BANK POLICY INSTITUTE

August 31, 2020

Via Electronic Mail

Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Re: Submission for OMB Review; Comment Request; Multiple Financial Crimes Enforcement Network Information Collection Requests

To Whom It May Concern:

The Bank Policy Institute[1] appreciates the opportunity to respond to the Department of the Treasury's submission for renewal without change, under the Paperwork Reduction Act, of the Financial Crimes Enforcement Network's suspicious activity and currency transaction information collection requirements. As discussed in BPI's submissions under this renewal, we appreciate FinCEN's efforts to further enhance its assessment of the burden imposed on financial institutions by SAR and CTR requirements. However, and as noted in BPI's SAR and CTR submissions respectively, we believe that the burden estimates in each reassessment are significantly lower than financial institutions' experiences and do not account for the full scope of activities undertaken to comply with these requirements.

In particular, in BPI's July 27 submission to FinCEN, which is attached as Annex A, on the Bank Secrecy Act's suspicious activity information collection requirements ("SAR submission"), we recommend that the burden assessment reflect that producing SARs is an enterprise-wide initiative and consider several additional activities that impose substantial burdens and costs on financial institutions. Furthermore in both the SAR submission and BPI's July 13 submission to FinCEN, which is attached as Annex B, on the Bank Secrecy Act's currency transaction information collection requirements ("CTR submission"), we raise significant concerns with assumptions made in each assessment around the level of automation utilized by financial institutions to comply with these reporting requirements and the staffing resources devoted to fulfilling these requirements, among other things. In both cases, we

[1] The Bank Policy Institute is a nonpartisan public policy, research and advocacy group, representing the nation's leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they employ almost 2 million Americans, make nearly half of the nation's small business loans, and are an engine for financial innovation and economic growth.

recommend that FinCEN revise the factors used to calculate the estimated burden to better align with financial institution practices.

Furthermore, and in line with the purposes of the Paperwork Reduction Act, to "ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government" and "improve the quality and use of Federal information to strengthen decisionmaking, accountability, and openness in Government and society" —and the purpose of the Bank Secrecy Act (the "BSA")—to "require certain reports or records where they have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism," our submissions provide numerous recommendations for improving the efficiency and effectiveness of SAR and CTR requirements. These recommendations notably include (i) a holistic review of SAR and CTR requirements to prioritize the reporting of highly useful information to law enforcement; (ii) revising regulatory requirements to facilitate automated filings of certain reports; and (iii) other technical regulatory changes. In addition, each submission discusses broader reforms that could improve the effectiveness of the U.S. AML/CFT regime, including setting priorities that can be used for coordinating policy and examinations across the government.

* * * * *

The Bank Policy Institute appreciates OIRA's consideration of its comments. We hope that they will inform OMB's review of current BSA SAR and CTR expectations. If you have any questions, please contact the undersigned by phone at 202-589-1935 or by email at *Angelena.Bradfield@bpi.com.*

Respectfully submitted,

Angelena Bradfield

Angelena Bradfield
Senior Vice President, AML/BSA, Sanctions & Privacy
Bank Policy Institute

Annex A

BANK POLICY INSTITUTE

July 27, 2020

Via Electronic Mail

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

Re: Request for Comments Regarding Suspicious Transaction Reporting Requirements (Docket No. FINCEN–2020–0004 and OMB control numbers 1506–0001, 1506–0006, 1506–0015, 1506–0019, 1506–0029, 1506–0061 and 1506–0065)

Ladies and Gentlemen:

The Bank Policy Institute ("BPI")[1] appreciates the opportunity to respond to the Financial Crimes Enforcement Network's May 2020 request under the Paperwork Reduction Act (the "PRA") for comment on FinCEN's proposal to renew without change currently approved information collections requiring certain financial institutions to file Suspicious Activity Reports ("SARs") (the "PRA Notice"). We appreciate FinCEN's efforts to refine its assessment of the burden imposed by SAR requirements.

The burden assessment in the PRA Notice considers, as compared to previous assessments, additional activities that financial institutions undertake as part of their SAR programs. However, the updated burden assessment still does not address the full range of activities engaged in by institutions in connection with satisfying SAR requirements. Further, for the activities that FinCEN considers in deriving the updated assessment, several of FinCEN's assumptions result in an estimated burden dramatically lower than financial institution estimates. Although it has not been feasible to collect and review quantitative data within the 60 day comment period following the publication of the PRA Notice, we offer the following comments and suggestions to enhance FinCEN's burden assessment. In addition,

[1] The Bank Policy Institute is a nonpartisan public policy, research and advocacy group, representing the nation's leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they employ almost two million Americans, make nearly half of the nation's small business loans, and are an engine for financial innovation and economic growth.

we offer recommendations for improving the effectiveness and efficiency of SAR requirements. We believe that these recommendations are in line with the purposes of the PRA—to "ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government" and "improve the quality and use of Federal information to strengthen decision making, accountability, and openness in Government and society"[2]—and the purpose of the Bank Secrecy Act (the "BSA")—to "require certain reports or records where they have a *high degree of usefulness* in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism."[3]

In Section I below, we address the full scope of activities that financial institutions undertake in connection with their SAR programs, and recommend revising the burden assessment to consider these activities. In Section II below, we address certain assumptions FinCEN uses in deriving the estimated burden of the activities considered in the PRA Notice, and recommend revisions that would allow the burden assessment to better reflect the processes that institutions have in place with respect to suspicious activity reporting. In Section III below, we provide recommendations to make the SAR framework more effective and efficient, with the ultimate goal of enhancing the usefulness of SARs for law enforcement and national security efforts to detect and address domestic and international money laundering.

I. FinCEN's Burden Assessment Should Be Revised to Address the Full Scope of Activities Undertaken to Comply with SAR Requirements.

A. The burden assessment for suspicious activity reporting should reflect that producing SARs is an enterprise-wide initiative.

BPI appreciates FinCEN's efforts in the PRA Notice to include additional activities that financial institutions must undertake in complying with SAR requirements. Previously, as FinCEN describes in the PRA Notice, the PRA burden associated with those requirements included only the burdens and costs of producing and filing SARs and storing a copy of filed SARs. We agree that the burden should also take into consideration, as FinCEN does in the PRA Notice, reviews of cases to determine whether a SAR is merited and documentation of decisions not to file a SAR.

However, the activities that FinCEN proposes to consider for the purpose of assessing the PRA burden of SAR requirements exclude numerous additional activities that financial institutions undertake to comply with SAR requirements, including related regulatory expectations.[4] SAR programs—from

---

[2] 44 U.S.C. § 3501(2), (4).

[3] 31 U.S.C. § 5311 (emphasis added).

[4] For a general overview of key activities in which financial institutions engage in connection with their AML programs, including with respect to suspicious activity reporting, see BPI, *Getting to Effectiveness – Report*

generating alerts to reviewing cases, documenting decisions and filing SARs—are enterprise-wide initiatives that involve several other processes, including customer due diligence, training, independent testing and governance. An accurate estimate of the burden associated with SAR requirements should include all relevant processes to the extent they are necessary for compliance with FinCEN's SAR rule. By assessing only the burden of case review, documentation of decisions and the SAR filing process (what FinCEN describes in the PRA Notice as Stages 4, 5 and 6), FinCEN derives a burden assessment that we believe dramatically understates the actual burden that SAR requirements impose on financial institutions.

The estimate of one BPI member institution is illustrative. That single institution reports that it spends more than $111 million annually on its SAR program—an amount that exceeds the total annual PRA cost estimated in the PRA Notice *for all banks* ($107.8 million). The institution's $111 million estimate includes the activities considered by FinCEN in the PRA Notice, as well as a few other activities necessary to address compliance with FinCEN's SAR rule. According to the institution, approximately 10% of these SAR-related costs are for staff dedicated to maintaining monitoring systems and reviewing alerts, 70% are for investigative staff and 20% are for technology-related costs associated with maintaining suspicious activity reporting systems. The institution further reports that this cost estimate is not comprehensive of all costs incurred in connection with suspicious activity reporting since it excludes, for example, investments in innovative technology relating to SAR processes and the time risk management and front line personnel spend responding to inquiries from anti-money laundering ("AML") staff related to suspicious activity.

B. FinCEN should consider in the burden assessment several additional activities that impose substantial burdens and costs on financial institutions.

1. Stages 1, 2 and 3

FinCEN recognizes in the PRA Notice that its burden assessment is incomplete. More specifically, FinCEN identifies three "stages" of the SAR filing process that it is not addressing: maintaining a monitoring system (Stage 1), reviewing alerts (Stage 2) and transforming alerts into cases (Stage 3). We appreciate FinCEN's concern about identifying data to calculate the burden associated with these activities, and recognize that FinCEN intends to address this burden in a future notice. However, we respectfully submit that these activities impose significant burdens that should be considered by FinCEN in order to generate a reasonably accurate estimate of the burden institutions face as a result of SAR requirements.

Stage 1. Institutions expend significant resources on maintaining a suspicious activity monitoring system. In addition to resources required for ongoing maintenance, threshold changes and testing, institutions must also address various significant and often burdensome compliance-related

---

on U.S. Financial Institution Resources Devoted to BSA/AML & Sanctions Compliance, at 3 (Oct. 29, 2018), *available at* https://bpi.com/wp-content/uploads/2018/10/BPI_AML_Sanctions_Study_vF.pdf.

expectations, including with respect to model validation. One large BPI member institution reports that it maintains over 100 different AML-related modules and models that are used in connection with suspicious activity monitoring. Even excluding the technology-related investment required to build and maintain these modules and models, their ongoing maintenance imposes substantial burdens and costs in connection with (i) production support and performance monitoring; (ii) production and maintenance of model policy requirements and documentation, and remediation of model risk findings; and (iii) ongoing model enhancements.

Stages 2 and 3. Similarly, reviewing alerts and transforming alerts into cases impose substantial burdens on financial institutions. The 2018 BPI report cited by FinCEN in the PRA Notice estimates that only approximately 19% of AML alerts become cases.[5] To address regulatory expectations, institutions expend significant resources in reviewing large volumes of alerts, the vast majority of which do not become cases. As with cases, the time it takes to review alerts from monitoring systems—as well as the "manual" alerts described below—depends in large part on the complexity and risk of the underlying activity. For example, more time is required to review an alert on a brokerage account than one on a consumer account. However, in light of regulatory expectations, institutions must, for any alert that does not become a case, sufficiently document the basis for that determination.

Further, FinCEN should consider combining the information gathering aspect of transforming alerts into cases (Stage 3) with case review (Stage 4) and documentation of case disposition (Stage 5, when a determination is made not to file a SAR, and part of Stage 6, when a determination is made to file a SAR). Gathering information about parties and transactions, which FinCEN appears to include in Stage 3, may require significant amounts of time, depending on the number of systems an investigator must access, and, when a customer's customer is involved, may require contacting other institutions. Such information gathering is frequently required even after investigators determine that an alert should become a case. For example, during case review, investigators often must analyze the flow of funds, which in many instances leads to a determination that additional subjects and/or counterparties must be included in the investigation. After making such a determination, an investigator must gather information about the newly included subjects and/or counterparties, and their transactions. In addition, as discussed further in Section II.C below, case review and preparation of documentation are themselves interdependent. As investigators perform and complete investigative tasks, they also prepare notes, comments and summaries as to the information reviewed and the basis for assumptions and conclusions. According to BPI member institutions, the activities undertaken to gather information, review cases and document case dispositions do not differ depending on whether a SAR is filed. To address regulatory expectations, a full, documented review must be conducted regardless of whether a case leads to the filing of a SAR.

---

[5] *See id.* at 6 tbl. 1. As noted in the report, a direct relationship could not be drawn between the number of alerts and the number of cases, as the alerts provided related to AML only, whereas cases might have related to fraud or AML. However, we believe this figure remains instructive as to the large amount of alerts that do not become cases, and including fraud alerts would have decreased the conversion rate.

2. Other activities

In addition to the activities included in Stages 1, 2 and 3, we believe several other activities and processes not addressed in the PRA Notice should be considered in assessing the burden of SAR requirements. As part of their SAR programs, institutions also engage in activities that include those listed below, each of which imposes a significant burden. Given that suspicious activity reporting is an enterprise-wide initiative, as mentioned above, these are not the only additional activities that should be considered by FinCEN. However, we believe that including these activities, together with those included in Stages 1, 2 and 3, for the purpose of assessing the burden of SAR requirements would enable FinCEN to produce a substantially more accurate estimate.

Generation of "manual" alerts. FinCEN's description of the SAR filing process in the PRA Notice, especially for the largest financial institutions, appears only to include SARs that result from alerts generated by monitoring systems. However, "manual" alerts—including, but not limited to, those resulting from internal referrals, external referrals (*e.g.*, from law enforcement), negative news and annual reviews of high-risk customers—account for a substantial proportion of alerts, cases and SARs. Although external referrals from law enforcement, for example, may result in a relatively small number of cases and SARs, as compared to other sources, we believe the resulting SARs are especially impactful for law enforcement objectives. Institutions expend considerable resources to enable manual alerts to be appropriately generated and incorporated into suspicious activity investigative processes.

Customer inquiries. A key objective of investigators in reviewing a case is to determine whether the activity is reasonable and explainable, and therefore not suspicious. Making such a determination frequently requires one or more inquiries addressed to an institution's customer. Generating and processing these inquiries requires significant time, both of AML staff and of the bankers that have the direct customer relationships.

SAR amendments. FinCEN's description of the SAR filing process in the PRA Notice includes original SARs and continuing SARs, but not amendments to already-filed SARs. Substantial investigative resources are required to determine when such an amendment is required and in preparing related documentation.

Law enforcement requests. The 2018 BPI report cited by FinCEN in the PRA Notice notes that eight responding institutions had a median of approximately 4% of SARs that led to follow-up inquiries from law enforcement.[6] Given the nature of these requests, responding to them imposes a significant burden on financial institutions. Because responding to these requests is critical in fulfilling the purpose of the BSA to make highly useful information available to law enforcement and national security authorities, the associated burden should be properly accounted for by FinCEN.

---

[6] BPI, *supra* note 4, at 6. As discussed in the report, law enforcement contact includes subpoenas, national security letters and requests for SAR backup documentation.

Quality control. To address regulatory expectations, financial institutions incorporate quality control into alert review, case investigation and documentation processes, with quality control checks applicable to all cases, including those that do not result in the filing of a SAR. Quality control is performed by capable, relatively highly paid investigators, and, like the other activities in this list, imposes a significant burden.

Control activities, reporting, governance and training. Compliance with any reporting requirement, including SAR requirements, requires robust control, reporting, assurance and internal audit activities. For example, institutions deploy governance resources to draft, maintain and update processes, policies, procedures and controls related to all facets of SAR programs. Institutions must also prepare management information, including reports on suspicious activity monitoring and reporting, for regular internal governance meetings. In addition, institutions must deploy training professionals with sufficient expertise to understand emerging financial systems and products, as well as money laundering methods and typologies, so that they can provide appropriate training. The substantial resources devoted to governance, training and other control, reporting, assurance and audit activities should be considered in assessing the burden associated with SAR requirements.

Technology and operational support. Institutions also expend significant resources to maintain technological systems related to suspicious activity reporting. In addition, institutions require technological and operational support for relevant case management systems, model development and risk management, information databases and data storage.

II. FinCEN Should Revise the Factors Used to Calculate the Estimated Burden in the PRA Notice to Better Align with Financial Institution Practices.

In the PRA Notice, FinCEN assesses the burden associated with SAR requirements separately for each of three "stages": case review (Stage 4), documentation of determinations that a SAR filing is not warranted (Stage 5) and selecting documentation for, completing and filing SARs, and storing filed SARs and supporting documentation (Stage 6). As described above, we believe the burden assessment should also consider several additional activities. Nevertheless, we respectfully submit that FinCEN should update certain assumptions it makes in assessing the burdens and costs associated with Stages 4, 5 and 6 to better align with financial institution practices.

A. The factors used to determine which SARs are complex should be updated.

We support FinCEN's efforts in the PRA Notice to categorize SARs by their complexity. We also support FinCEN's recognition that the complexity of a SAR affects the amount of time required for much of the process of SAR preparation, including case investigation and review. In addition, we recognize, as FinCEN does, that the factors that contribute to SAR complexity may differ between various types of financial institutions.

However, we believe FinCEN should update the factors used to categorize SARs filed by depository institutions as having "standard" as opposed to "extended" content. According to the PRA

Notice, for original SARs filed by depository institutions, FinCEN determines which SARs have extended content based on those that have greater numbers of persons identified as subjects and distinct suspicious activities selected, contain a longer narrative and/or include an attachment.[7] We believe that narrative length and the presence of an attachment are not accurate indicators of a SAR's complexity, and that in determining which SARs are more complex, FinCEN should take into account several additional factors.

1. Narrative length

We believe there is little correlation between the length of the narrative section of a SAR and the time required to investigate the case. For example, BPI member institutions reported that many SARs related to fraud have a relatively short narrative. However, where loss occurs, the institution must, in performing a complete investigation, contact customers, attempt to identify victims and perpetrators and stop and/or recover funds. Even where no loss occurs, an institution may need to take action to prevent loss or to link together multiple, related instances of fraudulent activity. Additionally, investigations and SARs involving a customer's customer can be more time-consuming, including to allow for other institutions to respond to information requests. As a result, notwithstanding the SARs' shorter narratives, the associated investigations may require significantly more time than investigations for certain AML-related SARs. More generally, BPI member institutions report that some of their lengthiest investigations, requiring reviews of large numbers of subjects and accounts, result in shorter narratives because they are able to summarize the relevant activities and group together relevant subjects and activity types. As a result, we believe FinCEN should revise its methodology to not use narrative length as a measure of a SAR's complexity.

2. Attachments

We similarly believe that the presence of an attachment is not an accurate way to identify more complex SARs. Attachments that provide additional transactional information are optional under the instructions for the SAR form, and several financial institutions report that they have policies and procedures that do not provide for the inclusion of attachments, even for their most complex SARs.

3. Additional factors

We support, in determining whether depository institution SARs are complex, consideration of the number of persons identified as subjects as well as the number of distinct types of suspicious activity. In our view, the following additional factors, which in some cases may be quantified from the BSA database, are also equally or, in some cases, more predictive of a SAR's complexity: (i) the type or types of identified suspicious activity; (ii) the number of accounts involved; (iii) the volume of

---

[7] FinCEN does not consider SARs filed by depository institutions to have extended content if they have a high ratio of digits to non-digit text in the SAR narrative.

transactions; and (iv) the length of the review period (*i.e.*, the length of the time during which the suspicious activity occurred).[8]

Type or types of identified suspicious activity. Reviews of certain typologies generally require substantially more time and resources, and the presence of these typologies may provide a more accurate predictor of a SAR's complexity than, for example, the number of persons identified as suspects. Investigations of cases related to certain high frequency typologies, such as structuring, are generally less complex. In contrast, for numerous other typologies, including terrorist financing, trade based money laundering, corruption, human trafficking, other forms of illicit financing and involvement of a high risk jurisdiction, law enforcement authorities frequently encourage institutions to conduct network analysis and provide cyber-related information. The nature of these typologies, considered together with law enforcement expectations, generally makes related investigations significantly more complex and time consuming.

Number of accounts involved. Like the number of persons identified as subjects, the number of accounts involved may correlate with the complexity of a SAR. We believe FinCEN therefore should include both of these measures in determining the SARs considered to be more complex. For example, a SAR that reports on one subject and ten separate accounts may be equally or more complex than a SAR that reports on ten separate subjects and one account.

*Volume of transaction*s. Investigations involving business accounts are generally more time-consuming than investigations related only to personal accounts. Because cases involving business accounts generally involve a significantly higher volume of transactions, we believe SARs that include a higher transaction volume are likely, in general, to involve more complex cases. Further, for large commercial relationships, the volume of transactions reported in a SAR may represent a small fraction of the total transaction volume that was reviewed; reviewing a larger set of transactions than is included in the SAR requires a significant amount of additional time and is frequently necessary to address regulatory expectations.

Length of the review period. If suspicious activity, as described in the SAR narrative, occurs over a long period of time, we believe this likely indicates, in general, that more time was required to investigate the case.

---

[8] We note that cases that involve subpoenas generally are among the most complex cases, due to the nature and scope of the required inquiry. However, in light of FinCEN's request to focus on categories of SARs that it can quantify by analyzing the contents of the BSA database, 85 Fed. Reg. 31,598, 31,613 (May 26, 2020), we focus in this section on factors relevant to a SAR's complexity that may be identifiable in that database.

B. The burden assessment should be updated to reflect that batch filing does not significantly decrease the time required for SARs filed by large institutions.

FinCEN estimates in the PRA Notice that the SAR process requires substantially less time to complete for batch-filed, as compared to discrete-filed, SARs. For depository institutions, FinCEN estimates that discrete-filed SARs require 50% more time to draft, write and submit than batch-filed SARs.[9]

However, for large depository institutions, the time required for SAR preparation and submission is not significantly different between batch- and discrete-filed SARs.[10] Very little of the time that institutions require to prepare and submit a SAR is spent on the actual process of submission, and for both types of SARs, institutions use the same processes, which in substantial part require manual intervention of relevant staff to determine how to complete the over 240 fields of the SAR form. Further, regardless of the method of submission, staff must review the draft report prior to submission, especially in light of the potential for regulatory scrutiny of errors or omissions. Accordingly, we respectfully submit that FinCEN should assign the same, or substantially the same, burden for SAR processes (taking into account the SAR's complexity) whether they lead to batch- or discrete-filed SARs.

C. The burden of case review and documentation should be considered as part of a single overall process and the associated burden should be significantly increased.

In the PRA Notice, for a batch-filed original SAR, FinCEN estimates that case review, documentation and submission (Stage 4 and Stage 6, excluding the time associated with storing a filed SAR and supporting documentation) require a total of 60 minutes for a less complex SAR and 220 minutes for a more complex SAR.[11] For a continuing batch-filed SAR, FinCEN estimates that those processes require 23 minutes in total.[12] For a case that does not result in the filing of an original SAR,

---

9 FinCEN estimates that less complex original SARs require 60 minutes for drafting, writing and submitting if discrete filed and 40 minutes if batch filed, and that more complex SARs require 300 minutes for drafting, writing and submitting if discrete filed and 200 minutes if batch filed. FinCEN similarly estimates that storing filed reports and supporting documentation requires appreciably more time (200% more) for discrete-filed SARs (15 minutes per report) as compared to batch-filed SARs (5 minutes per report).

10 Institutions, however, report that they invest considerably more in governance and controls with respect to processes for batch filing SARs, including related automation, due to the larger potential effects of errors, as compared to processes for discrete filing.

11 FinCEN estimates that Stage 4 requires 20 minutes to determine if a case merits filing an original SAR, and Stage 6 (excluding the time associated with storing a filed SAR and supporting documentation) requires (i) 40 minutes to draft, write and submit a batch-filed standard content original SAR or (ii) 200 minutes to draft, write and submit a batch-filed extended content original SAR. For discrete-filed original SARs, FinCEN estimates that these activities require, in aggregate, 80 minutes and 320 minutes for standard content and extended content SARs, respectively.

12 FinCEN estimates that Stage 4 requires 3 minutes to determine if a previously filed SAR merits a continuing SAR, and Stage 6 (excluding the time associated with storing a filed SAR and supporting

FinCEN estimates that case review and documentation (Stage 4 and Stage 5) require 45 minutes in total.[13]

Institutions, however, do not engage in case review and documentation as discrete stages or processes, as the PRA Notice suggests. Instead, these activities are part of a consolidated process that applies to original SARs, continuing SARs and cases that do not result in the filing of a SAR. Accordingly, we believe that FinCEN should consider Stage 4, Stage 5 and the documentation aspects of Stage 6 together for the purpose of assigning burden. As noted in Section I.B.1 above, we believe that the information gathering activities that FinCEN includes in Stage 3 should also be included in this consolidated process. We believe further that the estimated burden for this process, in conjunction with the estimated burden for submitting SARs, should—for cases related to original SARs, whether less or more complex, and cases related to continuing SARs—be dramatically increased from the estimates that FinCEN includes in the PRA Notice. BPI member institutions report that those estimates significantly understate the burdens and costs of case review and documentation in all cases, whether related to original or continuing SARs, and especially in the context of complex cases.

1. Cases related to original SARs

SAR programs generally combine, in a consolidated process, the various activities required for case investigation and documentation. In reviewing any case related to a potential original SAR, relevant staff must access the financial institution's numerous internal systems that contain valuable information. Those staff generally must log in to the systems, formulate search parameters, filter through results, analyze data and download information. They often must also review publicly available information as part of the research. At the same time they complete these investigative tasks, they are also developing investigative notes, case comments and/or summaries as to the information reviewed and the basis for any assumptions and conclusions. Investigators document all decisions in case management tools, which are subject to robust quality control review and testing. Many institutions also have in place committees, composed largely of individuals in management roles, that are responsible for reviewing and making decisions on cases and SARs. The decisions of these committees, together with related action items, are documented in meeting minutes.

Given how institutions complete these activities, there is little difference in the process or time required for cases of a similar level of complexity, regardless of whether they result in the filing of a SAR. To address regulatory expectations, no determination regarding whether to file a SAR may be made without a full, documented review of all relevant, available data. As a result, documentation requirements are essentially the same regardless of whether a case results in a SAR, as are the scope and robustness of related quality control and testing processes. In fact, institutions may, on average,

---

documentation) requires 20 minutes to draft, write and submit a batch-filed continuing SAR. For discrete-filed continuing SARs, FinCEN estimates that these activities require, in aggregate, 43 minutes.

[13] FinCEN estimates in the PRA Notice that Stage 4 requires 20 minutes to determine if a case merits filing an original SAR and Stage 5 requires 25 minutes to document the basis for not filing a SAR.

compile and retain a *greater* quantity of material to support decisions not to file SARs in order to reduce the risk of audit or supervisory criticism in those cases. As a result, the burden assigned to case investigation and documentation should not differ based on whether a SAR was filed, but only depending on the complexity of a case.

Further, we believe that FinCEN's estimates in the PRA Notice of the total time required for these activities substantially underestimate the associated burden. In connection with responding to a 2018 FinCEN notice under the PRA,[14] BPI member institutions estimated that even the most straightforward SARs require from one-and-a-half to five hours to complete. More recently, individual institutions report that the amount of time required for these most straightforward SARs has increased to three to five hours per SAR, or has become more variable, with these SARs requiring between 45 minutes and seven-and-a-half hours to complete. For the reasons described above, the same estimates also apply to straightforward cases that do not result in the filing of a SAR. More complex cases can require several days or more for investigation and documentation. We therefore respectfully request that FinCEN significantly increase the estimated burdens for the investigation and documentation of all cases related to original SARs, both less complex and more complex cases.

2. Cases related to continuing SARs

As FinCEN notes in the PRA Notice, institutions often require less time to review cases related to potential continuing SARs. However, we believe that the time required, on average, for investigation, documentation and submission in connection with these cases is significantly longer than the 23 minutes per batch-filed report estimated by FinCEN in the PRA Notice.

Although some cases related to continuing SARs are especially straightforward because the continuing activity is the same as the activity that led to the previous SAR, many cases involve additional activity and/or additional customers and counterparties. In such cases, the time required for a continuing investigation, together with any associated SAR committee review, is substantially longer and may be similar to that required for completion of an original case. Further, an investigator that conducts a continuing review will often be different from the investigator that conducted the original review, which requires the new investigator to spend time researching the institution's prior investigations and submissions. One BPI member institution reports that it may require up to six hours to complete investigation and documentation for a continuing SAR.

FinCEN also assumes in the PRA Notice that all cases related to potential continuing SARs in fact result in a SAR filing. For original SARs FinCEN assumes, based on the 2018 BPI report discussed above, that the conversion rate from cases to SARs is 42%. In contrast, for continuing SARs FinCEN effectively assumes a conversion rate from cases to SARs of 100%. Institutions, however, review a significant number of cases related to continuing activity that result in a determination that no continuing SAR

---

[14] *See* Letter to FinCEN, from The Clearing House re: Comments to FinCEN's PRA Notice for SAR and CTR Requirements, at 3 (Apr. 10, 2018).

needs to be filed. As a result, while the conversion rate from cases to continuing SARs is higher than the 42% figure applicable to original SARs, it is significantly less than 100%, and institutions invest substantial resources in investigating cases and preparing documentation where a determination is made that a continuing SAR is unnecessary.

Accordingly, we believe that FinCEN's estimates in the PRA Notice of the time required for case review and documentation for continuing SARs significantly underestimate the associated burden. We respectfully submit that FinCEN should assign a substantially higher PRA burden for these activities, and also apply this burden to cases that do not result in the filing of a continuing SAR.

D. The burden assessment should be updated to reflect the specialized nature of relevant staff.

For the purpose of estimating the cost of the PRA burden, FinCEN assumes in the PRA Notice that four types of activities are performed in connection with case review, documentation preparation, submission and recordkeeping: indirect supervision, direct supervision, clerical work related to case review and clerical work related to recordkeeping. FinCEN assumes further that these activities are performed by employees with the median hourly wages of financial managers, compliance officers, financial clerks and tellers, respectively, and that the percentage of time associated with each of these four activities differs among the various tasks that FinCEN includes in Stages 4, 5 and 6.[15]

BPI member institutions report that, on average, the costs associated with these aspects of their SAR programs are significantly higher than FinCEN's estimates. As described above, institutions generally integrate case investigation and documentation. The process for completing these tasks generally relies on compliance teams that include compliance managers, compliance investigators and compliance analysts. These staff perform activities that FinCEN describes as indirect supervision, direct supervision and case review clerical support. Importantly, because of significant regulatory focus on suspicious activity reporting, including determinations not to file SARs, institutions must deploy staff with relevant, specialized skills and experience. As a result, we believe SAR program staff may have median hourly wages that exceed the median wages cited by FinCEN in the PRA Notice for staff engaged in, as relevant, direct supervision, indirect supervision and case review clerical support.

Further, institutions do not generally rely on what FinCEN describes as recordkeeping clerical work in connection with their SAR programs. Staff that perform this activity may have limited roles in generating manual alerts or, in limited cases, reviewing low risk, low complexity cases involving

---

[15] FinCEN assumes that case review (Stage 4) is predominantly direct supervision (60% of the time) and case review clerical work (30%), with the remainder (10%) indirect supervision. Documenting cases not turned into SARs (Stage 5) is predominantly recordkeeping clerical work (80%) and the remainder direct (19%) and indirect (1%) supervision. Drafting, writing and submitting SARs (part of Stage 6) is predominantly case review clerical work (80% for standard content original SARs or continuing SARs, 75% for extended content original SARs), with the remainder direct supervision (19% and 20%, respectively) and indirect supervision (1% and 5%, respectively). Storing filed SARs and supporting documentation (also part of Stage 6) is predominantly recordkeeping clerical work (95%), with the remainder direct supervision (5%).

straightforward structuring or fraud. However, because of the significant regulatory focus noted above, institutions have determined that their SAR programs generally require more specialized, skilled staff.

Therefore, we respectfully request that FinCEN update the weighted average hourly cost it uses in calculating the PRA burden to include only the higher-wage employees institutions deploy for their SAR programs. This change would increase average hourly costs, which would better align with the experience of BPI member institutions.

III. Treasury, in Consultation with Relevant Parties, Should Review Current SAR Requirements, De-prioritize the Investigation and Reporting of High Frequency, Limited Complexity SARs and Create Feedback Opportunities for the Law Enforcement and National Security Communities.

In addition to our comments specific to the PRA Notice, as reflected above, we offer several recommendations aimed at making the SAR framework more effective and efficient, with the ultimate goal of enhancing the usefulness of SARs for law enforcement and national security efforts to detect and address domestic and international money laundering.

A. FinCEN and the federal banking agencies should modernize, tailor and clarify criteria that trigger SAR filing obligations.

The illicit finance risks present today differ significantly from the risks present when Treasury promulgated the SAR rule. Accordingly, FinCEN and the federal banking agencies should review the SAR criteria and related guidance and remove any that are obsolete and therefore of little law enforcement or national security value. In connection with this review, FinCEN should provide an update to financial institutions on the keywords and advisories that continue to be active and valid in connection with SAR requirements.

In removing obsolete requirements, FinCEN and the federal banking agencies should, for example, no longer require a SAR to be filed under the 90 day continuing activity review requirement. Removing such overly inclusive triggers, and aligning supervisory expectations and examination standards with the changes, would enable institutions to shift AML and countering the financing of terrorism ("CFT") resources to activities that would provide a higher value to law enforcement and national security officials. Further, in some circumstances, removing SAR criteria may prevent possible harm to innocent customers: many institutions have policies requiring the termination of a customer relationship after a certain number of SARs relating to that customer are filed, even if there is no basis for suspicion other than the criteria that required the filing of the SARs.

In addition to removing obsolete criteria and guidance, FinCEN, working with the federal banking agencies, should, where possible, tailor the scope of the type of conduct and clarify the level of suspicion or evidence of that conduct that triggers an obligation to file a SAR. By better tailoring SAR criteria, FinCEN and the banking agencies will help to eliminate marginal reports that tend to be of little or no investigative value. Of particular note, the filing of SARs is currently required for a "transaction

[with] no business or apparent lawful purpose."[16] We believe this criterion should be tailored to specify that, unless there are additional facts that provide a basis for suspicion, a SAR is not required simply because a transaction lacks an identifiable business or lawful purpose, or is not a transaction in which a customer would normally be expected to engage. Broad interpretations of the "no apparent purpose" criterion, potentially requiring SAR filings even where institutions lack a basis for suspicion, have contributed to the filing of SARs with little usefulness, especially in the context of correspondent banking, where the institution filing the SAR may simply have no direct insight into the business of the transaction's ultimate beneficiary. In addition, we believe FinCEN should consider tailoring the application of the 2016 advisory addressing cyber-events and related suspicious activity reporting.[17] Cyber-events are frequently reported to law enforcement and national security authorities through other mechanisms, including the Financial Services Information Sharing and Analysis Center. As a result, additional reporting of cyber-events in SARs, especially where there is no apparent connection to financial crime, in many cases imposes a substantial burden, but may provide limited additional usefulness.

B. FinCEN and the federal banking agencies should clarify the scope of certain expectations with respect to SAR filings.

In practice, compliance by depository institutions with SAR requirements largely reflects the supervisory expectations of the federal banking agencies, which examiners frequently treat as binding. FinCEN should work with the agencies to update these expectations to ensure that institutions focus their SAR programs on providing highly useful information to law enforcement and national security authorities. FinCEN should also urge the Federal Financial Institutions Examination Council ("FFIEC") to update and revise, and to continue to do so on a frequent basis, the sections of the BSA/AML Examination Manual that address how examiners assess compliance with SAR requirements. Updates to the manual should also provide examiners with tools to properly assess the effectiveness of programs and the proper management of risks, rather than technical compliance.[18]

We believe the following clarifications to regulatory expectations would significantly further the burden-reducing objective of the PRA, while either increasing or having little impact on the usefulness of SAR information provided to law enforcement or national security authorities: *First*, after an investigator determines a requisite level of suspicious activity and the institution files a SAR, there should be no requirement that the institution conduct a follow-up review of additional transactions or counterparties related to the filing. *Second*, a short, concise statement describing an institution's

---

16 *See, e.g.*, 31 C.F.R. § 1020.320(a)(2)(iii).

17 FinCEN, *Advisory to Financial Institutions on Cyber-Events and Cyber-Enabled Crime*, FIN-2016-A005 (Oct. 25, 2016).

18 Changes to the manual should be informed by discussion with and ultimately discussed with the private sector. Any expectations that the FFIEC, or any of the agencies comprising the FFIEC, view as "binding" should be subject to public notice and comment.

rationale for not filing a SAR should be sufficient documentation, and there should be no expectation that an institution will prepare a detailed description of its case investigation and decision-making process where a determination is made not to file a SAR. *Third*, if an institution files multiple SARs on a single customer, there should be no requirement or expectation that the institution will exit the customer after filing a certain number of SARs, and the institution should instead be encouraged to consider the actual financial crime risk of the customer holistically, together with any other relevant factors, including law enforcement's interest in keeping an account open, when determining whether to modify or exit the customer relationship.

Further, as BPI has previously raised with FinCEN and the federal banking agencies, the agencies should clarify that, with respect to certain activities, automated approaches can be used to satisfy SAR requirements. For example, where a structuring-related alert is generated, an institution should be able to file the transactional details with FinCEN. Those details would include information such as the names of the account holders or any other persons reasonably known to the institution to be involved, and the locations of the deposits. In connection with such a filing, the institution would not conduct a comprehensive investigation of the activity, unless it received a follow-up inquiry from law enforcement or national security authorities. After receiving such a follow-up inquiry, the institution would be required to conduct a full and timely investigation of the activity. A similar approach to initial, automated filings should also be considered for other high frequency, limited complexity types of suspicious activity. Allowing automated approaches for reporting of certain types of activity would reduce burdens on financial institutions. It would also enable institutions to focus their AML/CFT resources on higher value activities, without affecting the ability of law enforcement and national security officials to receive appropriate information when requested.[19]

C. FinCEN and the federal banking agencies should clarify model risk management expectations for BSA/AML systems.

The Model Risk Management guidance released by the Board of Governors of the Federal Reserve System and the OCC in 2011 focuses on capital and other financial modeling.[20] Nevertheless,

---

[19] In this regard, we welcome the recent conclusion of the Office of the Comptroller of the Currency (the "OCC") that a national bank's proposal for streamlining the filing of certain structuring SARs is consistent with the OCC's SAR regulation, 12 C.F.R. § 21.11(c), and the OCC's BSA/AML compliance program regulation, 12 C.F.R. § 21.21. *See* OCC, Interpretive Letter 1166 (Sept. 27, 2019), *available at* https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2019/int1166.pdf. We note, however, that the other federal banking agencies and FinCEN have not publicly addressed their views as to whether such an automated approach for certain SARs would be consistent with their parallel regulations.

[20] Bd. of Governors of the Fed. Reserve Sys. and OCC, Supervisory Guidance on Model Risk Management (Apr. 4, 2011), *available at* https://www.federalreserve.gov/supervisionreg/srletters/sr1107a1.pdf; *see also* Fed. Deposit Ins. Corp., Adoption of Supervisory Guidance on Model Risk Management (June 7, 2017) (adopting the 2011 Model Risk Management guidance for certain institutions), *available at* https://www.fdic.gov/news/financial-institution-letters/2017/fil17022.pdf. We note that the first sentence of the guidance states that "Banks rely heavily on quantitative analysis and models in most aspects of *financial* decision making" (emphasis added). Further, although the introduction indicates that

examiners have required that depository institutions apply it to a wide range of processes, including AML monitoring, and have treated its requirements as binding.

FinCEN should work with the federal banking agencies to clarify that AML/CFT programs are expressly exempt from the Model Risk Management guidance. The screening and monitoring mechanisms employed by these programs are distinct from the capital and other financial models for which the guidance was written. For example, approaches to AML transaction monitoring do not generate alerts that predict suspicious activity. Instead, these approaches typically use behavior detection to identify a set of transactions that require in-depth qualitative investigation to determine if there is potential suspicious activity. The design of detection approaches is highly subjective and draws on functional and subject matter expertise and, as a result, financial institutions' AML/CFT programs operate in an environment of material imprecision and incompleteness. In such an environment, the significant time and costs associated with implementing governance structures similar to capital and liquidity models often do not result in actionable recommendations.

In addition to clarifying that this guidance does not apply to AML/CFT programs, regulators should identify unique aspects of AML/CFT screening and monitoring mechanisms. Doing so would help align regulatory expectations with the objective of providing information that is highly useful in achieving law enforcement and national security goals, and reduce burdens incurred in addressing current expectations. FinCEN and the federal banking agencies should accordingly recognize that: (i) financial crime data used to calibrate and validate AML/CFT risk management models is often imperfect and/or a limited proxy for true financial crime; (ii) AML tools are fundamentally different from complex economic models used for capital and liquidity purposes; and (iii) due to the nature of AML efforts, an institution's control framework must allow for quick adjustments to address changes in criminal behavior.

We believe that, instead of independent validation and/or model risk management techniques, AML/CFT programs should remain subject to the controls and independent testing that are already part of well-governed AML programs and are required by the current AML/CFT regime. This controls-based testing regime should also undergo qualitative analysis of approaches, parameters and assumptions to ensure that AML screening and monitoring mechanisms continue to highlight the relevant observable patterns of transaction activity.

Finally, to the extent the agencies intend AML-specific model risk management expectations to be binding, they should be issued for public notice and comment.

---

models are used for a broad range of activities, none of the enumerated examples includes BSA/AML functions.

D. Treasury, in consultation with regulators and law enforcement, should set priorities for the AML/CFT regime that can be used for coordinating policy and examinations across the government.

In connection with modernizing SAR requirements and expectations, Treasury should, in partnership with the law enforcement and national security communities, conduct a broader review to ensure SAR information collection is appropriately tailored to its purpose of providing useful information to law enforcement and national security officials. A core problem with today's AML/CFT regime is that the law enforcement and national security communities—the end users of SAR information—have very little input into the way financial institutions deploy their resources to meet reporting requirements.

Any holistic regulatory review intended to refocus the current AML/CFT regime must therefore involve not only representatives of the law enforcement and national security communities, but also the relevant financial supervisors. Such a regulatory review should assess the utility in achieving law enforcement and other national security goals of information reported pursuant to current SAR requirements and related regulatory expectations. Those requirements and expectations, including associated rules and guidance, should then be tailored so that financial institutions may focus their resources on higher value reports and other higher value activities.

We respectfully submit that two additional initiatives should also be considered as part of a holistic review aimed at improving coordination across the AML/CFT regime and increasing focus on activities with the highest utility to the law enforcement and national security communities.

First, a mechanism should be developed for law enforcement and national security authorities to provide regular feedback to financial institutions on filed SARs to enable them to target their internal monitoring and tracking mechanisms to better serve law enforcement and national security goals. In line with the 2020 revisions to the FFIEC's BSA/AML Examination Manual, this feedback should then be incorporated into supervisory evaluations of an institution's BSA/AML program. As noted above, for a 2018 BPI report, institutions reported that a median of approximately 4% of SARs were the subject of a follow-up inquiry from law enforcement. A mechanism that provides feedback for some or all SARs—including the other 96% not subject to follow-up inquiries—will greatly assist institutions in targeting their resources. Law enforcement and national security authorities might also provide information about the usefulness of SAR information through more general outreach and training programs with financial institutions and their primary regulators.

Second, Treasury should undertake broader efforts to facilitate and improve dialogue among the various public- and private-sector entities involved in AML/CFT efforts in the United States to better prioritize and coordinate those efforts. One mechanism to facilitate and improve dialogue would be a more robust, regular and inclusive exercise that includes the end users of SAR data. Through this exercise, goals and priorities for the U.S. AML/CFT system would be set. Treasury is uniquely positioned to establish such a process and balance the sometimes conflicting interests relating to national security, the transparency and efficacy of the global financial system, the provision of highly valuable information to regulatory, tax and law enforcement authorities, financial privacy, financial inclusion and

international development.[21] The process should also produce guidance that financial supervisors may use in establishing examination standards with respect to suspicious activity reporting.

We believe a holistic review of the AML/CFT regime and related initiatives to better align the suspicious activity reporting regime with the needs of law enforcement and national security end users will improve the quality and usefulness of the information collected from financial institutions by the government, and therefore also further the purposes of the PRA.

We recognize that modernization of the AML/CFT framework is the subject of several current legislative efforts that would, for example, require a review of current SAR thresholds and encourage improved cooperation among Treasury, financial supervisors, law enforcement and national security agencies and financial institutions.[22] We believe these legislative efforts would have a significantly positive effect in improving the effectiveness and efficiency of the AML/CFT regime. Accordingly, BPI strongly supports these efforts.

* * * * *

The Bank Policy Institute appreciates FinCEN's consideration of its comments. If you have any questions, please contact the undersigned by phone at 202-589-1935 or by email at *Angelena.Bradfield@bpi.com.*

Respectfully submitted,

Angelena Bradfield

Angelena Bradfield
Senior Vice President, AML/BSA, Sanctions & Privacy
Bank Policy Institute

---

21 Clear precedents for such a process include the production of the National Security Strategy and the National Intelligence Priorities Framework, which both use interagency processes to establish priorities.

22 *See*, *e.g.*, Amdt. 1 to H.R. 6395, H.R. Rep. No. 116-457, at 43-81 (July 20, 2020).

Annex B

BANK POLICY INSTITUTE

July 13, 2020

Via Electronic Mail

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

Re: Request for Comments Regarding Currency Transaction Report Requirements (Docket No. FINCEN–2020–0003 and OMB control numbers 1506–0004, 1506–0005, and 1506–0064)

Ladies and Gentlemen:

The Bank Policy Institute ("BPI")[1] appreciates the opportunity to respond to the Financial Crimes Enforcement Network's May 2020 request under the Paperwork Reduction Act ("PRA") for comment on FinCEN's proposal to renew without change currently approved information collections requiring certain financial institutions to file Currency Transaction Reports ("CTRs") (the "PRA Notice"). We appreciate FinCEN's efforts to further enhance its assessment of the burden imposed on financial institutions by CTR requirements.

We believe that renewing CTR requirements without change, as proposed, would forgo an important and constructive opportunity to improve the effectiveness and efficiency of the CTR reporting framework. Indeed, certain enhancements and revisions to the CTR reporting framework would better serve not only the purposes of the PRA—to "ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government" and "improve the quality and use of Federal information to strengthen

[1] The Bank Policy Institute is a nonpartisan public policy, research and advocacy group, representing the nation's leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they employ almost two million Americans, make nearly half of the nation's small business loans, and are an engine for financial innovation and economic growth.

decision-making, accountability, and openness in Government and society"[2]—but also the purpose of the Bank Secrecy Act ("BSA")—to "require certain reports or records where they have a *high degree of usefulness* in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism."[3]

In Section I below, we address certain assumptions in FinCEN's burden assessment. We also recommend revisions that would allow that assessment to better reflect the processes that large depository institutions have in place with respect to CTR reporting and address the resources those institutions invest in such processes.

In Sections II and III below, we provide recommendations to make the CTR reporting framework more effective and efficient, with the ultimate goal of enhancing the usefulness of CTRs for law enforcement and national security efforts to detect and address domestic and international money laundering. The recommendations in these sections are discussed in substantial detail in previous letters from and a report by one or both of BPI's two predecessor organizations, The Clearing House Association and the Financial Services Roundtable.[4]

I. FinCEN Should Revise its Burden Assessment to Include the Full Scope of Resources Invested in Pre-Filing Review, Identification, Technology, Training, Testing, and Quality Assurance.

BPI appreciates FinCEN's efforts in the PRA Notice to update its assessment of the burden associated with the CTR reporting regime. We support including in that assessment both the "traditional" PRA burden associated with producing and filing CTRs and storing filed CTRs and an additional "supplemental" PRA burden associated with obtaining data required for CTRs not otherwise necessary for bookkeeping and maintaining, updating, and upgrading relevant technological infrastructure.

The largest depository institutions, which generally file at least 100 CTRs per week and therefore represent, according to data presented by FinCEN, over 70% of the CTRs filed in 2019,[5] utilize a variety of technologies and processes to obtain data for, produce, file, and store CTRs. Several changes should be made to FinCEN's burden assessment to more accurately reflect the common processes that these

---

2 44 U.S.C. § 3501(2), (4).

3 31 U.S.C. § 5311 (emphasis added).

4 *See* Letter to FinCEN, from The Clearing House re: Comments to FinCEN's PRA Notice for SAR and CTR Requirements (Apr. 10, 2018); Letter to the Department of the Treasury, from The Clearing House and the Financial Services Roundtable re: Review of Regulations (July 31, 2017); Report of The Clearing House, *A New Paradigm: Redesigning the U.S. AML/CFT Framework to Protect National Security and Aid Law Enforcement* (Feb. 2017).

5 85 Fed. Reg. 29,022, 29,023 tbl. 1 (May 14, 2020).

institutions have in place with respect to CTR reporting and to reflect the full scope of the burden that institutions face in satisfying CTR reporting requirements.

A. The traditional PRA burden should reflect that the process of preparing CTRs for batch filing is not fully automated, even for the largest institutions.

In the PRA Notice, for institutions that file more than 100 CTRs per week utilizing batch filing, FinCEN assumes that the process for preparing such filings is fully automated and "nearly instantaneous."[6] Accordingly, FinCEN estimates that the time required to produce and submit these CTRs, as well as carry out, review, and oversee relevant processes, is, on average, one minute per CTR.

While we agree that one minute is a reasonable approximation of the average time an institution requires to complete batch filing of a CTR that is ready for filing, FinCEN's assumption about the level of automation does not correspond to how large institutions in fact prepare CTRs in advance of filing. As a result, the total time that these institutions require to prepare, review, submit, and oversee the CTR filing process significantly exceeds an average of one minute per CTR.

In general, large institutions utilize a "hybrid" approach to CTR preparation that relies on both automated systems and manual review. As an initial step, after transaction data is entered by a teller, automation identifies transactions that may require the filing of a CTR. These systems then prepare draft CTRs based on information available from multiple data sources. Many or all automatically generated CTRs then undergo manual review prior to filing. The proportion of CTRs subject to manual review varies across institutions, but it represents a significant percentage of (and for some institutions all) CTRs.

Manual review of automatically generated CTRs is required so that institutions can verify the accuracy of the populated information, conduct appropriate research, and make necessary edits. Verifying accuracy serves as important pre-filing quality control, and has improved the overall quality of institutions' CTR filings. Manual intervention to edit CTRs that have been automatically pre-populated is also required for numerous types of CTRs that may be batch filed. Edits may be necessary, for example, in circumstances that include the following: (i) where data mismatches arise when compiling information from multiple transactions; (ii) where errors are identified in information inputted by a teller; (iii) where images of cashed checks must be reviewed to determine the true beneficiary of funds; and (iv) where information needed for the CTR is not stored in the system of record, such as when the conductor of a deposit is not a customer.[7]

---

6 85 Fed. Reg. at 29,025.

7 The conductor of a deposit may not be a customer if, for example, the conductor is an individual depositing a check on behalf of a non-exempt business customer or the conductor is depositing a check written by a customer and drawn on the institution.

Manual review of CTRs is also necessary in connection with certain large customers that regularly undertake significant numbers of cash transactions, but are ineligible for an exemption under the CTR rule. These customers include, for example, non-listed businesses that provide various financial services.[8] Preparation of a single CTR, even one ultimately batch filed, that aggregates multiple transactions for these customers may require several hours or even a full day to prepare, especially if issues are identified requiring correction in the underlying data. Some institutions deploy dedicated teams to prepare CTRs for these customers. Although these CTRs generally represent a small share of total CTRs filed by large depository institutions, the significant time required for their preparation increases the average burden for these institutions of preparing CTRs.

As a result, we believe that FinCEN should include in the traditional PRA burden for large institutions the time that institutions spend on pre-filing manual review of CTRs that are ultimately batch filed. BPI member institutions report that manual review processes represent the majority of the time expended on preparing and filing batch-filed CTRs and calculate that the average time for *preparing* each such CTR is substantially longer than the one minute that is also necessary to *complete* the batch filing.[9]

B. The traditional PRA burden assessment should be updated to reflect the typical pay of the operations staff that bears the primary burden of CTR preparation and filing.

For the purpose of estimating the cost of the traditional PRA burden, FinCEN assumes in the PRA Notice that operations staff requires 90% of the time, with direct supervision requiring 9% of the time and remote supervision requiring 1% of the time. We support this allocation of the burden for preparing and filing CTRs as a reasonable approximation.

However, we respectfully submit that FinCEN should increase the median hourly wage used to calculate the cost of the operations staff responsible for preparing and filing CTRs. In estimating the cost of operations work for this purpose, FinCEN uses the median hourly wage of tellers. While tellers are critical to the process of preparing and filing CTRs because they input the transaction data that is ingested into relevant systems, much of the time that large institutions devote to preparing and filing CTRs is attributable to the pre-filing manual review of CTRs described above. This manual review is generally undertaken by staff that includes financial crime analysts and financial crime specialists, and in some cases by dedicated teams specially trained to, among other things, assess the accuracy of CTR information, identify and correct errors, and make any other necessary edits before a CTR is filed. Although these individuals may sit within front line units, their average pay is higher than FinCEN's estimate given the specialized nature of their activities and may be more comparable to that of a

---

8 *See* 31 C.F.R. § 1020.315(e)(8).

9 Although BPI member institutions report that preparation of a CTR for batch filing requires, on average, substantially longer than one minute, it has not been feasible, given the limited time between the release of the PRA Notice and the deadline for responding, to generate a reasonably accurate estimate of the precise amount of time, on average, these institutions require for preparing a CTR.

compliance officer. Accordingly, we believe FinCEN should assign a significantly higher wage to operations work in the calculation of the PRA burden.

C. The supplemental PRA burden understates identification-related requirements and should reflect that these requirements impose burdens in a broader range of transactions.

We agree that financial institutions must collect additional identification information when a person conducts a transaction on behalf of another. For example, a transaction on behalf of a business may be conducted by an employee who is not him- or herself a customer, and therefore the institution must obtain and verify identification information of that employee in order to complete a CTR. We therefore support including this identification-related burden in the supplemental PRA burden.

However, FinCEN's identification-related assumptions in the PRA Notice should be revised to reflect that depository institutions do not conduct reportable transactions solely with established customers. For example, depository institutions may cash checks written by customers, even where the payee is not a customer. In such transactions, the institution must obtain and verify identification information for the transaction principal.

Further, FinCEN assumes in the PRA Notice that CTR requirements impose identification-related burdens solely in connection with transactions that in fact result in the filing of a CTR.[10] This assumption is incorrect. In order to comply with the aggregation requirement,[11] financial institutions must collect identification information for conductors of cash transactions involving significantly less than $10,000—that is, transactions that are not themselves reportable—in case, as a result of multiple transactions, a filing becomes necessary. Accordingly, we respectfully request that FinCEN revise the identification-related burden to reflect that the PRA burden of obtaining source data applies to a significantly broader set of cash transactions than just those that result in the filing of a CTR.

D. The estimated burden understates technology-related costs for large institutions.

We agree with FinCEN's assumption in the PRA Notice that financial institutions maintain separate systems dedicated solely to addressing CTR requirements. However, we submit that FinCEN's estimate of technology-related burdens in the PRA Notice significantly understates those burdens.

FinCEN estimates that technology-related burdens represent 15% of the total burden for fully-automated filers, which include large depository institutions, based on a 2008 survey that assessed how much it would cost institutions to maintain systems for reporting cross-border electronic transmittal of

---

[10] *See* 85 Fed. Reg. at 29,026 ("FinCEN assigns an ID-related PRA burden of three minutes per person for an institution to collect the required information *to file a CTR* on a person conducting a transaction on behalf of another person." (emphasis added)).

[11] 31 C.F.R. § 1010.313.

funds. We believe this survey is not a reliable basis to estimate the technology-related costs associated with CTRs. Compliance with funds transfer rules requires data from a more limited set of sources than does compliance with CTR requirements. Funds transfer rules also do not include an aggregation requirement, which significantly affects the technology infrastructure implemented for CTR reporting.

To address CTR requirements, institutions have implemented automated processes that assist in identifying when a CTR may be required and that pull certain or all data elements from various sources. In many cases, this technology is provided by third-party vendors, imposing costs for initial licensing and implementation, as well as ongoing maintenance, updating, and upgrading. Accordingly, we respectfully request that FinCEN revise the estimated burden to reflect that for large institutions the technology-related burden and costs account for significantly more than 15% of the total burden and costs associated with the CTR reporting regime. Individual BPI member institutions report that technology-related costs represent up to 45% of their costs associated with CTRs.

E. The PRA burden assessment should include the full range of processes that institutions undertake in connection with CTR reporting.

Compliance with any reporting requirement, including CTR requirements, requires robust control, quality assurance, and internal audit activities. These processes—including related training, support functions, and technologies—allow financial institutions to have in place appropriate CTR-related processes and systems, confirm they operate as intended, and produce accurate, high-quality reports. Testing and quality assurance activities are also necessary so that processes and systems are enhanced when warranted, that defects are remediated, and that necessary changes are made to reflect product and service offerings. In addition, institutions have in place processes to respond to inquiries from law enforcement and subpoenas received in connection with submitted CTRs.

FinCEN does not include these processes and systems in its calculation of the PRA burden associated with CTRs in the PRA Notice. We respectfully request that FinCEN revise its burden estimate to take into account the substantial resources that financial institutions deploy for these aspects of their CTR programs.

II. CTR Requirements Should Be Streamlined and Modernized to Facilitate Automated Filings of Currency Transactions at a Certain Dollar Threshold, Which Will Likely Increase the Timely Submission of "Highly Useful" Information to Law Enforcement.

We recognize that the burdens associated with CTR requirements differ significantly from the burdens associated with other anti-money laundering and countering the financing of terrorism ("AML/CFT") requirements, most notably those related to Suspicious Activity Reports ("SARs"). However, as described in Section I above, financial institutions nevertheless invest significant resources in both automated and manual processes for researching transactions and preparing CTR forms to be submitted to FinCEN.

The current CTR expectations that result in this substantial burden, however, are out of date and often produce CTRs that may be of little value to law enforcement or national security authorities, given changes in the nature of customer activity since the inception of the CTR program (*e.g.*, the growth in popularity of credit cards and other intangible payment methods over cash and checks). In this respect, we note that, according to a recent empirical study of BPI member institutions, ten institutions reported that, of the CTRs they filed in 2017, less than one in 200 (0.44%) resulted in a follow-up inquiry from law enforcement.[12]

The aggregation requirement, in particular, imposes significant burdens. Compliance with the requirement also becomes particularly difficult, given the breadth of the regulatory language: an institution is expected to file a CTR if it "has knowledge that [the multiple transactions] are *by or on behalf of* any person and result in either cash in or cash out totaling more than $10,000 during any one business day."[13] The requirement to include information generally in CTRs relating to the individuals on whose behalf a transaction may be taking place similarly imposes significant burdens on financial institutions. We note also that, although institutions have avenues to pursue CTR filing exemptions, the regulatory framework applicable to such exemptions is itself significantly burdensome. Accordingly, institutions typically opt to continue filing CTRs, instead of seeking exemptions.

We therefore support tailoring and streamlining CTR requirements and related guidance. We believe changes that would support these goals include (i) removing the aggregation requirement or, alternatively, not requiring aggregation of low-value cash transactions less than a specified threshold amount, and (ii) eliminating the requirement to include information relating to the individuals on whose behalf a transaction may be taking place. Especially when the CTR regime is viewed together with the SAR regime, we believe that these changes would reduce burdens on institutions by decreasing the filing of CTRs of little value to law enforcement or national security authorities.[14]

---

12 BPI, Getting to Effectiveness – Report on U.S. Financial Institution Resources Devoted to BSA/AML & Sanctions Compliance (Oct. 29, 2018), *available at* https://bpi.com/recent-activity/getting-to-effectiveness-report-on-u-s-financial-institution-resources-devoted-to-bsa-aml-sanctions-compliance/. As discussed in BPI's report, because there is no established metric for measuring whether a CTR is "useful" to law enforcement, a proxy was used, which was derived from instances where law enforcement reached out to institutions, including through subpoenas, national security letters, or requests for backup documentation.

13 31 C.F.R. § 1010.313(b) (emphasis added); *see also* FinCEN Guidance, FIN-2012-G001, *Currency Transaction Report Aggregation for Businesses with Common Ownership* (Mar. 16, 2002), *available at* https://www.fincen.gov/resources/statutes-regulations/guidance/currency-transaction-report-aggregation-businesses-common.

14 For example, the activity that underlies a CTR filed due to the aggregation requirement would almost certainly trigger the filing of a SAR for structuring activity, if such activity was the result of an attempt to hide illicit activity. As another example, if a financial institution's SAR investigation resulted in a determination that a sufficiently large cash transaction was conducted on behalf of another individual, an institution could file both a detailed SAR and a CTR relating to same underlying activity.

We believe that the CTR regime would be further enhanced if FinCEN adopts a system in which institutions send basic cash transactional data directly to the bureau, which would eliminate the need to file a CTR. In particular, an automated approach could be put in place in which institutions send basic data only for cash transactions satisfying certain criteria, namely, a threshold less than $10,000. The basic data that institutions would provide in such a system should include data corresponding to a limited, but prioritized, set of fields currently included in the CTR form.

Such real-time, straight-through reporting would allow institutions to redeploy resources to initiatives that are a higher priority to law enforcement and national security authorities, while providing FinCEN with no less (and potentially even more) information than is provided today. Providing data in this way to FinCEN would also not increase or pose additional illicit finance risks. Rather, this reporting approach may mitigate such risks by, for example, facilitating prompt, centralized analysis of data and reducing differences that may arise due to the diverse approaches to CTR reporting utilized by various financial institutions. Of course, each financial institution would continue to review underlying transactional activity and further investigate situations that merit additional attention from a risk management perspective.

Moreover, modifications to the CTR reporting regime to incorporate real-time provision and central analysis of bulk transaction data significantly further the purposes of the PRA. In particular, such modifications would help to "minimize the paperwork burden . . . resulting from the collection of information by or for the Federal Government," "ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government," and "improve the quality and use of Federal information to strengthen decision-making, accountability, and openness in Government and society."[15]

Understandably, the precise design and implementation of a modernized CTR reporting framework would require the input and support not only of Treasury, but also of many other public and private stakeholders, including, most importantly, the law enforcement and national security communities. A new framework would also need to account for privacy and civil liberty concerns,[16] and must manage for other risks. The benefits of a modernized system, however, would almost certainly offset the development costs.

Although we strongly believe such a modernized system would provide significant value and should be implemented as soon as possible, we recognize it may take time to do so. Accordingly, Treasury could consider a pilot project in which institutions may provide relevant data in lieu of filing

---

15 44 U.S.C. § 3501(1), (2), (4).

16 Among other statutes, the Right to Financial Privacy Act of 1978 (12 U.S.C. §§ 3401 *et seq.*) prevents financial institutions from sharing information with the government without prior authorization, a subpoena, warrant, or other formal request written by an agency. 12 U.S.C. § 3402. Information required to be reported in accordance with any federal statute or rule promulgated thereunder, however, is exempt from these restrictions. *Id.* § 3413(d).

CTRs. Such a pilot project may assist in allowing for a transition to the real-time information sharing system described above.

III. Treasury Should Conduct a Holistic Review of the U.S. AML/CFT Regime to Prioritize Reporting of a High-Degree of Usefulness to Law Enforcement.

In connection with modernizing CTR requirements as described in Section II, Treasury should, in partnership with the law enforcement and national security communities, conduct a broader review to ensure CTR information collection is appropriately tailored to its purpose of providing useful information for law enforcement and national security officials. A core problem with today's AML/CFT regime is that the law enforcement and national security communities—the end users of CTR (and SAR) information—have very little input into the way financial institutions deploy their resources to meet reporting requirements.

In practice, compliance by depository institutions with CTR requirements largely reflects the supervisory expectations of the federal banking agencies. These agencies essentially function as auditors in this context, emphasizing rigorous adherence to policies, procedures, and statutory and regulatory requirements. Examinations therefore tend to focus on what examiners know and control: policies, procedures, and quantifiable metrics (such as how many computer alerts translate into filed CTRs), instead of the usefulness of CTRs for their end users in the law enforcement and national security communities.

Any holistic regulatory review intended to refocus the current AML/CFT regime must therefore involve not only representatives of the law enforcement and national security communities, but also the relevant financial supervisors. Such a regulatory review should assess the utility in achieving law enforcement and other national security goals of information reported pursuant to FinCEN's current CTR requirements. Those requirements, including rules and related guidance, should then be tailored so that financial institutions may focus their resources on higher value reports and other higher value activities.

We respectfully submit that the following three initiatives should also be considered as part of a holistic review aimed at improving coordination across the AML/CFT regime and increasing focus on activities with the highest utility to the law enforcement and national security communities:

1. Treasury should urge the Federal Financial Institutions Examination Council ("FFIEC") to continue to update and revise the BSA/AML Examination Manual, including the sections that address how examiners assess compliance with CTR requirements. Because this manual effectively determines the regulatory requirements for an institution's BSA/AML program, it should also be critically reviewed and revised frequently. Furthermore, it should provide

examiners with tools to properly assess the effectiveness of programs and the proper management of risks, rather than technical compliance.[17]

2. A mechanism should be developed to grant law enforcement and national security authorities opportunities to provide general feedback to institutions or federal banking regulators on transaction reporting. In line with the 2020 revisions to the FFIEC's BSA/AML Examination Manual, this feedback should then be incorporated into supervisory evaluations of an institution's BSA/AML program. Such a mechanism could assist in ensuring that institutions target their resources to efforts that provide information of the greatest use to law enforcement and national security authorities. Those authorities might also provide information about usefulness through more general outreach and training programs with financial institutions and their primary regulators.

3. Treasury should undertake broader efforts to facilitate and improve dialogue among the various public- and private-sector entities involved in AML/CFT efforts in the United States to better prioritize and coordinate those efforts. One mechanism to facilitate and improve dialogue would be a more robust, regular, and inclusive exercise that includes the end users of CTR (and SAR) data. Through this exercise, goals and priorities for the U.S. AML/CFT system would be set. Treasury is uniquely positioned to establish such a process and balance the sometimes conflicting interests relating to national security, the transparency and efficacy of the global financial system, the provision of highly valuable information to regulatory, tax, and law enforcement authorities, financial privacy, financial inclusion, and international development.[18] The process should also produce guidance that financial supervisors may use in establishing examination standards with respect to CTR reporting.

We believe a holistic review of the AML/CFT regime and related initiatives to better align the CTR reporting regime with the needs of law enforcement and national security end users will improve the quality and usefulness of the information collected from financial institutions by the government, and therefore also further the purposes of the PRA.

We recognize that modernization of the AML/CFT framework is the subject of several current legislative efforts that would, for example, require a review of current CTR thresholds and encourage improved cooperation among FinCEN, financial supervisors, law enforcement and national security agencies, and financial institutions.[19] We believe these legislative efforts would have a significantly

---

[17] Further, changes to the Manual should be informed by discussion with and ultimately discussed with the private sector. Any expectations that the FFIEC, or any of the agencies comprising the FFIEC, view as "binding" should be subject to public notice and comment.

[18] Clear precedents for such a process include the production of the National Security Strategy and the National Intelligence Priorities Framework, which both use interagency processes to establish priorities.

[19] *See*, *e.g.*, S. Amdt. 2198 to S. 4049, 116th Cong. 166 Cong. Reg. S3587-S3608 (June 25, 2020).

positive effect in improving the effectiveness and efficiency of the AML/CFT regime. Accordingly, BPI strongly supports these legislative efforts.

* * * * *

The Bank Policy Institute appreciates FinCEN's consideration of its comments. If you have any questions, please contact the undersigned by phone at 202-589-1935 or by email at *Angelena.Bradfield@bpi.com.*

Respectfully submitted,

Angelena Bradfield
Senior Vice President, AML/BSA, Sanctions & Privacy
Bank Policy Institute