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Via: electronic submission http://www.regulations.gov

July 31, 2017

Department of Treasury
1500 Pennsylvania Ave
Washington, DC 20220

Re: Request for information and recommendations for Treasury Department regulations that can be eliminated, modified, or streamlined in order to reduce burdens

Dear Sir or Madam:

The Department of Treasury, in furtherance of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda ("Executive Orders" or "EOs"), is seeking comment and recommendations for Treasury Department regulations that can be eliminated, modified, or streamlined in order to reduce burdens. The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to comment on the Treasury Department's request for information.

ICBA commends the Treasury Department for carrying out the Executive Orders and seeking comment and recommendations to reduce regulatory burden. ICBA's comments are limited to the regulations, forms, and guidance documents issued by the Financial Crimes Enforcement Network (FinCEN). Bank Secrecy Act regulations have accreted steadily over past decades, but are rarely removed or modernized, resulting in a redundant and sometimes conflicting burden. A

[1] *The Independent Community Bankers of America®, the nation's voice for more than 5,800 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services. With 52,000 locations nationwide, community banks employ 760,000 Americans, hold $4.7 trillion in assets, $3.7 trillion in deposits, and $3.2 trillion in loans to consumers, small businesses, and the agricultural community. For more information, visit ICBA's website at www.icba.org.*

primary challenge facing community banks today is the sharply increasing burden of complying with these growing regulatory requirements. Additionally, these regulations often disproportionately burden community banks because they do not have dedicated legal and compliance departments and they have a smaller asset base over which to spread compliance costs. Therefore, we appreciate the Treasury Department's efforts to combat this clear trend of growing regulatory burden.

Community banks fully support the fight against terrorist financing and money laundering activities and are committed to supporting balanced, effective measures that will prohibit these offenders from using the financial system for illegal gains. However, banks are currently being effectively deputized to identify, investigate, and report on financial crimes. While banks are eager to cooperate with law enforcement, they should not act as police. There needs to be more balance between the responsibility of the public and private sector to detect and prevent financial crime.

Additionally, community banks spend significant resources — in terms of both direct and indirect cost — complying with the Bank Secrecy Act and anti-money-laundering laws and regulations. However, the cumulative impact of these regulations places a burden on community banks that is often disproportionate to the benefits of the additional regulatory requirements. As the government continues to combat money laundering and terrorist financing, it is important to focus on quality over quantity for all BSA reporting and compliance requirements.

Currency Transaction Reports

A bank must file a Currency Transaction Report (CTR) for each currency transaction of more than $10,000 by, through, or to the bank.[2] Multiple currency transactions totaling more than $10,000 during any one business day are treated as a single transaction if they are by or on behalf of the same person.[3] The current threshold for filing currency transaction reports (CTRs) was set in 1970. It is significantly outdated and captures far more transactions than originally intended.

ICBA recommends raising the CTR threshold from $10,000 to $30,000 and indexing future increases on an annual basis for inflation. CTRs are intended to collect information for investigations in money laundering, terrorist financing and other financial crimes. However, the overwhelming percentage of CTRs relate to ordinary business transactions, which create an enormous burden on financial

[2] FFIEC BSA/AML Examination Manual (2010), p. 84
[3] Id. at 86

institutions that is not commensurate with financial crime investigations. A higher threshold would produce more targeted, useful information for law enforcement.

Suspicious Activity Reports

Every bank must file a report of any suspicious transaction it believes is relevant to a possible violation of law or regulation by completing a Suspicious Activity Report ("SAR"), and collecting and maintaining supporting documentation.[4] Suspicious activity reporting is the cornerstone of the Bank Secrecy Act (BSA) system and is a way for banks to provide leads to law enforcement. However, in the current regulatory environment, community banks are faced with a cumbersome and overly burdensome process to ensure they are protected and no mistakes are made when reviewed by examiners. They are questioned about the number of SARs filed in relation to the number of alerts generated rather than the quality of the bank's monitoring system or investigative process. As a result, bank employees are often filing SARs as a defensive measure and to ensure that in hindsight they did not miss or overlook any details in the report.

For each transaction that is identified as suspicious, a thorough investigation is conducted. Investigations typically include monitoring and reviewing all documentation and interviewing appropriate personnel. A review of the investigation is conducted by a BSA-trained employee, and, if a community bank has the staff and resources, a second review by either a BSA committee or senior BSA officer is also performed. The investigation is documented and retained on transactions for which a SAR is filed as well as for those investigations for which a SAR is not filed. If a SAR is not filed, banks must justify to their examiner why a flagged transaction did not result in a filed SAR. Although this process is time consuming and labor intensive, community banks recognize the importance of accurately reporting suspicious transactions. However, community banks will follow the same SAR procedure for every suspicious transaction alert no matter how minor or severe the potential offense. This approach leaves community banks skeptical that the method by which SARs are completed provides commensurate value to law enforcement.

This places a significant burden on community banks. ICBA recommends that the SAR process be improved to be a more risk-based system with appropriate threshold increases. Similar to the CTR thresholds, the SAR filing thresholds have not been adjusted since becoming effective and increasing those thresholds would enable community banks to provide more directed and valuable information to law enforcement.

[4] 31 CFR 1020.320

Compensation for Anti-Money Laundering and Anti-Terrorist Financing Efforts

Community bankers are committed to supporting balanced, effective measures that will prevent terrorists from using the financial system to fund their operations and prevent money launderers from hiding the proceeds of criminal activities. However, as FinCEN identifies additional high-risk transactions and accounts, it increases banks' requirements in these new areas. It is important that the Treasury Department recognize the extensive efforts made by community banks to prevent money laundering and terrorist financing and compensate them, either financially or through reduced regulatory burden in other areas.

Customer Due Diligence on Beneficial Owners of Certain Legal Entities

FinCEN recently amended the BSA rules to require banks to conduct and document customer due diligence (CDD) on beneficial owners of legal entity customers that open new accounts. Under the new rules, banks must establish and maintain written procedures that are reasonably designed to identify and verify beneficial owners of new accounts opened by legal entity customers. Banks also must maintain a record of the identifying information obtained, and a description of any document relied on, of any non-documentary methods and the results of any measures undertaken, and of the resolution of each substantive discrepancy.

The new CDD rules for beneficial owners applies to new accounts and includes legal entity accounts whose beneficial ownership information has already been collected. ICBA recommends that FinCEN amend its rules to permit banks to rely on existing beneficial ownership information when opening subsequent accounts for legal entity customers.

A bank that has identified and verified the beneficial owners of a legal entity account should be able to use that information when opening subsequent accounts for the legal entity, provided it has no knowledge of facts that would reasonably call into question the reliability of that information. A bank will be required to obtain updated beneficial ownership information when it learns of new information, during its risk-based monitoring. Additionally, banks will be required to conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information including information regarding the beneficial owners of legal entity customers. Requiring the information to be collected repeatedly on the same legal entity customers is redundant and costly.

As ICBA has stated previously, beneficial ownership information should be collected and verified at the time a legal entity is formed and shifting the

responsibility and oversight of collecting this information to financial institutions is misguided and ineffective. The benefits to our society and individual fraud victims, if crime and terrorist financing are reduced as a result of this final rule, would more appropriately apply to a country whose government uniformly and consistently collects beneficial ownership information – not to the limited collection of beneficial ownership information by one private industry sector, the financial services sector.

Additionally, relying on one private industry sector to collect and maintain beneficial ownership information for all legal entities does not provide adequate benefits to justify the associated costs of the final rule. As technological advances are consistently improving and nonbank industries are developing, legal entities will not necessarily need to rely solely on the financial services sector to transfer or hold funds – illicit or otherwise. As such, the benefits identified as a result of the CDD rule are incorrectly skewed.

Conclusion

ICBA thanks the Treasury Department for seeking recommendations to reduce regulatory burden and appreciates the opportunity to comment. We urge the Department to continue its assessments and collaborate with its stakeholders to identify additional alternatives that would be less burdensome to financial institutions. If you have any questions, please do not hesitate to contact me at Lilly.Thomas@icba.org or 202.659.8111.

Sincerely,

/s/

Lilly Thomas
Senior Vice President and Senior Regulatory Counsel