

November 27, 2020

Submitted via Federal E-rulemaking Portal (www.regulations.gov) and Agency Website (<http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>)

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Director
Financial Crimes Enforcement Network
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Ms. Anne E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: 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; Docket Number FINCEN–2020–0002, RIN 1506–AB41 (FinCEN); Docket No. R-1726, RIN 7100-AF97 (Federal Reserve Board)

Dear Director Blanco and Secretary Misback,

These comments are submitted on behalf of INFiN, A Financial Services Alliance (“INFiN”), in response to the above-referenced Joint Notice of Proposed Rulemaking (“JNPRM”) issued by the Financial Crimes Enforcement Network (“FinCEN”) and the Board of Governors of the Federal Reserve System (“Board”) to amend the Travel Rule¹ and the Recordkeeping Rule,² respectively (together, the “Proposed Rule”). INFiN greatly appreciates the opportunity to comment on the Proposed Rule.

INFiN is a national trade association representing approximately 350 companies operating 8,000 consumer financial service provider locations throughout the U.S. INFiN members offer a wide array of financial products and services, including check cashing, money orders, electronic bill payments, domestic and international money transfers, ATM access, government benefit and payroll payments, tax preparation, prepaid cards, deposit acceptance services, small-dollar loans, and numerous other financial and consumer services. INFiN members are classified as money services businesses (“MSBs”). As such,

¹ 31 CFR 1010.410(f).

² 31 CFR 1020.410(a) and 31 CFR 1010.410(e).

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they are subject to the Bank Secrecy Act's anti-money laundering provisions and Suspicious Activity Report ("SAR") filing requirements. INFiN members have for decades served millions of Americans, including individuals that have relationships with banks as well as those that do not.

Our membership has a direct interest in the Proposed Rule, particularly those members engaging in funds transfers and remittances because it impacts their day-to-day activities and business model operational decisions. The principal concerns of INFiN with the Proposed Rule are the foreseeable direct financial, technological, and time-bound effects on its member MSBs.

Regulatory Costs and Burdens

The burden imposed on MSBs by the Proposed Rule, if finalized, must be measured in terms of both time and cost. The time-related burden is the additional time it would take for an MSB's employees to comply with the changes imposed by the Proposed Rule. Should the Proposed Rule become final, MSBs would need a significant transition period before the effective date to conduct the necessary staff training and make the appropriate infrastructure and technology changes. The cost burden includes both the operational costs and the technological costs of the proposed changes.

Under the current thresholds, in many cases an MSB can collect Know Your Customer information from a customer in a few minutes, and back office staff can verify that information relatively quickly. Significantly lower transaction size thresholds for recordkeeping will result in substantial increases in the number of customers and transactions for which MSBs will be required to collect and verify information. In fact, the Proposed Rule would require some MSBs to collect the required information for practically every transaction, as they regularly handle international transactions of over \$250. Additionally, MSBs will not only need to train their own staff and agents but educate customers about the new requirements.

The increased workload as a result of the Proposed Rule would not only affect MSBs and other covered businesses but would impact FinCEN and other government agencies as well. With ever-increasing volumes of information being collected on remittance transactions, the amount of information reported to FinCEN will greatly increase. Unless FinCEN has already allocated resources to make use of that additional information, MSBs should not be required to collect it. Moreover, it seems likely that the additional records that would be collected under the Proposed Rule will capture many more "clean" transactions to be analyzed than the "dirty" ones that are the focus of the Proposed Rule. In short, we question

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whether FinCEN's limited resources would be more effectively used to analyze the existing information it receives, rather than collecting more information on individuals at the bottom-end of the financial system who are typically persons of modest means sharing their hard-earned income with their family overseas.

Impact on Law Enforcement

It is also not clear that the additional recordkeeping will help law enforcement apprehend more bad actors. In fact, it could have the opposite effect by driving bad actors underground to unlicensed money transmitters or other unregulated parts of the financial system, making their transactions less, not more, transparent. Unofficial and underground businesses, such as Hawalas, are likely to make a resurgence if individuals are required to provide sensitive personal information for low-dollar value remittances. Well-meaning, law-abiding underbanked persons may be reticent to provide identifying information, thereby making it less likely for them to engage with licensed MSBs.

Effect of Inflation on the Thresholds

Since the issuance of the Travel Rule and the Recordkeeping Rule, the applicable recordkeeping and reporting thresholds have remained constant despite inflation, and the resulting changes to income, spending power, and the value of the American dollar. Given inflation, a compelling argument can even be made to raise the thresholds, not lower them. Considering the value of \$250 today, and what a remittance of this value would encompass, it is highly likely that most transactions in the \$250 to \$500 range are for basic needs of the recipients, rather than the facilitation of criminal activity. This is true notwithstanding the prevalence of low-dollar transactions in terrorist financing and fentanyl convictions, referenced in the JNPRM.

Use of Technology to Achieve Compliance

While they can be helpful, technological solutions to incremental compliance burdens also come with significant costs to an organization. In addition to the implementation and integration costs, monthly subscriptions and per transaction fees must be considered. These costs can be significant: some technology providers estimate their fees to be between \$1 and \$3 per transaction. Thus, if an MSB transmits one million eligible transactions per month, this can raise monthly costs by as much as \$3 million or more. These additional costs would necessarily be passed on to the customer who, more often than not, is from the under- or unbanked population, further driving them away from the mainstream financial system.

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Potential Compromise of Personally Identifiable Information

An additional consideration that results from the lowered threshold is that affected businesses will be handling higher volumes of personally identifiable information. This information must be maintained for significant periods of time and can make MSBs vulnerable to bad actors trying to unlawfully obtain this information. The number of data breaches that occur annually is ever increasing, and if MSBs were required to retain more personally identifiable information, this will not go unnoticed by cybercriminals and lead to increased attempts to steal this valuable and highly sensitive personal information.

Harmonization of Existing Federal Requirements

Finally, for the Proposed Rule to be truly effective, Federal requirements need to be harmonized. Currently, SAR thresholds for MSBs are set at \$2,000. This raises the question whether the MSB SAR threshold will also be lowered to match the updated recordkeeping requirements. It also raises a question of whether the proposed definition of “money” that includes convertible virtual currency (“CVC”), will be extended to other agencies that previously classified CVC as a commodity.

Conclusion

For the reasons cited herein, we respectfully submit that the Proposed Rule should be revised to better meet the objective of reducing financial crime.

On behalf of INFiN, thank you again for the opportunity to comment on the Proposed Rule. Please do not hesitate to contact me if you would like to discuss any aspect of this letter.

Respectfully submitted,



Edward P. D'Alessio
Executive Director

cc: Daniel P. Stipano, Esq.