BSA Amendment Would Improve State and Federal Regulator Coordination

COMMENT LETTER

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The Honorable Maxine Waters Chairwoman
House Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairwoman Waters:

The Conference of State Bank Supervisors (CSBS) commends you on the Discussion Draft ("the Draft") amending the Bank Secrecy Act (BSA) which was the subject of a hearing before your Committee on March 13, 2019. The Draft enhances information sharing, encourages the adoption of emerging technologies, and makes other laudatory reforms updating and modernizing the BSA to ensure it can better and more efficiently achieve its purpose of combatting illicit finance. We suggest further improving the Draft by including language mandating greater coordination between federal and state regulators who share responsibility for BSA enforcement, consulting with states on the Innovation Labs, and suggest areas for further study.

Background on CSBS

CSBS is the nationwide organization of banking regulators from all 50 states, American Samoa, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. The mission of CSBS is to support the leadership role of state banking supervisors in advancing the state banking system; ensuring safety and soundness; promoting economic growth and consumer protection; and fostering innovative state regulation of the financial services industry.

State regulators charter and supervise 79 percent of all banks in the United States. In addition, state regulators license and supervise a variety of non-depository financial services. CSBS, on behalf of state regulators, owns and operates the Nationwide Multistate Licensing System (NMLS) to license and register those engaged in mortgage, money transmission, consumer finance, debt collection, and other non-depository financial services industries. Currently, 64 state agencies use NMLS to manage 461 different license authorities covering a broad swath of nonbank financial services.

As the closest authority to financial services companies, the states are the single largest supervisor of institutions, both banks and non-banks, subject to BSA/AML requirements. In 2018, state-chartered banks filed 234,262 Suspicious Activity Reports (SARs). Over the same period, state-licensed money services businesses (MSBs) filed 873,203 SARs. Together, this amounts to more than half of the total number of SARs filed in 2018.[1]

Enhancing Regulatory Coordination

Federal agency leaders, agency staff, and media reports have all confirmed that discussions are underway between the banking agencies and FinCEN to reform the approach to BSA/AML compliance and supervision.

The states have a shared responsibility to supervise the nation's banks. We also have responsibility for BSA/AML supervision for a broad range of money services businesses. As the primary regulator of 4,283 depository institutions and over 500 non-depository money services businesses, state regulators are often the first point of contact for financial services providers and law enforcement on issues that arise related to BSA/AML compliance. Despite our significant role and experience in this area, the states have been excluded from the reform efforts.

We would like to work with the banking agencies, FinCEN, and Treasury on this important initiative. This work has the potential to simplify compliance for the industry while improving the quality of information provided to law enforcement. To ensure an effective program for the benefit of the country, it is critical for all regulators to have a seat at the table.

Accordingly, we recommend the Draft be amended to include language requiring federal/state coordination on BSA. Language in Dodd-Frank mandating the CFPB coordinate with states and other federal regulators is a good template.[2]

Improving Information Sharing and Areas for Further Study

Given their responsibility for safety and soundness, state regulators are troubled by the complaints they hear from their regulated institutions about the scarce feedback they receive from FinCEN and law enforcement on the SARs they are required to submit. The limited feedback and lack of instructions on how to complete SARs diminishes the value of SARs, enhances the regulatory burden on institutions, and frustrates state regulatory oversight.

Community banks recently rated compliance risk with BSA/AML as one of their top concerns.[3] Without in-house systems, BSA/AML compliance is a high-touch issue that requires individuals to review and report the proper information. Currently there are no off-the-shelf products that integrate with community bank core processors without considerable cost and effort, which necessitates high staffing levels of banks that otherwise rely on technology providers.

Establishing the FinCEN Domestic Liaison program through which senior FinCEN employees will perform regional outreach and education among industry participants and codification of the FinCEN Exchange program [4] are worthwhile provisions. These reforms will provide needed feedback to institutions to enhance the value of SARs which will, in turn, aid state regulators in their oversight responsibilities.

CSBS supports the proposed Government Accountability Office (GAO) study of the value of BSA data and the feedback mechanism to facilitate a two-way exchange. CSBS suggests the study be expanded to include the related topics of:

- A cost/benefit analysis of current BSA/AML standards to both the public and private sectors;
- An assessment of the effectiveness of current BSA/AML supervisory practices;
- Estimates of illicit activity thwarted annually by current BSA/AML standards;
- Assessment and recommendations regarding current thresholds for SARs and Currency Transaction Reports (CTRs);
- Information sharing between the government and financial institutions, including determining whether such information sharing can be done without affecting customer privacy; and
- Analyzing and making recommendations of additional or alternative methods of BSA/AML compliance.

Moreover, GAO should be required to consult with a wide array of stakeholders such as federal and state law enforcement agencies, federal and state financial regulatory agencies, the Departments of the Treasury and Justice, and private sector bank and non-bank industry participants.

Employing New Technologies

The bill codifies a December 2018[5] joint innovation statement by FinCEN and the federal banking regulators and establishes BSA-related Innovation Labs within each regulator. Given the evolving nature of emerging threats, encouraging the greater use of Artificial Intelligence (AI) and other technologies will help ensure regulators have the needed tools to track illicit funds. Moreover, coupled with the enhanced information sharing provisions in the Draft, AI could both potentially enhance the actionable intelligence contained in SARs and reduce the burden on industry required to furnish the SARs.

For new technologies to be deployed effectively, information sharing needs to occur between the public and private sector. AI and machine-learning models improve through feedback loops that determine what worked and what did not. While many banks and money transmitters have deployed impressive systems, they will never reach their full potential without feedback from regulators and law enforcement. Companies instead adopt models based on educated guesses, which limits the true potential of these technologies.

Given the role states play in BSA enforcement for both banks and non-banks, states should be represented on the Innovation Council established by the Draft. State representation on the Innovation Council is vital to ensure the bill works as intended as states are the primary regulator for non-banks and are responsible for licensing and supervising a diverse group of more than 24,000 non-depository financial service providers – including MSBs, the single largest source of SARs.

Leveraging Shared Services

CSBS supports the Draft's provision codifying existing Interagency guidance on shared resources.[6] We applaud the inclusion of this important provision, as it will help community banks struggling with BSA compliance to better leverage BSA expertise.

Indeed, CSBS published a White Paper in 2016 extolling the benefits of shared resources.[7] In addition to concluding shared resource arrangements may achieve (or exceed) the same regulatory cost savings or economies of scale as consolidation, the White Paper also concluded shared resource arrangements dedicated to BSA/AML compliance could provide community banks more latitude in attracting and acquiring skilled BSA compliance professionals.

Conclusion

We applaud you for releasing this Draft which modernizes BSA and helps ensure regulators have the necessary tools to tackle emerging threats. We look forward to working with you and your staff to help ensure the Draft improves federal/state BSA coordination, guarantees states are represented on the relevant decision-making bodies, and includes additional areas of study to ensure BSA reform stands the test of time.

Sincerely,

John Ryan
President and CEO

CC: The Honorable Patrick McHenry, Ranking Member The Honorable Gregory Meeks, Chairman The Honorable Blaine Luetkemeyer

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1 The statistics can be accessed from FinCEN's website.

2 12 USC 5495

3 According to a 2018 survey, 40.3 percent of banks ranked BSA compliance risk as important and 22.5 percent rated it as very important. Community Banking in the 21st Century, 2018 Research and Policy Conference.

4 The FinCEN Exchange program is a voluntary information-sharing partnership among law enforcement, financial institutions, and FinCEN.

5 Joint Statement on Innovative Efforts to Combat Money Laundering and Terrorist Financing, OCC, December 3, 2018. The statement provides the private sector with greater certainty about regulators' approach to technology adoption and encourages the greater use and adoption of emerging technologies.

6 Interagency Statement on Sharing Bank Secrecy Act Resources, FinCEN, October 3, 2018,

7 Shared Resources Arrangements: An Alternative to Consolidation, September 1, 2016,

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