

November 27, 2020

Via Email and Rulemaking Portal

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

Policy Division
Financial Crimes Enforcement Network
P.O. Box 39, Vienna, VA 22183

Re: Comments Regarding the Threshold for the Requirement to Collect, Retain, and Transmit Information on Funds Transfers and Transmittals of Funds– Docket No. R-1726; RIN 7100-AF97 and Docket No. FINCEN – 2020-0002; RIN 1506-AB41

Dear Sir or Madam:

On behalf of the Electronic Transactions Association (“ETA”), we appreciate the opportunity to share our thoughts on the Board of Governors of the Federal Reserve System (“Fed”) and the Department of Treasury’s Financial Crime Enforcement Network (“FinCEN”) proposed rule to modify the threshold in the rule implementing the Bank Secrecy Act (“BSA”) requiring financial institutions to collect and retain information on certain funds transfers and transmittals of funds.

ETA supports the Fed and FinCEN’s ability to gather information that would benefit law enforcement and national security investigations. However, ETA is concerned that lowering the threshold to \$250 for international transfers would likely lead to greater compliance efforts for covered entities without garnering a substantial return in useful information for law enforcement. Money service businesses (“MSBs”) and virtual currency providers would be especially burdened by this rule given the nature of their business models. In addition, FinCEN should be mindful of the chilling effect this proposal could have on consumers, many of whom may not have access to depository accounts, and the burden it could create for small and medium sized businesses that may offer MSB services as an ancillary products.

Who We Are

ETA is the leading trade association for the payments industry, representing over 500 companies that offer electronic transaction processing products and services. ETA’s members include banks, mobile payment service providers, mobile wallet providers, money transmitters and non-bank financial technology companies (“FinTech”) that provide access to credit, primarily to small businesses, either directly or in partnership with other lenders. ETA member companies are creating innovative offerings in financial services, revolutionizing the way commerce is conducted with safe, convenient, and rewarding payment solutions and lending alternatives – facilitating over \$22 trillion in payments in 2019 worldwide.

Comments

Modernizing Anti-Money Laundering Regulations

ETA does support modernizing our anti-money laundering (“AML”) regime and allowing financial institutions to better assist law enforcement in its efforts to detect and deter financial crimes, including terrorism financing, fraud, and other illicit activity.

For example, by securing a beneficial ownership registry of legal entities held at FinCEN this would provide law enforcement with needed information to pursue criminals looking to exploit our financial system.

Comments on Identity Verification

While it is unclear what will be required under the new identification standard contemplated in the proposed rule, and therefore difficult to estimate related burden, ETA believes the best course of action is to leave the current standard unchanged for covered entities that already have reasonable and tested verification procedures in place. Allowing a flexible, risk-based approach consistent with MSB business models is an issue of fairness that will ultimately help maintain a level playing field between institutions of all types and sizes while still allowing FinCEN access to the information they need to help prevent illicit activity.

Comments on Proposed Rule

Currently, the Travel Rule applies to all transfers of \$3,000 or more. The proposed rule would lower the reporting threshold to \$250, for international funds transfers – those that begin or end outside the United States.

The threshold in the proposed rule is significantly lower than the minimum threshold of €1,000 recommended by the Financial Action Task Force (“FATF”), an intergovernmental body that develops anti-money laundering and counter-terrorism financing standards and promotes their effective implementation.

FATF’s recommended threshold has been adopted by the European Union and by a vast number of jurisdictions around the world. The disparity between the international bodies may lead to financial institutions rejecting wire transfers if the necessary data is not provided. ETA encourages the Fed and FinCEN to harmonize the recommendations to combat money laundering and terrorism financing. Standardization would provide certainty and consistency to businesses and financial institutions without having to navigate a patchwork of laws or regulations. This reduced complexity and associated costs savings could lead to enhanced products and services for consumers without hampering the efforts of law enforcement.

According to the proposed rule, a financial institution would have “reason to know” that a funds transfer begins or ends outside the United States only to the extent that such information could be determined based on the information the financial institution:

- a) receives in the transmittal order,
- b) collects from the transmitter to effectuate the transmittal of funds, or
- c) otherwise collects from the transmitter or recipient to comply with the BSA.

ETA believes the Fed and FinCEN should clarify the “reason to know” standard.

In addition, the difficulties financial institutions face in determining whether a funds transfer is covered by the \$250 threshold may depend on their role in the funds transfer. While these requirements may present a limited burden for traditional financial institutions, other intermediary financial institutions, which could include MSBs, or beneficiary financial institutions may lack full visibility into relevant funds transfer information. Requiring those intermediary financial institutions maintain records of this information and send a copy to the recipient financial institution is an additional burden.

In reviewing the threshold in the Recordkeeping and Travel Rules, the Fed and FinCEN concluded that almost all banks, regardless of size, already maintain records of all fund transfers irrespective of the dollar amount, including transfers below \$3,000.

However, the same is not the case for the more than 12,000 money transmitters that would be affected by the proposed threshold. Since MSBs are not subject to the BSA’s Customer Identification Program rule, MSBs may not already separately collect and verify the customer information required by the Recordkeeping Rule for funds transfers below the existing \$3,000 threshold. As a result, the broader universe of international funds transfers that would be covered under the proposed rules may significantly increase MSBs’ compliance burdens.

Similarly, this is far more information than is required to transfer an amount of virtual currency between two parties – given that financial institutions identify their customers in order to track fund transfers while virtual currency providers identify transactions not by a customer’s name but rather by a virtual wallet.

Furthermore, tracking the location of a traveling consumer will be a challenge. The proposed rule deems a sender outside the United States to a United States recipient as being covered even though the transfer did not originate or end outside the United States. ETA believes the Fed and FinCEN should focus on the location of the account – not the person.

Comments on Lower Dollar Thresholds

With limited exceptions, MSBs are subject to the full range of BSA regulatory controls, including the AML rule, suspicious activity and currency transaction reporting rules, and various other identification rules. Additionally, existing BSA regulations require certain MSB principals to register with the Treasury Department.

Financial institutions, including MSBs, continually monitor transactions for anything that is unusual or inconsistent with normal behavior, such as a consumer trying to break up a large transaction into smaller transactions. Innovations in technology, such as artificial intelligence and machine learning, has improved the ability to identify anomalies and retain that information. However, the proposal to require the collection, retention, and transfer of information on all international wire transfers over \$250 is counterproductive. Dropping the reporting thresholds is likely to make citizens of other countries turn to less transparent means of transferring money into the United States and even harder to trace criminal activity.



ETA members are not against AML or reporting rules but understands the importance of efficient regulations and rules while maintaining consumer protection and safety and soundness standards. Any guidelines should be sustainable in that it adjusts to changes in the market and technology. This strikes the necessary balance among principles of safety and soundness, consumer protection, innovation, and promoting competition – allowing any new guidelines to be tailored based to the risk profile of the participant.

In closing, ETA reiterates that the changes proposed are significant, especially when you couple a potential new identify verification requirement with the increased number of transactions that would require this verification should the current \$3,000 threshold be lowered. These changes will require an immense amount of coordination and systems changes at MSBs and their agent locations. Should the rule move forward unamended or in substantially similar fashion, ETA believes its member companies would need at least 18 months after a final rule is published to come into compliance. We are hopeful that FinCEN views a reasonable implementation timeframe as a key component of ensuring MSBs can work diligently toward meeting regulatory expectations while continuing to serve the needs of consumers without interruption. ETA also encourages the Fed and FinCEN to have thorough discussions with members of the Bank Secrecy Act Advisory Group to ensure a final rule meets the needs of law enforcement and financial institutions alike.

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ETA appreciates the opportunity to provide input on this important issue. If you have any questions, please contact me or ETA's Senior Vice President of Government Affairs, Scott Talbott at stalbott@electran.org.

Sincerely,



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