



November 27, 2020

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

Re: Threshold for the Requirement to Collect, Retain and Transmit Information for International Funds Transfers and Clarification of Treatment of Convertible Virtual Currencies and Digital Assets with Legal Tender Status; Docket Number FINCEN–2020–0011/RIN1506-AB44

Dear Secretary Misback:

On behalf of the 2.2 million credit union members we represent, the Heartland Credit Union Association (HCUA) appreciates the opportunity to comment on the joint notice of proposed rulemaking (“JNPRM”) regarding the threshold for the requirement to collect, retain and transmit information for international funds transfers and clarification of treatment of convertible virtual currencies and digital assets with legal tender status.

Background

The Currency and Foreign Transactions Reporting Act of 1970, as amended, in relevant part, by the Annunzio-Wylie Anti-Money Laundering Act of 1992 and the USA PATRIOT Act of 2001 (“BSA”), requires financial institutions to collect and retain information on certain funds transfers and transmittals. The BSA also requires the provision of reports or records that are deemed to have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism. These BSA provisions are enforced by the Board and the Department of Treasury while the Director of FinCEN has been delegated the authority to adopt and enforce certain regulations related to the BSA.

In 1995, the Regulating Agencies adopted rules for banks (defined to include credit unions) and nonbank financial institutions to collect and retain information related to certain transfers and transmittals of funds in amounts of \$3,000 or more (the “Recordkeeping Rule”). FinCEN concurrently issued a rule requiring covered institutions to transmit information on certain funds transfers and transmittals to other banks or nonbank financial institutions that are in the payment chain of the transfer or transmittal (the “Travel Rule”). In sum, the Recordkeeping Rule requires financial institutions to collect and retain the information that, under the Travel Rule, must be included with transmittal orders.

In this JNPRM, the Regulating Agencies state that bad actors are using smaller-value cross-border wire transfers to facilitate or commit terrorist financing, narcotics trafficking, and other illicit activity. The primary data underpinning this analysis comes from 2,000 Suspicious Activity Reports (SARs) filed by money transmitters, which indicate that a substantial volume of potentially illicit funds transfers and transmittals of funds occur below the \$3,000 threshold. In addition, the JNPRM describes the increased use of convertible virtual currencies (“CVCs”) and digital assets that have legal tender status in these cross-border transfers and transmittals.

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In response to this issue, the Regulating Agencies are proposing modifications to BSA regulations that will:

- reduce the reporting threshold from \$3,000 to \$250 for funds transfers and transmittals of funds that begin or end outside the United States; and
- clarify that the Recordkeeping and Travel Rules apply to CVCs and digital assets that have legal tender status.

HCUA believes it is important to strike the right balance between the imposition of compliance costs on leanly staffed, community-oriented credit unions and the potential benefits that BSA regulatory requirements may provide to law enforcement. Of course, we strongly support FinCEN's efforts to detect, investigate, and prosecute money laundering and other financial crimes undertaken to facilitate criminal enterprises or finance terrorist activities; however, we oppose this proposed reduction of the funds transfer/transmittal recordkeeping threshold. In its current form, this proposed rule fails to strike that balance.

HCUA opposes the reduction in the threshold and suggests that targeted reforms to the existing SARs processes could ensure that available data for low dollar transactions is useful to law enforcement. We have no objection to the clarification that the Recordkeeping and Travel Rules apply to CVCs and digital assets that have legal tender status.

Specific Comments

Question 1: To what extent would the proposed rule impose a burden on financial institutions, including with respect to information technology implementation costs? To what extent would the burden be different for thresholds such as \$0, \$500, or \$1,000 for funds transfers and transmittals of funds that begin or end outside the United States? What would be the impact on the burden if the proposed threshold change were extended to all transactions, including domestic transactions?

We agree with the JNPRM's conclusion that a \$0 threshold would impose a substantial burden on small financial institutions. We are unable to discern how the Regulating Agencies determined that the impact on these same small institutions arising from reduction in the threshold from \$3,000 to \$250 is "low." The JNPRM attempts to minimize the impact by mentioning that some financial institutions are already collecting information on at least a portion of transactions taking place under the current threshold for purposes of reporting suspicious transactions to FinCEN. The low-value transaction data contained in SARs is arguably more helpful to law enforcement since it arose in the context of suspicious activity as opposed to the routine collection of almost every cross-border transfer/transmittal.

A small credit union that provides money transfer services to members who are immigrants who wire small amounts to relatives in their countries of origin would be hit particularly hard. These smaller credit unions get to know their members in alignment with both the historic mission of credit unions and FinCEN's Customer Identification Program (CIP) requirements. Under existing regulations, they would not be required to collect, retain or transmit that information unless the member's activities reach a substantial dollar threshold or trigger the SARs process. Under this proposal, that same credit union would be responsible for collecting, retaining and reporting on all of those activities – a change that could result in a substantial increase in costs and burden on personnel hours.

Question 3: To what extent would the burden of the proposed rule be reduced if the Agencies issued specific guidance about appropriate forms of identification to be used in conjunction with identity verification, including in regard to whether there are circumstances in which verification may be done remotely and what documents are acceptable as proof?

Any guidance about identity verification, acceptable proof and use of technology would be greatly appreciated and the reduction in ambiguity could relieve some amount of the burden imposed by the rule. That said, the amount and efficacy of that burden reduction would greatly depend on the details of that guidance, including the types of identification and their accessibility to the member population served.

(5) With respect to the effect of clarifying the meaning of “money” in the definitions of “payment order” and “transmittal order” in 31 CFR 1010.100, describe the additional costs, if any, from complying with the Recordkeeping Rule and Travel Rule in light of the clarification included in the proposed rule, including with respect to information technology costs.

While there may be additional costs associated with this clarification for some covered institutions, HCUA agrees with the JNPRM's recognition that the cost of this proposed change has likely been absorbed by industry already since it is a codification of existing sub-regulatory guidance.

As always, we appreciate the opportunity to review this issue. We will be happy to respond to any questions regarding these comments.

Sincerely,

A handwritten signature in black ink that reads "Bradley D. Douglas". The signature is written in a cursive, flowing style.

Brad Douglas
President/CEO