



(BILLING CODE: 4810-02)

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of Anti-Money Laundering Programs for Certain Financial Institutions.

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 currently approved information collections found in existing Bank Secrecy Act regulations requiring money services businesses, mutual funds, insurance companies, dealers in precious metals, precious stones, or jewels, operators of credit card systems, and loan or finance companies to develop and implement written anti-money laundering programs reasonably designed to prevent those financial institutions from being used to facilitate money laundering and the financing of terrorist activities. Although no changes are proposed to the information collections themselves, this request for comments covers a future expansion of the scope of the annual burden and cost estimates 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-2020-0009 and the specific Office of Management and Budget (OMB) control numbers 1506-0020, 1506-0030, and 1506-0035.

- Mail: Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN-2020-0009 and OMB control numbers 1506-0020, 1506-0030, and 1506-0035.

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 implementing Title II of 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 regulations requiring money services businesses (MSBs) (31 CFR 1022.210), mutual funds (31 CFR 1024.210), insurance companies (31 CFR 1025.210), dealers in precious metals, precious stones, or jewels (31 CFR 1027.210), operators of credit card systems (31 CFR 1028.210), and loan or finance companies (31 CR 1029.210) to develop and implement written AML programs. This notice renews the OMB control numbers associated with these specific AML program regulations. The notice is not renewing the OMB control numbers associated with other types of financial institutions' AML program regulatory requirements at this time for the reasons described below.

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).

On April 29, 2002, FinCEN issued an interim final rule to provide guidance to certain financial institutions concerning section 352 of the USA PATRIOT Act that requires financial institutions to establish AML programs. The interim final rule provided that banks, savings associations, credit unions, brokers or dealers in securities, futures commission merchants, and casinos would be deemed to be in compliance with section 352 if they established and maintained AML programs as required by existing FinCEN regulations, or their respective Federal regulator or self-regulatory organization (SRO).³

Prior to FinCEN issuing the interim final rule in 2002, casinos were the only type of financial institution subject to FinCEN AML program regulations.⁴ Since 1987, all federally insured depository institutions and credit unions have been required to have AML programs. In addition, in the interim final rule, FinCEN clarified that it was appropriate to implement section 5318(h)(1) of the BSA with respect to brokers or dealers in securities and futures commission merchants through their respective SROs.⁵

³ 67 FR 21110 (April 29, 2002). This document is available at https://www.fincen.gov/sites/default/files/federal_register_notice/352fininst.pdf.

⁴ See 58 FR 13538 (March 12, 1993) (final rule imposing AML program requirements on casinos) and 59 FR 61660 (Dec. 1, 1994) (final rule amending the AML program requirements for casinos to require the training of casino personnel). These documents are available at <https://www.govinfo.gov/content/pkg/FR-1993-03-12/pdf/FR-1993-03-12.pdf> and <https://www.govinfo.gov/content/pkg/FR-1994-12-01/html/94-29662.htm>, respectively.

⁵ The casino AML program regulations are covered under FinCEN OMB control number 1506-0051, which is not set to expire until February 2021. The renewal of that control number, therefore, will be addressed later in 2020 in a separate FinCEN notice. Since 1987, all federally insured depository institutions and credit unions have been required by their Federal regulators to have AML programs. The applicable Federal regulator maintains the OMB control number for the AML program regulatory requirements of depository institutions and credit unions as follows: (a) Office of Comptroller of the Currency (AML program regulations at 12 CFR 21.21 – covered by OMB control number 1557-0180); (b) Federal Reserve Board (AML program regulations at 12 CFR 208.63 – covered by OMB control number 7100-0310); (c) Federal Deposit Insurance Corporation (AML program regulations at 12 CFR 326.8 – covered by OMB control number 3064-0087); and (d) National Credit Union Administration (AML program regulations at 12 CFR 748.2 – covered by OMB control number 3133-0108). In the 2002 interim final rule, FinCEN also noted it was appropriate to implement section 5318(h)(1) of the BSA with respect to brokers or dealers in securities and futures commission merchants through their respective SROs, because the Securities and Exchange Commission (SEC) and the Commodity Futures Trade Commission (CFTC) and their SROs significantly accelerated the implementation of AML programs for their regulated financial institutions.

For that reason, FinCEN does not maintain OMB control numbers for the AML program regulatory requirements of banks, savings associations, credit unions, brokers or dealers in securities, and futures commission merchants.

II. Paperwork Reduction Act of 1995 (PRA)⁶

Title: AML program requirements for MSBs (31 CFR 1022.210), mutual funds (31 CFR 1024.210), insurance companies (31 CFR 1025.210), dealers in precious metals, precious stones, or jewels (31 CFR 1027.210), operators of credit card systems (31 CFR 1028.210), and loan or finance companies (31 CFR 1029.210).

OMB Control Numbers: 1506-0020, 1506-0030, and 1506-0035.⁷

Report Number: Not applicable.

Abstract: FinCEN is issuing this notice to renew the OMB control numbers for the AML program regulatory requirements for certain financial institutions.

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

Type of Review:

Accordingly, 31 CFR 1023.210 and 31 CFR 1026.210 provide that brokers or dealers in securities, and futures commission merchants and introducing brokers in commodities, respectively, will be deemed to be in compliance with the requirements of section 5318(h)(1) of the BSA if they comply with any applicable regulation of their Federal functional regulator governing the establishment and implementation of AML programs. The SEC's SRO is the Financial Industry Regulatory Authority (FINRA). The AML program requirements for brokers or dealers in securities is FINRA Rule 331. The CFTC's SRO is the National Futures Association (NFA). The AML program requirements for futures commission merchant and introducing brokers in commodities is NFA Rule 2-9(c). The SROs are not required to comply with the Paperwork Reduction Act of 1995. Therefore, there are no OMB control numbers for the AML program regulatory requirements of brokers or dealers in securities, futures commission merchants, and introducing brokers in commodities.

⁶ Public Law 104-13, 44 U.S.C. 3506(c)(2)(A).

⁷ The AML program regulatory requirements are currently covered under the following OMB control numbers: 1506-0020 (31 CFR 1022.210 – AML programs for MSBs, 31 CFR 1024.210 – AML programs for mutual funds, and 31 CFR 1028.210 – AML programs for operators of credit card systems); 1506-0030 (31 CFR 1027.210 – AML programs for dealers in precious metals, precious stones, or jewels); and 1506-0035 (31 CFR 1025.210 – AML programs for insurance companies, and 31 CFR 1029.210 – AML programs for loan and finance companies). There is no OMB control number associated with 31 CFR 1030.210 – AML programs for housing government sponsored enterprises, because the purpose of the PRA is not to minimize burden on Federal agencies. (44 U.S.C. 3505(1)).

- Renewal without change of currently approved information collections.
- 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”).
- Propose for review and comment an expansion of the scope of the PRA burden in the future (the “supplemental annual PRA burden”).

Frequency: As required.

Estimated Number of Respondents: 305,897 financial institutions.⁸

Estimated Recordkeeping Burden:

In Part 1 of this notice, FinCEN describes the breakdown of the estimated number of financial institution, by type, and the primary characteristics of their individual AML program requirements. In Part 2, FinCEN proposes for review and comment a renewal of the traditional annual PRA burden, which includes a scope and methodology similar to that used in the past, with a few additional criteria, and the incorporation of cost estimates. In past renewals of the OMB control numbers addressed in this document FinCEN estimated the hourly burden of (a) documenting an AML program for each type of financial institution, and (b) obtaining and verifying the identity of customers at the moment of establishing the initial relationship for providers and sellers of prepaid access only.⁹ The additional criteria and the methodology for estimating cost are described in further detail in Part 2. In Part 3, FinCEN proposes for review and comment a method to

⁸ Table 1 below breaks down the types of financial institutions covered by this notice.

⁹ The MSB AML program regulations have a unique requirement. Specifically, 31 CFR 1022.210(d)(1)(iv) provides that a MSB that is a provider or seller of prepaid access must establish procedures to verify the identity of a person who obtains prepaid access under a prepaid program and obtain identifying information concerning such a person, including name, date of birth, address, and identification number. Sellers of prepaid access must also establish procedures to verify the identity of a person who obtains prepaid access to funds that exceed \$10,000 during any one day and obtain identifying information concerning such a person, including name, date of birth, address, and identification number.

estimate the burden and cost of a future estimate of a supplemental annual PRA burden. Finally, in Part 4, FinCEN solicits input from the public about (a) the accuracy of the estimate of the traditional annual PRA burden; (b) the method proposed for the calculation of a future supplemental annual PRA burden; (c) the criteria, metrics, and questions FinCEN should take into consideration when researching the information required to determine the future supplemental annual PRA burden estimate; and (d) any other comments about the regulations and the proposed current and future burden and cost estimates of these requirements the public wishes to make.

Part 1. Breakdown of financial institutions covered by this notice

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

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

Type of financial institution		Number of financial institutions
Principal MSBs ¹⁰		22,939 ¹¹
Providers or sellers of prepaid access	1,632	
Others types of principal MSBs	21,307	
Agent MSBs		229,161 ¹²
Mutual funds		1,591 ¹³
Insurance companies		1,200 ¹⁴
Dealers in precious metals, stones, and jewels		20,000 ¹⁵

¹⁰ The definition of MSB covers both principal MSBs and agents. Under 31 CFR 1022.210(d)(1)(iii), a person that is a MSB solely because it is an agent for another MSB and the MSB for which it serves as an agent (the principal MSB), may by agreement allocate between them responsibility for developing the policies, procedures, and internal controls of the AML program. However, each MSB remains solely responsible for the actual implementation of an effective AML program.

¹¹ FinCEN’s MSB registration database.

¹² *Id.*

¹³ Based on estimates provided for the 2018 notice to renew OMB control number 1506-0033, 83 FR 46011 (Sept. 11, 2018).

¹⁴ Based on estimates provided for the 2018 notice to renew OMB control number 1506-0035 (83 FR 34298 (July 19, 2018)).

¹⁵ Based on estimates provided for the 2018 notice to renew OMB control number 1506-0030 (83 FR 46014 (Sept. 11, 2018)).

Type of financial institution	Number of financial institutions
Operators of credit card systems	6 ¹⁶
Loans or finance companies	31,000 ¹⁷
Total	305,897

Section 352 requires that an AML program must encompass four key elements:

(a) establishing policies, procedures, and internal controls reasonably designed to assurance 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.¹⁸

The AML program regulations for MSBs, mutual funds, insurance companies, dealers in precious metals, precious stones, or jewels, operators of credit card systems, and loan or finance companies require these financial institutions to implement an AML program that is reasonably designed to prevent the financial institution from being used to facilitate money laundering and terrorist financing. The AML program must be in writing and must be commensurate with the financial institution's risk profile.¹⁹

The AML program regulations for mutual funds, for which the corresponding OMB control number is being renewed as part of this notice, include customer due

¹⁶ Based on estimates provided for the 2018 notice to renew OMB control number 1506-0020 (83 FR 42558 (Aug. 22, 2018)).

¹⁷ See supra note 14.

¹⁸ 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.

¹⁹ The AML program regulations for mutual funds, specifically, also require the program to be approved in writing by their board of directors or trustees. 31 CFR 1024.210(a).

diligence (CDD) requirements.²⁰ FinCEN will consider a mutual fund's CDD requirements as part of the future supplemental annual PRA burden in this notice.

Part 2. Traditional annual PRA burden and cost

The scope of the traditional annual PRA burden and cost estimates of the AML program in this renewal is limited to: 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); for mutual funds, securing approval of the AML program by the board of directors or trustees (Action D);²¹ and for providers or sellers of prepaid access, obtaining, verifying, and maintaining cardholder identifying information (Action E).

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

- a) In all cases, agent MSBs agree to abide by the policies, procedures, and internal controls established by their principal MSBs.
- b) Principal MSBs establish minimum training and independent review standards for their agents.²²

²⁰ 31 CFR 1024.220.

²¹ The mutual fund AML program regulations are the only AML program regulations being renewed in this notice with a regulatory requirement to secure board of directors' or trustees' approval of the AML program. For that reason, FinCEN is only including the burden and cost of the board of directors' or trustees' approval for mutual funds in the traditional annual PRA burden and cost estimate. FinCEN recognizes, however, that the other financial institutions covered by this notice may also get their board or directors or trustees to approve their AML programs as a best practice.

²² According to FIN-2016-G001, "Guidance on Existing AML Program Rule Compliance Obligations for MSB Principals with Respect to Agent Monitoring," (March 11, 2016), MSB principals are required to develop and implement risk-based policies, procedures, and internal controls that ensure adequate ongoing monitoring of agent activity, as part of the principal's implementation of its AML program. Imposing a minimum level of general training and a minimum frequency of independent review allows principal MSBs to standardize in part these agent monitoring responsibilities. This document is available at <https://www.fincen.gov/resources/statutes-regulations/guidance/guidance-existing-aml-program-rule-compliance-obligations>.

- c) 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.
- d) 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.
- e) The estimated number of prepaid access arrangements established annually remains at approximately 2.6 million. The collection and storage of cardholder identification information is automated.²³

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	Type of financial institution	Number of financial institutions²⁴	Total hourly burden
A. Maintaining and updating the written AML program	1 per financial institution	1 hour	All except agent MSBs	76,736	76,736
B. Storing the written AML program	1 per financial institution	5 minutes	All	305,897	25,491

²³ 83 FR 42558 (Aug. 22, 2018).

²⁴ As set out in Table 1 above.

Action	Instances per year	Time per instance	Type of financial institution	Number of financial institutions ²⁴	Total hourly burden
C. Producing the AML program upon request	1 per financial institution	5 minutes	All	305,897	25,491
D. Board of directors/trustees approval of the AML program	1 per financial institution	1 hour	Mutual funds	1,591	1,591
E. Obtaining, verifying, and storing cardholder identifying information	2.6 million (once per card)	2 minutes	Providers or sellers of prepaid access	1,632	86,667
Total Hourly Burden					215,976

FinCEN's estimate for the total traditional hourly annual PRA burden is 215,976 hours.

FinCEN identified four roles and corresponding staff positions involved in maintaining an AML program in order to estimate the hourly costs associated with the burden hour estimates calculated in this part. Those are: (i) general oversight (board of directors/trustees approval of the AML program); (ii) general supervision (providing process oversight); (iii) direct supervision (reviewing operational-level work and cross-checking all or a sample of the work product against their supporting documentation); and (iv) 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 four roles by taking the median wage as estimated by the U.S. Bureau of Labor Statistics (BLS), and computing an additional benefits cost as follows:²⁵

Table 3. Total hourly remuneration (fully-loaded hourly wage) per role and BLS job position

Role	BLS-code	BLS-name	Median hourly wage	Benefit factor	Fully-loaded hourly wage
Board of directors/trustees	11-1010	Chief Executive ²⁶	\$88.68	1.50	\$133.00*
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

* \$133.02 rounded to \$133.00

FinCEN estimates that, *in general and on average*,²⁷ each role would spend different amounts of time on each portion of the traditional annual PRA burden, as follows:

²⁵ 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, credit intermediation and related 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.

²⁶ FinCEN recognizes that a board of directors/trustees would be on a different pay scale than a chief executive officer, however, chief executive officer is the highest paid category in the BLS Occupational Employment Statistics. For that reason, FinCEN is conservatively estimating the highest wage rate available for its cost analysis.

²⁷ By "in general," FinCEN is speaking 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.

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. **Action A** applies to all financial institutions covered by this notice, except agent MSBs.

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 E** 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. (Applies to all financial institutions covered by this notice).
- **Action C** - producing of the AML program upon request. (Applies to all financial institutions covered by this notice).
- **Action E** - obtaining, verifying, and storing prepaid access customer identifying information. (Only applies to providers and sellers of prepaid access).

Table 5. Weighted average hourly cost of storing and producing AML program documentation upon request, and obtaining, verifying, and storing prepaid access customer identifying information

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

For **Action D** set out in Table 2 above, approval of a mutual fund’s AML program by the board of directors or trustees, the cost of each hour of burden would be \$133.00, as shown in Table 3 above. **Action D** only applies to mutual funds.²⁸

The total cost of the traditional annual PRA burden would be \$8,437,348, as reflected in Table 6 below:

Table 6 – Total cost of traditional annual PRA burden

Action	Total burden in hours	Hourly cost		Total cost
	(Table 2)	\$	Source	
A. Maintaining and updating the written AML program	76,736	\$48.00	Table 4	\$3,683,328
B. Storing the written AML program	25,491	\$33.00	Table 5	\$841,203
C. Producing the written AML program upon request	25,491	\$33.00	Table 5	\$841,203
D. Board of directors/trustees approval of the AML program	1,591	\$133.00	Table 3	\$211,603
E. Obtaining, verifying, and storing prepaid access customer identifying information	86,667	\$33.00	Table 5	\$2,860,011
Total Cost				\$8,437,348

Part 3. Supplemental annual PRA burden

In the future, FinCEN intends to add a supplemental annual PRA burden calculation for the AML program regulations covered by this notice, reflecting the annual PRA burden and cost involved in implementing certain actions that are part of the four key elements of an AML program. As noted above, for all of the financial institutions covered by this notice, an AML program must encompass four key elements: (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

²⁸ See supra note 21.

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.²⁹

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 supplemental annual PRA burden.

The future supplemental 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 (d) independent audit) relating to the regulations and corresponding OMB control numbers being renewed in this notice. The future supplemental annual PRA burden calculation also will include the estimated burden and cost for a mutual fund to implement CDD, because CDD is a requirement in the mutual fund AML program regulations, which are being renewed in this notice.

To further clarify, below are (1) a list of actions FinCEN intends to include in a future supplemental annual PRA burden estimate relating to the regulations and OMB

²⁹ 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.

control numbers renewed in this notice, and (2) a list of actions FinCEN intends to cover in OMB control number renewals associated with other BSA regulatory requirements.

a) FinCEN **intends to include** the following within a future supplemental annual PRA burden estimate:

- 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 the 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 the implementation of CDD requirements for mutual funds, only. The CDD requirements include the implementation of risk-based procedures for conducting ongoing customer due diligence, including (a) understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile, and (b) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information, such as information about the beneficial ownership of legal entity customers.

b) FinCEN **does not intend to include** the following as part of a future supplemental 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;³⁰
- ii. the designation of a person to ensure day to day compliance with the financial institution's AML program and the BSA;³¹ and
- iii. AML education and training provided to personnel relating to their job specific responsibilities.³²

FinCEN does not have the necessary information to provide a tentative estimate of these supplemental annual PRA hourly burdens and costs within the current notice. FinCEN also recognizes that it does not have all the necessary information to precisely estimate the traditional annual PRA burden. For that reason, FinCEN is relying on estimates used in prior renewals of OMB control numbers and applicable regulations. FinCEN further recognizes that after receiving public comments, the burden and cost estimates for the traditional annual PRA burden may vary significantly. FinCEN intends to conduct more granular studies of the actions included in the proposed scope of a supplemental annual PRA burden in the near future, to arrive at accurate estimates of net BSA hourly burden and cost.³³ The data obtained in these studies also may result in a significant variation in the estimated traditional annual PRA hourly burden.

³⁰ 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.

³¹ 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.

³² 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.

³³ 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

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.

Estimated Recordkeeping Burden: Due to the different scope and criteria used for the estimate, the average estimated annual traditional PRA burden, measured in hours per respondent, is: (Action A) 1 hour per principal financial institution, for maintaining and updating the AML program; (Action B) 5 minutes per financial institution, for storing the written AML program; (Action C) 5 minutes per financial institution, for producing a copy of the AML program if requested by regulatory examiners or law enforcement; (Action D) 1 hour per mutual fund, for securing approval of the AML program by the board of directors or trustees; and (Action E) 2 minutes per provider or seller of prepaid access, for obtaining, verifying, and maintaining customer identifying information.

Estimated Number of Respondents: 305,897, as described in Table 1.

Estimated Total Annual Responses: Due to unique requirements in the mutual fund and MSB AML program regulations, each of the five actions listed below impact a different estimated number of financial institutions as follows:

- (1) 76,736 (all financial institutions except agent MSBs) for the maintaining the written AML Program;
- (2) 305,897 (total number of financial institutions) for storing the written AML program;

financial resources needed to comply with an information collection if the time and resources are for things a business (or other person) does in the ordinary course of its activities if the agency demonstrates that the recordkeeping activities needed to comply are usual and customary. 5 CFR 1320.3(b)(2).

- (3) 305,897 (total number of financial institutions) for producing a copy of the written AML program if requested by regulatory examiners or law enforcement;
- (4) 1,591 (number of mutual funds) for securing approval of an AML program by the board of directors or trustees; and
- (5) 2,600,000 (number of new prepaid access arrangements added per year) for providers and sellers of prepaid access for obtaining, verifying, and maintaining customer identifying information.

Estimated Total Annual Recordkeeping Burden: The estimated total annual PRA burden is 215,976 hours, as described in Table 2.

Estimated Total Annual Recordkeeping Cost: The cost of the estimated total annual PRA is \$8,437,348, as described in Table 6.

Part 4 – Request for Comments

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

FinCEN invites comments on any aspect of the revision to the traditional annual PRA burden, as described in Part 2 of this notice. In particular, FinCEN seeks comments on the adequacy of (i) the estimated number of financial institutions, by type, covered by this notice; (ii) the assumptions FinCEN employed to estimate the burden; (iii) the estimated number of burden hours attributed to each action set out in Table 2; (iv) the levels of the organization of the financial institution participating in such action, their estimated hourly remuneration, and the estimated proportion of time each level participated in each portion of the burden; and (v) the estimated number of new prepaid

access arrangements established on an annual basis. FinCEN encourages commenters to include any publicly available source for alternative estimates or methodologies.

(b) Specific requests for comments on the proposed criteria for determining the scope of a future traditional and supplemental annual PRA hourly burden and cost estimate.

FinCEN invites comments on any aspect of the criteria for a future estimate of the traditional and supplemental annual PRA hourly burden and cost, as described in Part 3 of this notice. In particular, FinCEN seeks comments on the following:

(i) Is it realistic to estimate that the PRA hourly burden and cost to implement policies, procedures, and internal controls to ensure compliance with BSA regulations and maintain a BSA compliance officer will be adequately reflected by estimating (a) the hourly burden and cost attributed to internal controls, and (b) the BSA compliance officer's time across each of the specific BSA requirements, such as reports of transactions in currency, and reports of suspicious transactions.

(ii) Specific request for comments on the appropriate criteria, methodology, and questionnaire required to obtain information required for a realistic estimate of the future traditional and supplemental annual PRA 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 financial institution's compliance department spend on creating AML related training content, or is the training function conducted by a

team outside of the financial institution's compliance department of the financial institution?

- 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 financial institution 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 financial institution update its AML program?

(c) 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.

Dated: August 7, 2020.

Michael Mosier,
Deputy Director,
Financial Crimes Enforcement Network.