

Supporting Statement
OMB Control Number 1506-0056

Reports of Certain Domestic Transactions (31 U.S.C. 5326, CFR 1010.370, and 31 CFR 1010.410(d))

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. 5326(a) authorizes the Secretary to issue an order requiring any domestic financial institution or nonfinancial trade or business or group of domestic financial institutions or nonfinancial trades or businesses in a geographic area to obtain such information as the Secretary may describe in such order concerning transactions specified in the order, if the Secretary finds that reasonable grounds exist for concluding that additional recordkeeping and reporting are necessary to carry out the purpose of the BSA or to prevent evasions thereof. These orders are commonly referred to as geographic targeting orders (GTOs).

The authority set forth in 31 U.S.C. 5326 to impose reporting and recordkeeping requirements is self-implementing. Section 5326(a) generally requires domestic financial institutions or nonfinancial trades or businesses in a geographic area that receive an order to report, in the manner and to the extent specified in the order, information concerning any transaction as the Secretary may describe in such order in which such financial institution or nonfinancial trade or business is involved for the payment, receipt, or transfer of funds. An order typically will include the following terms: (i) the dollar amount of transactions subject to the

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).

reporting requirement; (ii) the type of transactions and financial institutions or nonfinancial trades or businesses subject to or exempt from the reporting requirement; (iii) the appropriate form for reporting and the method for form submission; (iv) the starting and ending dates by which the transactions specified in the order are to be reported; (v) a point of contact at FinCEN for questions; (vi) the amount of time the reports and records of reports generated are required to be retained; and (vii) any other information deemed necessary to carry out the purpose of the order. Pursuant to 31 U.S.C. 5326(d), no order will prescribe a reporting period of more than 180 days unless it is renewed pursuant to 31 U.S.C. 5326(a). Although 31 U.S.C. 5326 does not mention the need for a prescribing regulation, a rule relating to section 5326 is set forth at 31 CFR 1010.370. Among other things, the rule defines a geographic area.

31 CFR 1010.410(d) requires each financial institution or nonfinancial trade or business to retain the original or a copy or reproduction of a record of the information required to be reported in a GTO for the period of time specified in the order, not to exceed five years.

2. Method of collection and use of data.

There are no specific methods required to collect information in response to GTOs. FinCEN will specify the form and method for reporting in each GTO as appropriate. For example, FinCEN has required persons to report by using modified currency transaction reports (CTRs) and Form 8300s, and has also created reports unique to the GTO when appropriate. Typically, responses to GTOs can be filed electronically, such as through the BSA E-Filing System.

GTOs enhance the transparency of businesses that are required to collect information on specific transactions, and expose criminals that use legitimate financial institutions and businesses to facilitate illicit activities. The information collected and retained under this regulation assists FinCEN in identifying the parties that are conducting certain transactions within a specific sector and geographic area, and which may be more susceptible to abuse for illicit purposes. As such, GTOs have also had a deterring effect, while exposing money laundering vulnerabilities and assisting FinCEN's future regulatory efforts for the sectors that are identified in the respective GTOs.

The information collected and retained also assists Federal, state and local law enforcement in tracing the proceeds of criminal or illegal activity and in identifying, investigating, and prosecuting individuals and entities involved in a variety of financial crimes occurring in specific geographic locations.

3. Use of improved information technology to reduce burden.

As noted above, there are no specific methods required to collect information in response to GTOs. FinCEN will specify the form and method for reporting in each GTO as appropriate. For example, FinCEN has required persons to report by using modified CTRs and Form 8300s, and has also created reports unique to the GTO when appropriate. Typically, responses to GTOs can be filed electronically, such as through the BSA E-Filing System. BSA E-filing provides a

faster and more convenient, secure and cost-effective method for submitting BSA reports.

4. Efforts to identify duplication.

GTOs seek to collect additional identifying information on certain transactions from U.S. financial institutions or nonfinancial trades or businesses, located in certain geographic areas, which is not collected by other BSA reports, such as CTRs and Form 8300s, and is not otherwise available to the government. 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 should not pose any adverse impact on small businesses because the information required to be recorded and reported as a result of a GTO is basic information which domestic financial institutions or nonfinancial trades or businesses would collect in the normal course of doing business.

With respect to the impact on individuals, the information required to be reported applies only when a GTO is issued and is basic information to which the filer would have access in the normal course of business. For instance, a domestic financial institution or nonfinancial trade or business involved in a payment, receipt or transfer of funds would have access to the information required to be reported. The information required to be reported for a GTO generally includes the following: (i) the dollar amount of the transaction; (ii) the type of transaction; (iii) information identifying a party to the transaction, such as name, address, date of birth, and tax identification; (iv) the role of a party in the transaction (e.g., originator or beneficiary); and (v) the name, address, and contact information for the domestic financial institution or nonfinancial trade or business. No special accounting or legal skills are necessary to report the basic information required to be reported under a GTO.

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

Because the information is collected at the time of the transaction, a failure to collect this information could hamper FinCEN and law enforcement efforts to detect and deter 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 to be inconsistent with guidelines.

-
31 CFR 1010.410(d) requires filers to retain records relating to transactions required to be reported for a period of time specified in the order, not to exceed five years. This retention period is necessary in order to allow for verification of compliance with the reporting requirement and to keep available records that may be pertinent to other 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 December 23, 2020.³ The notice requested public comments on the proposed renewal, without change, of currently approved information collections relating to the regulation and reports of certain domestic transactions. FinCEN received one comment in response to the notice. The comment, however, did not make reference to the regulations being renewed in this supporting statement.

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.⁴

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 Privacy Act Systems of Records Notice.⁵

12. Estimated burden of information collection.

Frequency: As required

Estimated Number of Respondents: 353 domestic financial institutions and/or nonfinancial trades or businesses filers (2018-2020 average).⁶

Estimated Total Annual Responses: 13,719 (2018-2020 average).⁷

3 See 85 FR 84104 at <https://www.federalregister.gov/documents/2020/12/23/2020-28431/agency-information-collection-activities-proposed-renewal-comment-request-renewal-without-change-of>.

4 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>.

5 Id.

6 The number of respondents to GTOs in general could vary significantly, as FinCEN has the authority to issue GTOs to any businesses in any geographical region in the United States. However, the average number of respondents in recent years has been 353, based on the number of respondents in 2018 (377), 2019 (259), and 2020 (424).

7 The number of responses to GTOs in general could vary significantly, as FinCEN has the authority to require reporting of transactions by any businesses in any geographical region in the United States. However, the average

Estimated Reporting and Recordkeeping Burden:

The estimated average burden associated with the GTO reporting and recordkeeping requirements will vary depending on the type of reportable transactions, the sector, and the type of domestic financial institution or nonfinancial trade or business required to report transactions under the GTO.

Generally, the information required to be recorded and reported under a GTO is basic information to which a domestic financial institution or nonfinancial trade or business would have access in the normal course of doing business. For instance, a domestic financial institution or nonfinancial trade or business involved in a payment, receipt or transfer of funds would have access to the information required to be reported. The information required to be reported for a GTO generally includes the following: (i) the dollar amount of a transaction; (ii) the type of transaction; (iii) information identifying a party to the transaction, such as name, address, date of birth, and tax identification; (iv) the role of a party in the transaction (i.e., originator or beneficiary); and (v) the name, address, and contact information for the domestic financial institution or nonfinancial trade or business.

Because the information to be reported is readily available to a domestic financial institution or nonfinancial trade or business, FinCEN estimates that reporting this information will take 20 minutes on average. Additionally, the GTO information is filed electronically, which allows the filer to save an electronic version of the form and satisfy the recordkeeping requirement. Therefore, FinCEN estimates that the recordkeeping requirement will take 5 minutes on average. FinCEN estimates the total hourly burden of reporting and recordkeeping for each reportable transaction per filer under a GTO is 25 minutes (20 minutes for reporting, and 5 minutes for recordkeeping).

Estimated Total Annual Reporting and Recordkeeping Burden on Respondent: 5,716 hours. The average number of reportable transaction is 13,719 responses. 13,719 responses multiplied by 25 minutes per response and converted to hours equals, 5,716 hours.⁸

13. Estimated total annual cost burden of information collection.

Estimated Total Annual Reporting and Recordkeeping Labor Cost: 5,716 hours x \$30.60 per hour⁹ = \$174,909.60. There are no out-of-pocket expenses for respondents. Filing a report through BSA E-Filing is free.

14. Estimated annual cost to the Federal government.

Electronic processing cost to the Federal government for 13,719 responses x \$0.10 per

number of responses in recent years has been 13,719, based on number of responses in 2018 (12,866), 2019 (14,046), and 2020 (14,244).

⁸ Although the burden is stated as an annual burden in accordance with the PRA, the estimated annual burden is not intended to indicate that there is a GTO in effect throughout any given year or in every year.

response¹⁰ = \$1,371.90.

15. Reason for change in burden.

The estimated total annual burden hours decreased by 2,284 hours from 8,000 hours in 2017 to 5,716 hours in 2020, although the annual hourly burden estimate per response remained the same as in 2017. The reduction in burden is solely a result of a decrease in the estimated annual responses from 19,200 in 2017 to 13,719, the average number of responses received between 2018 and 2020.

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

The collection of information will not be tabulated or compiled for publication.

17. Request not to display the expiration date of the OMB control number.

FinCEN requests that the expiration date of the control number relating to GTO reports 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.

⁹ 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/news.release/ecec.nr0.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 \times 1.50 = \30.60). The Financial Clerk average hourly wage is being used here because there is a great deal of variation as to who is responsible for complying with a GTO.

¹⁰ 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."