



April 4, 2016

*Via Electronic Mail*

Financial Crimes Enforcement Network  
U.S. Department of the Treasury  
Attn: PRA Comments—BCTR Revision  
P.O. Box 39  
Vienna, Virginia 22183

Re: Bank Secrecy Act Currency Transaction Report (BCTR) Revised Layout and  
Proposed Additional Fields (OMB Number 1506-0064)

Ladies and Gentlemen:

The Clearing House Association L.L.C.<sup>1</sup> appreciates the opportunity to provide the Financial Crimes Enforcement Network with comments on its proposed revisions to the Bank Secrecy Act Currency Transaction Report (“**BCTR**”).<sup>2</sup> As the proposal notes, the BCTR is “designed to facilitate financial institutions reporting the most frequently encountered transaction scenarios,” as authorized by the Bank Secrecy Act (“**BSA**”)<sup>3</sup> and required by FinCEN.

The Clearing House remains committed to working closely with the public sector towards our shared goal of combating money laundering (“**AML**”) and terrorist financing (“**CFT**”)

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<sup>1</sup> The Clearing House is a banking association and payments company that is owned by the largest commercial banks and dates back to 1853. The Clearing House Association L.L.C is a nonpartisan organization that engages in research, analysis, advocacy and litigation focused on financial regulation that supports a safe, sound and competitive banking system. Its affiliate, The Clearing House Payments Company L.L.C., owns and operates core payments system infrastructure in the United States and is currently working to modernize that infrastructure by building a new, ubiquitous, real-time payment system. The Payments Company is the only private-sector ACH and wire operator in the United States, clearing and settling nearly \$2 trillion in U.S. dollar payments each day, representing half of all commercial ACH and wire volume.

<sup>2</sup> See 81 Fed. Reg. 5518 (Feb. 2, 2016) (proposed collection and request for comment).

<sup>3</sup> See 31 U.S.C. 5313 and 31 CFR 1010.310.

through compliance with the BSA, its implementing regulations, and Office of Foreign Assets Control (“**OFAC**”) sanctions programs. To that end, we support FinCEN’s efforts to further streamline the reporting of transactions “that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.” Because we believe that certain aspects of the proposal could benefit from further clarification, however, we note in this letter several concerns and provide several recommendations intended to improve the clarity and effectiveness of the proposed revisions.

**I. The proposal would significantly expand the collection and reporting requirements in Part III of the BCTR.**

The proposal states, in part, that during FinCEN’s review of the BCTR, the agency “observed an increase in the number of holding or parent companies filing for their subsidiary institutions” and that “[t]he current BCTR was not designed to record different filing and transaction locations. Additionally, FinCEN noted an inability to record the dollar value of the transaction in Part III when multiple transactions were reported. FinCEN also was made aware that the current BCTR does not provide a means of indicating ‘shared branching’ transactions.” In order to “support recording the dollar amount of the transaction at the transaction location, cash-in and cash-out fields have been added to Part III” of the BCTR. While the addition of fields to capture “cash in” and “cash out” at particular locations may be appropriate in the context of shared branching (as we suggest that term be defined, described further below in section II) where different filing institutions are involved in order to allow FinCEN to identify the institution at which the transaction transpired, these proposed fields could be construed as requiring financial institutions not engaged in shared branching arrangements to report transactions on a branch-by-branch basis. Such a requirement would reflect a significant expansion of the collection and reporting aspects of the BCTR, especially for financial institutions that routinely file aggregated BCTRs. In some cases, there could be dozens, if not hundreds, of locations where the detailed transaction-level information will need to be reported and these institutions will in many cases have to investigate the individual transactions to confirm that an aspect of the reported aggregated transaction was conducted in cash. In order to accomplish this, existing processes would need to be revised which would require substantial investment in operational and human capital resources for their development and maintenance, with potentially few, if any, benefits. Further, the details of any particular transaction are available to law enforcement via current processes once they become aware of a customer that generates interest, and the proposal provides no explanation as to why the collection of such granular information on a branch-by-branch basis would be helpful to FinCEN or law enforcement as it works to combat financial crimes and terrorism. Therefore, we respectfully request that FinCEN clarify that the proposed additions of “cash-in” and “cash-out” fields in Part

III of the BCTR are intended to capture cash flowing in and out of branches that are part of transactions reported pursuant to a shared branching arrangement (as we suggest that term be defined in section II, below), primarily in the context of credit union cooperatives and the limited universe of other financial institutions that may use shared branching networks, rather than cash flowing in and out of branches of financial institutions that are not reporting transactions pursuant to a shared branching arrangement. If FinCEN proceeds with requiring all covered institutions to provide branch-by-branch information, we believe that FinCEN should conduct a considered study of the costs of such a requirement as compared to the likely benefits.

**II. FinCEN should clarify that, for purposes of the proposed revisions, the term “shared branching” applies in the context of credit union cooperatives and other types of institutions that use shared branching networks.**

As noted above in section I of this letter, the proposal states that “FinCEN . . . was made aware that the current BCTR does not provide a means of indicating ‘shared branching’ transactions. Under the ‘shared branching’ transaction, the employee identification number (EIN) of the financial institution where the transaction was conducted may not be known to the filing institution, so an ‘unknown’ check box has been added.” We are concerned by both the absence of a definition of “shared branching” as well as the failure to clarify that, consistent with FinCEN’s historic position, only certain types of financial entities would be affected by the proposed changes. Indeed, FinCEN has historically used the term “shared branching” primarily in connection with credit union cooperative networks. For example, in October 2007, FinCEN, in conjunction with the Bank Secrecy Act Advisory Group, published the *SAR Activity Review – Trends, Tips & Issues* in which it defined credit union cooperatives and shared branching in the following way: “Credit union cooperatives operate networks that provide Electronic Funds Transfer/Automated Teller Machine/Point of Sale (EFT/ATM/POS) and shared branching services to the cooperatives’ member credit unions . . . Shared branches allow members of participating credit unions to conduct transactions at either branches of the cooperative’s other participating credit unions or facilities that are managed by the cooperative itself.”<sup>4</sup> The report goes on to further elaborate on the different types of shared branches and shared-branching networks in the context of credit union cooperative networks. Additionally, in 2011, FinCEN again discussed the term “shared branching” in relation to credit unions, explaining that “[s]hared branching extends the credit union’s ability to provide expanded access or offer more

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<sup>4</sup> See FinCEN, *SAR Activity Review – Trends, Tips & Issues*, “Credit Union Cooperatives,” October 2007, (2007 SAR Activity Review), p. 15.

complex and competitive financial services to their memberships.”<sup>5</sup> Finally, we understand that shared branching transactions may be used by a limited number of other institutions.

In the current proposal, FinCEN has not defined “shared branching” or clarified that the proposed changes would only be relevant for a limited universe of financial institutions that use this operating model, such as credit union cooperative networks and a small number of other financial institutions. The Clearing House is concerned that the term “shared branching,” if left undefined and not specifically limited in application to credit union cooperatives and those few financial institutions that use shared branching, could be misconstrued as applying to bank branches and their affiliates, which could significantly undermine the current technological processes and systems depository institutions and their parent companies have in place to appropriately review transactional data and provide it to FinCEN through the filing of BCTRs. Therefore, we respectfully request that FinCEN clarify that “shared branching” applies in the context of credit union cooperatives and other types of institutions that use shared branching networks, and its use in the proposal is meant to address reporting concerns associated with those particular institutions, rather than the broader population of financial entities who are subject to the BCTR filing requirement. In addition, we request that at the very least, FinCEN clarify that the term “shared branching” as used in the current proposal has the same meaning as in the 2007 SAR Activity Review and the 2011 Outreach Report. As noted above in section I, we also request that FinCEN clarify that the proposed additions of “cash-in” and “cash-out” fields in Part III are intended to capture cash flowing in and out of branches that are part of transactions reported pursuant to a shared branching arrangement, as we propose that term be clarified.

### **III. FinCEN should narrow its proposed definition of “teller” to make clear that it includes only customer-facing employees of the financial institution that accept currency in the normal course of business.**

In its proposal, FinCEN states that it was “advised by several non-bank financial institutions that the reference to ‘teller(s)’ in the BCTR instructions is confusing and misleading since non-bank financial institutions normally do not employ ‘tellers.’” The agency thus proposes that “teller” be defined as “[a]n individual employed by a covered financial institution that accepts currency in the normal course of business at the covered financial institution.” While we appreciate FinCEN’s intent to provide further clarity around the term “teller,” we are concerned that this definition could be interpreted to include employees that are not customer-facing, but that do accept currency as part of their employment duties. For example, some depository institutions have employees who are responsible for their cash vaults, and these

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<sup>5</sup> See FinCEN, *Financial Institutions Outreach Initiative – Report on Outreach to Depository Institutions with Assets under \$5 Billion*, “Issues Specific to Credit Unions,” February 2011, (2011 Outreach Report), p. 74.

employees accept or provide cash to common carriers. In some cases, these cash vaults are owned and operated by the institution itself, while in others, the vaults are owned and operated by third-party entities. When coupled with the current guidance on whether reporting institutions need to check the BCTR's "aggregated transactions" box, FinCEN's proposed definition of "teller" is likely to be problematic.

As expressed in the July 2013 "FinCEN Currency Transaction Report (FinCEN CTR) Electronic Filing Guidelines," financial institutions are required to "Check box 24e 'Aggregated transactions' if the financial institution did not identify any of the transactor(s) because the FinCEN CTR reports aggregated transactions, all of which were below the reporting requirement, and at least one of the aggregated transactions was a teller transaction."<sup>6</sup> Using FinCEN's proposed definition of "teller" in concert with its guidance on when financial institutions should check the BCTR's "aggregated transactions" box could be problematic for institutions, as individuals employed at cash vaults that accept currency in the normal course of business are currently not considered tellers, and, therefore, their activity would not be considered in determining whether to check the BCTR's "aggregated transactions" box.

Limiting the scope of those employees who will be considered "tellers" to those who are customer-facing is consistent with additional FinCEN guidance, including that found in BCTR FAQ 27. This guidance not only provides similar instructions to the aforementioned electronic filing guidelines regarding when financial institutions should check the "aggregated transactions" box, but also defines a "teller transaction" as including, but not limited to, "the deposit or withdrawal of currency by an individual at the teller window, an individual making a loan payment with currency at the teller window or, an individual exchanging currency at the teller window."<sup>7</sup> The examples provided by FinCEN of a "teller transaction" contemplate a customer-facing element inherent in the definition of "teller. Therefore, we request that FinCEN formally codify this customer-facing element in connection with the definition of "teller" as used in the BCTR.

**IV. FinCEN should provide financial institutions with at least 18 months to adjust their systems and processes before the proposed revisions to the BCTR take effect and stipulate that institutions will be able to file report amendments using the report format originally used.**

Currently, the proposal does not include a timeline for implementation of FinCEN's proposed BCTR changes. Implementation of FinCEN's proposed changes could require coordination between internal stakeholders to adjust and potentially develop new data collection

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<sup>6</sup> *FinCEN Currency Transaction Report (FinCEN CTR) Electronic Filing Requirements*, July 2013, p. ix.  
<sup>7</sup> See "Frequently Asked Questions Regarding the FinCEN Currency Transaction Report," available at [https://www.fincen.gov/whatsnew/html/ctr\\_faqs.html](https://www.fincen.gov/whatsnew/html/ctr_faqs.html), accessed March 11, 2016.

processes around the revised guidelines and requirements. These revised processes will then need to be tested in order to ensure that they are fully compliant before the effective date. In some cases, external vendors may need to be engaged or consulted to ensure compliance with FinCEN's revised guidelines. For these reasons, The Clearing House respectfully requests that institutions covered by the final amendments to the BCTR be provided a minimum of 18 months after publication of the final rule to comply with the requirements contained therein.

In addition, in the event that a covered institution must amend a BCTR filed in the old format, if the amended information must be filed in the updated format, institutions would likely have to manually obtain the information needed for the amended report. For this reason, we also request that FinCEN stipulate that an institution will be permitted to file amendments to previously filed BCTRs in the same format as that which was originally filed with FinCEN.

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We thank you in advance for your consideration of our comments and would welcome the opportunity to provide you with any assistance or input that you might find helpful. Should you have any questions or need further information, please do not hesitate to contact me at (202) 649-4608 or [angelena.bradfield@theclearinghouse.org](mailto:angelena.bradfield@theclearinghouse.org).

Respectfully submitted,



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