



DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of Anti-Money Laundering Program Requirements for Casinos

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comments on the proposed renewal, without change, of a currently approved information collection found in existing Bank Secrecy Act regulations. Specifically, the regulations require casinos to develop and implement written anti-money laundering programs reasonably designed to ensure and monitor compliance with the requirements set forth in the Bank Secrecy Act regulations. Although no changes are proposed to the information collection itself, this request for comments covers a future expansion of the scope of the annual hourly burden and cost estimate associated with these regulations. This request for comments is made pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments are welcome, and must be received on or before [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THIS DOCUMENT IN THE *FEDERAL REGISTER*.]

ADDRESSES: Comments may be submitted by any of the following methods:

- Federal E-rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Refer to Docket Number FINCEN-2020-0015 and the specific Office of Management and Budget (OMB) control number 1506-0051.

• Mail: Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN-2020-0015 and OMB control number 1506-0051.

Please submit comments by one method only. Comments will also be incorporated into FinCEN's review of existing regulations, as provided by Treasury's 2011 Plan for Retrospective Analysis of Existing Rules. All comments submitted in response to this notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Support Section at 1-800-767-2825 or electronically at frc@fincen.gov.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Provisions

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. The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, 31 U.S.C. 5311–5314 and 5316–5332, 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 anti-money laundering (AML) programs and compliance procedures.¹ Regulations

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.

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

Section 352 of the USA PATRIOT Act added subsection (h) to 31 U.S.C. 5318 of the BSA. Section 352 mandates that financial institutions establish AML programs in order to guard against money laundering. Such AML programs must include, at a minimum, the following: (a) the development of internal policies, procedures, and controls, (b) the designation of a compliance officer, (c) an ongoing employee training program, and (d) an independent audit function to test programs. Pursuant to section 352, FinCEN issued a regulation requiring casinos to develop and implement written AML programs.³ This notice only proposes to renew the OMB control number associated with the casino AML program regulations.⁴

II. Paperwork Reduction Act of 1995 (PRA)⁵

Title: AML program requirements for casinos (31 CFR 1021.210, 31 CFR 1021.410(b)(10)).

OMB Control Number: 1506-0051.

Report Number: Not applicable.

Abstract: FinCEN is issuing this notice to renew the OMB control number for the AML program regulatory requirements for casinos.

Affected Public: Businesses or other for-profit institutions, and non-profit institutions.

Type of Review:

- Renewal without change of a currently approved information collection.
- Propose for review and comment 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”).

² Treasury Order 180-01 (re-affirmed Jan. 14, 2020).

³ 31 CFR 1021.210.

⁴ Card clubs are included in the casino AML program regulations, and any reference to casinos used in BSA regulations includes card clubs, unless specifically noted. *See* 31 CFR 1010.100(t)(5)(iii).

⁵ Public Law 104-13, 44 U.S.C. 3506(c)(2)(A).

- Propose for review and comment a future expansion of the scope of the PRA burden (the “future annual PRA burden”).

Frequency: As required.

Estimated Number of Respondents: 993 casinos.⁶

Estimated Recordkeeping Burden:

Part 1 of this notice describes the breakdown of the estimated number of casinos, by type. Part 2 proposes for review and comment a renewal of the estimate of the traditional annual PRA hourly burden, which includes an annual hourly burden estimate per casino similar to the estimate used in the past, with the incorporation of a more robust cost estimate. The scope and methodology used in the past assigned a total annual hourly burden estimate, per casino, to multiple recordkeeping requirements within the regulations, rather than assigning an annual hourly burden estimate, per casino, to each unique AML recordkeeping requirement.⁷ In the past, one annual hourly burden estimate per casino was used to encompass all of the recordkeeping requirements included in the AML program requirements for casinos. Part 3 of this notice proposes for review and comment a methodology for a future estimate of an annual PRA burden. The estimate would include the PRA burden and cost broken down by each recordkeeping requirement in the casino AML program regulations. Finally, Part 4 solicits input from the public about: (a) the accuracy of the traditional annual PRA burden estimate; (b) the more granular calculation needed to establish a future annual PRA burden, of the hourly and cost burden per casino AML program recordkeeping requirement; (c) the criteria,

⁶ Table 1, *infra*, below sets forth a breakdown of the types of casinos covered by this notice.

⁷ The casino AML program regulations have two unique requirements. Specifically, 31 CFR 1021.210(b)(2)(v) provides that a casino must establish procedures for using all available information to determine, when required by the BSA regulatory requirements, the name, address, social security number, and other information, and verification of the same, of a person; the occurrence of any transactions or patterns of transactions required to be reported pursuant to 31 CFR 1021.320; and whether any record as described in subpart D of part 1010 or part 1021 must be made and retained. 31 CFR 1021.210(b)(2)(vi) provides that, for those casinos that have automated data processing systems, their AML compliance program must provide for the use of automated programs to aid in ensuring compliance.

metrics, and most appropriate questions FinCEN should consider when researching the information to estimate the future annual PRA burden; and (d) any other comments about the regulations and the current and proposed future hourly burden and cost estimates of these requirements.

Part 1. Breakdown of the casinos⁸ covered by this notice

The breakdown of casinos, by type, covered by this notice is reflected in Table 1 below:

Table 1. Breakdown of casinos covered by this notice, by type of financial institution

Type of Casino	Number of Casinos
Casino	466 ⁹
Tribal Casino	527 ¹⁰
Total number of casinos	993¹¹

Part 2. Traditional annual PRA burden and cost

The scope of the traditional annual PRA burden and cost estimates in this renewal encompasses all of the recordkeeping requirements included in the AML program requirements for casinos, notably: maintaining and updating the written AML program (Action A); storing the written AML program (Action B); producing a copy of the written AML program if requested by regulatory examiners or law enforcement (Action C); and complying with the requirements in 31 CFR 1021.210(b)(2)(v) and (vi) (Action D). The prior renewal did not break the requirements down into a burden estimate for each recordkeeping requirement, but instead estimated that all of the requirements combined

⁸ Card clubs are not included in the breakdown of casinos covered by this notice. The omission of card clubs in the total number of casinos in Table 1 will reduce the total hourly burden estimate in Table 2, *infra*, from its actual number.

⁹ According to numbers provided to FinCEN by the American Gaming Association (AGA), there are 466 commercial casinos as of October 20, 2020.

¹⁰ According to numbers provided to FinCEN by the AGA, there are 527 tribal properties as of October 20, 2020.

¹¹ According to numbers provided to FinCEN by the AGA, the total number of casinos includes 223 commercial and tribal casinos in Nevada as of October 20, 2020. This number does not include restricted locations, *i.e.*, those with 15 slot machines or fewer.

would require 100 hours.¹² In future estimates, FinCEN intends to estimate burden based on each individual requirement set out in 31 CFR 1021.210.

For purposes of the estimate of the AML program traditional annual PRA burden, FinCEN has made the following assumptions:

- a) The written AML program is stored as an electronic file. The estimated annual burden (5 minutes per financial institution) represents the administrative burden involved in processing the storage of the written program, and not just the time of actual electronic storage, which would be nearly instantaneous.
- b) Producing the written AML program electronically to regulatory or law enforcement agencies, upon their request. FinCEN estimates the annual burden of producing the written program at 5 minutes per financial institution. The estimated annual burden represents the administrative burden involved in producing the program upon request, and not just the time required to make the program available to the requestor for inspection (for example, the actual electronic transmission), which would be nearly instantaneous.

The estimated burden associated with each portion of the traditional annual PRA estimate is as follows:

Table 2 – Burden associated with each portion of the traditional annual PRA estimate

Action	Instances per year	Time per instance	Number of Casinos ¹³	Total hourly burden
A. Maintaining and updating the written AML program	1 per casino	1 hour ¹⁴	993	993
B. Storing the written AML program	1 per casino	5 minutes	993	83*

¹² See 82 FR 31636 (July 7, 2017).

¹³ As set out in Table 1 above.

¹⁴ We are estimating the annual recordkeeping burden per recordkeeper as 1 hour for casinos, consistent with our calculation of 1 hour for maintaining and updating the written AML program in the 60-day notice to renew AML programs for certain financial institutions (85 FR 49418 (Aug. 13, 2020)).

Action	Instances per year	Time per instance	Number of Casinos ¹³	Total hourly burden
C. Producing the AML program upon request	1 per casino	5 minutes	993	83*
D. Ongoing Compliance with the requirements in 31 CFR 1021.210(b)(2)(v) and (vi)	1 per casino	99 hours	993	98,307
Total Hourly Burden				99,466

*82.75 rounded to 83

To calculate the hourly costs of the burden estimate, FinCEN identified three roles and corresponding staff positions involved in maintaining an AML program: (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 research and administrative review and filing and producing the AML program on request).

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),¹⁵ and computing an additional benefits cost as follows:

Table 3. Fully-loaded hourly wage by role and BLS job position for all financial institutions covered by this notice

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 filing and producing the program upon request)	43-3099	Financial Clerk	\$20.40	1.50	\$30.60

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/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.

FinCEN estimates that, *in general and on average*,¹⁶ each role would spend different amounts of time on each portion of the traditional annual PRA burden, as follows:

For **Action A** set out in Table 2 above, annually maintaining and updating the AML program documentation, the cost of each hour of burden is estimated to be \$48.00, as shown in Table 4 below.

Table 4. Weighted average hourly cost of maintaining and updating AML program documentation

General supervision		Direct supervision		Clerical work (case review)		Weighted average hourly cost
%time	Hourly cost	%time	Hourly cost	%time	Hourly cost	
10%	\$9.37	60%	\$29.88	30%	\$9.18	\$48.00*

*\$48.43 rounded to \$48.00

For **Actions B, C, and D** set out in Table 2 above, the cost of each hour of burden is estimated to be \$33.00, as shown in Table 5 below:

- **Action B** - storing the AML program.
- **Action C** - producing of the AML program upon request.
- **Action D** – complying with requirements in 31 CFR 1021.210(b)(2)(v) and (vi).

Table 5. Weighted average hourly cost of storing and producing AML program documentation upon request, and complying with requirements in 31 CFR 1021.210(b)(2)(v) and (vi)

General supervision		Direct supervision		Clerical work (recordkeeping)		Weighted average hourly cost
%time	Hourly cost	%time	Hourly cost	%time	Hourly cost	
1%	\$0.94	9%	\$4.48	90%	\$27.54	\$33.00*

*\$32.96 rounded to \$33.00

The total cost of the traditional annual PRA burden would be \$3,297,273 as reflected in Table 6 below:

Table 6 – Total cost of traditional annual PRA burden

¹⁶ By “in general,” FinCEN means without regard to outliers (e.g., financial institutions with AML programs with complexities that are 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.

Action	Total burden in hours	Hourly cost		Total cost
	(Table 2)	\$	Source	
A. Maintaining and updating the written AML program	993	\$48.00	Table 4	\$47,664
B. Storing the written AML program	83*	\$33.00	Table 5	\$2,739
C. Producing the written AML program upon request	83*	\$33.00	Table 5	\$2,739
D. Ongoing compliance with the requirements in 31 CFR 1021.210(b)(2)(v) and (vi)	98,307	\$33.00	Table 6	\$3,244,131
Total Cost				\$3,297,273

*82.75 rounded to 83

Part 3. Future annual PRA burden

In the future, FinCEN intends to be more granular in estimating the annual PRA burden, by calculating the burden and cost attributed to certain, but not all, activities necessary to implement the four key elements of an AML program.¹⁷

The burden hours and cost of two of the key elements of an AML program (internal controls, and designation of a BSA compliance officer) are accounted for individually across all of the 42 OMB control numbers FinCEN maintains for the various BSA regulatory requirements because those requirements necessitate that internal controls be put in place and that a BSA compliance officer be designated. For that reason, for the OMB control numbers and related regulations renewed in this notice, FinCEN generally does not intend to estimate burden hours and cost applicable to these two key elements in the future annual PRA burden.

The future annual PRA burden calculation will include the estimated burden and cost to implement the other two key elements of an AML program ((c) BSA training, and

¹⁷ Although FinCEN is providing information about burden and cost with respect to the four key elements of an AML program, FinCEN wants to emphasize that the four key elements of an AML program are statutory requirements. The four key elements of an AML program are: (a) establishing policies, procedures, and internal controls reasonably designed to ensure compliance with the BSA; (b) designating a person to ensure day to day compliance with the AML program and the BSA; (c) providing education and training to appropriate personnel concerning their responsibilities under the AML program; and (d) implementing an independent review to monitor and maintain an adequate AML program.

(d) independent audit) relating to the regulations and corresponding OMB control number being renewed in this notice. The future annual PRA burden calculation also will include the estimated burden and cost for a casino to (a) provide procedures to determine customer identification information, and the occurrence of suspicious activity transactions, and (b) use automated programs to aid in ensuring compliance, if the casino has automated data processing systems. These additional two elements are requirements of the casino AML program regulations, which are being renewed in this notice.

To further clarify, below are lists of actions FinCEN intends to (1) include in a future annual PRA burden estimate relating to the regulations and OMB control number renewed in this notice, and (2) cover in OMB control number renewals associated with other BSA regulatory requirements.

- a) FinCEN **intends to include** the following within a future annual PRA burden estimate for casinos:
- i. Any generic BSA-related education and training provided to all levels of the organization, and any training provided to appropriate personnel on BSA issues in excess of that required by their job-specific responsibilities under their financial institution's AML program.
 - ii. The burden and cost of any internal or external independent review of compliance with BSA-specific obligations.
 - iii. The annual burden and cost of implementation of a compliance program that includes procedures to determine customer identification information and the occurrence of suspicious activity transactions.
 - iv. For casinos that have automated data processing systems, the annual cost and burden of implementation of a compliance program that provides for the use of automated programs to aid in ensuring compliance.

b) FinCEN **does not intend to include** the following as part of a future annual PRA burden estimate:

- i. the annual PRA burden and cost of the policies, procedures, and internal controls established in the AML program to ensure compliance with the BSA;¹⁸
- ii. the designation of a person to ensure day to day compliance with the financial institution's AML program and the BSA;¹⁹ and
- iii. AML education and training provided to personnel relating to their job specific responsibilities.²⁰

FinCEN does not have the necessary information to provide a tentative estimate for the PRA hourly burdens and costs it intends to address in the future. In addition, FinCEN does not have all the necessary information to more accurately estimate the traditional annual PRA burden. For that reason, FinCEN is relying on estimates used in prior renewals of this OMB control number and the applicable regulations. FinCEN further recognizes that after receiving public comments as a result of this notice, future traditional annual PRA hourly burden and cost estimates may vary significantly. FinCEN intends to conduct more granular studies of the actions included in the proposed scope of the annual PRA burden in the near future, to arrive at more accurate estimates of net BSA hourly burden and cost.²¹ The data obtained in these studies also may result in a significant variation of the estimated traditional annual PRA burden.

¹⁸ As noted above, the burden hours and cost of internal controls will be accounted for individually across all of the 42 OMB control numbers FinCEN maintains for the various BSA regulatory requirements because those requirements necessitate that internal controls be put in place.

¹⁹ As noted above, the burden hours and cost of a BSA compliance officer will be accounted for individually across all of the 42 OMB control numbers FinCEN maintains for the various BSA regulatory requirements because those requirements necessitate that a BSA compliance officer be designated.

²⁰ As noted above, generic BSA-related training provided to all levels of the organization will be included in future burden and cost estimates corresponding to the OMB control numbers being renewed in this notice. Job-specific training related to specific BSA requirements, will be covered in the OMB control numbers corresponding to those specific BSA requirements.

²¹ Net hourly burden and cost are the burden and cost a financial institution incurs to comply with requirements that are unique to the BSA, and that do not support any other business purpose or regulatory obligation of the financial institution. Burden for purposes of the PRA does not include the time and financial resources needed to comply with an information collection, if the time and resources are for things

Estimated Recordkeeping Burden: The average estimated annual PRA burden, measured in hours per respondent, is: 1 hour per casino, for maintaining and updating the AML program (Action A); 5 minutes per casino, for storing the written AML program (Action B); 5 minutes per casino, for producing a copy of the AML program if requested by regulatory examiners or law enforcement (Action C); and 99 hours per casino, for complying with the requirements in 31 CFR 1021.210(b)(2)(v) and (vi) (Action D).

Estimated Number of Respondents: 993, as set out in Table 1.

Estimated Total Annual Recordkeeping Burden: The estimated total annual PRA burden is 99,466 hours, as set out in Table 2.

Estimated Total Annual Recordkeeping Cost: The estimated total annual PRA cost is \$3,297,273, as set out in Table 6.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the BSA must be retained for five years.

Part 4 – Request for Comments

a) Specific request for comments on the traditional annual PRA hourly burden and cost.

FinCEN invites comments on any aspect of the traditional annual PRA burden, as set out in Part 2 of this notice. In particular, FinCEN seeks comments on the adequacy of: (i) FinCEN's assumptions underlying its burden estimate; (ii) the estimated number of hours required by each portion of the burden; and (iii) the organizational roles of the casino engaged in each portion of the burden, the roles' estimated hourly remuneration, and the estimated proportion of time spent by each role on the requirements. FinCEN

a business (or other person) does in the ordinary course of its activities if the agency demonstrates that the reporting activities needed to comply are usual and customary. 5 CFR 1320.3(b)(2).

encourages commenters to include any publicly available sources for alternative estimates or methodologies.

b) Specific request for comments on the appropriate criteria, methodology, and questionnaire required to obtain information to more precisely estimate the future annual PRA hourly burden and cost.

FinCEN invites comments on the most appropriate and comprehensive means to question financial institutions about the annual hourly burden and cost. For example, as it relates to training, independent review, and maintaining and updating the AML program:

Training:

- 1) How much time is spent on creating and implementing the AML training plan?
- 2) How much time is spent on delivering instructor led training or creating web-based training?
- 3) How much time does the casino's compliance department spend on creating AML related training content, or is the training function conducted by a team outside of the casino's compliance department?
- 4) How much time is spent identifying the proper audience for training?
- 5) How much time is spent tracking, and reporting on, AML-related training?

Independent Review:

- 1) How much of the casino's compliance department's time is spent on responding to inquiries or correcting deficiencies related to the independent review of the AML program?
- 2) If the independent review is conducted by an internal audit department, how much of the internal audit department's time is spent creating and implementing the required testing plan for the independent review?

Updating and Maintaining a Written AML Program:

On average, how many times per year does your casino update its AML program?

The future annual PRA hourly burden and cost estimate of the recordkeeping necessary to comply with the AML program requirements for casinos must take into consideration only the effort involved in obtaining those data elements that are used exclusively for complying with requirements under 31 CFR 1021.210. Given the complexity in determining what portion of the effort to include in the estimate, FinCEN seeks comments from the public regarding any questions we should consider posing in future notices, in addition to the specific questions for comment outlined directly below. FinCEN welcomes any suggestions as to how to derive these estimates by using publicly available financial information.

c) Specific questions for comment associated with implementing a compliance program that includes procedures to determine customer identification information and the occurrence of suspicious activity transactions, when required by BSA regulations.

1) Customer identification procedures

- On average, how long does it take your casino to establish procedures for using all available information to determine and verify the name, address, social security number, and other information, of a person?
- Does your casino have a review and approval process involving senior management to evaluate the procedures used for determining and verifying customer identification information? On average, how long does the review process take and how many approvals are necessary?
- How frequently does your casino collect and verify the name, address, social security number, and other information, of a person?
- On average how many new accounts does your casino open per year?
- How many accounts are for new customers?
- How long does it take your casino to open a new account for an existing customer?

- How long does it take your casino to conduct identity verification procedures for a new personal or business account?
- Is the collection of customer identification information exclusively to comply with customer identification requirements, or is it also to comply with other regulatory requirements or for other business reasons?

2) Suspicious activity procedures

- On average, how long does it take your casino to establish procedures for using all available information, including your automated systems and your surveillance system and surveillance logs, to determine the occurrence of any transactions or patterns of transactions required to be reported as suspicious?
- Does your casino have a review and approval process involving senior management to evaluate the procedures used for determining suspicious activity? On average, how long does the review process take and how many approvals are necessary?

d) Specific questions for comment associated with implementation of a compliance program that provides for the use of automated programs to aid in ensuring compliance, for casinos that have automated data processing systems:

- Does your casino use automated data processing systems?
- How does your casino use its automated data processing systems to aid in ensuring compliance?
- Does your casino have a review and approval process involving senior management to evaluate the use of its automated data processing systems? On average, how long does the review process take and how many approvals are necessary?

e) General request for comments.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (i) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (ii) the accuracy of the agency's estimate of the burden of the collection of information; (iii) ways to enhance the quality, utility, and clarity of the information to be collected; (iv) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (v) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Michael G. Mosier
Deputy Director
Financial Crimes Enforcement Network

[FR Doc. 2020-28255 Filed: 12/21/2020 8:45 am; Publication Date: 12/22/2020]