

Supporting Statement
OMB Control Number 1506-0053

Regulations Requiring Additional Records to be Made and Retained by Brokers or Dealers in Securities (31 CFR 1023.410).

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 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

Until October 1, 2003, 31 CFR 1023.410(a) required a broker or dealer in securities to make a record of certain information. Until October 1, 2008, a broker or dealer in securities was required to maintain all such records, as well as a list containing the names, addresses, and account or credit line numbers of those persons from whom it had been unable to secure the required information despite reasonable efforts. The customer identification program requirement for brokers or dealers in securities has effectively superseded these requirements.³

31 CFR 1023.410(b) requires every broker or dealer in securities to retain an original or a copy of the following: (1) each document granting signature or trading authority over each customer’s account; (2) a record of each remittance or transfer of funds, currency, checks, other monetary instruments, investment securities, or credit, of more than \$10,000 to a person, account, or place outside the United States; (3) a record of each receipt of currency, other monetary instruments, investment securities, or checks, and of each transfer of funds or credit, of more than \$10,000 on any one occasion, not through a domestic financial institution, from any person, account, or place outside 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).

³ 31 CFR 1023.220. The burden associated with this requirement is calculated under OMB control number 1506-0034.

United States; and (4) each record described in paragraphs (1), (2), (3), (5), (6), (7), (8), and (9) of 17 CFR 240.17a-3(a), covering records to be made by certain exchange members, brokers and dealers as identified in 17 CFR 240.17a-3.

The required records must be maintained for five years.⁴

2. Method of collection and use of data.

The collection of information described above is not reported to the Federal government. Instead, brokers or dealers in securities are required to secure and maintain records of the taxpayer identification number for individuals for whom a transaction or brokerage account is opened, or for whom a line of credit is extended, subject to certain exceptions. The regulations also require that brokers or dealers in securities retain originals or copies of specified documents relating to account and transaction records. The recordkeeping requirements help to ensure that brokers or dealers in securities are not used to facilitate money laundering, other financial crimes, or terrorist financing. These records will be reviewed by regulatory agencies during the course of BSA examinations and made available only upon request to other appropriate agencies in accordance with applicable legal requirements.

3. Use of improved information technology to reduce burden.

Brokers or dealers in securities 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 brokers or dealers in securities are required to secure and maintain the records described in this statement 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 this information only upon request, in accordance with applicable legal authority.

7. Special circumstances requiring data collection inconsistent with guidelines.

Pursuant to 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

⁴ 31 CFR 1010.430(d).

years because such records may relate to substantive violations of law 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 February 1, 2021.⁵ The notice requested public comments on the proposed renewal, without change, of currently approved information collections relating to regulations requiring additional records to be made and retained by dealers in foreign exchange and additional records to be made and retained by brokers or dealers in securities. 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 of 1995 (“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 “future annual PRA burden”). FinCEN received no comments in response to the notice.

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 retained under the regulations implementing the BSA may be made available to FinCEN and appropriate government agencies upon their request or as part of an examination.

11. Justification of sensitive questions.

This is a recordkeeping requirement. Information collection requirements for brokers or dealers in securities are mandated by other provisions of the BSA, as amended, and FinCEN regulations.

12. Estimated Annual Hourly Burden

Frequency: As required.

Estimated Number of Respondents: 3,640 brokers or dealers in securities.⁶

Each broker or dealer in securities must retain an original or copy of certain types of documents as described in footnote 4 above. Due to the challenges of obtaining the

⁵ 86 FR 7778 at <https://www.federalregister.gov/documents/2021/02/01/2021-02064/agency-information-collection-activities-proposed-renewal-comment-request-renewal-without-change-of>.

⁶ 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.

total number of such records required to be maintained by brokers or dealers in securities, in its 2017 control number renewal, FinCEN estimated that the annual recordkeeping burden per broker or dealer in securities for these requirements was 100 hours.⁷ FinCEN continues to estimate that the annual hourly burden of complying with 31 CFR 1023.410 is 100 hours per broker or dealer in securities.

Estimated Total Annual Burden Hours: 364,000 hours (3,640 brokers or dealers in securities multiplied by 100 hours).

13. Estimated Annual Cost to Respondents for Hour Burdens

To calculate the hourly costs of the burden estimate, FinCEN identified three roles and corresponding staff positions involved in maintaining records as required by 31 CFR 1023.410: (i) general supervision (providing process oversight); (ii) direct supervision (reviewing operational-level work and cross-checking all or a sample of the work product against supporting documentation); and (iii) clerical work (engaging in recordkeeping).

FinCEN calculated the fully-loaded hourly wage for each of these three roles by using the median wage estimated by the U.S. Bureau of Labor Statistics (BLS),⁸ and computing an additional benefits cost as follows:

| Role | BLS-Code | BLS-Name | Median Hourly Wage | Benefit Factor | Fully-loaded Hourly Wage |
|---|----------|--------------------|--------------------|----------------|--------------------------|
| General supervision | 11-3031 | Financial Manager | \$62.45 | 1.50 | \$93.68 |
| Direct supervision | 13-1041 | Compliance Officer | \$33.20 | 1.50 | \$49.80 |
| Clerical work (research, review, and recordkeeping) | 43-3099 | Financial Clerk | \$20.40 | 1.50 | \$30.60 |

FinCEN estimates that, *in general and on average*,⁹ each role would spend different amounts of time on each portion of the traditional annual PRA burden, as follows:

⁷ 82 FR 31686, 31687 (July 7, 2017).

⁸ 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.

⁹ By “in general,” FinCEN means without regard to outliers (e.g., financial institutions with accounts or transactions that require recordkeeping that is uncommonly higher or lower than those of the population at large). By “on average,” FinCEN means the mean of the distribution of each subset of the population.

The cost of each hour of burden, broken down by role, to produce and maintain records as outlined in 31 CFR 1023.410 would be \$37.00 as set out below:

| General Supervision | | Direct Supervision | | Clerical Work | | Weighted Average Hourly Cost |
|---------------------|-------------|--------------------|-------------|---------------|-------------|------------------------------|
| % Time | Hourly Cost | % Time | Hourly Cost | % Time | Hourly Cost | |
| 5% | \$4.68 | 15% | \$7.47 | 80% | \$24.48 | \$37.00 |

\$36.63 rounded to \$37.00

Total Estimated Annual Cost: \$13,468,000 (364,000 hours multiplied by \$37).

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

14. Estimated annual cost to the Federal government.

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

15. Reason for change in burden.

The estimated total annual burden hours decreased by 466,000 hours from 830,000 hours in 2017 to 364,000 hours in 2020, although the annual hourly burden estimate for these recordkeeping requirements remained the same as in 2017. The reduction is solely a result of a decrease in the estimated number of brokers or dealers in securities from 8,300 in 2017 to 3,640 in 2020.

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.