

Supporting Statement
OMB Control Number 1506-0012

Transactions of Exempt Persons (31 CFR 1020.315), and FinCEN Report 110-
Designation of Exempt Persons (DOEP) Report.

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

The requirement for financial institutions to report certain transactions in currency has been an important component of the BSA from its inception.³ Regulations have long established a one-person, one-day, one-institution aggregate currency transaction threshold of \$10,000, above which financial institutions must file a Currency Transaction Report (CTR) reporting information about the transaction and the person(s) involved.⁴ The Money Laundering Suppression Act of 1994 amended the BSA to give banks certain mandatory exemptions from the requirement for financial institutions to file CTRs, and to give the Secretary authority to create additional such exemptions.⁵ Regulations implementing this exemption authority are found at 31 CFR 1020.315. These regulations, as explained in greater detail below, require banks to submit the Designation of Exempt Persons (DOEP) Report to create certain exemptions from the CTR requirement. Under 31 CFR 1020.315(a), a bank is not required to file a CTR with respect to any transaction

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 Public Law 91–508 (Oct. 26, 1970), 84 Stat. 1122.

⁴ 31 CFR 1010.311.

⁵ Public Law 103–325, Title IV, Section 402 (Sep. 23, 1994), 108 Stat. 2243. These authorities are codified at 31 U.S.C. 5313(d) (mandatory exemptions) and (e) (discretionary exemptions).

in currency between exempt persons and the bank, or between an exempt person and other banks that are affiliated with the bank.⁶

31 CFR 1020.315(b) sets out that an exempt person is: (1) A bank, to the extent of such bank's domestic operations; (2) a department or agency of the United States, of any State, or of any political subdivision of any State; (3) any entity established under the laws of the United States, any State, or any political subdivision of any State, or under an interstate compact, that exercises governmental authority on behalf of the United States, any such State, or any such political subdivision; (4) any entity, other than a bank, whose common stock or analogous equity interests are listed on the New York Stock Exchange, the American Exchange, or the NASDAQ Stock Market (a "listed entity"), provided that, if the listed entity is a financial institution other than a bank, it is an exempt person only to the extent of its domestic operations; (5) any subsidiary, other than a bank, of a listed entity mentioned in the previous item (4) that is organized under the laws of the United States or of any State, provided that the listed entity owns at least 51 percent of the equity interest of the subsidiary, and subject to the qualification that if the subsidiary is a financial institution other than a bank, it is an exempt person only to the extent of its domestic operations; (6) any other commercial enterprise, with certain exceptions, that maintains a transaction account at the bank for at least two months, frequently engages in transactions with the bank in currency in excess of \$10,000, and is incorporated or organized under the laws of, or is registered as and eligible to do business within, the United States or a State (a "non-listed business"), but only to the extent of the non-listed business customers' domestic operations and only with respect to transactions conducted through the non-listed business customer's exemptible accounts; or (7) any other person, with certain exceptions, that maintains a transaction account at the bank for at least two months, operates a firm that frequently withdraws more than \$10,000 in order to pay its U.S. employees in currency, and is incorporated or organized under the laws of, or is registered as and eligible to do business within, the United States or a State (a "payroll customer"), but solely with respect to withdrawals for payroll purposes from existing exemptible accounts.⁷

31 CFR 1020.315(c)(1) requires a bank to designate an exempt person by filing the DOEP Report⁸ within 30 calendar days after the day of the first reportable transaction in currency with that person that the bank seeks to exempt from reporting. A bank holding company or one of its bank subsidiaries may make such a designation on behalf of any or all of the bank holding company's bank subsidiaries by listing those bank subsidiaries in the DOEP Report that it files.⁹ However, a bank is not required to file a DOEP Report for transfer of currency to or from (1) any of the 12 Federal Reserve Banks, (2) a bank, to the extent of such bank's domestic operations, (3) a department or

⁶ 31 CFR 1010.315(a). The exemption does not apply when the exempt person is acting as agent for another person who is the beneficial owner of the funds that are the subject of the transaction. 31 CFR 1010.315(f).

⁷ In certain circumstances, a limited exemption from the two month transaction account holding requirement may apply to non-listed business and payroll customers pursuant to the special rule at 31 CFR 1010.315(c)(2)(ii).

⁸ This is referred to in the regulations as "FinCEN Form 110." FinCEN has referred to its forms as "reports" since moving to electronic filing.

⁹ 31 CFR 1020.315(c)(1) and (e)(6).

agency of the United States, of any State, or of any political subdivision of any State, or (4) any entity established under the laws of the United States, any State, or any political subdivision of any State, or under an interstate compact between two or more States, that exercises governmental authority on behalf of the United States or any such State or political subdivision.¹⁰

31 CFR 1020.315(d) requires a bank to review at least once annually the continued eligibility of an exempt person that is a (1) listed entity, (2) subsidiary of a listed entity, (3) non-listed business customer, or (4) payroll customer. As part of the annual review, a bank must also review the application to each existing account of a non-listed business or payroll customer of the monitoring system that 31 CFR 1020.315(h)(2) requires the bank to maintain (related to suspicious activity monitoring).

Under 31 CFR 1020.315(e), a bank must take steps to assure itself that an exempt person meets the definition of that term (see 31 CFR 1020.315(b), summarized above), document the basis for its conclusion, and document its compliance with the terms of the exemption, including the operating rules in 31 CFR 1020.315(e)(2)-(9). A bank must also take steps to document compliance with its suspicious activity monitoring obligations under 31 CFR 1020.315(h)(2). The steps that the bank takes under 31 CFR 1020.315(e) must be those that a reasonable and prudent bank would take and document to protect itself from fraud or loss based on misidentification of a person's status and, in the case of the suspicious activity monitoring obligations, to identify suspicious transactions.

31 CFR 1020.315(h)(1) states that the CTR exemption rules do not relieve a bank of its obligation to report any suspicious transactions pursuant to 31 CFR 1020.320, including any suspicious transactions or attempted transactions in currency associated with the accounts of an exempt person, or relieve a bank of any other reporting or recordkeeping obligation imposed under the authority of the BSA.

Under 31 CFR 1020.315(h)(2), a bank must establish and maintain a monitoring system that is reasonably designed to detect, for each account of a non-listed business or payroll customer, transactions in currency that would require a bank to file a Suspicious Activity Report (SAR).

2. Method of collection and use of data.

The DOEP Report is filed electronically through the FinCEN BSA E-Filing system. The purpose of this report is to provide a transparent, reviewable means for banks to exempt eligible customers and their transactions from CTR filings when the bank considers exemption appropriate. The information collected and retained under this regulation facilitates banks' efficient compliance with the CTR requirements, while assisting Federal, state and local law enforcement efforts in identifying, investigating, and prosecuting individuals and entities involved in a variety of financial crimes.

3. Use of improved information technology to reduce burden.

¹⁰ 31 CFR 1020.315(c)(2)(A) and (B).

The BSA E-filing system supports electronic filing of BSA reports, including the DOEP Report, through a FinCEN secure network. BSA E-filing provides a faster, more convenient, secure, and cost-effective method for submitting BSA reports.

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.

The reporting and recordkeeping requirements of these regulations and reports should not pose any adverse impact on small businesses. The BSA implementing regulations require banks to file CTRs on transactions in currency of more than \$10,000. The regulations also permit banks to exempt eligible customers' transactions from CTR reporting requirements by filing a DOEP Report. Banks are the only type of financial institutions that may exempt customers from the CTR filing requirements. DOEP Reports are optional and only need to be filed when a bank elects to exempt customers from CTR filing. Banks that qualify as small businesses are less likely to maintain accounts for customers that meet the definition of exempt persons.

FinCEN does not consider it possible to further reduce the burden for small businesses.

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

These reporting and recordkeeping requirements are intended to provide an effective means for banks to reduce the need to file CTRs for transactions with designated exempt persons. This information helps law enforcement and regulatory authorities detect, investigate, and prosecute money laundering and other financial crimes.

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. 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 January 25, 2021.¹¹ The notice requested public comments on the proposed renewal, without change, of currently approved

¹¹ 86 FR 6964 at <https://www.federalregister.gov/documents/2021/01/25/2021-01451/agency-information-collection-activities-proposed-renewal-comment-request-renewal-without-change-of>.

information collections related to transactions of exempt persons (31 CFR 1020.315), and the DOEP Report. 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 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 “supplemental annual PRA burden”). The supplemental annual PRA burden calculation will include the estimated hourly burden and cost to: (1) determine the initial eligibility of exempt persons, document the basis for the consideration, and document compliance with the DOEP reporting requirements; (2) conduct an annual review to determine whether certain exempt persons remain eligible for the CTR exemption, and, consistent with that review, to maintain a monitoring system to identify suspicious transactions associated with the accounts of non-listed business and payroll customers; and (3) identify suspicious transactions associated with accounts of non-listed business and payroll customers.

FinCEN received no public 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.

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.¹²

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 annual hourly burden of information collection.

Frequency: As required.

Estimated Number of Respondents: 11,161 banks.¹³

¹² 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>.

¹³ 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 (as defined in 12 CFR 28.2), and 168 foreign banking organizations). According to the National Credit Union Administration there were 5,236 federally

Estimated Total Annual Reponses: 18,141 DOEP Reports were filed in calendar year 2019.

Estimate of Burden:

FinCEN continues to estimate the annual hourly burden of the designation of exempt persons as one hour per form. This estimate covers the burden of: (1) 45 minutes to fill out and file the report; and (2) 15 minutes to save the report electronically and print out a copy to keep in hard-copy files. FinCEN believes that the information required to be included on the DOEP Report is basic information that banks need to maintain to conduct business. The e-filing system prompts banks to save the report after submission.

FinCEN’s estimate of the traditional annual PRA burden, therefore, is 18,141 hours, as set out below:

Type of Financial Institution	Number of DOEP Reports Filed in 2019	Time Per Form		Total Burden Hours Per Step		Grand Total Burden Hours
		Completion (Filling out and Filing)	Maintenance	Completion (Filling out and Filing)	Maintenance	
Banks	18,141	45 minutes	15 minutes	13,605.75	4,535.25	18,141 ¹⁴

13. Estimated total annual cost to respondents for hour burdens

Fully-loaded hourly wage by role and Bureau of Labor and Statistics (BLS) job position¹⁵ for all financial institutions covered by this supporting statement:

regulated credit unions as of December 31, 2019). Approximately 297 state-chartered non-depository trust companies, 228 non-federally insured credit unions, 12 non-federally insured state-chartered banks and savings and loan or building and loan associations, 1 private bank, 29 international banking entities, and 52 international financial entities, all of which are required to implement written AML programs as a result of a final rule issued on September 15, 2020 (85 FR 57129), are also required to keep the records described in this supporting statement, if they choose to file DOEP Reports.

¹⁴ In the past PRA burden analysis, FinCEN estimated that the traditional burden to complete and file the DOEP Report for banks was 1 hour (45 minutes for completion of the form and 15 minutes for recordkeeping). (18,141 x .75 minutes = 13,605.75 burden hours for completion of the report) + (18,141 x .25 minutes = 4,535.25 burden hours for maintenance). The total hourly burden is 18,141 hours (13,605.75 + 4,535.25). In future renewals of this OMB control number this estimate will be different because FinCEN intends to account for the initial eligibility determination, filling out and filing the report, annual review, maintenance of records, maintenance of the monitoring system, and monitoring accounts to report suspicious transactions.

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*,¹⁶ each role would spend a different amount of time on each portion of the traditional annual PRA burden. For initial filing, the cost of each hour of burden would be one burden hour at \$48.00 representing the actual completion and filing of the report broken down by each role as set out below:

General Supervision		Direct Supervision		Clerical Work		Weighted Average Hourly Cost
% Time	Hourly Cost	% Time	Hourly Cost	% Time	Hourly Cost	
10%	\$9.37	30%	\$14.94	60%	\$18.36	\$43.00

\$42.67 rounded to \$43.00

The total estimated cost of the traditional annual PRA burden is \$780,063, as set out below:

Steps	Hourly Burden	Hourly Cost	Total Cost
Report Completion (divided between the roles listed above)	13,605.75	\$43.00	\$585,047.25
Maintenance/Recordkeeping	4,535.25	\$43.00	\$195,015.75
Total Cost			\$780,063

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

14. Estimated annual cost to the Federal government.

Electronic processing cost to the Federal Government: 18,141 DOEP Reports x \$0.10 per form = \$1,814.10.¹⁷

¹⁵ 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/cec.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.

¹⁶ By "in general," FinCEN means without regard to outliers. By "on average," FinCEN means the mean of the distribution of each subset of the population.

15. Reason for change in burden.

The estimated total annual burden hours decreased by 8,899 from 27,040 hours in 2017 to 18,141 hours in 2020 although the annual hourly burden estimates per regulatory requirement remained the same as in 2017 (one hour per report). The reduction in burden is a result of a decrease in the number of reports filed from 27,040 in 2017 to 18,141 in 2019. Additionally, there was a reduction in the number of respondents since the last approval from 13,520 to 11,161 banks in 2019.

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 DOEP Report 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.

¹⁷ 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.