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

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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]

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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

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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

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[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]

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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

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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

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[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.

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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,

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