

Supporting Statement
OMB Control Number 1506-0018

Renewal Without Change of Reports Relating to Currency in Excess of \$10,000 Received in a Trade or Business, or Received as Bail by Court Clerks; Form 8300 (31 CFR 1010.330 and 31 CFR 1010.331).

1. Circumstances necessitating collection of information.

The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of 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 (USA PATRIOT Act) (Public Law 107–56) and other legislation, including most recently the Anti-Money Laundering Act of 2020 (AML Act) (Division F of Public Law 116-283). The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, 31 U.S.C. 5311–5314 and 5316–5336, and notes thereto, with implementing regulations at 31 CFR Chapter X.

The BSA authorizes the Secretary of the Treasury, *inter alia*, to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement anti-money laundering (AML) programs and compliance procedures.¹ Regulations implementing the BSA appear at 31 CFR Chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.²

31 U.S.C. 5331 of the BSA and 26 U.S.C. 6050I of the Internal Revenue Code require that certain transactions be reported to both FinCEN and the Internal Revenue Service (IRS) in the form and manner prescribed by the Secretary of the Treasury. The BSA implementing regulations are found at 31 CFR 1010.330 and 31 CFR 1010.331, respectively, and require: (1) any person engaged in a trade or business (other than a financial institution required to file currency transaction reports under FinCEN regulations) who, in the course of that trade or business, receives more than \$10,000 in coins or currency in one transaction or two or more related transactions, and (2) any clerk of a federal or state court who receives more than \$10,000 in currency as bail for any individual charged with a specified criminal offense, to report these transactions on the Form 8300.

2. Method of collection and use of data.

¹ Section 358 of the USA PATRIOT Act added language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism. Section 6101 of the AML Act added language further expanding the scope of the BSA but did not disturb these longstanding purposes.

² Treasury Order 180-01 (re-affirmed Jan. 14, 2020).

Persons engaged in a trade or business and court clerks can submit the Form 8300 electronically via the BSA E-filing system. Filers may also mail a paper version of the Form 8300 to the IRS. The IRS incorporates the data from paper-filed 8300s into the BSA database.

The information collected and retained under this regulation assists Federal, state and local law enforcement in tracing the proceeds of illegal activity and in identifying, investigating, and prosecuting individuals and entities involved in a variety of financial crimes.

3. Use of improved information technology to reduce burden.

The BSA E-filing system supports electronic filing of BSA reports, including Form 8300s (either individually or in batches)³ through a FinCEN secure network. BSA E-filing provides a faster and more convenient, secure and cost-effective method for submitting BSA reports. Discrete and batch versions are available on the FinCEN BSA E-File website at <http://bsaefiling.fincen.treas.gov/main.html>. FinCEN also upgraded to the industry standard of XML file format for both discrete and batch filers of Form 8300s.

4. Efforts to identify duplication.

FinCEN does not require financial institutions to file Form 8300s because financial institutions are required to file currency transaction reports for currency transactions in excess of \$10,000; thus there is no similar information available and no duplication.

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

The reporting and recordkeeping requirements of these regulations and reports should not pose any adverse impact on small businesses. The reports only need to be filed when a business or court clerk receives more than \$10,000 in currency in one transaction or two or more related transactions. Small businesses are less likely to receive \$10,000 in currency for one or more related transactions. Nonetheless, should a small business have to report, the recordkeeping impact should be minimal as these businesses generally retain these records as part of their regular business practice.

With respect to the impact on individuals, the information required to be reported on the Form 8300 is basic information which the filer would have access to during the course of business. For example, the Form 8300 requires a trade or business or court clerk to report identifying information about the individual from whom the cash was received, as well as any person on whose behalf the transaction was conducted. No

³ In batch-filing, a filer submits a single electronic file containing several reports. In discrete-filing, the filer fills in an electronic form individually, using a data entry screen that FinCEN provides.

special accounting or legal skills will be necessary to transfer the basic information required to be reported to the Form 8300.

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

Because the Form 8300 is filed at the time of the currency transaction, a failure to collect this information could hamper law enforcement efforts to detect illegal activity while it is still ongoing and discernible. The timely reporting of this information provides law enforcement with important investigative leads in order to take appropriate action, including tracing criminal proceeds, gathering additional evidence, seizing funds, and stopping the movement of funds before criminal elements can change their schemes for disposing of the profits of illegal activity.

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. This allows such records to be used in connection with investigations and prosecutions for substantive violations of law for which the statute of limitations is 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 December 7, 2020.⁴ The notice requested public comments on the proposed renewal, without change, of currently approved information collections relating to reports of currency of more than \$10,000 received by a trade or business or by a court clerk as bail (Form 8300). FinCEN received one anonymous public comment during the comment period in connection with this notice.

The commenter noted that the \$10,000 reporting threshold needs to be adjusted for inflation because \$10,000 in 1970 would be \$70,000 today. The commenter stated that the reporting limit is arbitrary and opens another door for government overreach into the lives of citizens. The commenter asserts that if the goal is to prevent criminal activity, then retaining the \$10,000 threshold is counterproductive because it creates a diluted pool of Form 8300s, which could assist in allowing actual criminals to fly under the radar.

The suggestions for modifications to the applicable regulations will be taken into account in FinCEN's review of existing regulations, consistent with Treasury's 2011 Plan for Retrospective Analysis of Existing Rules, and as part of the formal review of regulations implementing the BSA and BSA-related guidance, as required by Section 6216 of the AML Act. FinCEN will continue to evaluate ways to clarify the Form 8300 reporting requirements and minimize burden to the public.

FinCEN appreciates the recommendations and intends to use that information

⁴ See 85 FR 78932, <https://www.federalregister.gov/documents/2020/12/07/2020-26883/agency-information-collection-activities-proposed-renewal-comment-request-renewal-without-change-of>.

as part of a larger project FinCEN is undertaking to better understand the Paperwork Reduction Act of 1995 (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.

The information collected under this requirement is made available to appropriate agencies and organizations as disclosed in FinCEN's Privacy Act System of Records Notice relating to BSA reports.⁵

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. Estimated burden of information collection.

Frequency: As required.

Estimated Number of Respondents: 32,500.⁶

Estimated Total Annual Responses: 323,067 Form 8300s were filed in calendar year 2019.

Estimated Recordkeeping and Reporting Burden per Response:

The information required to be reported on the Form 8300 is basic information to which a filer would have access to in the course of doing business. For instance, the Form 8300 requires a trade or business or court clerk to report identifying information about the individual from whom the cash was received, as well as any person on whose behalf the transaction was conducted. The Form 8300 also requires the filer to report a description of the transaction and method of payment, as well as identifying information for the business that received the cash. As this information is readily available to a trade or business or court clerk, FinCEN estimates that reporting this information will take 20 minutes on average. Additionally, while the Form 8300 may be filed electronically, which allows the filer to save an electronic version of the form and satisfy the recordkeeping requirement, many filers choose to file a paper copy of the Form 8300. Therefore, FinCEN estimates that the recordkeeping requirement will take 10 minutes on

⁵ See FinCEN's System of Records Notice for the BSA System at 79 FR 20974 (April 14, 2014), <https://www.federalregister.gov/documents/2014/04/14/2014-08254/privacy-act-of-1974-as-amended-system-of-records-notice>.

⁶ In 2019, FinCEN received form 8300s from 32,462 unique filers based on their tax identification numbers (TIN). FinCEN is conservatively rounding this estimate to 32,500 respondents annually.

average. FinCEN estimates total hourly burden of reporting and recordkeeping for each Form 8300 is 30 minutes.

Estimated Total Annual Reporting and Recordkeeping Burden Hours: 161,534 (323,067 Form 8300s filed in calendar year 2019 multiplied by 30 minutes per form and converted to hours).

13. Estimated total annual cost burden of information collection.

Estimated Total Annual Reporting and Recordkeeping Labor Cost: \$4,942,940 (161,534 X \$30.60 per hour⁷). There are no out-of-pocket costs to respondents.

14. Estimated annual cost to the Federal government.

Electronic processing cost to the Federal Government: 323,067 Form 8300s x \$0.10 per form = \$32,306.70.⁸

15. Reason for change in burden.

The estimated total annual burden hours decreased from 164,952 hours to 161,534 hours since the last control number renewal in 2017. The estimated burden for reporting and recordkeeping remained at 30 minute per respondent. The decrease in burden is a result of a decrease in the estimated number of Form 8300s filed in 2017 (329,903 x 30 minutes = 164,952 hours) and 2019 (323,067 x 30 minutes = 161,534 hours).

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 the expiration date of the control number of the Form 8300 not be displayed on the report so that there is no confusion as to whether the report is still valid. This request will not affect the normal 3-year PRA renewal process.

18. Exceptions to the certification statement.

There are no exceptions to the certification statement.

⁷ The 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 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/oes/tables.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 each hourly wage by the benefit factor produces the fully-loaded hourly wage per position. The May 2019 Bureau of Labor Statistics average hourly wage for "43-3099 Financial Clerk" is \$20.40. (\$20.40 x 1.50 = \$30.60).

⁸ The estimated cost per electronic response is calculated as part of an annual report FinCEN creates and provides to the Department of the Treasury and OMB, entitled the Cost per BSA Filing Transaction.