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Via Electronic Submission

February 22, 2021

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street, SW
Suite 3E-218
Washington, DC 20219

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

RE: [Docket ID OCC-2020- 0037] RIN 1557-AE77 Exemptions to Suspicious Activity Report Requirements
FDIC - RIN 3064-AF56 Exemptions to Suspicious Activity Report Requirements

Dear Sir or Madam:

The Independent Community Bankers of America ("ICBA")¹ appreciates the opportunity to respond to the Office of the Comptroller of the Currency's ("OCC") and the Federal Deposit Insurance Corporation ("FDIC") notices of proposed rulemaking. The proposed rules would amend the OCC's and FDIC's (collectively "the agencies") Suspicious Activity Report ("SAR") regulations to allow them to issue exemptions from the requirements of those regulations. The proposed rules would make it possible for the agencies to grant relief to their regulated banks that develop innovative solutions intended to meet Bank Secrecy Act ("BSA") requirements more efficiently and effectively.

Background

The OCC and FDIC requires their supervised institutions to file SARs under certain conditions.²

¹*The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. ICBA is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education, and high-quality products and services.*

With nearly 50,000 locations nationwide, community banks constitute 99 percent of all banks, employ more than 700,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding more than \$5 trillion in assets, over \$4.4 trillion in deposits, and more than \$3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers' dreams in communities throughout America. For more information, visit ICBA's website at www.icba.org.

²*Requirements related to SARs are codified at 12 CFR 21.11.*

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OCC³ and FDIC⁴ have for a long time required their regulated entities to report potential violations of law. In 1992, Congress passed The Annunzio-Wylie Anti-Money Laundering Act and allowed the Financial Crimes Enforcement Network of the Department of Treasury (“FinCEN”) to require all supervised entities to report certain suspicious transactions as a requirement of BSA. FinCEN, in consultation with the federal banking agencies and law enforcement, developed a SAR form and reporting process, and created a centralized database that could be accessed by law enforcement and regulatory agencies. To implement FinCEN’s reporting process, the OCC and FDIC amended their regulations and aligned their reporting requirements with FinCEN’s to reduce unnecessary reporting burdens and refine the reporting processes.

As a result of aligning their reporting process, OCC and FDIC supervised banks are currently required to file SARs pursuant to their agencies’ regulations and FinCEN’s regulations. These regulations are not identical, as the agencies’ SAR regulations cover a broader range of circumstances but are substantially similar. FDIC, OCC, and FinCEN all require banks to file SARs relating to money laundering, structuring, and transactions that have no business or apparent lawful purpose or are not the sort in which the particular customer would normally be expected to engage. Furthermore, all three agencies require banks to maintain the confidentiality of a SAR and any information that would reveal the existence of a SAR, outside of certain circumstances.

FinCEN has general authority to grant exemptions from the requirements of the BSA, which includes granting exemptions under its SAR reporting regulations. The agencies, however, currently do not have similar exemption authority. Under the proposal, OCC and FDIC regulated banks seeking an exemption must submit a written request to their respective agency. For exemption requests involving the OCC, the agency would assess whether “the exemption is consistent with safe and sound banking, and any other appropriate factors, such as any outstanding supervisory concerns related to Bank Secrecy Act/Anti-Money Laundering (“BSA/AML”), including informal and formal enforcement actions.”⁵ For requirements that fall under both the OCC and FinCEN, the OCC would be permitted to make its own determination as to consistency with the purposes of the BSA. If an exemption request also requires an exemption from FinCEN’s SAR regulation, the requesting institution would need to obtain exemptions from both the OCC and from FinCEN.⁶ The FDIC would undergo the same safety and soundness evaluation as the OCC, but would also seek FinCEN’s determination as to whether the exemption request is consistent with the purposes of the BSA.⁷ When a request involves the SAR filing requirements of both FinCEN and the FDIC, the proposed rule would require the FDIC to seek FinCEN’s concurrence.

³The OCC first codified this requirement in 1971 at 12 CFR 7.5225, which required national banks to submit a report to the OCC, FBI, and U.S. attorney consisting of “any facts growing out of the affairs of the bank known or suspected to include criminal violation of any section of the U.S. Code.” (Aug. 26, 1971).

⁴The FDIC first codified this requirement in 1986 at 12 CFR part 353 (1986), which required FDIC insured state non-member banks to report “apparent violation[s]” of federal criminal law. 51 FR 16485, 16486 (May 5, 1986).

⁵[Docket No. OCC–2020–0037] RIN 1557–AE77, p.9

⁶*Ibid*

⁷RIN 3064-AF56 Exemptions to Suspicious Activity Report Requirements, p.7

Under the proposed rules, exemptions may be conditional or unconditional, apply to limited persons or classes of persons, and apply to limited transactions or classes of transactions. Both agencies would have the authority to extend or revoke previously granted exemptions.

These proposals seek to encourage financial institutions (“FIs”) to develop innovative technological solutions to, effectively and efficiently, aid in fulfilling their BSA compliance obligations. The proposals also seek to eliminate the exemption authority disparity between FinCEN and the agencies.

ICBA Summary

ICBA has long supported and encouraged community banks to innovate, both organically and through partnerships with other innovators to streamline and harmonize existing obligations, including those associated with BSA/AML requirements. ICBA supports the proposals to allow the agencies to exempt their regulated FIs from certain SAR requirements. Banking agencies play a valuable role in defining and identifying the risks of existing and emerging technologies for community banks, and any proposals should be crafted in a manner that does not hamper innovation or impose undue burden.

Suspicious activity reports are the cornerstone of the BSA system and were established as a way for banks to provide leads to law enforcement. Community bankers are committed to supporting balanced, effective measures that will prevent terrorists from using the financial system to fund their operations and prevent money launderers from hiding the proceeds of criminal activities. However, anti-money laundering/combating the financing of terrorism and BSA compliance programs (collectively “AML/CFT”) consume a growing share of community banks’ scarce resources. These regulations also diminish community bank’s ability to attract capital, support the financial needs of their customers, serve their communities, and contribute to their local economies as many do not have dedicated legal and compliance departments.

Since the inception of anti-money laundering laws in 1970 and anti-terrorist financing laws in 2001, the burdens placed on banks increasingly create an environment where FIs are essentially tasked with monitoring, identifying, investigating, policing, and reporting potential criminal activity. Each year, community banks must invest more time, money, and resources to combat this threat. Yet, community banks report that the current outdated regulatory framework is more of a robotic exercise of completing forms and strictly adhering to policies and procedures developed from regulatory requirements rather than making an impact in combating financial crime.

ICBA supports efforts in exploring ways to enhance AML effectiveness and efficiencies to provide banks greater flexibility in the allocation of resources. Innovative methods, created by FIs, for SAR monitoring, investigations, and filings may go a long way in assisting community banks, especially smaller ones, to achieve an efficient SAR process. But, as community banks assess their current capabilities, explore ways to use existing tools, or adopt new technologies to help fulfill their BSA/AML compliance obligations, exemptive relief will be paramount.

ICBA supports a regulatory framework that encourages innovation. Innovative solutions created by FIs can improve the efficiency of BSA/AML compliance programs, lessen regulatory restraints, and strengthen the overall law enforcement objectives of the BSA. When undergoing an assessment to consider an exemption request, the agencies will weigh whether “the exemption is consistent with safe and sound banking, and any other appropriate factors.”⁸ Appropriate factors should include those consistent with efforts to modernize the BSA/AML regulations. Specifically, ICBA recommends the agencies consider whether the exemption will enhance usefulness to law enforcement, and whether the exemption would enable the institution to redeploy resources in a manner suitable for the institution. Federal prudential regulators have been working to identify areas in which burdens to FIs can be reduced while maintaining the effectiveness of the AML/CFT regime. Exempting banks that create innovative BSA/AML solutions from the agencies’ SAR requirements could assist in this goal. This approach is consistent with current efforts to modernize the BSA regime.

Under the proposals, the agencies would also have the authority to revoke previously granted exemptions. ICBA recommends that before an exemption is revoked, the agencies provide reasonable notice to allow the institution ample time to reinstitute and test their SAR program.

ICBA appreciates the opportunity to provide comments in response to these requests. If you have any questions, please do not hesitate to contact me at Rhonda.Thomas-Whitley@icba.org or (202) 659-8111.

Sincerely,

/s/

Rhonda Thomas-Whitley
Vice President and Regulatory Counsel

⁸[Docket No. OCC–2020–0037] RIN 1557–AE77, p.9; and RIN 3064-AF56 Exemptions to Suspicious Activity Report Requirements, p.7