1 hour	1,104	1,104	2,208
Mutual funds	1,591	1 hour	1 hour	1,591	1,591	3,182
<b>Total burden hours</b>				<b>16,938</b>	<b>16,938</b>	<b>33,876</b>

Estimated Total Annual Cost: \$3,065,778.

**Total cost of traditional annual PRA burden**

Steps	Hourly Burden	Hourly Cost	Total Cost
Maintaining and updating the program	16,938	\$48.00 <sup>13</sup>	\$813,024
Board of directors/senior management approval of the program	16,938	\$133.00 <sup>14</sup>	\$2,252,754
<b>Total cost</b>			<b>\$3,065,778</b>

14. Estimated annual cost to the Federal government.

There is no cost to the government; this is a recordkeeping requirement only.

15. Reason for change in burden.

The estimated total annual burden hours decreased from 56,326 hours to 33,876 hours since the last control number renewal in 2017. The estimated burden to maintain and update the due diligence program remained at 2 hours per covered financial institution. The decrease in burden is a result of a decrease in the estimated number of covered financial institutions from 28,163 in 2017 to 16,938, based on 2020 data.

<sup>13</sup> See 85 FR 61107 (Sept. 29, 2020) for the weighted average hourly cost of maintaining and updating the due diligence program.

<sup>14</sup> See 85 FR 61107 (Sept. 29, 2020) for the weighted average hourly cost for a board of directors/senior management approval of the due diligence program.

16. Plans for tabulation, statistical analysis, and publication.

This collection of information will not be published.

17. Request not to display the expiration date of the 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.