

February 14, 2022

Submitted via Federal E-rulemaking Portal (www.regulations.gov)

Himamauli Das, Acting Director
Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183

**RE: Request for Information and Comment; Review of Bank Secrecy Act
Regulations and Guidance
Docket Number FINCEN-2021-0008**

Dear Acting Director Das:

These comments are submitted on behalf of INFiN, A Financial Services Alliance (“INFiN”), in response to the above-referenced Request for Information and Comment (“RFI”), issued by the Financial Crimes Enforcement Network (“FinCEN”) on ways to streamline, modernize and update Bank Secrecy Act (“BSA”) regulations seeking to protect U.S. national security in a cost-effective and efficient manner. INFiN appreciates the opportunity to comment in response to the RFI. We strongly support FinCEN’s efforts in these areas and share FinCEN’s goal of advancing innovative approaches that support a risk-based approach to BSA anti-money laundering (“AML”) compliance.

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, 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.

INFiN’s concerns regarding current BSA/AML compliance regimes, and therefore our comments to the RFI, are focused on three areas: 1) the need to guard against bank account terminations, or “de-risking” of MSBs resulting from BSA/AML regulatory risk; 2) the need to increase CTR and SAR reporting thresholds; and 3) the need to continually measure the cost of BSA/AML compliance on businesses.

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MSBs are Critical in Protecting the U.S. Financial System

Over the years, the role of MSBs in preventing financial fraud and terrorist financing has been repeatedly recognized by FinCEN and others. In its November 10, 2014, Statement on Providing Banking Services to Money Services Businesses, FinCEN reiterated: “MSBs play an important role in a transparent financial system, particularly because they often provide financial services to people less likely to use traditional banking services.” In 2015, Under Secretary for Terrorism and Financial Intelligence David Cohen stated:

Both here in the United States and abroad, MSBs provide essential financial services, including to low-income people who are less likely or unable to make use of traditional banking services. More than a quarter of American households use non-bank financial institutions like MSBs, to do everything from paying their bills and cashing checks to supporting their family members abroad Financial transparency is a goal we work toward every day in this building, since the more transparent the financial system is, the harder it becomes for illicit actors – states, terrorists, or criminals – to camouflage themselves in the legitimate economy But what would happen in a world without MSBs? Those customers, many of whom are unable to access traditional banking services, might seek to do business through less regulated channels. And then we would lose access to crucial information that regulators and law enforcement depend on every day to prevent the abuse of the financial system. Other customers would turn to riskier, less predictable service providers, with little recourse for when something goes wrong. (Opening Remarks at the U.S. Treasury Roundtable on Financial Access for Money Services Businesses, January 13, 2015).

The role of MSBs in serving consumers, and in protecting our nation’s financial system, is no less critical today.

Notwithstanding Their Critical Role, MSBs Have Suffered from De-Risking Tied to Perceived BSA/AML Risks to Financial Institutions

Despite their often-recognized value in combating terrorist financing and other financial crimes, MSBs have experienced a very high incidence of bank account terminations, or “de-risking”, resulting from category-based decisions about MSB services, as opposed to individual, case-by-case customer risk evaluations. The very unfortunate result of these terminations is that the customers of these businesses are often forced to find other ways to conduct their financial transactions, including using unregulated, underground operators. Bank account terminations, and the threat to MSBs and their customers, continue to this

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day. We respectfully submit that in evaluating BSA/AML compliance requirements, and in its efforts to streamline, modernize, and update BSA regulations, FinCEN must renew its focus on ensuring the availability of banking relationships for MSBs.

While some attention has been directed to the issue of de-risking, certain basic measures could be implemented to continue the effort to prevent account terminations. As FinCEN is aware, through the Bank Secrecy Act Advisory Group, the MSB industry developed an extensive set of “best practices” entitled “Best Practices for US Money Services Businesses: Anti-Money Laundering and Counter-Financing of Terrorism Compliance Program,” (“MSB Best Practices”). While these MSB Best Practices were developed within the broad overview of FinCEN, a more formal approval, or a statement of support, for the effort would boost their visibility and usefulness in addressing de-risking. INFiN respectfully suggests that FinCEN provide such support for the MSB Best Practices and for the concept of industry self-regulation.¹

In addition, as FinCEN is considering ways to modernize and streamline its regulations, other measures could be undertaken, potentially with the engagement of other regulators. These measures could include a survey of banks that currently bank MSBs, or that have terminated MSB accounts over the last five or more years. A survey would establish a baseline of bank-MSB relationships and would allow evaluation over time to assist in the evaluation of the impact of new or updated BSA/AML regulations.

INFiN also respectfully requests that, in issuing updated regulations, FinCEN re-affirm core publications, including the 2005 Joint Statement on Providing Banking Services to MSBs, the 2014 FinCEN Statement on Providing Banking Services to Money Services Businesses, and the 2005 Guidance to Money Services Businesses on Obtaining and Maintaining Banking Services.

Updating SAR and CTR Filing Requirements

As many other commenters have noted, when the Bank Secrecy Act was enacted in 1970, the \$10,000 threshold was established for reporting currency received in a trade or business. In the intervening years the \$10,000 amount, adjusted for inflation, has increased significantly. The impact of not adjusting the \$10,000 threshold has led to an increased burden on MSBs as they are required to file more CTRs, and in turn has resulted in more risk to financial institutions that provide bank accounts. INFiN respectfully suggests that

¹ In its December 2021, report entitled “Bank Secrecy Act: Views on Proposals to Improve Banking Access for Entities Transferring Funds to High-Risk Countries” (GAO-22-104792) the Government Accounting Office addressed the development of codes of conduct and best practices like the MSB Best Practices.

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the currency reporting threshold be increased to account for inflation, and that the threshold be adjusted on a predictable schedule to continue to account for inflation.

INFiN members embrace their role in combatting financial crimes, including the obligation to file SARs. However, SAR reporting imposes a tremendous burden and consumes significant amounts of time for MSBs. As with CTRs, the SAR threshold has not kept pace with inflation. Accordingly, and as has been proposed in various legislative proposals, INFiN suggests that FinCEN study the SAR reporting threshold to determine whether it should be increased.

Regulatory Costs and Burdens

The burden imposed on MSBs by BSA/AML requirements must be measured in terms of both time and cost. The time-related burden is the time it takes for an MSB's employees to comply with the Rules. The cost burden includes both the operational costs and the technological costs of compliance. Raising the transaction size thresholds for recordkeeping will result in a decrease in the number of customers and transactions for which MSBs will be required to collect and verify information. The decreased workload because of decreased reporting would not only affect MSBs and other covered businesses but would impact FinCEN and other government agencies as well.

Many commentators propose the increased use of technology to aid compliance. While they can be helpful, technological solutions to incremental compliance burdens also come with significant costs. In addition to the implementation and integration costs, monthly subscriptions and per transaction fees must be considered. These costs can be significant. These additional costs would necessarily be passed on to the customer who, often, is from the under- or unbanked population, further driving them away from the mainstream financial system.

INFiN submits that when FinCEN is considering its goals with respect to BSA/AML regulation, it conducts an appropriate analysis to determine if those goals can be met without imposing significant additional costs on businesses. Additionally, input from small businesses should be solicited and considered. When appropriate, small businesses, measured by transactions, employees, or other metrics, could be provided an exemption or a less costly alternative.

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Conclusion

On behalf of INFiN, thank you again for the opportunity to comment in response to the RFI. Please do not hesitate to contact us if you would like to discuss any aspect of this letter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "E. P. D'Alessio". The signature is written in a cursive, flowing style.

Edward P. D'Alessio
Executive Director