



November 27, 2020

Via Electronic Mail

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

Re: Request for Comments Regarding FinCEN's Renewal Without Change of Anti-Money Laundering Programs; Due Diligence Programs for Correspondent Accounts for Foreign Financial Institutions and for Private Banking Accounts (Docket No. FINCEN-2020-0012 and OMB control number 1506-0046).

To Whom It May Concern:

The Bank Policy Institute ("BPI") and the Bankers Association for Finance and Trade ("BAFT") (collectively, "the Associations")¹ appreciate the opportunity to respond to the Financial Crimes Enforcement Network's ("FinCEN") request for comment under the Paperwork Reduction Act ("PRA") to renew, without change, currently approved information collections requiring financial institutions to establish due diligence programs for correspondent accounts for foreign financial institutions ("FFI") and private banking accounts.² The Associations' members together operate a significant portion of the correspondent banking network worldwide, and recognize both the importance of correspondent banking to the smooth functioning of the international financial system and the unique vulnerability of the correspondent banking system to illicit finance risks. In light of these concerns and the statutory mandate set forth in Section 312 of the USA PATRIOT Act, the Associations' member banks maintain robust programs to conduct due diligence and enhanced due diligence for correspondent accounts for FFIs and private banking accounts. These programs complement and support bank compliance with other BSA requirements, including detection and reporting of suspicious activity, among other things.

As an initial matter, the Section 312 requirements impose burdens that significantly exceed the estimates set forth in FinCEN's notice. FinCEN acknowledges in the notice that it currently lacks the

¹ Descriptions of the Associations are provided in Annex A of this letter.

² Financial Crimes Enforcement Network, Agency Information Collection Activities; Renewal Without Change of Anti-Money Laundering Programs; Due Diligence Programs for Correspondent Accounts for Foreign Financial Institutions and for Private Banking Accounts, Notice and Request for Comments, 85 Fed. Reg. 61104 (Sept. 29, 2020).

information to precisely estimate PRA hourly burdens and costs and plans to “conduct more granular studies” on this topic “to arrive at more precise estimates of net BSA hourly burden and cost.”³ Therefore, we offer contextual information and recommendations in Section I below to assist FinCEN’s study of this issue.

In addition, in Section II, we offer recommendations for improving the effectiveness and efficiency of the requirements related to foreign correspondent banking. These recommendations align with both 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”⁴—and the purpose of 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.”⁵

I. FinCEN Should Update the Assessment Criteria to Include All Aspects of Banks' Foreign Correspondent and Private Bank Account Due Diligence Programs and Utilize Public Source Data and Voluntary Industry Engagement Mechanisms to Collect Additional Information on the Burdens Imposed by These Requirements.

The USA PATRIOT Act and its implementing regulations impose significant requirements on U.S. banks with respect to their foreign correspondent banking and private banking activities as described in FinCEN’s notice. In addition, government authorities, the banking industry and multinational bodies have issued an array of guidance discussing measures financial institutions should consider to properly identify, monitor and control the ML/TF risks associated with foreign correspondent banking⁶ and private banking.⁷

In compliance with the above, financial institutions that offer foreign correspondent and private bank accounts employ due diligence, enhanced due diligence (“EDD”), periodic review, senior management review and other processes to manage the risks associated with these products. For example, in addition to the robust procedures institutions utilize to open foreign correspondent

³ 85 Fed. Reg. 61108.

⁴ 44 U.S.C. § 3501(2), (4).

⁵ 31 U.S.C. § 5311 (emphasis added).

⁶ See, e.g., Federal Financial Institutions Examination Council, *Bank Secrecy Act/Anti-Money Laundering Examination Manual*, “Correspondent Accounts (Foreign),” (2014), available at https://bsaaml.ffiec.gov/manual/RisksAssociatedWithMoneyLaunderingAndTerroristFinancing/02_ep; The Wolfsberg Group, *Wolfsberg Anti-Money Laundering Principles for Correspondent Banking*, (2014), available at <https://www.wolfsberg-principles.com/sites/default/files/wb/pdfs/wolfsberg-standards/8.%20Wolfsberg-Correspondent-Banking-Principles-2014.pdf>.

⁷ See, e.g., Federal Financial Institutions Examination Council, *Bank Secrecy Act/Anti-Money Laundering Examination Manual*, “Private Banking,” (2014), available at https://bsaaml.ffiec.gov/manual/RisksAssociatedWithMoneyLaunderingAndTerroristFinancing/20_ep; The Wolfsberg Group, *Wolfsberg Anti-Money Laundering Principles for Private Banking*, (2012), available at <https://www.wolfsberg-principles.com/sites/default/files/wb/pdfs/wolfsberg-standards/10.%20Wolfsberg-Private-Banking-Principles-May-2012.pdf>.

accounts – including due diligence and EDD on the entity, its management, and its beneficial owners⁸ – once the account is opened, bank resources focus on efforts to maintain the relationship. These typically include account monitoring and transaction reviews as well as risk-based periodic reviews (e.g. every 1, 2 or 3 years) of the relationship, which can include a holistic activity review and refresh of due diligence information. Such maintenance activities can result in determinations as to whether to continue the customer relationship.⁹ In addition to these procedures, banks also apply general AML program requirements to these due diligence programs, such as internal audit and employee training.

In light of the above, the Associations believe that FinCEN’s estimate of an annual burden of two hours per covered financial institution for “maintaining, updating and obtaining senior management approval of the due diligence program”¹⁰ for foreign correspondent and private bank accounts significantly understates the resources devoted to undertaking just these activities. Banks estimate that the burden associated with these documentation expectations alone – which includes input and review by financial institutions’ business lines, compliance staff, audit staff and senior management – likely amounts to hundreds of hours. If FinCEN were to include the onboarding, periodic review, employee training and other related activities to its estimate it would drastically increase. Therefore, we support FinCEN’s intention, as proposed in the notice, to further supplement this estimate by including the resources it takes for institutions to “maintain records to document compliance with the due diligence and EDD procedures for foreign correspondent accounts, and due diligence procedures and enhanced scrutiny requirement for private banking accounts.”¹¹ Such an assessment should also account for the employee training that is required for these programs and internal audit processes.

A few of the Associations’ member banks provided information on their due diligence processes, representing almost 1700 foreign financial institution customers and over 10,600 private bank accounts, to prepare this response to the questions set forth in the notice. However, the procedures employed by the banks to open and maintain foreign correspondent and private banking accounts and, thus, their associated hourly burden and cost estimates, vary significantly. Such variation is likely the result of each individual institution’s understanding of the questions appearing in the notice, its product offerings, and its programmatic structure.¹² Therefore, the Associations cannot provide estimates that would be representative of the entire industry to inform FinCEN’s study of this issue at this time.

We would suggest that FinCEN engage with the industry, through roundtables and other voluntary mechanisms, to further understand and assess the burdens associated with foreign correspondent and private bank account due diligence programs. We note that publicly available data and information, such as releases from the Financial Stability Board, Bank for International

⁸ This can include the use of screening and other due diligence tools, as necessary.

⁹ As described in FinCEN’s notice, U.S. regulations require bank FFI correspondent account due diligence programs to include procedures for when a bank cannot perform appropriate due diligence, “including when the covered financial institution should refuse to open the account ... or close the account.” See 31 C.F.R. § 1010.610(d).

¹⁰ 85 Fed. Reg 61106.

¹¹ 85 Fed. Reg. 61107.

¹² In particular, key factors impacting these estimates likely included (i) the number of foreign correspondent and private bank accounts held at the institution; (ii) the permitted use of the accounts (e.g. downstream correspondent banking); and (iii) the level of risk associated with the customer.

Settlements¹³, and Bankers Almanac, may also inform FinCEN's study of the foreign correspondent banking relationships maintained by U.S. banks.¹⁴

II. FinCEN, in Consultation with the Federal Banking Agencies, Should Make Changes to Foreign Correspondent Banking and Related Expectations to Improve Their Efficiency Without Materially Reducing Their Effectiveness.

Foreign correspondent banking is an integral part of the international payment system, but as discussed above, we also recognize that the nature of correspondent banking makes the system uniquely vulnerable to illicit financial activity. The de-risking phenomenon has been widely discussed, both in domestic and international fora, as a problem that threatens to hinder financial inclusion and drive illicit financial risks into informal, less secure and less visible channels.¹⁵ With these concerns in mind, we offer the following recommendations which would improve the efficiency of relevant AML program activities, without materially reducing their effectiveness – ultimately strengthening the U.S. AML/CFT regime.¹⁶

As an initial matter, we note that in August 2020, FinCEN released FAQs related to the CDD rule that, among other things, confirmed that institutions may obtain information on the customers of a correspondent banking customer (*i.e.*, a respondent bank) on the basis of risk, and are not categorically required to collect information on a customer's customer.¹⁷ Given that this clarification was necessary, in part, due to the supervisory focus on this issue, we recommend that FinCEN work with the federal banking agencies to ensure this guidance is incorporated into banks' examination procedures.

In line with the above, we also recommend that FinCEN acknowledge that institutions may adjust due diligence processes with respect to correspondent accounts based on risk and that institutions that make a good faith effort to monitor transactions and identify suspicious activity in correspondent accounts will not necessarily be subject to criticism for failing to identify particular instances of suspicious activity. Correspondent banking relationships carry varying types of risks – those used to process transactions by or on behalf of third parties pose higher risk than relationships that financial institutions enter into as principals. Emphasizing the risk-based nature of the program and good faith efforts to comply with it, would provide institutions with additional comfort while furthering the objective of increasing AML program effectiveness and efficiency. To further emphasize this point, we also recommend that FinCEN review and update the regulatory definition of "correspondent

¹³ See, e.g., On the global retreat of correspondent banks, Bank for International Settlements Quarterly Review, March 1, 2020 at https://www.bis.org/publ/qtrpdf/r_qt2003g.htm.

¹⁴ We understand that the Bankers Almanac, in particular, may provide FinCEN with information on the number of correspondent relationships U.S. banks have.

¹⁵ See, e.g., Speech By Christine Lagarde, Managing Director of the International Monetary Fund, Relations in Banking—Making It Work for Everyone (July 18, 2016), available at <http://www.imf.org/en/News/Articles/2016/07/15/13/45/SP071816-Relations-in-Banking-Making-It-Work-For-Everyone>.

¹⁶ Many of these recommendations were also provided to FinCEN in BPI's comment letter on its advance notice of proposed rulemaking related to AML program effectiveness.

¹⁷ Financial Crimes Enforcement Network, Frequently Asked Questions Regarding Customer Due Diligence (CDD) Requirements for Covered Financial Institutions, FIN-2020-G002, at 1-2 (Aug. 3, 2020), available at www.fincen.gov/sites/default/files/2020-08/FinCEN%20Guidance%20CDD%20508%20FINAL_2.pdf

account.”¹⁸ Principal-to-principal interbank relationships that are established for trading purposes are typically set up to source liquidity and mitigate market risk arising from client relationships. Given the nature and purpose of this particular customer relationship and the low risk associated with it, we believe relationships of this type should not be considered “correspondent accounts.” We also recommend that FinCEN and the federal banking agencies coordinate with foreign regulators, including through various intergovernmental bodies such as the Financial Stability Board and Financial Action Task Force, to enhance international consistency as to what activities are included within foreign correspondent banking.

Furthermore, we recommend that FinCEN reconsider its approach to the requirements imposed under Sections 313 and 319(b) of the USA PATRIOT Act that banks collect a certification or recertification every three years from foreign banks for which a correspondent account is maintained in the United States.¹⁹ While the policy considerations that led to the requirement were relevant when it was formally implemented in 2002 (e.g. concerns that the account was going to be used by a foreign shell bank) many have been addressed globally, and there are likely more efficient ways to achieve the overall goal of complying with these expectations.²⁰

Finally, in order to assist bank efforts to establish a holistic view of customer activity and manage risks across borders, we recommend that FinCEN and the federal banking agencies expressly permit financial institutions to share information related to a SAR, including the underlying concerns and findings, with foreign branches and affiliates, subject to appropriate privacy controls. In addition, given the utility of the information provided through SAR filings related to foreign correspondent banking relationships, FinCEN may also want to work with banks to provide additional information on the best way to describe funds transfer flows in the SAR narrative to promote better data analysis and uniformity across cross-border payment SAR filings.

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The Associations appreciate FinCEN’s consideration of these comments. If you have any questions, please contact the undersigned: Angelena Bradfield (angelena.bradfield@bpi.com) and Samantha Pelosi (Spelosi@baft.org).

Respectfully submitted,



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¹⁸ See 31 C.F.R. § 1010.605(c).

¹⁹ 31 U.S.C. § 5318(j)-(k).

²⁰ 67 Fed. Reg. 60562.

ANNEX A

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.

The Bankers Association for Finance and Trade is the leading international financial services association whose membership includes large global and regional banks, service providers, and fintech companies headquartered around the world. BAFT provides advocacy, thought leadership, education, and a global forum for its members in transaction banking, including international trade finance and payments. For nearly a century, BAFT has expanded markets, shaped policy, developed business solutions, and preserved the safety and soundness of the global financial system.