



FLORIDA
INTERNATIONAL
BANKERS
ASSOCIATION

November 20, 2020

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Via email: regs.comments@federalreserve.gov

Re: Threshold for the Requirement to Collect, Retain, and Transmit Information on Funds Transfers and Transmittals of Funds That Begin or End Outside the United States, and Clarification of the Requirement to Collect, Retain, and Transmit Information on Transactions Involving Convertible Virtual Currencies and Digital Assets with Legal Tender Status
Docket No. R-1726; RIN 7100-AF97; FINCEN-2020-0002

Ms. Misback:

The Florida International Bankers Association (“FIBA”), Inc.¹ appreciates the opportunity to respond to the Board of Governors of the Federal Reserve System’s (“Federal Reserve”) and the Financial Crimes Enforcement Network’s (“FinCEN,” together with the Federal Reserve, the “Agencies”) request for comment on the proposed rule (the “Proposal”)² that would lower the Recordkeeping Rule and Travel Rule thresholds set forth in 31 CFR 1020.410 and 31 CFR 1010.410(e) and (f) from \$3,000 to \$250 for funds transfers and transmittals that begin or end outside the U.S.

FIBA strongly supports efforts to promote compliance with anti-money laundering regulations and the Bank Secrecy Act of 1970 (collectively, “AML/BSA”) through effective and efficient AML/BSA compliance programs. However, FIBA has significant concerns regarding the effectiveness and efficiency of the Proposal, which are described below. Most significantly, FIBA is concerned about the Proposal’s chilling effect on cross-border funds flows that could

¹ FIBA was established in 1979 and is comprised of over 125 financial institutions and supporting members. It has long served as a leading voice on matters affecting the regulation of Latin American financial trade, including anti-money laundering and other regulatory issues. Among other business lines, its members engage in a significant number of cross-border fund transfers involving both retail and commercial customer.

² *Threshold for the Requirement to Collect, Retain, and Transmit Information on Funds Transfers and Transmittals of Funds That Begin or End Outside the United States, and Clarification of the Requirement to Collect, Retain, and Transmit Information on Transactions Involving Convertible Virtual Currencies and Digital Assets with Legal Tender Status*, 85 Fed. Reg. 68005 (Nov. 27, 2020).

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have a significant financial impact on the FIBA members' customers and their families located in Latin America. In addition, FIBA questions whether the increased compliance costs generated from the Proposal outweigh the potential benefits to law enforcement in identifying and preventing money laundering and terrorism financing.

1) The Proposal presumptively classifies cross-border financial transactions as higher risk without permitting banks to assess BSA/AML risk on more salient factors.

The Proposal classifies cross-border transactions as having heightened BSA/AML risk, even if a financial institution's BSA/AML policies and procedures have not identified any risks associated with the transaction. FIBA believes that the Proposal should treat all similarly situated transactions the same without regard to whether the transaction is domestic or cross-border to ensure that any unintended and potentially discriminatory impacts on small-dollar cross-border transactions are minimized.

Rather than threshold changes requiring recordkeeping requirements, the Agencies should consider a recordkeeping requirement for those transactions of less than \$3,000 when a financial institution suspects or has reason to know that a potential BSA/AML violation has occurred. FinCEN has taken the same approach with Suspicious Activity Report ("SAR") requirements. Banks may submit Suspicious Activity Reports to the Treasury Department whenever the bank identifies suspicious transactions of any size where the bank knows or has reason to suspect that the transaction is unlawful.³ Taking a similar approach with respect to the Recordkeeping Rule and Travel Rule will avoid unfair classifications of small-dollar funds transfers while still enabling financial institutions to keep transaction records when BSA/AML deficiencies are identified.

2) The Proposal encourages the filing of SARs that will have little or no BSA/AML issues and undercuts FinCEN's recent initiatives on improving the effectiveness of BSA/AML compliance programs.

FIBA strongly supports FinCEN's efforts to promote BSA/AML compliance through thoughtful enhancements in the effectiveness of BSA/AML compliance programs.⁴ However, this Proposal undercuts that initiative. If the Agencies view small-dollar cross-border transactions as carrying higher BSA/AML risks, financial institutions may respond by submitting more SARs on such transactions out of an abundance of caution even when the financial

³ 31 C.F.R. § 1020.320.

⁴ 85 Fed. Reg. 58023 (Sept. 17, 2020).

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institution has not otherwise identified any BSA/AML risk. This would undermine attempts to generate effective BSA/AML compliance programs and overwhelm banks' and law enforcement's efforts to generate and review SARs as well as bog down the BSA/AML monitoring process.⁵

3) The Proposal will result in a significant increase in compliance costs while providing little benefit in preventing money laundering and terrorism financing.

If the Proposal is adopted, financial institutions will face a significant increase in the data that must be generated and retained under the Recordkeeping and Travel Rules. Accordingly, compliance departments will face a significant increase in compliance costs in the form of additional technology, training and personnel costs. Some financial institutions, including many community banks, will find it difficult to absorb these costs in the current low margin environment while also fulfilling their duties as the government's first line of defense against money laundering and terrorism financing.

In view of FinCEN's recent proposal in its Advanced Notice of Proposed Rulemaking,⁶ the allocation of resources to smaller transactions, merely because they are cross-border and without more, seems misaligned.

4) The Proposal will drive small-dollar deposit accounts from regulated institutions due to higher fees associated with complying with the Proposal.

FIBA believes that, instead of increasing financial inclusion, the Proposal will significantly increase compliance costs associated with all accounts that routinely engage in cross-border transactions and drive financial *exclusion*. Given the low interest rate environment, financial institutions will need to increase costs and fees to recoup the additional expense. This will have a disproportionate impact on small-dollar deposit accounts that are traditionally maintained by low- and moderate-income families. These families may be unable or unwilling to incur additional fees and forced to close their accounts, which in turn, will have a chilling effect

⁵ In another comment to FinCEN's advanced notice of proposed rulemaking, *Anti-Money Laundering Program Effectiveness*, 85 Fed. Reg. 58023 (Sept. 16, 2020), FIBA endorses the Agencies considering increasing thresholds to adjust for inflation to ensure that AML programs remain effective tools in combating money laundering and terrorism financing. When the \$3,000 thresholds in the Recordkeeping and Travel Rules were created, the Agencies tried to balance the value of the data with the burden imposed on financial institutions. This balance no longer exists due to a static threshold and almost 25 years of inflation. Instead of increasing thresholds to account for inflation, the Agencies have chosen to lower the threshold significantly in an effort to tip the scales decisively towards data that may have little or no value in preventing money laundering and terrorism financing.

⁶ *Anti-Money Laundering Program Effectiveness*, 85 Fed. Reg. 58023 (Sept. 16, 2020).



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on cross-border fund flows for those families that routinely transmit money to friends and family abroad. Often times, these families are financially dependent on these funds. If these families are shut out of the banking system, they will have turn to other entities that may not be regulated in the same safe and sound manner. Anything that results in the disintermediation of financial institutions from the payments systems will undermine effective and efficient AML compliance programs.

Before the Proposal is finalized, FIBA urges the Agencies to conduct a study on the effects of the Proposal on minority communities. Effectively segregating transactions involving sending or receiving funds to or from a foreign country as a stand-alone class may have deleterious effects on the financial wellbeing of those communities.

* * *

Thank you for your consideration of these important issues. Please let me know if we can provide any further information

Sincerely,

A handwritten signature in blue ink, appearing to read "David Schwartz", is written in a cursive style.

David Schwartz
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