

Supporting Statement
OMB Control Number 1506-0012

Transactions of Exempt Persons Regulations, and FinCEN Form 110, Designation of Exempt Persons Report.

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)¹ and other legislation, including the Anti-Money Laundering Act of 2020 (AML Act).² The BSA is codified at 12 U.S.C. 1829b, 1951–1960 and 31 U.S.C. 5311–5314, 5316–5336, including notes thereto, with implementing regulations at 31 CFR chapter X.

The BSA authorizes the Secretary of the Treasury (Secretary) to, *inter alia*, require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, or regulatory matters, risk assessments or proceedings, or in the conduct of intelligence or counter-intelligence activities to protect against terrorism, and to implement anti-money laundering/countering the financing of terrorism (AML/CFT) programs and compliance procedures.³ The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.⁴

Under 31 U.S.C. 5313, the Secretary is authorized to require financial institutions to report certain currency transactions. Regulations implementing 31 U.S.C. 5313 are found at 31 CFR 1010.310 through 1010.314, 31 CFR 1021.311, and 31 CFR 1021.313. The Money Laundering Suppression Act of 1994 amended the BSA to create certain mandatory exemptions applicable to banks from the requirement for financial institutions to file currency transaction reports (CTRs), and to give the Secretary authority to create additional such exemptions.⁵ Regulations implementing this exemption authority, including by requiring the collection of information on FinCEN Form 110, Designation of Exempt Person (DOEP Report), are found at 31 CFR 1020.315.

Under 31 CFR 1020.315(a), a bank is not required to file a CTR with respect to any transaction in currency between exempt persons and the bank, or between an exempt person and other banks that are affiliated with the bank.⁶

¹ USA PATRIOT Act, Pub. L. 107-56, 115 Stat. 272 (Oct. 26, 2001).

² The AML Act was enacted as Division F, sections 6001-6511 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. 116-283, 134 Stat. 3388 (Jan. 1, 2021).

³ See 31 U.S.C. 5311.

⁴ Treasury Order 180–01 (Jan. 14, 2020); *see also* 31 U.S.C. 310(b)(2)(I) (providing that the FinCEN Director shall “[a]dminister the requirements of subchapter II of chapter 53 of this title, chapter 2 of title I of Public Law 91–508, and section 21 of the Federal Deposit Insurance Act, to the extent delegated such authority by the Secretary.”).

⁵ Pub. L. 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).

⁶ 31 CFR 1020.315(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

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, of any State, or of 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 customer's 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 the 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 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

1020.315(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).

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.

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.

FinCEN's system of records for DOEP Reports is the Bank Secrecy Act Reports System (the "BSA System") - Treasury/FinCEN.003.¹¹ Information in the BSA System is made available to Federal, state, and local agencies that engage in criminal, regulatory and tax investigations and proceedings, agencies that engage in intelligence and counterintelligence activities, certain self-regulatory organizations, appropriate foreign agencies, and foreign financial intelligence units.

¹⁰ 31 CFR 1020.315(c)(2)(i)(A) and (B).

¹¹ *See* FinCEN, *Privacy Act of 1974, System of Records Notice*, [79 FR 20969](#) (Apr. 14, 2014).

3. Use of improved information technology to reduce burden.

The BSA E-filing system supports electronic filing of BSA reports, including DOEP Reports (either individually or in batches)¹² through a FinCEN secure network. BSA E-filing provides a faster and more convenient, secure, and cost-effective method for submitting BSA reports. Discrete and batch versions are available on the FinCEN BSA E-File website at <http://bsaefiling.fincen.treas.gov/main.html>. FinCEN also upgraded to the industry standard of XML file format for both discrete and batch filers of DOEP 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 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.

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

DOEP 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, and thus increase the share of CTRs available to law enforcement and regulatory authorities that are likely to include actionable information. 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 retention period is necessary to allow for verification of compliance with the reporting requirement and 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.

¹² In batch-filing, a filer submits a single electronic file containing several reports. In discrete-filing, the filer fills in an electronic form individually, using a data entry screen that FinCEN provides.

On August 8, 2024, FinCEN published in the Federal Register a notice and request for comments of its intention to renew, without change, information collection requirements for transactions of exempt persons regulations, and FinCEN Form 110, DOEP Report.¹³ The comment period closed on October 7, 2024. FinCEN received seven comments in response to the notice. Two commenters expressed that no one should be exempt from the CTR filing requirements. Another commenter noted that utilizing the CTR-filing exemption saves the institution much more work than filing CTRs on those exempt entities. Another commenter noted that the analysis required to identify CTR exemptions is very labor intensive; however, the commenter did not offer an alternative burden estimate. A different commenter suggested that for cash-intensive businesses, FinCEN should consider making the DOEP exemption review semiannual and allowing an entity to qualify for the exemption if it conducts five transactions that would warrant a CTR-filing in a six-month period, or allowing an entity to qualify for the exemption if it conducts 12 transactions that would warrant a CTR-filing in a 12-month period.

These suggestions for modifications to the applicable regulations will be considered in FinCEN's ongoing review of CTR and SAR forms, processes, and thresholds, as required by sections 6204 and 6205 of the AML Act. FinCEN appreciates these recommendations and will continue to evaluate ways to clarify CTR reporting exemptions and minimize burden to the public. In connection with a variety of initiatives FinCEN is undertaking to implement the AML Act, FinCEN intends to conduct, in the future, additional assessments of the PRA burden associated with BSA requirements.

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 collected on the DOEP Report is made available to appropriate agencies and organizations as disclosed in FinCEN's Privacy Act System of Records Notice (SORN) relating to BSA reports.¹⁴

11. Justification of sensitive questions.

The information requested concerns identifying entities and individuals that a bank designates as exempt from the CTR reporting requirements. Personally identifiable information, such as name, address, and taxpayer identification number, are necessary to identify an entity or individual for a CTR-filing exemption. Any personally identifiable information collected under the BSA is strictly controlled as outlined in FinCEN's SORN.¹⁵

¹³ See FinCEN, *Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of Transactions of Exempt Persons Regulations, and FinCEN Form 110, Designation of Exempt Person Report*, [89 FR 65012](#) (Aug. 8, 2024).

¹⁴ See *supra* note 11.

¹⁵ *Id.*

12. Estimated burden of information collection.

Frequency: As required.

Estimated Number of Respondents: 10,062 banks.¹⁶

Table 1. Distribution of financial institutions covered by this notice, by type of financial institution

Type of financial institution	Number of financial institutions
Banks with a Federal functional regulator (FFR) ^a	9,462
Banks lacking an FFR ^b	600
Total	10,062

^a This estimate of the total number of banks with a federal functional regulator, including credit unions, is based on end of year 2023 data as provided by the FFRs: the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the National Credit Union Administration.

^b This estimate of active entries as of year-end 2023 incorporates data from both public and non-public sources, including: Call Reports; various State banking/financial institution regulators' websites and directories; the Federal Reserve Board of Governors' Master Account and Services database (<https://federalreserve.gov/paymentsystems/master-account-and-services-database-exisiting-access.htm>); and data from the OCIF (Oficina del Comisionado de Instituciones Financieras); and was derived in consultation with staff from the Internal Revenue Service's Small Business/Self-Employed Division.

Estimated Number of Reponses: 15,105 DOEP Reports.¹⁷

Estimated Total Recordkeeping Burden Hours:

FinCEN continues to estimate the annual hourly burden of the designation of exempt persons as one hour per report. This estimate covers the burden of: (1) reporting, which is estimated to require an average of 45 minutes to fill out and file the report; and (2) recordkeeping and maintenance, which is estimated to require an average of 15 minutes per report. 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 BSA E-filing system prompts banks to save the report after submission.

¹⁶ Table 1 below describes the distribution of the types of financial institutions covered by this supporting statement.

¹⁷ Based on 2023 filings, FinCEN received 15,105 DOEP Reports.

FinCEN's estimate of the annual PRA burden, which is based on reporting activity in the previous calendar year, therefore, is 15,105 hours, as detailed in table 2 below:

Table 2 – Estimated total annual burden hours associated with completion and maintenance of the DOEP Reports

Type of financial institution	Number of DOEP Reports filed in 2023	Time per report in minutes		Total burden hours per step		Total burden hours
		Reporting	Recordkeeping	Reporting	Recordkeeping	
Banks	15,105	45 minutes	15 minutes	11,329	3,776	15,105 ^a

^a FinCEN estimates that the burden to complete and file the DOEP Report for banks was one hour (45 minutes for completion of the report and 15 minutes for recordkeeping). 15,105 DOEP Reports multiplied by 45 minutes and converted to hours equals 11,329 hours. 15,105 DOEP Reports multiplied by 15 minutes and converted to hours equals 3,776 hours. The summation of 11,329 hours and 3,776 hours is 15,105 hours.

13. Estimated total annual cost burden of the information collection.

Estimated Total Annual Recordkeeping Cost:

FinCEN is utilizing the same fully loaded composite hourly wage rate of \$106.30 utilized in the 2024 notices of proposed rulemaking (NPRMs) entitled Customer Identification Programs for Registered Investment Advisers and Exempt Reporting Companies and Anti-Money Laundering and Countering the Financing of Terrorism Programs, as well as in recent 60-Day Notices to renew OMB control numbers corresponding to specific BSA regulations.¹⁸

The total estimated cost of the annual PRA burden is \$2,421,331.50, as reflected in table 3 below:

¹⁸ See, e.g., FinCEN and SEC, *NPRM Customer Identification Programs for Registered Investment Advisers and Exempt Reporting Advisers*, [89 FR 44571](#) (May 21, 2024); FinCEN, *NPRM Anti-Money Laundering and Countering the Financing of Terrorism Programs NPRM*, [89 FR 55428](#) (July 3, 2024); FinCEN, *Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of the Customer Identification Program Regulatory Requirements for Certain Financial Institutions*, [89 FR 51940](#) (June 20, 2024); FinCEN, *Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of Due Diligence Programs for Correspondent Accounts for Foreign Financial Institutions and for Private Banking Accounts*, [89 FR 49273](#), (June 11, 2024).

Table 3. Estimated total cost of annual PRA burden

Steps	Burden hours per step	Wage rate	Total cost
Report completion	11,329	\$106.30	\$1,816,038.70
Maintenance/recordkeeping	3,776	\$106.30	\$605,292.80
Total cost			\$2,421,331.50

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

14. Estimated annual cost to the Federal government.

Electronic processing cost to the Federal Government: 15,105 DOEP Reports x \$0.10¹⁹ per filing = \$1,510.50.

15. Reason for change in burden.

The estimated total annual burden decreased by 3,036 hours from 18,141 hours in 2020 to 15,105 hours in 2024, although the annual hourly burden estimates per regulatory requirement remained the same as in 2020 (one hour per report). The reduction in burden is a result of a decrease in the number of reports filed from 18,141 in 2019 to 15,105 in 2023. Additionally, there was a reduction in the number of respondents since the last approval from 11,161 banks in 2019 to 10,062 in 2023.

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 relating to the DOEP regulations and report not be displayed on the regulation/report so that there is no confusion as to whether the report is still valid. This request will not affect the normal three-year PRA renewal process.

18. Exceptions to the certification statement.

There are no exceptions to the certification statement.

¹⁹ 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.