FACTCOALITION
Financial Accountability & Corporate Transparency

February 22, 2021

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

Submitted via email: regs.comments@federalreserve.gov

Re: **Proposed Federal Reserve Rule to Authorize Exemptions to Suspicious Activity Report (SAR) Requirements, Docket No. R-1738; RIN 7100-AG08**

Dear Ms. Misback,

On behalf of the Financial Accountability and Corporate Transparency (FACT) Coalition, we write to voice our opposition to the Board of Governors of the Federal Research System (Federal Reserve or Board) proposed rule (RIN 7100-AG08) that would grant the Federal Reserve new authority to exempt financial institutions under its purview – including bank holding companies, state member banks, the U.S. offices of foreign banking organizations, and other entities – from long-standing requirements to issue Suspicious Activity Reports (SARs) as part of their anti-money laundering (AML) obligations.

The FACT Coalition is a non-partisan alliance of more than 100 state, national, and international organizations in the United States working toward a fair tax system that addresses the challenges of a global economy and promoting policies that combat the harmful impacts of corrupt financial practices.[1]

We agree with the comments submitted today by Elise J. Bean, the former Staff Director and Chief Counsel to the U.S. Senate Permanent Subcommittee on Investigations. The draft Federal Reserve rule, as written, is counterproductive to U.S. anti-money laundering objectives and will likely be vulnerable to legal challenges under the Administrative Procedures Act as arbitrary, capricious, and unsupported by substantial evidence. The law also fails to account for new provisions passed by Congress in the Anti-Money Laundering Act (AML Act) that require that the Treasury Department, in consultation with the Federal Reserve and other regulators, to review other means for mitigating SAR technology issues. As such, we respectfully urge the Federal Reserve to withdraw and reassess this proposed rule to address

[1] For a full list of FACT Coalition members, visit https://thefactcoalition.org/about/coalition-members-and supporters.

the points outlined below, or at a minimum, extend the period for public comment by an additional 90 days to allow the Federal Reserve to field further suggested improvements to the proposed rule.

For decades, U.S. law enforcement and national security officials have relied on SARs issued by U.S. financial institutions under the Bank Secrecy Act (BSA). A recent study by the Government Accountability Office (GAO) surveyed more than 5,000 employees at six federal agencies and found that more than "72 percent of their personnel reported using BSA reports to investigate money laundering and other crimes, such as drug trafficking, fraud, and terrorism."[2] SARs offer these officials a critical tool to counter money laundering, investigate financial crimes, and prosecute offenders.

Yet the proposed rule, as drafted, risks jeopardizing U.S. officials' access to this key investigative tool by granting the Federal Reserve new authority to exempt institutions from submitting SARs – without providing a compelling, evidence-based justification for doing so. In the 25 years that the Federal Reserve has required financial institutions to file SARs, it has never pursued authority to exempt financial institutions from that requirement, nor has there been any comparable congressional direction or explicit statutory authorization. This proposal fails to explain what is different now: the proposal only purports that exemptive relief would give financial institutions the leeway for "innovation" in addressing SAR technology issues. Even so, it neither provides substantial evidence for that claim nor explains how innovation would necessitate an exemption. It further does not demonstrate why specifically the Federal Reserve would need its own exemptive authority, given that the draft rule still requires Federal Reserve officials to seek the determination of Treasury's Financial Crimes Enforcement Network (FinCEN) that the "exemption is consistent with purposes of the Bank Secrecy Act." Ultimately, the proposed rule does not satisfactorily justify the creation of a new Federal Reserve authority.

Likewise, the actual language for the authority, exemptions, and process used in the proposal would, at best, introduce confusion around a rollout and, at worst, open the door for abuse. The exemptive authority, as written, is immensely broad and could inadvertently permit the wholesale exemption of entire institutions or categories of institutions from SAR requirements. Likewise, the exemption language would permit thousands of different types of financial institutions overseen by the Federal Reserve to pursue exemptions, without providing concrete standards for eligibility and a clear-cut process (e.g. sample forms) for obtaining those exemptions. The lack of clarity around definitions, scope, and process could easily be exploited, running counter to the interests of financial transparency and anti-money laundering objectives.

Finally, the draft rule is premature and fails to account for new measures in the Anti-Money Laundering Act (AML Act) – a law enacted at the start of this year – that would address, by other means, the SAR and AML concerns that appear to have prompted this proposed rule. For instance, the new law requires

[2] "Anti-Money Laundering: Opportunities Exist to Increase Law Enforcement Use of Bank Secrecy Act Reports, and Banks' Costs to Comply with the Act Varied," GAO, No. GAO-20-574, "GAO Highlights" at 1 (9/2020), https://www.gao.gov/products/GAO-20-574.

the Treasury Department, in consultation with the Federal Reserve and other agencies, to review the existing SAR reporting system over the next year and identify new ways, including through regulation, to make it more modern, efficient, and effective. The AML Act likewise requires the Treasury Department to issue a rule-making developing procedures to test technologies that would aid AML compliance, as well as to hire new BSA Innovation Officers to help analyze technology issues. Issuing this rule before Treasury can fulfill the duties mandated in the AML Act risks implementing conflicting or duplicative efforts. The Federal Reserve should wait to issue and reassess this rule in light of the Treasury Department's findings.

Thank you for considering these views. We welcome the opportunity to discuss these comments in greater detail during your deliberations.

Please contact Erica Hanichak (ehanichak@thefactcoalition.org) with any comments or questions.

Sincerely,

Ian Gary
Executive Director

Erica Hanichak
Government Affairs Director