

Supporting Statement  
OMB Control Number 1506-0055  
Reports of Transactions with Foreign Financial Agencies

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 (October 26, 2001), and other legislation, including most recently the Anti-Money Laundering Act of 2020 (AML Act).<sup>1</sup> The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1960, 31 U.S.C. 5311–5314 and 5316–5336, and includes notes thereto, with implementing regulations at 31 CFR Chapter X.

The BSA authorizes the Secretary of the Treasury (the “Secretary”), 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.<sup>2</sup> The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.<sup>3</sup>

The Secretary is authorized to require any “resident or citizen of the United States or a person in, and doing business in, the United States, to . . . keep records and file reports, when the resident, citizen, or person makes a transaction or maintains a relation for any person with a foreign financial agency.”<sup>4</sup> The term “foreign financial agency” (FFA) means any person engaging in any activities outside the United States as a “financial agency,” which the statute defines as “a person acting for a person . . . as a financial institution, bailee, depository trustee, or agent, or acting in a similar way related to money, credit, securities, gold, or a transaction in money, credit, securities or gold, or a service provided with respect to money, securities, futures, precious metals, stones and jewels, or value that substitutes for currency.”<sup>5</sup> The regulations implementing reports of transactions with FFAs are found at 31 CFR 1010.360.

31 CFR 1010.360(a) authorizes the Secretary, when the Secretary deems appropriate, to promulgate regulations requiring specified financial institutions to file reports of certain transactions with designated FFAs. A regulation promulgated pursuant to 31 CFR 1010.360(a) must designate one or more categories of information to be reported by the financial institution as it relates to a designated FFA, including one or more of the following: (i) checks or drafts; (ii) transmittal orders; (iii) loans; (iv) commercial

<sup>1</sup> The AML Act was enacted as Division F, §§ 6001-6511, of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. 116-283, 134 Stat 3388 (2021).

<sup>2</sup> 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 amend these longstanding purposes.

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

<sup>4</sup> 31 U.S.C. 5314(a).

<sup>5</sup> 31 U.S.C. 5312(b)(2).

paper; (v) stocks; (vi) bonds; and (vii) certificates of deposit.

31 CFR 1010.430(d) requires that all records that must be retained pursuant to 31 CFR Chapter X, be retained for a period of five years.

## 2. Method of collection and use of data.

There are no specific methods required to collect information in response to FFA requests. As noted above, FinCEN may specify the form and method for reporting and typically provides a reporting schedule to each specified financial institution. If the financial institution does not have any reportable transactions, that information must be reported to FinCEN. FFA information is typically reported by uploading a comma-separated value file spreadsheet through FinCEN's Secure Information Sharing System, which allows the filer to save an electronic version of the report and satisfy the recordkeeping requirement.

The information collected and retained assists Federal, state and local law enforcement and other government agencies 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.

## 3. Use of improved information technology to reduce burden.

As noted above, there are no specific methods required to collect information in response to FFA requests. FinCEN may specify the form and method for reporting and typically provides a reporting schedule to each specified financial institution. If the financial institution does not have any reportable transactions, that information must be reported to FinCEN. FFA information is typically reported by uploading a comma-separated value file spreadsheet through FinCEN's Secure Information Sharing System, which allows the filer to save an electronic version of the report and satisfy the recordkeeping requirement.

## 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 *per se* should not pose any adverse impact on small businesses because the information required to be reported is basic information which specified financial institutions would collect in the normal course of doing business.<sup>6</sup> Generally, the information required to be reported

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<sup>6</sup> As noted in section 8 below, one commenter pointed out that, independent of any difficulties associated with recording and reporting the required information, the technical limitations that FinCEN has imposed on reports of FFA data impose their own, possibly significant burden on financial institutions required to file such reports; the commenter made recommendations about how to ease that burden. FinCEN is adjusting the burden associated with these filings to take into account filers' need to address those technical limitations,

pursuant to an FFA regulation is basic information that a domestic financial institution would already maintain based on current BSA recordkeeping requirements. For example, a domestic financial institution sending or receiving transmittal orders (funds transfers) with a designated FFA would have access to the information required to be reported. The information required to be reported pursuant to an FFA regulation includes one or more of the following categories: (i) checks or drafts; (ii) transmittal orders; (iii) loans; (iv) commercial paper; (v) stocks; (vi) bonds; and (vii) certificates of deposit. Although FFA requests may include any of these types of transactions, in general, over the past three years, FinCEN has only made requests associated with funds transfers. No special accounting or legal skills are necessary to report the basic information required.

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

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 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. The five year retention period ensures that law enforcement and other appropriate government agencies will have access to records for a reasonable period of time and allows for verification of compliance with specific requirements. FinCEN may require financial institutions to report FFA data more frequently than quarterly depending on the circumstances, to enable law enforcement to take appropriate investigative action and for FinCEN and other government agencies to analyze the data in a timely manner to support appropriate follow-on actions.

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 11, 2022.<sup>7</sup> The notice requested public comments on the proposed renewal, without change, of currently approved information collections relating to regulations requiring specified financial institutions to file reports of certain transactions with designated FFAs. In response to the notice, FinCEN received one relevant comment from a policy, research and advocacy institute.

The commenter commended FinCEN for its focus on more accurately estimating burden associated with the FFA reporting requirements. The commenter shared information provided by its members on hours invested and resources devoted to FFA requests.

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and is also considering the commenter's recommendations.

<sup>7</sup> 87 FR 1479, available at [2022-00332.pdf \(govinfo.gov\)](https://www.govinfo.gov/2022-00332.pdf).

The commenter noted that it recognizes the value of these reports to law enforcement, and suggested that institutions could provide more substantial and useful information to FFA investigations if FinCEN could provide additional information on the rationale for an FFA request. The commenter also recommended that FinCEN consider ways to enhance reporting capabilities, because some institutions indicated that it is a substantial effort to provide the reports in a manner FinCEN can accept. Specifically, these institutions noted that FinCEN has a 100-megabyte file size limit for FFA reports, so institutions have to devote significant time to the activity of breaking down responses to large requests into multiple files.

The commenter noted that FinCEN's estimate of 5 hours and 5 minutes per FFA response significantly underestimates the amount of time it takes for institutions to respond to these requests, particularly large banks. The commenter noted that while some institutions indicated that certain requests can take 5 to 8 hours, the majority take significantly more time. The commenter clarified that the key elements that impact the burden of a FFA request include: (i) the number of individuals and their function; (ii) the jurisdiction of the FFA; and (iii) and the search period. The commenter further noted that some institutions reported that significant requests can take 320 to 400 hours per request, while other requests have required 80 to 120 hours per request.

FinCEN appreciates the recommendations concerning ways to clarify FFA requests and minimize burden via the expansion of the size of files that can be accepted per request and will take these recommendations into consideration. In addition, based on the burden estimates described directly above, FinCEN is increasing its estimate of burden as described in detail in section 12 below.

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 (SORN) relating to BSA reports.<sup>8</sup>

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 SORN.<sup>9</sup>

12. Estimated annual hourly burden.

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<sup>8</sup> 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>.

<sup>9</sup> *Id.*

Frequency: As required.

Estimated Number of Respondents: 9 domestic financial institutions.<sup>10</sup>

Estimated Total Annual Responses: 84 responses.<sup>11</sup>

**Table 1 - Burden associated with each portion of the traditional annual Paperwork Reduction Act of 1995 (PRA) estimate as noted in the 60-day notice published in the Federal Register**

Action	Responses per Year	Time per Instance	Total Hourly Burden
A. Filing reports of certain transactions with designated FFAs	84 reports per year	5 hours	420 hours
B. Complying with recordkeeping requirements in 31 CFR 1010.430	84 records per year	5 minutes	7 hours
<b>Total Hourly Burden</b>			<b>427 hours</b>

Based on burden estimates provided by one commenter, as described in section 8 above, FinCEN is revising its burden estimate related to the number of hours necessary to file a report for one FFA response from 5 hours, to a range of the following:

- Simple request - 5 to 8 hours (average 6.5 hours rounded up to 7 hours)
- Typical request - 80 to 120 hours (average 100 hours)
- Complex request - 320 to 400 hours (average 360 hours)

FinCEN's revised burden estimate as outlined in Table 2 directly below makes the assumption that the percentage of requests are broken down as follows:

- Simple request - 25%
- Typical request - 50%
- Complex request - 25%

**Table 2 - Revised reporting burden associated with each portion of the traditional annual PRA estimate, as a result of public comments**

<sup>10</sup> Between 2019-2021, FinCEN sent FFA requests to an average of 9 financial institutions (5-13 financial institutions per request for an average of 9 financial institutions per request).

<sup>11</sup> Between 2019-2021, FinCEN sent a total of 4 requests to an average of 9 financial institutions, for a total of 36 requests over three years. The requests asked for information on 1 to 12 FFAs per request, with an average of 6.5 (rounded up to 7) FFAs per request. 36 total requests multiplied by 7 FFAs per request equals 252 responses over the course of 3 years. Therefore, the annual estimated number of responses is 252 responses divided by 3 years, which equals 84 responses annually.

Type of FFA request:	Simple request (5 to 8 hours per response)	Typical request (80 to 120 hours per response)	Complex request (320 to 400 hours per response)	Totals
Average hours per response	7 hours	100 hours	360 hours	
Number of responses per FFA request type	21 responses <sup>12</sup>	42 responses <sup>13</sup>	21 responses <sup>14</sup>	<b>84 responses</b>
Total annual reporting burden hours per FFA request type	147 hours	4,200 hours	7,560 hours	<b>11,907 hours</b>

Estimated Total Annual Burden Hours: 11,914 hours (11,907 reporting burden hours<sup>15</sup> plus 7 recordkeeping burden hours).<sup>16</sup>

13. Estimated annual cost burden.

FinCEN revised its cost estimate to account for the increase in the reporting burden per FFA response, as described directly above.

**Table 3 – Revised total cost of traditional annual PRA burden**

Steps	Hourly Burden	Hourly Cost	Total Cost
Filing reports of certain transactions with designated FFAs	11,907 <sup>17</sup>	\$95.00 <sup>18</sup>	\$1,131,165
Complying with the recordkeeping requirements in 31 CFR 1010.430	7 <sup>19</sup>	\$95.00 <sup>20</sup>	\$665
<b>Total Cost</b>			<b>\$1,131,830</b>

Estimated Total Annual Cost: \$1,131,830.

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

<sup>12</sup> 84 total FFA responses multiplied by 25 percent equals 21.

<sup>13</sup> 84 total FFA responses multiplied by 50 percent equals 42.

<sup>14</sup> 84 total FFA response multiplied by 25 percent equals 21.

<sup>15</sup> See Table 2.

<sup>16</sup> See Table 1.

<sup>17</sup> See Table 2.

<sup>18</sup> See *supra* note 7.

<sup>19</sup> See Table 1.

<sup>20</sup> See *supra* note 7.

14. Estimated annual cost to the Federal government.

Electronic processing cost to the Federal government for 84 responses x \$0.10 per response<sup>21</sup> = \$8.40.

15. Reason for change in burden.

The estimated total annual burden hours increased by 10,914 hours from 1,000 hours in 2016 to 11,914 hours in 2022, because the annual hourly burden estimate per FFA response increased from 5 hours in 2016 to 142<sup>22</sup> hours in 2022, even though the number of responses decreased from 200 responses in 2016 to 84 responses in 2022.

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.

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<sup>21</sup> The estimated cost to FinCEN per BSA report submitted to FinCEN is \$0.10.

<sup>22</sup> 11,914 hours divided by 84 FFA responses equals an average of 141.83 hours (rounded up to 142 hours) per FFA response.