

IMPOSITION OF SPECIAL MEASURE RELATED TO A
FOREIGN JURISDICTION OF PRIMARY MONEY LAUNDERING CONCERN,
31 CFR CHAPTER X, 1506-0074

SUPPORTING STATEMENT FOR EMERGENCY PROCESSING

Justification for Emergency Processing.

The Financial Crimes Enforcement Network (FinCEN) is requesting immediate emergency processing of a collection concerning disclosure and recordkeeping requirements created by the promulgation of the finale rule – Imposition of Special Measure Related to a Foreign Jurisdiction of Primary Money Laundering Concern, 31 CFR Chapter X. FinCEN requests that emergency processing be concluded by Friday, September 27, 2019.

FinCEN’s mission is to safeguard the financial system from illicit use, to combat money laundering, and to promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities. The potential misuse of the U.S. financial system to evade domestic criminal, tax, and regulatory laws has been a long-held congressional and law enforcement concern. *See* 31 U.S.C. § 5311. The instant matter involves a top national security priority and will further U.S. foreign policy goals.

FinCEN has determined that a foreign jurisdiction is of primary money laundering concern, and that the imposition of the special measure selected – restricting domestic financial institutions from maintaining foreign correspondent accounts with the foreign jurisdiction’s financial institutions 31 U.S. Code § 5318A(b)(5) - is a necessary step to ensure it is not able to access the U.S. financial system for terrorist financing or money laundering, or for any other illicit purpose. FinCEN has determined that this particular foreign jurisdiction is of immediate concern, and ensuring that the foreign jurisdiction’s financial institutions are denied access to the U.S. financial system must be done as soon as possible. Public harm is reasonably likely if normal clearance procedures were followed.

The collection of information in the rule relates to both disclosure and recordkeeping. The information required to be disclosed by domestic financial institutions to a third-party—i.e., a one-time notice to correspondent account holders—is intended to ensure cooperation from correspondent account holders in denying access to the U.S. financial system, as well as to increase awareness within the international financial community of the anti-money laundering (AML) risks and deficiencies associated with the foreign jurisdiction. The inability to require financial institutions to transmit such notice in a timely manner would delay FinCEN’s ability to protect the U.S. financial system. For this reason, normal clearance procedures cannot be followed.

Because this rule involves a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedures Act (APA) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, as well as the provisions of

Executive Order 13771, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612) also does not apply.

1. Circumstances Necessitating Collection of Information.

The BSA, Titles I and II of Pub. L. 91-508, as amended, codified at 12 U.S.C. 1829, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5330, authorizes the Secretary of the Treasury (the Secretary), among other things, to issue regulations requiring records and reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings. Regulations implementing Title II of the BSA, (codified at 31 U.S.C. 5311-5330) appear at 31 CFR Chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

FinCEN is issuing a final rule under the authority of section 5318A of Title 31, United States Code, to impose a special measure against a Jurisdiction of Primary Money Laundering Concern. FinCEN has determined that a jurisdiction is of primary money laundering concern, and that the imposition of the special measure selected – restricting domestic financial institutions from maintaining foreign correspondent accounts with a foreign jurisdiction 31 U.S.C. 5318(b)(5) - is a necessary step to ensure it is not able to access the U.S. financial system for terrorist financing or money laundering, or for any other illicit purpose

2. Method of Collection and Use of Data.

The collection of information in the rule relates to both disclosure and recordkeeping requirements. The information required to be disclosed by domestic financial institutions to a third-party—i.e., a one-time notice to correspondent account holders—is intended to ensure cooperation from correspondent account holders in denying the identified jurisdiction access to the U.S. financial system, as well as to increase awareness within the international financial community of the anti-money laundering (AML) risks and deficiencies associated with the jurisdiction. The information required to be maintained by domestic financial institutions will be used by federal agencies and certain self-regulatory organizations to verify compliance with the requirement that a domestic financial institution notify its correspondent account holders that they may not provide the foreign jurisdiction’s financial institutions with access to the correspondent account maintained at the institution.

3. Use of Improved Information Technology to Reduce Burden.

Under the rule, satisfactory notice could be given by including a one-time notice by mail, fax, e-mail, or including the notice in the next regularly occurring transmittal from the covered financial institution to its correspondent account holders. Financial institutions may use any method of improved information technology to document its compliance with the notice requirement in the rule, including keeping an electronic copy of the actual notice that is sent to financial institutions.

4. Efforts to Identify Duplication.

The rule is unique in that it would be the only federal rule that explicitly restricts domestic financial institutions from maintaining correspondent accounts for financial institutions in the jurisdiction and requires them to conduct enhanced due diligence on their foreign correspondent relationships to ensure that they do not indirectly process transactions involving the jurisdiction's financial institutions.

5. Methods to Minimize Burden on Small Businesses or Other Small Entities.

The information requirements in the rule will not have a significant impact on a substantial number of small entities. In addition, all U.S. persons, including U.S. financial institutions, currently exercise some degree of due diligence in order to comply with existing U.S. sanctions programs applicable to the foreign jurisdiction. Thus, the one-time notice to correspondent account holders and the requirement to document compliance with that notice requirement are not expected to impose a significant additional economic burden upon small entities.

6. Consequences to the Federal Government of Not Collecting the Information.

Under the rule, a financial institution must notify its correspondent account holders that they may not provide the jurisdiction's financial institutions with access to the correspondent account maintained at the financial institution. The failure to transmit such notice will make it more difficult for the special measure to achieve its goal of protecting the U.S. financial system. A financial institution further must document its compliance with the requirement that it notify its correspondent account holders that they may not provide the jurisdiction's financial institutions with access to the correspondent account maintained at the covered financial institution. The failure to maintain such documentation will make it impossible to verify compliance with this notice requirement, and by extension, to guard against the improper use of the U.S. financial system by the jurisdiction found to be of primary money laundering concern.

7. Special Circumstances Requiring Data Collection Inconsistent with Guidelines.

There are no special circumstances that will cause the information collection to be inconsistent with the guidelines in 5 CFR 1320.5(d)(2).

8. Consultation with Individuals Outside of the Agency on Availability of Data, Frequency of Collection, Clarity of Instructions and Forms, and Data Elements.

As required by 31 U.S.C. § 5318A(b)(5) (Section 311 of the USA PATRIOT Act), prior to publication of the final rule, FinCEN has consulted with the State Department, the Justice Department, and the Federal Reserve.

9. Payments and Gifts.

No payments or gifts are made to respondents.

10. Assurance of Confidentiality of Responses.

The information collected would be available to Treasury or its designee to verify compliance with the notice requirement; all such information collections under the BSA must further a criminal, tax, regulatory, or intelligence purpose, in accordance with 31 U.S.C. 5311.

11. Justification of Sensitive Questions.

There are no questions of a sensitive nature in the collection of this information. Any personally identifiable information collected under the Bank Secrecy Act is strictly controlled as outlined in FinCEN's Systems of Records Notice:

http://www.fincen.gov/foia/files/FinCEN_79_FR_20969.pdf.

12. & 13. Estimated Burden & Cost of Information Collection.

The rule requires a financial institution to provide notice to its correspondent account holders and to document its compliance with that notice requirement.

Estimated number of affected financial institutions: 23,615.¹

Estimated average annual burden per affected financial institution: 2 hours.²

Estimated annual burden hours: 47,230 hours.

The rule applies to all domestic financial institutions that maintain correspondent accounts for foreign banks. There are approximately 23,615 such financial institutions doing business in the United States.

1 The above Estimated Number of Affected Financial Institutions is based on sum of the following numbers:

- 5,358 banks [Federal Deposit Insurance Corporation, *Key Statistics* webpage, April 25, 2019];
- 5,375 federally-insured credit unions [National Credit Union Administration, *Quarterly Credit Union Data Summary*, December 31, 2018];
- 125 privately-insured credit unions [General Accountability Office, *PRIVATE DEPOSIT INSURANCE: Credit Unions Largely Complied with Disclosure Rules, but Rules Should Be Clarified*, March 2017];
- 1,130 introducing brokers [National Futures Association website, March 31, 2019];
- 64 futures commission merchants [National Futures Association website, March 31, 2019];
- 3,607 securities firms [Financial Industry Regulatory Authority website, December 31, 2018]; and,
- 7,956 U.S. mutual funds [Investment Company Institute, *2018 Factbook*, 2018].

2 The estimated burden is two hours per financial institution- One hour for a senior executive of the financial institution to review and approve the notice to be provide to correspondent account holders and one hour for a compliance officer to provide notice to correspondent account holders.

Estimated total annual cost burden:

23,615 hours X 50.20 ³ per hour =	\$1,185,473
<u>23,615 hours X \$101.65⁴ per hour =</u>	<u>\$2,400,464</u>
47,230 hours total	\$3,585,937

14. Estimated Annual Cost to the Federal Government.

There is no estimated annualized cost to the Federal Government.

15. Change in Burden.

None.

16. Plans for Tabulation, Statistical Analysis, and Publication.

There are no plans for tabulation or publication.

17. Request Not To Display Expiration Date of the Office of Management and Budget Control Number.

FinCEN requests that it not be required to display the expiration date, in order to avoid amending the regulation every three years.

18. Exceptions.

This collection will not have a significant impact on a substantial number of small entities, for the reasons discussed above in item 5. The collection also does not employ statistical survey methodology.

3 The above Average Hourly Wage Rate is calculated from the May 2018 Bureau of Labor Statistics average hourly wage for “13-1041 Compliance Officer” of \$34.86, plus an additional 44% for benefits to produce a fully-loaded rate of \$50.20.

4 The above Average Hourly Wage Rate is calculated from the May 2018 Bureau of Labor Statistics average hourly wage for “11-3031 Financial Manager” of \$70.59, plus an additional 44% for benefits to produce a fully-loaded rate of \$101.65.