

February 16, 2023

Himamauli Das
Acting Director
Financial Crimes Enforcement Network
2070 Chain Bridge Road
Vienna, VA 22182

Re: Comments Regarding Regulatory Clarity Surround CIP Rules and Consumer Products

Director Das:

The Electronic Transactions Association (ETA) appreciates the opportunity to assess ways the Financial Crimes Enforcement Network (FinCEN) may modify or streamline its regulations and reduce burden to financial institutions. To this, we'd like to inquire about seeking regulatory clarity and aligning Customer Information Program (CIP) rules with similar credit products.

ETA's members are committed to supporting national and international efforts to combat money laundering and terrorist financing while protecting the integrity and efficiency of the financial system so that it can support and expand economic activity. To achieve these goals, it is critical to ensure that the payments industry apply their resources effectively and efficiently but at the same time, requirements are evaluated on a periodic interval to ensure they can accommodate the technology capabilities of various stakeholders and satisfy expectations and appropriately reflect the new realities of our modern, technology-driven, consumer financial services ecosystem.

Under existing FinCEN CIP Rules, banks and entities that operate as third parties are required to collect and verify specified customer information before opening an account. Under the Rules, this data must be obtained directly from each customer.¹ To help adapt CIP Rules to the modern banking environment, FinCEN and the prudential regulators under their Bank Secrecy Act (BSA) delegated authority should pursue a rulemaking to harmonize CIP data collection rules of similar credit products, such as buy-now-pay-later (BNPL), with existing data collection requirements, including collecting the last four digits of a Social Security Number (SSN) directly from the consumer, collect full SSNs from a third party, and go through the normal verification procedures.

Who We Are

ETA is the world's leading advocacy and trade association for the payments industry. Our members span the breadth of significant payments and fintech companies, from the largest incumbent players to the emerging disruptors in the U.S and in more than a dozen countries around the world. ETA members make commerce possible by processing more than \$44 trillion in purchases worldwide and deploying payments innovation to merchants and consumers.

ETA's Comments on CIP Regulatory Clarity to Harmonize CIP Rule Requirements

Unlikely to Increase Money Laundering

As noted in the Office of the Comptroller of the Currency's (OCC) Interpretive Letter 1175, under the CIP rule, banks are required to implement a CIP that includes risk-based verification procedures that

¹ 31 CFR 1020.220(a)(2)(i)(A)

enable the bank to form a reasonable belief that it knows the true identity of its customers.² Further, within the Interpretive Letter, the OCC determined that the, “modified CIP process will not change the overall risk for money laundering and terrorist financing because [OpSub] will acquire the full TIN from a third-party source prior to establishing an account relationship and will verify the information collected as required by the rule. [OpSub]’s proposed practice of collecting partial TINs is similar to the existing exemption available to the processing of credit card accounts, and [OpSub]’s modified process should be treated similarly because the OCC finds that the rationale supporting the credit card exemption also applies to the [OpSub] process as described in the request letter. The credit card exemption was granted to tailor the application of the CIP rules to “situations where the account holder is not physically present at the financial institution” at account opening and involve practices that have “little risk that the lender does not know the identity of the borrower,” which is analogous to the online services provided by [OpSub].”

While the guidance was for an online payments service provider, the OCC’s rationale could apply to other institutions that provide similar credit products – such as BNPL products that present the same money laundering risks as credit cards – given that the rationale is based on the “situations where the account holder is not physically present at the financial institution” at account opening, which is a core function of the modern online banking environment, and not a uniquely payments-focused aspect of the financial product or service. Moreover, applying OCC’s Interpretive Letter rationale could help realize the Department of the Treasury’s goals of (1) stemming regulatory arbitrage and (2) creating a fair and consistent set of rules for all players to compete under; as noted in Treasury’s recent report on non-bank financial services providers’ impact on competition in the consumer finance markets.³ In order to formalize this guidance across the financial services industry and further adapt CIP rules to the modern banking environment, we believe that it would be beneficial for FinCEN to engage in the aforementioned rulemaking.

Congressional and Agency Intent

Congressional and agency intent to ensure that CIP rules are not unnecessarily burdensome or impractical to financial institutions has been well documented. In House Report 107-250, it states with regard to agencies establishing identification rules that, “it is not the Committee’s intent that the regulations adopted pursuant to this legislation impose burdens that would make this prohibitively expensive or impractical.”

Further, the Preamble of FinCEN and the banking regulators’ regulations implementing Section 326 of the USA PATRIOT Act, on which the CIP rule is based, also cited Congress’ intent to ensure that requirements are not burdensome, prohibitively expensive, or impractical. Additionally, the final rulemaking of the Transaction and Customer Identification Programs stated that the Department of the Treasury and the Agencies (i.e. the Commodity Futures Trading Commission, Federal Reserve System, Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision, and Securities and Exchange Commission) “have determined that requiring a bank to obtain a customer’s identification number, such as a social security number, from the customer himself or herself, in every case, including over the telephone, would be unreasonable and impracticable because it would be contrary to banks’ current practices and could alienate many potential customers.” At the time of this rulemaking, this analysis formed the basis for the credit card exemption to the CIP Program.

² See OCC Interpretive letter 1175, published Nov. 16, 2020, Washington, D.C.

<https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2020/int1175.pdf>

³ U.S. Department of the Treasury Report to the White House Competition Council, *Assessing the Impact of New Entrant Non-bank Firms on Competition in Consumer Finance Markets* (Nov. 2022).

If you apply the Congressional and agency intent to the modern banking environment, it is clear that existing requirements, such as the collection of a consumer's full SSN, in an online context should be avoided because they would alienate potential customers attempting to engage in online banking services, such as an online lending application.

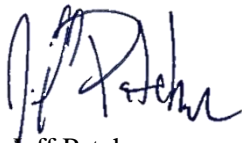
Consistent Treatment of Similar Financial Products

The Consumer Financial Protection Bureau's (CFPB) recent report on the BNPL market noted that BNPL products are "a fast-growing alternative to credit cards" that serves consumers in a similar manner as credit cards.⁴ Further, as noted above, BNPL products present the same minimal money laundering risks as credit cards. The BNPL market includes multiple product types, such as "pay-in-four," point-of-sale installment loans, and post-purchase credit card installment plans. Given this broad market understanding by CFPB, which specifically includes credit card-based financial products, it can be surmised that BNPL providers are offering financial products and services with a similar operation and intent as credit cards. FinCEN's CIP Rules already provide an exception for credit card accounts akin to the rulemaking we are requesting.⁵ Given the similarity in consumer use case between credit cards and BNPL products, it would seem that these BNPL products should be provided the credit card exemption in the CIP Rules. Adding to the confusion, certain bank regulators (as discussed above) have granted exemptions to their supervised banks that are not available to banks supervised by other bank regulators.

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Thank you for your attention to this matter. 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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⁴ See Consumer Financial Protection Bureau, "Buy Now, Pay Later: Market trends and consumer impacts", September 2022, Washington, D.C. https://files.consumerfinance.gov/f/documents/cfpb_buy-now-pay-later-market-trends-consumer-impacts_report_2022-09.pdf.

⁵ 31 C.F.R. § 1020.220(a)(2)(i)(C)