

Supporting Statement
OMB Control Number 1506-0043
Prohibition on Correspondent Accounts for Foreign Shell Banks; Records Concerning Owners of
Foreign Banks and Agents for Service of Legal Process

1. Circumstances necessitating collection of information.

The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of the Currency and Foreign 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).¹ 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.² The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.³

31 U.S.C. 5318(j) prohibits covered financial institutions⁴ from maintaining correspondent accounts in the United States for, or on behalf of, foreign banks that do not have a physical presence in any country. In addition, under 31 U.S.C. 5318(k), a covered financial institution maintaining a correspondent account in the United States for a foreign bank must retain records identifying (i) the owners of record and the beneficial owners of the foreign bank, and (ii) the name and address of a person residing in the United States who is authorized to accept service of legal process for the foreign bank. The regulations implementing 31 U.S.C. 5318(j) and 31 U.S.C. 5318(k) appear at 31 CFR 1010.630.

31 CFR 1010.630(a)(1) prohibits covered financial institutions⁵ from maintaining

¹ 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).

² 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.

³ Treasury Order 180-01.

⁴ A covered financial institution is any financial institution described in subparagraphs (A) through (G) of 31 U.S.C. 5312(a)(2), including an insured bank, as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)); a commercial bank or trust company; a private banker; an agency or branch of a foreign bank in the United States; any credit union; a thrift institution; and a broker or dealer registered with the Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.). 31 U.S.C. 5318(j) (1).

⁵ See 31 CFR 1010.605(e)(2) for the definition of a covered financial institution for purposes of 31 CFR 1010.630: (i) an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h))); (ii) a commercial bank or trust company; (iii) a private banker; (iv) an agency or branch of a foreign bank in the United

correspondent accounts⁶ in the United States for, or on behalf of, foreign shell banks.⁷ Covered financial institutions must take reasonable steps to ensure that any correspondent account managed by a covered financial institution in the United States is not being used by a foreign bank⁸ to indirectly provide banking services to a foreign shell bank.⁹

31 CFR 1010.630(a)(2) requires covered financial institutions that maintain correspondent accounts in the United States for foreign banks to retain records in the United States identifying: (i) the owners of each such foreign bank whose shares are not publicly traded,¹⁰ with one exception;¹¹ and (ii) the name and street address of a person who resides in the United States and is authorized, and has agreed, to be an agent to accept service of legal process for records regarding each such account.

31 CFR 1010.630(b) clarifies that a covered financial institution will be deemed to be in compliance with the requirements of 31 CFR 1010.630(a) with respect to a foreign bank if the covered financial institution obtains, at least once every three years, a certification or recertification from the foreign bank. FinCEN has developed an optional certification form¹² that includes a request to the foreign bank for the information required under 31 CFR 1010.630(a). Covered financial institutions may use the certification form to obtain the necessary information for an initial certification and a recertification.

31 CFR 1010.630(c) outlines interim verification requirements covered financial institutions must follow. Specifically, a covered financial institution must request that a foreign bank verify or correct the information provided in such bank's certification or recertification, if the covered financial institution knows, suspects, or has reason to suspect that such information

States; (v) a credit union; (vi) a savings association; (vii) a corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*); and (viii) a broker or dealer in securities registered, or required to be registered, with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934.

6 31 CFR 1010.605(c). For purposes of 31 CFR 1010.630, a correspondent account is defined as an account established for a foreign bank to receive deposits from, or to make payments or other disbursements on behalf of, the foreign bank, or to handle other financial transactions related to such foreign bank.

7 31 CFR 1010.605(g). *Foreign shell bank* means a foreign bank without a physical presence in any country.

8 31 CFR 1010.100(u). A foreign bank is defined as a bank organized under foreign law, or an agency, branch or office located outside the United States of a bank. The term does not include an agent, agency, branch or office within the United States of a bank organized under foreign law.

9 31 CFR 1010.630(a)(1)(iii) clarifies that covered financial institutions are not prohibited from providing correspondent account or banking services to a regulated affiliate.

10 According to 31 CFR 1010.630(a)(2)(iii), *publicly traded* refers to shares that are traded on an exchange or on an organized over-the-counter market that is regulated by a "foreign securities authority" as defined in section 3(a)(50) of the Securities Exchange Act of 1934 (15 U.S.C. 78C(a)(50)).

11 According to 31 CFR 1010.630(2)(ii), a covered financial institution is not required to maintain records of the owner of a non-publicly traded foreign bank if the foreign bank is required to file with the Federal Reserve Board a Form FR-Y that identifies the current owners of the foreign bank.

12 Available at <https://www.fincen.gov/sites/default/files/shared/Certification%20Regarding%20Correspondent%20Accounts%20for%20Foreign%20Banks.pdf>

is incorrect or no longer accurate.

31 CFR 1010.630(d) outlines instances in which correspondent accounts must be closed and also describes the criteria necessary to reestablish a closed account.

31 CFR 1010.630(e) requires covered financial institutions to retain any original document provided by a foreign bank, and the original or a copy of any document otherwise relied upon by a covered financial institution for purposes of complying with 31 CFR 1010.630, for at least five years after the date that a covered financial institution no longer maintains any correspondent account for such foreign bank.

2. Method of collection and use of data.

The collection of information described above is not reported to the Federal government. Instead, covered financial institutions are required to secure and maintain any original document provided by a foreign bank, and the original or a copy of any document otherwise relied upon by a covered financial institution for purposes of complying with 31 CFR 1010.630, for at least five years after the date that a covered financial institution no longer maintains any correspondent account for such foreign bank.

The recordkeeping requirements help to ensure that covered financial institutions 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.

Covered financial institutions 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 covered financial institutions are required to secure and maintain the records described in this statement and are permitted to use the method most suitable to their business.

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 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 10, 2022.¹³ The notice requested public comments on the proposed renewal, without change, of a currently approved information collection relating to regulations prohibiting covered financial institutions from maintaining correspondent accounts for foreign shell banks; and requiring covered financial institutions to obtain and retain records concerning owners of foreign banks and agents for service of legal process. In response to the notice, FinCEN received four comments; however, none of the comments made recommendations regarding the regulation being renewed, or related to the corresponding burden of that regulation.

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

¹³ 87 FR 7919 at <https://www.federalregister.gov/documents/2022/02/10/2022-02885/agency-information-collection-activities-proposed-renewal-comment-request-renewal-without-change-of>.

or investigation.

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.

Frequency: As required.

Estimated Number of Respondents: 8,696 covered financial institutions.^{14, 15}

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

Estimated Number of Covered Financial Institutions with One or More Correspondent Accounts for Foreign Banks	Hourly Burden to Obtain and Record a Certification or Recertification Per Foreign Bank		Total Burden Hours for Covered Financial Institutions to Obtain and Record Certification and Recertification Annually		Grand Total Annual Burden Hours for Covered Financial Institutions to Comply with 31 CFR 1010.630
	Certification and Recordkeeping	Recertification and Recordkeeping	Certification and Recordkeeping	Recertification and Recordkeeping	
					1010.630

¹⁴Data are from the Federal Reserve’s Structured Data for U.S. Banking Offices (see [FRB: Structure Data for U.S. Banking Offices of Foreign Entities \(federalreserve.gov\)](https://www.federalreserve.gov/structure-data)) and quarterly call report bank data (specifically, Schedule RC-E: Deposit liabilities, line 5: liabilities of banks in foreign countries) from the Financial Institution Retrieval Data System (FINDRS). Using these two sources, FinCEN determines that as of Q3 2021, approximately 5,164 banking organizations (national and state banks, trusts, thrifts and savings and loans, branches and agencies of foreign banking organizations, representative offices, Edge Act corporations, and agreement corporations) will be affected by this rule in any given year. Specifically, we determine that there are approximately: 190 branches and agencies of foreign banks; 115 representative offices, Edge Act corporations, and agreement corporations; and 4,859 U.S. banks (national and state chartered, trusts, savings and loans, thrifts) that report values for deposit liabilities of banks in foreign countries. Deposit liabilities in a foreign country is an indication that a bank maintains at least one correspondent account with a foreign financial institution.

¹⁵According to the Securities and Exchange Commission (SEC), as of March 31, 2021, there were 3,532 brokers or dealers in securities registered with the SEC. FinCEN conservatively estimates that each of these brokers or dealers in securities maintain at least one correspondent account with a foreign financial institution.

Estimated Number of Covered Financial Institutions with One or More	Hourly Burden to Obtain and Record a Certification or Recertification Per Foreign Bank		Total Burden Hours for Covered Financial Institutions to Obtain and Record Certification and Recertification Annually		Grand Total Annual Burden
					Hours for Covered Financial
8,696	15 hours ¹⁶	15 hours ¹⁷	130,440	130,440	260,880

Estimated Total Annual Burden Hours: 260,880

13. Estimated annual cost burden.

Table 2 - Total cost of traditional annual PRA burden

Steps	Hourly Burden	Hourly Cost	Total Cost
Time taken for covered financial institutions to obtain certification requirements from foreign banks, including recordkeeping.	130,440	\$96.00 ¹⁸	\$12,522,240
Time taken for covered financial institutions to obtain recertification requirements from foreign banks, including recordkeeping.	130,440	\$96.00 ¹⁹	\$12,522,240
Total Cost			\$25,044,480

Estimated Total Annual Cost: \$25,044,480

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

14. Estimated annualized cost to the Federal government.

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

15. Reasons for change in burden.

¹⁶ FinCEN estimates that the annual hourly burden for a covered financial institution to obtain and maintain an initial certification form from a foreign bank for which it maintains a correspondent account is 15 hours. This estimate covers the burden to a covered financial institution to: (i) obtain assurances from the foreign bank that it is not providing banking services, directly or indirectly, to a foreign shell bank; (ii) obtain ownership information from the foreign bank, if necessary; (iii) obtain the name of an agent based in the United States who has agreed to accept service of legal process for records regarding such correspondent account; (iv) review all documentation submitted by the foreign bank; and (v) maintain records of all documentation associated with the certification process for the foreign bank.

¹⁷ FinCEN estimates the annual hourly burden for a covered financial institution to obtain and maintain a recertification form from a foreign bank for which it maintains a correspondent account is also 15 hours. FinCEN believes the hourly burden estimate for a recertification is the same as for a certification because the covered financial institution can use the same certification form to reconfirm all of the information required in the initial certification.

¹⁸ See *supra* note 13.

¹⁹ See *supra* note 13.

The estimated total annual burden hours decreased from 306,000 hours in 2018 to 260,880 hours in 2022. When FinCEN renewed OMB control number 1506-0043 in 2018 it estimated that 2,000 covered financial institutions would obtain and maintain 9,000 certification and recertification forms from foreign banks, and estimated the burden per certification/recertification form would be 34 hours per form. In 2022, FinCEN estimated that 8,696 covered financial institutions would obtain and maintain 17,392 certification and recertification forms from foreign banks,²⁰ and estimated the burden per certification/recertification form would be 15 hours per form. In 2018, the estimate included an annual estimate of the following three items: (i) 20 hours to complete a certification for a foreign bank; (ii) 5 hours to complete a recertification for a foreign bank; and (iii) 9 hours to maintain records on the foreign bank's certification/recertification. In 2022, FinCEN revised its estimate to incorporate the recordkeeping component of the burden estimate within the certification and recertification process. FinCEN also revised its assessment of the time necessary to conduct a recertification, as the process is identical to a certification. For those reasons, FinCEN is estimating the burden for a certification and corresponding recordkeeping is 15 hours; and the burden for a recertification and corresponding recordkeeping is also 15 hours. The decrease in burden is a combination of an increase in the estimated number of certification/recertification forms from 9,000 in 2018 to 17,392 in 2022 and a decrease in the estimated burden per certification/recertification form from 34 hours per form in 2018 to 15 hours per form in 2022.

16. Plans for tabulation, statistical analysis and publication.

This collection of information will not be published.

17. Request not to display the OMB expiration date.

FinCEN requests that it not be required to display the expiration date so that the regulations and the optional certification form 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.

²⁰ FinCEN estimated that 8,696 covered financial institutions would obtain and maintain two forms per year (one certification form and one recertification form). 8,696 covered financial institutions multiplied by 2 forms per year equals 17,392 certification and recertification forms obtained annually by covered financial institutions.