

January 27, 2012

The Financial Crimes Enforcement Network
P. O. Box 39
Vienna, VA 22183

Re: RIN 1506-AB16, Imposition of Special Measures Against Iran

Dear Sir or Madam:

The American Bankers Association (ABA)¹ appreciates the opportunity to comment on the proposal by the Financial Crimes Enforcement Network (FinCEN) to implement special measures against the Islamic Republic of Iran (Iran). This proposal is the result of the recent government designation of Iran as a jurisdiction of primary money laundering concern under section 311 of the USA Patriot Act.² Once such a determination has been made, the statute requires special steps to be taken. To meet the statutory requirement, FinCEN proposes prohibiting any domestic financial institution or agency from opening or maintaining of correspondent accounts by for or on behalf of Iranian banking institutions.

It is important to stress that FinCEN “does not expect the burden associated with these requirements to be significant given that U. S. financial institutions have long been subject to sanctions regulations prohibiting the provision of correspondent account services for banking institutions in Iran.”³ As set forth in the proposal, covered financial institutions would be expected to apply special due diligence to their correspondent accounts to guard against their improper indirect use by Iranian banking institutions. Fundamentally, the proposal outlines the expectation that covered financial institutions would take a risk-based approach, an element of the proposal that ABA believes is particularly important and that underlies our comments.

ABA has long supported efforts to combat international terrorism and the abuse of the international financial system. Our members have taken many steps that support efforts by FinCEN and the federal government designed to protect against money laundering and terrorist financing. ABA appreciates that FinCEN has proposed measures that address the finding that Iran is a jurisdiction of primary money laundering concern with a balanced approach that minimizes unnecessary burdens on covered financial institutions. To that end, and to help FinCEN achieve this goal, ABA suggests FinCEN clarify two key points.

¹ The American Bankers Association represents banks of all sizes and charters and is the voice for the nation’s \$13 trillion banking industry and its 2 million employees. ABA’s extensive resources enhance the success of the nation’s banks and strengthen America’s economy and communities. Learn more at www.aba.com.

² 76 *Federal Register* 228, November 25, 2011, p. 72756.

³ 76 *Federal Register* 228, November 28, 2011, p. 72880.

Notice to Correspondents

As proposed, two special steps would be required. The first step would require covered financial institutions to provide a notice about the restrictions to any correspondent account holders that the covered financial institution knows or has reason to know provide services to Iranian banking institutions. According to FinCEN, the purpose of the one-time notice is to “help ensure cooperation from correspondent bank holders in denying Iranian banking institutions access to the U. S. financial system.” While there is no expectation that a covered financial institution would obtain a certification of compliance from correspondents, FinCEN does ask for comment on whether a one-time notice is sufficient. To simplify this mandate, the proposal includes a model notice that banks could use. ABA welcomes both the model notice and the simple process banks can use to send the notice to correspondents.

ABA believes that, given the international focus on Iran, especially through efforts through the United Nations and other international bodies, a one-time notice should be sufficient. ABA also agrees with FinCEN that covered financial institutions should be able to determine the best and most appropriate way to transmit the notice to their correspondents.

While the proposal would require banks to notify correspondents that they suspect may be engaging in transactions involving Iran, ABA believes that compliance with such an obligation could be accomplished by allowing covered financial institutions the option to provide the notice to *all* correspondents. This would allow banks to comply without undertaking any additional steps to demonstrate and document the source of any “suspicion” that the correspondent may be engaged in transactions with Iranian banking institutions.

Reasonable Monitoring Steps

The second step covered financial institutions would be expected to take would be reasonable steps to identify any indirect use of its correspondent accounts by Iranian banking institutions. As proposed, a covered financial institution would be expected to do this to the extent indirect use can be determined from transactional records maintained by the covered financial institution *in the normal course of business* (emphasis added).

On the premise that Iran has long been subject to sanctions and since banks are already monitoring transactions for compliance with these existing sanctions, and consistent with FinCEN’s comments in the proposal, ABA believes it would be appropriate for FinCEN to clarify that what is deemed “reasonable” for the purposes of this requirement are steps and procedures that are consistent with existing processes to monitor for compliance with sanctions. Since FinCEN has stated that the proposal is not intended to create undue burden, and since banks have had procedures to ensure compliance with Iranian sanctions for more than 25 years,⁴ existing monitoring should be accepted by FinCEN and a bank’s prudential regulator as “reasonable.” However, ABA requests that FinCEN articulate this in order to ensure that examiners and auditors do not create extraordinary requirements beyond that which FinCEN intends.

⁴ See <http://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran.pdf>.

Recordkeeping & Reporting

The proposal does not require or specify any special record-keeping or reporting process or format. Rather, the proposal only notes that a covered financial institution is expected to document its compliance. ABA appreciates the fact that no special records are required.

Conclusion

ABA believes that if FinCEN clarifies the two primary points described above, covered financial institutions should be able to meet the mandate both efficiently and effectively. It is important to underscore, though, that it is equally important that FinCEN and other federal agencies have processes in place to respond quickly and efficiently to questions from covered financial institutions as they arise. All too often, ABA members comment that efforts to resolve issues or concerns by contacting FinCEN or one of its sister agencies, especially the Office of Foreign Asset Controls (OFAC) are unsuccessful or produce inconclusive or unhelpful responses. This not only frustrates the ability of the covered financial institution to serve its customers and comply with federal sanctions requirements, but also confuses and undermines the effectiveness of the sanctions programs. To that end, in addition to ensuring sufficient staff is available to respond to questions as they arise, ABA also urges FinCEN to make the responses to these questions available so that other covered financial institutions may benefit from the additional guidance.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert G. Rowe, III". The signature is fluid and cursive, with a horizontal line extending from the end.

Robert G. Rowe, III
Vice President & Senior Counsel