

June 1, 2011

RE:

RIN 1506–AB12
CISADA Reporting Requirements Under Section 104(e)

The American Israel Public Affairs Committee (AIPAC) submits the following comments on the proposal of the Financial Crimes Enforcement Network (FinCEN) to implement section 104(e) of the Comprehensive Iran Sanctions, Accountability and Divestment Act (CISADA).

AIPAC strongly supports the requirements in section 104(e) of CISADA and is encouraged that FinCEN has issued a proposed rule to implement the section. The proposed rule, however, does not meet the requirements of the statute and should therefore be amended accordingly.

First, under the proposed rule, U.S. banks would be required to inquire of their foreign correspondent banks whether they maintain correspondent relations with Iranian banks under U.S. sanctions and if they have processed transfers of funds on behalf of the IRGC in the past 90 days—but only when they are specifically asked to do so by the Treasury Department.

AIPAC believes the statute requires, and Congress intended, that financial institutions that maintain foreign correspondent accounts be responsible for ensuring their foreign partners are not conducting prohibited transactions or providing prohibited financial services, as defined in Section 104 (c)(2) of CISADA. Domestic financial institutions should therefore be required to provide that information to the Treasury, not only when asked, but as soon as they are aware that the foreign financial institution is engaged in a prohibited activity.

Second, under the proposed rule, banks are only required to report whether the foreign bank has correspondent relations with a sanctioned Iranian bank or has processed fund transfers on behalf of the IRGC in the past 90 days. But under CISADA, foreign financial institutions are also required to report if they have facilitated the activities of a person subject to financial sanctions pursuant to U.N. Security Council Resolutions with respect to Iran. The proposed rule should be amended to require this additional disclosure.

Third, the proposed rule is limited to “banks” and not the broader category of “financial institutions” that is required by the statute. AIPAC believes that the statute should be adhered to and the reporting requirement be expanded accordingly.

Fourth, AIPAC believes the proposed rule should clearly outline the ramifications for foreign financial institutions that fail to provide the required information or provide incorrect information. Such ramifications should mirror the sanctions outlined in section 104(c)(1) of CISADA, which requires the Secretary of the Treasury to prohibit, or impose, strict conditions on the opening or maintaining in the United States of a correspondent account or a payable-through account by a foreign financial institution that engages in a prohibited activity.

Finally, AIPAC believes it is important that the proposed rule be finalized and implemented as soon as possible. Foreign financial institutions that carry out transactions in violation of U.S. law must be sanctioned and held to account for their activity.