



**International Bancshares
Corporation**

July 27, 2020

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

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

Re: Supplemental Comments on Proposed Renewal Without Change Certain of the Bank Secrecy Act Reports of Suspicious Transactions (Docket Number FINCEN–2020–0004; Office of Management and Budget control numbers 1506–0001, 1506–0006, 1506–0015, 1506–0019, 1506–0029, 1506–0061, and 1506–0065)

Dear Sir or Madam:

International Bancshares Corporation (“IBC”) offers the following comments to supplement the letter it submitted on July 22, 2020 in response to the notice and request (“Notice”) by the Financial Crimes Enforcement Network (“FinCEN”) for comment on a proposed change in the calculation of burden estimates related to suspicious activity report (“SAR”) filings under the Bank Secrecy Act (“BSA”).

This letter pertains to the Notice’s first specific request for comments, which invites the public to suggest other factors that FinCEN should consider in evaluating the burden and cost of SAR reporting. The estimate of the SAR reporting burden proposed by FinCEN in the Notice is based exclusively on information that was extractable from the 2019 SAR filings. IBC’s initial letter recommended that FinCEN review the SAR reporting requirements and engage in a cost-benefit analysis to determine whether any data elements can be removed from the SAR process due to being statistically insignificant in identifying, investigating, or prosecuting the type of illegal activity that the BSA and FinCEN’s law enforcement rules aim to counteract. IBC now writes to suggest an additional factor that should influence FinCEN’s estimation of the SAR reporting burden—namely, the tremendous burden and costs of operating a monitoring system and ensuring it remains compliant with the ever-growing body of cross-agency regulatory requirements that monitoring systems are subject to.

The overall costs associated with compliance are staggering. The total projected cost of financial crime compliance in the United States is estimated at \$26.4 billion.¹ On average, mid-to-large U.S. organizations with total assets of \$10 billion or more spend \$14.3 million

¹ LexisNexis Risk Solutions, True Cost of Financial Crime Compliance Study 9 (2020). This global survey drew findings from the responses of nearly 900 financial crime compliance decision makers and aimed to “[u]nderstand the cost of compliance, its year-over-year trends, and the degree to which these are apportioned across resources and compliance activities.” *Id.* at 2–3.

annually on financial crime compliance, with 54% of these costs attributed to labor and 46% to technology.² As indicated in Table 1 of the Notice, which reports that banks were responsible for over half of the 2,751,694 SAR submissions in 2019, the banking industry shoulders the majority of these exorbitant compliance costs. For IBC, the cost of annual BSA compliance totals over \$12 million.

Maintaining a monitoring system is a significant and costly aspect of BSA compliance. In the six-stage SAR filing process contemplated by the Notice, the first three stages involve filers' implementation, maintenance, operation, and assessment of a monitoring system, reliance on the system to evaluate the validity of generated alerts, and use of the system as a basis for further information gathering if the alert is deemed to have successfully captured a credible potential risk event. A compliant monitoring system must provide, "at a minimum: (1) A system of internal controls to assure ongoing compliance; (2) Independent testing for compliance to be conducted by bank personnel or by an outside party; (3) Designation of an individual or individuals responsible for coordinating and monitoring day-to-day compliance; (4) Training for appropriate personnel; and (5) Appropriate risk-based procedures for conducting ongoing customer due diligence . . . for the purpose of developing a customer risk profile; and . . . [c]onducting ongoing monitoring to identify and report suspicious transactions."³

While the Notice emphasizes how technology fosters efficiency in the compliance process, the implementing regulations make clear that there is an underlying manual component to compliance that relies on individual personnel performing case-by-case, customer-by-customer assessments. North American financial organizations spend an average of 11 hours clearing alerts triggered by anti-money laundering ("AML") transaction monitoring systems and 6 hours clearing Know Your Customer due diligence alerts.⁴ As these numbers demonstrate, technology may streamline certain aspects of regulatory compliance but does not replace the role of personnel and manual effort. The costs of manual processes cannot be understated and should be factored in to the calculation of SAR burden estimates. While technology can sometimes make the impossible possible, it often does so at a very high cost in terms of both personnel and dollars.

The cost of labor to operate a minimally compliant monitoring system is only one facet of the overall regulatory burden. Financial institutions must also ensure that the monitoring systems in place comply with model validation and verification requirements. The Supervisory Guidance on Model Risk Management (the "OCC Guidance"), adopted by the Office of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System in 2011 and by the Federal Deposit Insurance Corporation in 2017, acknowledges "the direct cost of devoting resources to develop and implement models

² *Id.* at 12–13.

³ 31 C.F.R. § 1020.210(b).

⁴ LexisNexis Risk Solutions, *supra* note 1, at 27.

properly.”⁵ To address “the possible adverse consequences (including financial loss) of decisions based on models that are incorrect or misused[,]” the OCC Guidance requires banks to expend additional resources to actively manage model risk. Effective model risk management involves “[r]igorous model validation”; “sound development, implementation, and use of models”; and “governance and control mechanisms such as board and senior management oversight, policies and procedures, controls and compliance, and an appropriate incentive and organizational structure.”⁶ Of the estimated \$26.4 billion that U.S. financial firms spend on AML compliance, approximately 28% is spent on AML compliance management, and 23% is spent on suspicious activity and transaction monitoring.⁷ While IBC recognizes the policy objective in requiring financial institutions to continually evaluate the accuracy of the monitoring systems they are relying on, the indirect costs of this repetitive assessment must be accounted for in the estimation of the SAR filing burden.

Other costs associated with the maintenance of a regulatory-compliant monitoring system include the costs of engaging in operational risk governance, providing information technology and business support, training compliance personnel for each stage of the SAR filing process, drafting and implementing policies and procedures to document de-risk efforts, and remediating model risk findings. Despite the massive costs of regulatory AML compliance, the success of AML efforts is relatively dismal. Of the estimated \$3 trillion criminal funds generated each year, authorities successfully confiscate roughly \$3 billion in illicit funds, meaning the annual AML success rate is a mere 0.05%, and the global costs of compliance (approximately \$300 billion) are 100 times greater than the amount of successfully recovered illicit funds.⁸

The imposition of this cost on the banking industry as an unfunded government mandate is unjustified. Through increasingly onerous BSA/AML regulations, federal regulators have passed the burden of fighting money laundering to financial organizations, treating them as quasi law enforcement officials without providing the industry with a cost-benefit justification. For banks, the return on their compliance investment is effectively zero. Increasing compliance costs have lowered productivity, hindered customer acquisition efforts, and caused compliance team retention issues across the banking industry. Fear of the financial and reputational penalties for failing to catch covert criminal transactions has forced banks to be overly skeptical of customer activities, which results in monitoring systems that flag suspicious activity with a false-positive rate of over 95% and SARs never

⁵ Office of the Comptroller of the Currency, OCC 2011-12, Supervisory Guidance on Model Risk Management 1 (2011).

⁶ *Id.* at 2.

⁷ LexisNexis Risk Solutions, 2019 True Cost of AML Compliance Study, United States & Canada Edition 39 (2019).

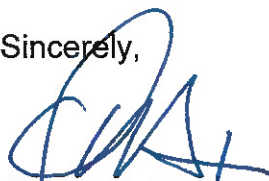
⁸ Ronald F. Pol, *Anti-Money Laundering: The World's Least Effective Policy Experiment? Together, We Can Fix It*, 3 Pol'y Design & Prac., no.1, Feb. 25, 2020, at 73, 88, <https://www.tandfonline.com/doi/pdf/10.1080/25741292.2020.1725366?needAccess=true>.

being filed for roughly 98% of the system-produced alerts.⁹ Apathetic to the burden imposed by the mounting costs passed on to the private sector, federal regulators have no incentive to address the inefficiency in compliance cost allocation, the diminished value of SAR filings to law enforcement, or the counterproductivity of private financial institutions expending billions of dollars to comply with the BSA regulatory regime in exchange for the public to recuperate an infinitesimal fraction of the illicit funds generated annually.

IBC appreciates FinCEN's efforts to modernize how the SAR filing burden is quantified and agrees with FinCEN that "the information provided by [the] [N]otice, though not a complete estimate of the SAR PRA burden, improves the estimate and creates a foundation for a future estimate of the costs of all six stages." However, failing to account for the operational and regulatory costs attributable to the monitoring system component of the SAR filing process undermines the accuracy of FinCEN's burden estimate. For that reason, IBC offers these supplemental comments in response to FinCEN's specific request for suggestions regarding "other factors that may affect the burden and cost of SAR reporting" and urges FinCEN to reevaluate its estimation in light of these pressing factors.

Thank you for the opportunity to share IBC's view.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dennis E. Nixon", is written over the word "Sincerely,".

Dennis E. Nixon
President and CEO

⁹ Joshua Fruth, *Anti-Money Laundering Controls Failing to Detect Terrorists, Cartels, and Sanctioned States*, REUTERS (Mar. 14, 2018), <https://www.reuters.com/article/bc-finreg-laundering-detecting/anti-money-laundering-controls-failing-to-detect-terrorists-cartels-and-sanctioned-states-idUSKCN1GP2NV>.