



DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal without Change of Bank Secrecy Act Regulations Requiring Reports of Certain Domestic Transactions

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, if the Secretary of the Treasury finds that reasonable grounds exist for concluding that additional recordkeeping and/or reporting requirements are necessary to carry out the purposes of Bank Secrecy Act, or prevent evasion thereof, the Secretary may issue an order that imposes certain additional recordkeeping and reporting requirements on one or more domestic financial institutions or nonfinancial trades or businesses in a geographic area. 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-2020-0019 and the specific Office of Management and Budget (OMB) control number 1506-0056.

• Mail: Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN-2020-0019 and OMB control number 1506-0056.

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. Comments will generally become a matter of public record. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. Given the nature of GTOs and their law enforcement purposes, any information that concerns confidential matters involving specific GTOs should be marked 'confidential' and include the specific name of the GTO..

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 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

Congress amended the BSA in 1988 to give the Secretary the authority to issue orders under 31 U.S.C. 5326 by passing Pub. L. 100-690, Title VI, § 6185(c). This provision was later amended to permit issuance of confidential orders, lengthen the effective period of orders to 180 days, cover transactions involving transfers of funds, and to clarify that orders can be issued upon reasonable grounds for concluding that additional requirements are necessary to carry out the purposes of the subtitle of which 31 U.S.C. 5326 is a part, or to prevent evasions thereof. *See* Pub. L. 102-550, Title XV, § 1514; Pub. L. 107-56, § 353(d); Pub. L. 115-44, § 275.

Under 31 U.S.C. 5326(a), if the Secretary finds that reasonable grounds exist for concluding that additional recordkeeping and reporting are necessary to carry out the purpose of the BSA or to prevent evasions thereof, the Secretary may issue an order requiring any domestic financial institution or nonfinancial trade or business or group of domestic financial institutions or nonfinancial trades or businesses in a geographic area to obtain such information as the Secretary may describe in such order concerning certain transactions.

The authority set forth in 31 U.S.C. 5326 to impose reporting and recordkeeping requirements is self-implementing.³ Section 5326(a) generally requires domestic financial institutions or nonfinancial trades or businesses in a geographic area that receive an order to report, in the manner and to the extent specified in an order, information concerning any transaction in which such financial institution or nonfinancial trade or business is

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.

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

³ Although 31 U.S.C. 5326 does not mention the need for a prescribing regulation, a rule corresponding to section 5326 is set forth at 31 CFR 1010.370. Among other things, the rule defines a geographic area.

involved for the payment, receipt, or transfer of funds (as the Secretary may describe in such order). An order typically will include the following terms: (i) the dollar amount of transactions subject to the reporting requirement; (ii) the type of transactions subject to or exempt from the reporting requirement; (iii) the appropriate form for reporting and the method for form submission; (iv) the starting and ending dates by which the transactions specified in the order are to be reported; (v) a point of contact at FinCEN for questions; (vi) the amount of time the reports and records of reports generated are required to be retained; and (vii) any other information deemed necessary to carry out the purpose of the order. Pursuant to 31 U.S.C. 5326(d), no order will prescribe a reporting period of more than 180 days unless it is renewed pursuant to 31 U.S.C. 5326(a). These orders are commonly referred to as geographic targeting orders (GTOs).

31 CFR 1010.410(d) requires each financial institution or nonfinancial trade or business to retain the original or a copy or reproduction of a record of the information required to be reported in a GTO for the period of time specified in the order, not to exceed five years.

II. Paperwork Reduction Act of 1995 (PRA)⁴

Title: Reports and records of certain domestic transactions (31 U.S.C. 5326; 31 CFR 1010.370 and 1010.410(d)).

OMB Control Number: 1506-0056.

Report Number: Not applicable.

Abstract: FinCEN is issuing this notice to renew the OMB control number for statutes and regulations requiring reports and records of certain domestic transactions.

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

Type of Review: Renewal without change of a currently approved information collection.

Frequency: As required.

⁴ Public Law 104-13, 44 U.S.C. 3506(c)(2)(A).

Estimated Number of Respondents: 353 domestic financial institutions and/or nonfinancial trades or businesses.⁵

Estimated Total Annual Responses: 13,719 responses.⁶

Estimated Reporting and Recordkeeping Burden:

Generally the information required to be recorded and reported as a result of a GTO is basic information to which a domestic financial institution or nonfinancial trade or business would have access in the normal course of doing business. For instance, a domestic financial institution or nonfinancial trade or business involved in a payment, receipt or transfer of funds, would have access to the information required to be reported. The information required to be reported for a GTO, generally, includes the following: (i) the dollar amount of the transaction; (ii) the type of transaction; (iii) information identifying a party to the transaction, such as name, address, date of birth, and tax identification number; (iv) the role of a party in the transaction (i.e., originator or beneficiary); and (v) the name, address, and contact information for the domestic financial institution or nonfinancial trade or business.

As noted above, FinCEN will specify the form and method for reporting. For GTOs, FinCEN has used modified currency transaction reports and Form 8300s, and has also created reports unique to the GTO when appropriate. All responses to GTOs are submitted to FinCEN electronically, such as through the BSA E-Filing System.

Because the information to be reported is readily available to a domestic financial institution or nonfinancial trade or business, FinCEN estimates that reporting this information will take 20 minutes on average. Additionally, the GTO information is filed electronically, which allows the filer to save an electronic version of the form and satisfy

⁵ The number of respondents, 353, is the average for 2018 (377), 2019 (259), and 2020 (424). Note that FinCEN may issue a GTO to any business in the United States. Generally, a GTO is issued to a specific sector or business type.

⁶ The number of responses, 13,719, is the average number of responses for 2018 (12,866), 2019 (14,046), and 2020 (14,244).

the recordkeeping requirement. Therefore, FinCEN estimates that the recordkeeping requirement will take 5 minutes on average. FinCEN estimates the total hourly burden of reporting and recordkeeping for each reportable transaction under a GTO is 25 minutes.

Estimated Total Annual Reporting and Recordkeeping Burden: The average number of reportable transactions under GTOs is 13,719 responses. 13,719 responses multiplied by 25 minutes per response and converted to hours equals 5,716 hours.⁷

Estimated Total Annual Reporting and Recordkeeping Cost: 5,716 hours X \$30.60 per hour⁸ = \$174,909.60.

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.

General Request for Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (i) whether the recordkeeping 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

⁷ Although the burden is stated as an annual burden in accordance with the PRA, the estimated annual burden is not intended to indicate that there is a GTO in effect throughout a year or in each year.

⁸ 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/oes/tables.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. The May 2019 Bureau of Labor Statistics average hourly wage for "43-3099 Financial Clerk" is \$20.40. (\$20.40 x 1.50 = \$30.60). The Financial Clerk average hourly wage is being used here because there is a great deal of variation across industries and geographies in who is responsible for responding to a GTO.

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 Mosier,
Deputy Director,
Financial Crimes Enforcement Network.

[FR Doc. 2020-28431 Filed: 12/22/2020 8:45 am; Publication Date: 12/23/2020]