February 14, 2022

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

> ### Re: Financial Crimes Enforcement Network ("FinCEN") Request for Information on " Review of Bank Secrecy Act Regulations and Guidance" (Docket Number FINCEN–2021–0008); 86 FR 71201

Dear Acting Director Das:

The U.S. Chamber of Commerce appreciates the opportunity to provide comments on the Request for Information ("RFI") issued by the Financial Crimes Enforcement Network ("FinCEN") on "Review of Bank Secrecy Act Regulations and Guidance."

The Chamber welcomes this RFI and applauds FinCEN for seeking comments on "ways to modernize risk-based AML/CFT regulations and guidance, issued pursuant to the Bank Secrecy Act (BSA), so that they, on a continuing basis, protect U.S. national security in a cost-effective and efficient manner." The Chamber shares these goals and offers comments designed to inform your efforts. We address specific questions posed in the RFI at the end of this letter.

As we noted in our 2020 letter on AML program effectiveness, "the Chamber shares in FinCEN's commitment to modernizing the regulatory framework of the BSA. The Chamber has long sought reforms to AML rules. We have noted that much of the BSA-AML regulatory regime has not been updated since the 1970s, and that reforms would help regulators better prioritize possible investigations into illicit activity."[1] That 2020 ANPR noted that BSA's AML regime needs to adapt to address the evolving threats of illicit financial activity, some of which have changed considerably in scope, nature, and impact since the initial passage of the BSA.

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[1] U.S. Chamber of Commerce Center for Capital Markets Competitiveness Comment Letter on Anti-Money Laundering Program Effectiveness http://www.centerforcapitalmarkets.com/wp-content/uploads/2020/11/CCMC-Comment-Letter-FinCEN-ANPR-Final-11.16.20.pdf?

The Chamber notes that under Section 6216 of the AML Act, FinCEN is required to consult with stakeholders before submitting its findings in a report to Congress. The Chamber appreciates FinCEN being "particularly interested in new and innovative approaches to BSA compliance that promote a risk-based approach to protecting the financial system from threats to national security posed by various forms of financial crime, including money laundering, the financing of terrorism and proliferation, while also providing for the reporting of information with a high degree of usefulness to government authorities."

As the RFI further notes, "AML/CFT programs should, among other things, be reasonably designed to assure and monitor compliance with the BSA and be risk-based, including ensuring that financial institutions direct more attention and resources toward higher-risk customers and activities, consistent with the risk profile of the financial institution, rather than toward lower-risk customers and activities." We share this risk-based approach to providing financial institutions new options to leverage technology so they can provide more useful information to the government.

The Chamber provides recommendations below that are designed to capitalize on advancements in technology that can make the AML/CFT regulations more streamlined, while providing useful information to agencies to help achieve the underlying goals of the Act.

1. FinCEN should standardize and streamline the report submission process:

    a. FinCEN should create a common definition set to ensure uniformity of filings
    b. FinCEN should develop AI/Machine Learing compatible standard report framework
    c. FinCEN should develop and deploy an API (or similar) near-automated, advanced filing system

FinCEN should standardize and streamline the report submission process

A. FinCEN should create a common definition set to ensure uniformity of filings.

FinCEN notes in the RFI that it is seeking innovative approaches to protecting the financial system from financial crimes and that it "appreciates the important role that technology, innovation, and the efficient application of resources to BSA reporting play in promoting a risk-based approach to BSA compliance." The Chamber shares

this goal. A standardized and streamlined reporting process is a primary way to improve efficiencies and ensure that information provided to law enforcement by financial institutions is useful for the purposes of preventing financial crimes and reduces redundancies in reporting.

A primary way to streamline the report submission process would be to create a common definition set that would ensure uniformity of filings among financial institutions. In 2019 alone, over two million suspicious activity reports (SARs) were filed. This is a large number of reports for law enforcement and government agencies to process, and with the rapid advancement of digital services and offerings in our economy, this number is only anticipated to grow. Yet, the SAR filing submission process is still largely built and based off original 1970s BSA requirements, including the creation and documentation included on a report. This enables different reporting companies to file similar SARs with unique phrases, explanations, and definitions.

FinCEN should develop a common definition set to align terminology and threats reported in SARs. Doing so will provide more valuable information to law enforcement, streamline the submission process to provide more timely reporting, and enable machine learning to assist in investigations.

B. FinCEN should develop an AI/Machine Learning compatible standard report framework

Coupled with a common definition set, FinCEN should work to establish standard submission forms for SARs. While this will not be possible for every report, there are several topics for which FinCEN can issue standard submission forms. Doing so will improve the timeliness of submissions, standardization of review by FinCEN, and enable machine learning assistance.

The process should enable reporting companies to provide supplemental information, but there should be no requirement for reporting companies to do so. Standard reporting, as with standard definition sets, will enable FinCEN to improve database queries and investigations through the assistance of AI and machine learning.

C. FinCEN should develop and deploy an API (or similar) near-automated, advanced filing system

Modernizing the reporting architecture to an API both improves the security of data flow and speed of submission, if coupled with other changes. Deploying an API would enable reporting companies to build models directly into AML tools, assisting the generation and timely submission of reportable information to FinCEN.

Questions

9. Are there BSA regulations or guidance that do not promote risk-based safeguards or that no longer fulfill their original purpose? If so, which regulations or guidance, and what changes do you recommend?

The Chamber believes that the prepaid filing threshold is outdated. The threshold is $2,000 for a SAR when a suspect is or is not identified. By comparison, debit and credit cards have a $5,000 threshold for known suspects and a $25,000 threshold for no known suspect. This system no longer makes sense given the sophistication of prepaid products. The Chamber believes this is an area where FinCEN needs to re-examine the risk-based safeguards given the current market dynamic, fraud detection technology, and influx of activity in prepaid in recent years.
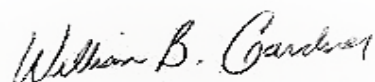
Question 26: In what ways could BSA regulations or guidance be more efficient in light of innovative approaches and new technologies. Should any BSA regulations or guidance account for technological advancements, such as digital identification, machine learning, and artificial intelligence? If so, how?

As noted in the Chamber's comments above, creating a common definition set would create uniformity, streamline the report submission process, and help reduce burdens on reporting companies to help them file reports in a timely manner.

BSA regulations should account for technological advancements like digital identification, machine learning, and AI. Taking advantage of these technologies will aid in the standardizing and streamlining of the report submission process, as well as improve FinCEN databases so they provide more useful information to law enforcement agencies.

The Chamber stands ready to work with you on these issues going forward.

Sincerely,

Will Gardner
Director
Center for Capital Markets Competitiveness
U.S. Chamber of Commerce