



**International Bancshares
Corporation**

November 27, 2020

Via email and electronic submission:

Board of Governors of the Federal Reserve System
Attn: Ann E. Misback, Secretary
20th Street and Constitution Avenue NW
Washington, DC 20551
regs.comments@federalreserve.gov

Financial Crimes Enforcement Network
Policy Division
P.O. Box 39
Vienna, VA 22183
<http://www.regulations.gov>

Re: Comments on Joint Advanced Notice of Proposed Rulemaking to 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. Regulatory Identification Numbers (RIN) 7100-AF97, 1506-AB41; Docket Numbers R-1726, FINCEN-2020-0002.

Dear Sir or Madam:

The following comments are submitted by International Bancshares Corporation (“IBC”), a publicly-traded, multi-bank financial holding company headquartered in Laredo, Texas. IBC maintains 187 facilities and 284 ATMs, serving 88 communities in Texas and Oklahoma through five separately chartered banks (“IBC Banks”) ranging in size from approximately \$397 million to \$9 billion, with consolidated assets totaling approximately \$13.5 billion. IBC is one of the largest independent commercial bank holding companies headquartered in Texas.

This letter responds to the joint advanced notice of proposed rulemaking (“ANPRM”) by the Federal Reserve Board (“FRB”) and the Financial Crimes Enforcement Network (“FinCEN;” together, the “Agencies”) on proposed amendments to reduce certain transaction recordkeeping and reporting requirement thresholds as required by the Bank Secrecy Act (“BSA”). IBC strongly opposes any decrease to the recordkeeping and reporting thresholds.

Under the recordkeeping rule (“RKR”), covered financial institutions must collect and retain information related to funds transfers in amounts of \$3,000 or more. The travel rule (“TR”) requires covered financial institutions to transmit information on certain funds transfers to other banks or nonbank financial institutions participating in the funds transfer when such transfer is in an amount of \$3,000 or more.

The RKR requires an originator’s financial institution to collect and retain the following information for transfers equal to or greater than \$3,000:

- (a) name and address of the originator;
- (b) the amount of the payment or transmittal order;

- (c) the execution date of the payment or transmittal order;
- (d) any payment instructions received from the originator with the payment or transmittal order; and
- (e) the identity of the beneficiary's bank or recipient's financial institution.

For transfers equal to or greater than \$3,000, the originator's financial institution must also retain the following information if it receives such information from the originator:

- (a) Name and address of the beneficiary or recipient;
- (b) account number of the beneficiary or recipient; and
- (c) any other specific identifier of the beneficiary or recipient. The originator's financial institution is required to verify the identity of the person placing a payment or transmittal order if the order is made in person and the person placing the order is not an established customer.

Under the TR, the originator's financial institution is required to include information, including all information required under the RKR, in a payment or transmittal order sent by the financial institution to another bank or nonbank financial institution in the payment chain.

The Agencies propose to reduce the current RKR and TR requirement thresholds from \$3,000 to \$250 for transfers beginning or ending outside of the United States. The Agencies are considering lowering these thresholds in order to better assist law enforcement. In deciding the new threshold, the Agencies "considered the usefulness of transaction information associated with smaller-value cross-border transfers and transmittals of funds in criminal, tax, or regulatory investigations or proceedings, and in intelligence or counterintelligence activities to protect against international terrorism, as well as the effect on the payments system of requiring information collection and retention for these transactions."¹ The Agencies concluded that the national security and payments system cost and efficiency benefits supported lowering the RKR and TR threshold for transfer ending or beginning outside of the United States.

Because of its history and geographic footprint, IBC has robust domestic and international wire transfer services and collects, maintains, and reports information on such transfers as required by applicable law, regulation, and internal policy. IBC urges the Agencies to withdraw their threshold reduction proposal and to leave the thresholds at their current levels. The Agencies have not provided sufficient time for the public, including covered financial institutions, to comment and provide relevant data and information to the Agencies. But more importantly, the ANPRM does not support the threshold reductions because it does not sufficiently acknowledge and consider the added burden that lower thresholds would place on insured depository institutions. The ANPRM

¹ Joint notice of proposed rulemaking, "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;" available at <https://www.federalregister.gov/documents/2020/10/27/2020-23756/threshold-for-the-requirement-to-collect-retain-and-transmit-information-on-funds-transfers-and>

fails to show that the added burden of the lower thresholds would be outweighed by added benefits to law enforcement. The ANPRM also fails to provide any related reduction in recordkeeping or reporting requirements under other provisions of the BSA. The Agencies should not merely regulate through addition under the BSA, but rather should also consider regulatory burden reductions in areas that have not proven to provide valuable and effective information to law enforcement. The ANPRM provides no such consideration and merely increases an already over-bloated BSA recordkeeping and reporting regime.

1. General Comments

In addition to comments to specific requests provided below, IBC has several general comments to the Agencies' proposal.

The Agencies looked at 2,000 SARs filed by money transmitters over a three (3) year period and are proposing lowering the RKR and TR thresholds to \$250 based on that data. The Agencies do not clarify if "money transmitter" was limited to money service businesses, non-insured, non-depository institutions, or insured bank depository institutions.

The Agencies also did not appear to consider internal, voluntary limits that covered financial institutions implement in order to address risk and fraud concerns, in addition to regulatory compliance. For example, IBC has a lower transaction minimum requirement for transfers involving the transmittal of pesos to Mexico. For international wires of any other currency, the minimum transfer limit is higher. Therefore, IBC has a large volume of small-dollar transfers of pesos to Mexico as that service is more widely available to our customers. 30% of IBC's wire transfers of pesos to Mexico are between \$3,000 to \$250 in value, whereas only 20% of IBC's international wire transfers are within that range. Notably, IBC's international wire transfers are one-third of the volume of its peso wires transfers to Mexico. IBC serves a diverse clientele given its large, southwestern footprint. IBC believes its lower transfer minimum requirement for wire transfers of pesos to Mexico is, in part, responsible for the larger volume of small-value wire transfers.

Some money service businesses may have similar minimum or maximum transaction limits which would skew the data considered by the Agencies. This may be especially true in cases where there are low maximum limits for non-customers. It may be the case that international wire transfers of funds to support terrorism are not requested by "customers" of covered financial institutions, thus such transfers are subject generally to informal market limits on such transfers. That could explain why the Agencies' data showed a trend of small transfers supporting illegal foreign activity. If an unaccounted for externality is influencing the volume and/or amounts of these funds transfers, the Agencies should be sure to identify and address its effect and revise their recommendation accordingly.

It may be that instead of a drastic reduction to the threshold, the Agencies could craft a trigger for lower-dollar transactions that would require reporting if certain other factors were true. By the Agencies' own admission, it appears that the SARs they reviewed (2,363) involved 1,368,000 transmittals of funds, with most of those transmittals being under \$500. Were there any other defining characteristics? Was there a certain volume at which these low-dollar transfers would indicate illegal activity? Are there relevant differences in transaction characteristics based on the

covered financial institution (e.g. money service business, insured bank depository, etc.)? Are the Agencies prepared to receive the increased data, as applicable? If the Agencies are only looking at the transaction amount and not considering any additional context, it is possible that the increased information collection and reporting requirements do not add any value to law enforcement.

2. Comments to Specific Requests

With respect to the effect of lowering the threshold for the requirement in 31 CFR 1020.410 and 31 CFR 1010.410(e) and (f) to collect, retain, and transmit information on funds transfers and transmittals of funds that begin or end outside the United States, the Agencies in particular request comment on the following questions from financial institutions and members of the public:

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?

IBC COMMENT: IBC, as an insured depository institution, already requires, retains, and reports this information. As discussed below, IBC believes that the Agencies should focus on less highly-regulated industries subject to the RKR and TR as most insured depository institutions already record and maintain the applicable information.

IBC is concerned that if such action becomes a requirement under the RKR or the TR, insured depository institutions will see their costs of examination increase, as well as regulatory scrutiny in this area as a whole, without a similar increase in the effectiveness of law enforcement. If the transaction threshold is decreased, insured depository institutions will face increased examination scrutiny because of the increased volume of transactions that would now be in scope. The Agencies do not appear to fully appreciate the cost and burden of implementing and maintaining the required recordkeeping and reporting systems at the proposed thresholds. Almost every regulatory amendment triggers a re-assessment of the products and services that will be affected. Wire transfer services generally operate on thin margins, so any additional regulatory compliance costs could result in those transfers becoming untenable to offer. Insured depository institutions may eliminate or significantly reduce their wire transfer services. In fact, the Remittance Transfer Rule resulted in this exact scenario.² IBC requests the Agencies consider whether decreasing the thresholds will cause insured depository institutions, as well as other covered financial institutions, to stop offering wire transfers. This decrease in service availability may drive consumers to transfer providers that are not subject to the BSA or other related recordkeeping and reporting requirements. This would result in the information being even harder get into the hands of law enforcement.

² Remittance Transfers Assessment Report, Consumer Financial Protection Bureau, April 2019, https://files.consumerfinance.gov/f/documents/bcfp_remittance-rule-assessment_report_corrected_2019-03.pdf

The Agencies fail to appreciate the impact lower thresholds will have on cost to and burden on covered financial institutions. For example, the lower threshold will require a recalibration of monitoring and reporting systems which in turn will increase the costs and staff time required to track and maintain a greater volume of transactions. Even if an insured depository institution had been collecting and/or reporting the information, by changing the official threshold, the Agencies are changing the level of scrutiny these wires will be subject to, requiring enhanced procedures for quality control, compliance, training and other steps. The Agencies have not considered this added examination scrutiny and cost, which will result regardless of whether or not a covered institution already collects and/or reports such information for all wire transfers. Finally, less regulated covered institutions will likely not face similar increased costs or scrutiny, thus placing the greatest burden on the financial institutions already informally complying with the proposed changes. To the extent the Agencies believe a change to the thresholds are necessary, they should focus on increasing oversight of non-bank covered financial institutions.

The Agencies stated that certain SARs were reviewed which support the lowering of the thresholds for retaining and reporting under the RKR and TR. The Agencies reviewed these SARs and were able to identify those which were implicated in illicit financial activity. However, the Agencies failed to state whether these SARs or subsequent law enforcement activities would have been better or more efficient if the wire transfers at issue had been subject to lower-threshold RKR or TR requirements. Did any of the transactions in the reviewed SARs lack the information required to be collected under either the RKR or TR? If so, would such information have assisted in any review or action by law enforcement? Does any potential assistance outweigh the burden of expressly requiring such collection and reporting and lowering the thresholds? Perhaps the Agencies should focus any threshold adjustment on covered financial institutions that are not otherwise heavily regulated, instead of a blanket threshold adjustment regardless of institution type.

2. To what extent would the burden of the proposed rule on financial institutions and the public be mitigated were the Agencies to select a threshold of \$250 but not require nonbank financial institutions to collect a social security number or employer identification number ("EIN") for non-established customers engaging in transmittals of funds between \$250 and \$3,000 that begin or end outside the United States?

IBC COMMENT: This is the exact scenario that the Agencies should avoid. Nonbank financial institutions should be subject to increased oversight and reporting requirements to the extent they are not as highly regulated as a depository institution. Insured depository institutions are already subject to an incredible level of oversight and regulatory requirements. They also have strong, ongoing relationships with the clients who use these wire transfer services. They also have clear, express guidance regarding offering such services to non-clients. Nonbank financial institutions may not have ongoing relationships with their clients, and may not face the same level of regulatory scrutiny. If the Agencies are not going to apply RKR and TR requirements equally amongst covered financial institutions, they should certainly place a higher burden on nonbank financial institutions, not insured depositories.

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 regards to whether there are circumstances in which verification may be done remotely and what documents are acceptable as proof?

IBC COMMENT: Insured depository institutions already have myriad policies and procedures in place to identify customers, including those who send wires, and those policies and procedures almost always include specific documentation required for identification. These policies and procedures generally were created independently of RKR and TR requirements, and instead were created in response to other regulatory requirements, such as BSA/AML obligations for other products and services. If the Agencies imposed specific mandates regarding appropriate forms of identification, that could require changes to existing policies and procedures that may be disruptive and a further incentive to discontinue certain products and services. Before considering specific guidance regarding appropriate forms of identification, we recommend the Agencies further evaluate the need for and impact of such a requirement and engage with covered financial institutions to understand the potential impacts of such a requirement. At this time, IBC strongly opposes any specific identification requirements the Agencies would provide, including those covering online customer identification and verification, for purposes of the RKR, RT, and any other BSA requirement. One of the greatest hurdles to the adoption of online products and services is customer identification and verification procedures. By and large, insured depository institutions already have robust regimes to handle these requirements. If covered financial institutions have to amend and implement new policies and procedures for customer identification in the context of wire transfers, that cost may prove prohibitive to continued offering of such transfers.

4. To what extent would the burden of the proposed rule on financial institutions and the public be mitigated if the Agencies were to include in the regulation the standard described in Section IV.A for determining when an institution would be subject to the \$250 threshold for cross-border transfers, i.e., that “reason to know” that a transaction begins or ends outside the United States exists when such information could be determined based on the information the financial institution receives in the transmittal order, collects from the transmittor to effectuate the transmittal of funds, or otherwise collects from the transmittor or recipient to comply with regulations implementing the BSA?

IBC COMMENT: This burden would not be mitigated as to IBC because IBC already collects sufficient information for each wire transfer to determine whether such transfer begins or ends outside of the United States. IBC will continue to collect sufficient information to make this determination regardless of the Agencies’ revisions to the RKR or TR. IBC only asks that nonbank institutions be held to a similar level of regulation and scrutiny in regards to international wire transfers. No covered financial institution should benefit from its willful ignorance regarding the wire transfers it processes.

Thank you for the opportunity to share IBC’s views and comments. IBC strongly urges the Agencies to withdraw the proposed threshold decreases to the RKR and TR and to leave the

thresholds as-is. In the alternative, IBC asks the Agencies to allow more time to receive and consider further comment and information from the public and covered financial institutions. IBC looks forward to a continuing dialog with the Agencies about these issues.

INTERNATIONAL BANCSHARES CORPORATION

A handwritten signature in blue ink, appearing to read 'DENIXON', with a stylized flourish at the end.

Dennis E. Nixon, President and CEO