INSTITUTE OF INTERNATIONAL BANKERS

October 30, 2024

VIA ELECTRONIC SUBMISSION

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

Ann E. Misback
Secretary, Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Second Published Request for Comments Under the Third Iteration of the Review Required by the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (OCC – Docket ID OCC-2023-0016) (FRB – Docket No. OP-1828)

Dear Sir or Madam:

The Institute of International Bankers ("IIB") appreciates the opportunity to submit this letter to the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System ("FRB") and the Federal Deposit Insurance Corporation (together with the OCC and FRB, the "Agencies") regarding the Agencies' regulatory review and request for comments on outdated, unnecessary or unduly burdensome regulatory requirements imposed on insured depository institutions and their holding companies in the category of "Money Laundering."[1]

The IIB represents internationally headquartered financial institutions from over 35 countries around the world doing business in the United States. The IIB's members are principally foreign banking organizations ("FBOs") that operate branches, agencies, bank subsidiaries and broker-dealer subsidiaries in the United States. Our members are important participants in the U.S. financial system, injecting billions of dollars each year into state and local economies across the country through direct employment, capital expenditures and other investments.

We welcome the Agencies' efforts to identify opportunities to reduce burdensome or duplicative requirements under the Agencies' anti-money laundering ("AML") program and suspicious

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[1] OCC et al., Regulatory Review and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996, 89 Fed. Reg. 62679 (Aug. 1, 2024).

activity report ("SAR") rules and to consider where regulatory requirements may be inconsistent with current business practices. We also acknowledge the broader ongoing efforts to modernize the U.S. AML/countering the financing of terrorism ("CFT") regulatory regime pursuant to the Anti-Money Laundering Act of 2020 ("AML Act"), including, but not limited to, the Agencies' proposed rulemaking to amend the Agencies' Bank Secrecy Act ("BSA") compliance program rules (the "Agencies' Proposed AML/CFT Program Rule").[2] We recognize the shared private and public responsibilities in combatting illicit finance risks and support fully the AML Act's aim to strengthen financial institutions' ability to focus attention and resources on higher-risk areas. To this end, we encourage the Agencies to take the opportunity presented by this concurrent regulatory review to address AML/CFT and SAR requirements and practices that have become outdated, unnecessary and unduly burdensome for financial institutions, which would facilitate banks' ability to focus their time and resources on activities that are more likely to result in highly useful reporting to law enforcement.

In addition, as a general matter, we urge the Agencies to ensure that AML/CFT program and SAR rules take into account the unique features of U.S. operations of FBOs. In particular, foreign-headquartered banking organizations are subject to multiple AML/CFT regimes and implement and coordinate AML/CFT processes across different jurisdictions as part of enterprise-wide risk management programs. To avoid undue burdens on FBOs, we believe the Agencies should ensure that regulatory and supervisory expectations applicable to FBOs are aligned and that supervisory examinations of an FBO reflect accurately the nature and operations of that institution.

As a final preliminary comment, the IIB respectfully requests that the Agencies' share this letter and comments herein with the Financial Crimes Enforcement Network ("FinCEN"), given the overlapping nature of the Agencies' and FinCEN's AML/CFT program and SAR filing rules.

The IIB has provided its main comments in response to the Agencies' request for comments in Sections I through III of this letter. In Section IV, we provide additional comments on certain of the enumerated questions posed by the Agencies. Below, we provide an executive summary of our main comments:

- Current SAR rules should be amended to reduce undue or unnecessary burdens on financial institutions by enabling SAR sharing with foreign affiliates, increasing SAR filing thresholds and reducing expectations for the filing of continuing activity SARs and documentation of no-SAR decisions.

- As the Agencies consider the Agencies' Proposed AML/CFT Program Rule, we request that the Agencies avoid imposing one-size-fits-all requirements or unnecessarily burdensome onshoring requirements on U.S. operations of FBOs.

- Additional examiner training and tailored approaches are critical to ensure different FBO models are appropriately examined for compliance with AML/CFT program requirements, in addition to consistent regulatory and supervisory expectations for

[2] OCC et al., Anti-Money Laundering and Countering the Financing of Terrorism Program Requirements, 89 Fed. Reg. 65242, 65248 (Aug. 9, 2024).

compliance with and guidance on supervisory interpretations of AML/CFT program rules.

I. The Agencies' SAR rules should be modernized to reduce burdens on financial institutions, including by allowing SAR sharing with affiliates, addressing burdens associated with continuing activity SARs and documentation of no-SAR decisions and increasing SAR filing thresholds.

The Agencies requested comments about unnecessarily inflexible requirements; outdated, unnecessary or unduly burdensome reporting requirements; and requirements that are unwarranted by the unique characteristics of a particular type of insured depository institution or its holding company (Questions 4, 9 and 11).

The IIB respectfully submits that several aspects of the Agencies' SAR rules should be amended to reduce burdens on and reflect current business practices of financial institutions, as described below. We recognize financial institutions' important role in combatting illicit finance activity by working with law enforcement and other governmental authorities, and believe these amendments ultimately would enable financial institutions to more effectively further this purpose.

A. SAR confidentiality rules

SAR confidentiality requirements do not permit the sharing of SARs, or information that would reveal the existence of a SAR, with foreign affiliates (other than head offices and controlling entities).[3] We respectfully urge the Agencies to amend their SAR confidentiality rules to permit the sharing of SARs and information about the existence of a SAR with foreign affiliates.

For FBOs, a key aspect of facilitating the identification of suspicious activity (and thus managing financial crime risk effectively) is the ability to share SARs within an institution's organizational structure. Incorporating information as to the existence of a SAR and the suspicious activity at issue in a financial institution's systems facilitates risk mitigation, allowing firms to more quickly, efficiently and comprehensively form a view as to the risks presented by a customer, and investigation of potentially suspicious activity.

U.S. SAR confidentiality rules impose an unnecessary operational burden on FBOs by requiring the segregation of AML/CFT processes that could be performed more efficiently and effectively by centralized, global teams if SARs could be shared with foreign affiliates. For example, currently, SARs are shared within organizations for a variety of investigative and operational purposes; however, where SAR confidentiality rules prevent foreign affiliates from seeing SARs or information that would reveal their existence, FBOs' non-U.S. teams that are responsible for transaction monitoring and suspicious activity detection processes are unable to incorporate SAR data points in their work. This unnecessary burden due to SAR confidentiality rules falls disproportionately on FBOs, which are more likely than domestic institutions to have foreign affiliates involved in enterprise-wide AML/CFT processes. For U.S. operations of FBOs, greater

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[3] See, *e.g.*, 12 CFR 21.11(k), 208.62(j). *See also* FinCEN et al., *Interagency Guidance on Sharing Suspicious Activity Reports with Head Offices and Controlling Companies* (Jan. 20, 2006) [hereinafter "2006 Guidance"].

flexibility to share SARs, or at least information that would reveal SARs' existence, with foreign affiliates would significantly enhance their ability to detect, and report on, new threats and risks arising globally and to manage risk comprehensively.

As the Agencies and FinCEN recognized in 2006, SAR sharing within an organizational structure is a "critical issue, particularly in a global context."[4] In 2010, FinCEN took the step of permitting SARs to be shared with domestic affiliates subject to a SAR regulation.[5] We strongly encourage the Agencies to resolve this long-standing issue now and permit SAR sharing with foreign affiliates, in connection with broader efforts to modernize the U.S. AML/CFT regime.

The IIB believes that historical concerns with sharing SARs outside of the United States can be effectively managed with appropriate safeguards. For nearly two decades, financial institutions have been able to share SARs with head offices or controlling entities located outside the United States, even in jurisdictions that may be considered to pose higher risks for different reasons (e.g., Russia or China), subject to written confidentiality agreements or arrangements in place to protect SAR confidentiality through appropriate internal controls. In line with this long-established approach for foreign head offices and controlling entities, the IIB respectfully submits that extending similar SAR sharing permissions for foreign affiliates under similar conditions would be reasonable and warranted by current business practices.

In January 2022, FinCEN proposed a pilot program for SAR sharing with foreign affiliates pursuant to statutory requirements under the AML Act, but did not proceed to establish the pilot program.[6] That pilot program would have permitted SAR sharing with foreign affiliates, subject to appropriate internal controls to address potential concerns with unauthorized disclosure of SARs and related information. To the extent SAR sharing with foreign affiliates raises concerns for the Agencies related to certain jurisdictions or purposes for such sharing, the IIB believes FinCEN's pilot program demonstrates the feasibility of addressing those concerns through tailored approaches (e.g., additional controls, notification requirements or reporting and recordkeeping obligations).

Finally, in line with the Agencies' and FinCEN's recent focus on the effectiveness of AML/CFT programs, the IIB strongly believes that allowing SAR sharing with foreign affiliates not only would help financial institutions to implement more effective AML/CFT programs, but also may bolster the effectiveness of the U.S. AML/CFT regime as a whole (and may encourage greater cross-jurisdictional reciprocal information sharing about illicit activity).[7]

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4 *See* 2006 Guidance, *supra* note 3.

5 FinCEN, FIN-2010-G006, *Sharing Suspicious Activity Reports by Depository Institutions with Certain U.S. Affiliates* (Nov. 23, 2010).

6 FinCEN, Pilot Program on Sharing of Suspicious Activity Reports and Related Information With Foreign Branches, Subsidiaries, and Affiliates, 87 Fed. Reg. 3719 (*proposed* Jan. 25, 2022).

7 *See supra* note 2 at 65245 (describing the requirement that AML/CFT programs be "effective"); s*ee, e.g.*, FinCEN, *FinCEN Statement Noting the Release of the Egmont Group's White Paper: Enterprise-wide STR Sharing: Issues and Approaches* (Feb. 4, 2011) ("[E]nterprise-wide SAR sharing may not only be efficient for

B. Continuing activity SARs

Currently, financial institutions file so-called "continuing activity SARs" on suspicious activity that continues after an initial SAR is filed, consistent with FinCEN's guidance to do so.[8] We believe the Agencies' SAR rules should be amended to clarify that financial institutions need not file repeated continuing activity SARs on the same suspicious activity.

The Federal Financial Institutions Examination Council ("FFIEC") BSA/AML Examination Manual suggests the purpose of continuing activity SARs is, in part, to remind a financial institution to "continue to review the suspicious activity to determine whether other actions may be appropriate."[9]

However, the IIB respectfully suggests, based on IIB members' experience and current business practices, that continuing activity SARs are outdated, unnecessary and unduly burdensome given financial institutions' current processes for identifying and monitoring suspicious activity. These processes typically include sophisticated continuous transaction monitoring systems, other enhanced monitoring tools and internal watch lists for customers on which SARs have been filed previously. Further, when investigating potentially suspicious activity that triggers a transaction monitoring alert, financial institutions generally also review prior SARs related to the subsequent activity. Other, more comprehensive tools and processes, such as risk assessments, high-risk reviews and global and cross-functional investigations, are part of financial institutions' broader risk management frameworks to address higher-risk clients and suspicious activity across an organization. Thus, financial institutions already have robust processes in place to monitor and review suspicious activity on an ongoing basis and determine if further actions may be appropriate; continuing activity SAR filing obligations are unnecessary to achieve this purpose and are unduly burdensome.

In addition, we respectfully submit that it is not clear to what extent continuing activity SARs provide benefits to law enforcement, regulators or financial institutions. In many cases, financial institutions must explain to regulators the relevant context for a decision to file a continuing activity SAR, and it is not apparent that continuing activity SARs, in and of themselves, provide highly useful information to law enforcement. (Of course, if the nature of previously reported activity changes, financial institutions would be obligated to file SARs on the new suspicious activity.) Accordingly, the IIB believes that amending the SAR rules to make clear that repeated continuing activity SAR filings are not mandatory would relieve financial institutions of a burdensome obligation that is unnecessary given current risk management practices.

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global financial institutions, but also could promote more effective AML/CFT compliance and more valuable information reporting to [Financial Intelligence Units].")

8 *See* FinCEN, *FinCEN Suspicious Activity Report (FinCEN SAR) Electronic Filing Instructions* (Oct. 2012); FinCEN, *Frequently Asked Questions Regarding the FinCEN Suspicious Activity Report (SAR)*, https://www.fincen.gov/frequently-asked-questions-regarding-fincen-suspicious-activity-report-sar.

9 FFIEC BSA/AML Examination Manual, *Suspicious Activity Reporting – Overview* 69 (Feb. 27, 2015), https://bsaaml.ffiec.gov/docs/manual/06_AssessingComplianceWithBSARegulatoryRequirements/04.pdf.

C. SAR reporting thresholds

The Agencies' SAR rules incorporate reporting threshold amounts that have been unchanged for nearly three decades.[10] Increases to the SAR reporting thresholds would ensure the Agencies' SAR rules are not outdated or unduly burdensome.

As a result of inflation that has occurred since the current SAR reporting thresholds were instituted, an increasing number of transactions previously considered de minimis and carved out from SAR reporting obligations to reduce financial institutions' reporting burdens are now in-scope of the SAR rules. We believe the SAR rules should be amended to at least adjust the outdated SAR reporting thresholds for inflation. Increasing the SAR reporting thresholds also would reduce burdens on financial institutions by removing potential reasons to make defensive SAR filings for low value transactions, in cases where financial institutions would otherwise determine filing a SAR for activity that may not in fact merit a SAR is the best way to avoid regulatory or examiner scrutiny.

We note that the AML Act directed the Treasury Secretary, in consultation with the federal functional regulators, among others, to evaluate whether SAR reporting thresholds should be adjusted.[11] FinCEN also issued a request for information ("RFI") in December 2021 that requested comments about potential burden reductions from adjusting dollar thresholds for BSA reports.[12] Given the broader focus on SAR reporting thresholds, we encourage the Agencies to take this opportunity to address this significant issue in connection with the ongoing AML/CFT regime modernization efforts.

D. No-SAR decisions

The IIB believes the Agencies' SAR rules should expressly state that financial institutions will not be criticized for failures to file SARs absent bad faith, consistent with existing bank examiner guidance.

The FFIEC BSA/AML Examination Manual directs examiners to focus on banks' SAR decision-making processes, not individual SAR decisions, stating that, when a bank has an established SAR process and has determined not to file a SAR in accordance with that process, the bank "should not be criticized for the failure to file a SAR unless the failure is significant or accompanied by evidence of bad faith."[13]

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[10] *See*, *e.g.*, FRB, Membership of State Banking Institutions in the Federal Reserve System; International Banking Operations; Bank Holding Companies and Change in Control; Reports of Suspicious Activities Under Bank Secrecy Act, 61 Fed. Reg. 4338 (Feb. 5, 1996) (raising the FRB's SAR thresholds to the current amounts to reduce reporting burdens); OCC, Minimum Security Devices and Procedures, Reports of Suspicious Activities, and Bank Secrecy Act Compliance Program, 61 Fed. Reg. 4332 (Feb. 5, 1996) (raising the OCC's SAR thresholds to the current amounts to reduce reporting burdens).

[11] *See* AML Act § 6205.

[12] *See* FinCEN, Review of Bank Secrecy Act Regulations and Guidance, 86 Fed. Reg. 71201, 71206 (Dec. 15, 2021).

[13] *Supra* note 9 at 68.

In practice, however, financial institutions spend significant time and resources documenting rationales for decisions to not file SARs to avoid criticism for such no-SAR decisions. In some cases, financial institutions may determine that making a SAR filing is the simplest way to address potential examiner scrutiny. This may result in financial institutions making defensive SAR filings even when a SAR may not be warranted, which creates unnecessary burdens on financial institutions for no clear benefit to law enforcement.

We believe the FFIEC's examination guidance should be formalized in the Agencies' SAR rules to ensure financial institutions have flexibility to implement appropriate SAR decision-making processes and to reduce unnecessary burdens on financial institutions related to documentation of no-SAR decisions and defensive SAR filings.

II. The Agencies should avoid imposing unnecessarily inflexible or burdensome requirements on U.S. operations of FBOs in connection with the Agencies' Proposed AML/CFT Program Rule.

The Agencies requested comments about unnecessarily inflexible requirements (Question 4). In line with comments submitted by the IIB in response to the Agencies' Proposed AML/CFT Program Rule,[14] we encourage the Agencies to ensure their AML/CFT program rules do not impose one-size-fits-all requirements on financial institutions, including, but not limited to, in relation to risk assessment processes and AML/CFT program approval and oversight. We believe financial institutions should retain flexibility to determine what constitutes an effective, risk-based and reasonably designed AML/CFT program considering the particular risks a financial institution faces.

The Agencies also requested comments about requirements that are unwarranted by the unique characteristics of a particular type of insured depository institution or holding company (Question 11). As discussed in the IIB's comment letter to the Agencies' Proposed AML/CFT Program Rule, we also respectfully urge the Agencies to interpret the duty prescribed in section 6101(b)(2)(C) of the AML Act to be limited to requiring that oversight of AML/CFT compliance with respect to U.S. activities be the responsibility of, and performed by, a person or persons in the United States. Given the particular characteristics of FBOs' operations, onshoring to the United States of a significant portion of AML/CFT functions currently conducted offshore would require extraordinarily high expenditure for no meaningful benefit to the effectiveness of AML/CFT programs (and even potential detriment to financial institutions' abilities to maintain effective AML/CFT programs and potential supervisory risk in FBOs' home countries).

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[14] *See* Letter from Stephanie Webster, Gen. Couns., Inst. Int'l Bankers, to the OCC and FRB (Oct. 4, 2024), https://www.regulations.gov/comment/OCC-2024-0005-0011.

III. The Agencies should provide for additional examiner training and tailored approaches to examining different FBO models for compliance with AML/CFT program requirements.

The Agencies requested comments about requirements that are unwarranted by the unique characteristics of a particular type of insured depository institution or holding company, and whether regulations are clear and easy to understand (Questions 11 and 12).

The financial industry has highlighted previously the issue of variations in examiners' interpretations of AML/CFT rules. This variation causes a lack of clarity about regulatory requirements and can result in financial institutions being subject to examiner expectations that are neither aligned with regulatory requirements nor risk-based.

In addition, in some cases bank examiners are not fully aware of the characteristics of different FBO structures, resulting in confusion or inconsistent expectations by examiners. As a result, examiners' evaluations of an FBO's AML/CFT compliance program may be based on the characteristics of other institutions or not reflective of the institution's own business and the application of the Agencies' AML/CFT rules to that institution. To provide one example, the AML/CFT program for U.S. operations of an FBO may be approved by the FBO's board of directors *or* a delegee,[15] but this flexibility is not recognized by some examiners, who may expect head office approval when this is not required for FBOs.

As the Agencies consider amending their AML/CFT program rules to be more focused on effectiveness and risk-based approaches, we strongly emphasize to the Agencies the need for (i) consistent regulatory and supervisory expectations for AML/CFT program rules, (ii) guidance on how supervisors will interpret the amended AML/CFT program rules, if implemented and (iii) examiner training to ensure that examiners understand the nature of FBOs they are examining and have the necessary tools to assess consistently whether an FBO's AML/CFT program is effective, reasonably designed and risk-based without imposing hindsight judgments.

IV. Responses to the Agencies' Requests for Comment

In addition to the IIB's more general comments above, the IIB also has considered and provides below responses to certain of the Agencies' specific requests for comment. For ease of reference, we have reproduced certain of the Agencies' specific issues for comment in bold italics, after which we provide the IIB's responsive comments.

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[15] *See* 12 CFR 211.24(j).

Question 1: Have there been changes in the financial services industry, consumer behavior, or other circumstances that cause any regulations in these categories to be outdated, unnecessary, or unduly burdensome? If so, please identify the regulations, provide any available quantitative analyses or data, and indicate how the regulations should be amended.

The Agencies' AML program rules require the implementation of a customer identification program ("CIP"). Accordingly, the IIB requests that the Agencies consider amending their rules to update CIP requirements that are unnecessary and unduly burdensome.

In particular, the IIB notes that FinCEN issued an RFI in March 2024, in connection with FinCEN's implementation of the AML Act's requirements to identify regulations and guidance that are outdated, redundant or otherwise do not promote a risk-based AML/CFT regime.[16] That RFI sought comment on whether banks should be permitted, for CIP purposes, to collect partial Social Security number ("SSN") information directly from a customer who is a U.S. individual and subsequently use reputable third-party sources to obtain the full SSN for the customer prior to account opening. The IIB believes such a proposal would reduce unnecessary burdens on banks. More broadly, the IIB believes the Agencies and FinCEN should consider amending CIP requirements to be more reflective of current business practices and permit banks to take advantage of a wide range of customer identification and identity verification methods as part of a risk-based approach to compliance with CIP requirements.

Question 5: Looking at the regulations in a category as a whole, are there any requirements that are redundant, inconsistent, or overlapping in such a way that taken together, impose an unnecessary burden that could potentially be addressed? If so, please identify those regulations, provide any available quantitative analyses or data, and indicate how the regulations should be amended.

The IIB respectfully suggests that the Agencies examine areas where the Agencies' SAR rules do not align with FinCEN's SAR rules and create unnecessary burdens on financial institutions, and liaise with FinCEN as necessary to ensure consistency in the scope and application of SAR rules. For example, for transactions where there is no substantial basis for identifying a possible suspect or group of suspects, FinCEN's SAR rule is not aligned with the Agencies' SAR rules, as the latter would require a SAR to be filed only in circumstances involving $25,000 or more in funds or other assets.[17]

In addition, the Agencies and FinCEN should ensure that supervisory expectations for compliance with the Agencies' SAR rules and FinCEN's SAR rules are aligned, to avoid subjecting financial institutions to inconsistent, yet overlapping, SAR obligations.

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[16] FinCEN, Request for Information and Comment on Customer Identification Program Rule Taxpayer Identification Number Collection Requirement, 89 Fed. Reg. 22231 (Mar. 29, 2024).

[17] *See, e.g.*, 12 CFR 21.11(c)(3), 208.62(c)(3).

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We appreciate your consideration of our comments. If we can answer any questions or provide any further information, please contact the undersigned at 646-213-1149 or swebster@iib.org.

Very truly yours,

Stephanie Webster
General Counsel