

Supplemental Statement

Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (“CISADA”) Reporting Requirements Under Section 104(e) (31 CFR 1060.300 and 31 CFR Chapter X)

Control Number 1506-XXXX

SUPPORTING JUSTIFICATION

1. Circumstances necessitating collection of information. FinCEN, to comply with the congressional mandate to prescribe regulations under section 104(e) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (“CISADA”) and consistent with its statutory mission under 31 U.S.C. 310, proposed to issue regulations that would require a U.S. bank that maintains a correspondent account for a foreign bank to inquire of the foreign bank, and report to FinCEN certain information with respect to transactions or other financial services provided by that foreign bank. Under the rule, U.S. banks would only be required to report this information to FinCEN upon receiving a specific written request from FinCEN. The regulations implementing section 104(e) of CISADA appears at 31 CFR 1060.300. Banks may satisfy these requirements by using the model certification found on the Financial Crimes Enforcement Network (FinCEN) website at http://www.fincen.gov/statutes_regs/frn/pdf/CISADAProposedCertification4-26-2011.pdf. Records of documents relied upon by a bank for purposes of 1060.300 must be maintained for at least five years after the date the request from FinCEN is issued.
2. Use of data. The information received as a result of this rulemaking will be used primarily to provide FinCEN with potentially useful information from U.S. banks regarding the nature of foreign bank activities that may be relevant to CISADA. Based on the reports, immediate action may be taken under section 104(c) of CISADA, or, among other things, there may be consultation with those foreign banks that maintain correspondent accounts for Iranian-linked financial institutions designated under IEEPA, that have processed one or more transfers of funds for or on behalf of, directly or indirectly, an Iranian-linked financial institution or an IRGC-linked person designated under IEEPA, or that have been unwilling to respond to inquiries from the banks at which the foreign banks maintain correspondent accounts.
3. Use of improved information technology to reduce burden. Use of improved information technology would not significantly reduce burden.
4. Efforts to identify duplication. No Federal agency currently collects this information.
5. Methods to minimize burden on small businesses or other small entities. No impact on small businesses. Banks that are subject to this rule tend to be large institutions.
6. Consequences of less frequent collection on Federal programs or policy activities. Under the rule, banks will only be required to report this information to FinCEN upon receiving a

specific written request from FinCEN. FinCEN proposed to target this reporting requirement on those foreign banks that there is some basis to suspect may be engaged in activities that may be sanctionable under section 104(c) of CISADA. FinCEN will require reports from those banks that maintain correspondent accounts for the specific foreign banks that are of interest for purposes of CISADA implementation. Less frequent collection of this information would frustrate efforts to implement CISADA.

7. Special circumstances requiring data collection to be insistent with guidelines in 5 CFR 1320.5(d)(2). The recordkeeping requirement specifies that banks retain records for five years. This retention period is necessary to substantiate violations that have occurred within the Statute of Limitations (5 or 6 years).

8. Consultation with individuals outside of the agency on availability of data, frequency of collection, and clarity of instructions and forms, and data elements. On May 2, 2011, FinCEN published a 30-day notice in the Federal Register (76 FR 24410) inviting public comment on this information collection.

We received a total of seven comment letters. The comments were generally supportive of the Notice but sought additional clarification on certain aspects of the Notice, all of which were addressed in the preamble of the final rule. The below summary describes the revisions to the regulation text and the model certification in the final rule as a result of comments received regarding the Notice.

“for or on behalf of, directly or indirectly”

Revisions to 1060.300(a); 1060.300(b); 1060.300(c); and the Model Certification

In the context of the request that a foreign bank certify whether it has processed one or more transfers of funds within the preceding 90 calendar days “related to” an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account, and whether it has processed one or more transfers of funds within the preceding 90 calendar days “related to” an IRGC-linked person designated under IEEPA, FinCEN has agreed to replace “related to” with “for or on behalf of, directly or indirectly.” The terminology “for or on behalf of, directly or indirectly,” is meant to include situations where a foreign bank has knowledge that a transfer of funds it is processing is for or on behalf of an Iranian-linked financial institution designated under IEEPA, or an IRGC-linked person designated under IEEPA, but where the designated entity or individual does not appear on the face of the transaction. In other words, the phrase is meant to include those situations in which the processing is being done with knowledge based on a relationship that exists through a third party such as a money exchange or trading house. These revisions directly address the recommendations offered by commenters.

“to its knowledge”

Revisions to 1060.300(c)(1)(iv) and the Model Certification

Consistent with the revision “for or on behalf of, directly or indirectly” and based on comments received, FinCEN has also incorporated the phrase “to its knowledge” into the following reporting requirement:

“Upon receiving a written request from FinCEN, a bank shall report to FinCEN, in such format and manner as may be prescribed by FinCEN, the following information for any specified foreign bank: ...

(iv) the name of any specified foreign bank, for which the bank maintains a correspondent account, that certifies that it does not maintain a correspondent account for an Iranian-linked financial institution designated under IEEPA, that certifies that *to its knowledge* it has not processed one or more transfers of funds within the preceding 90 calendar days *for or on behalf of, directly or indirectly*, an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account, and/or that certifies that *to its knowledge* it has not processed one or more transfers of funds within the preceding 90 calendar days *for or on behalf of, directly or indirectly*, an IRGC-linked person designated under IEEPA.” [Emphasis added.] (See 1060.300(c)(1)(iv)).

In order to be consistent with the revisions to the regulation text, FinCEN has also incorporated the phrase “to its knowledge” into the model certification in the following places: “Foreign Bank hereby certifies that *to its knowledge* it has not processed one or more transfers of funds within the preceding 90 calendar days *for or on behalf of, directly or indirectly*, an Iranian-Linked Financial Institution Designated Under IEEPA, other than through a correspondent account detailed above;” [emphasis added] and “Foreign Bank hereby certifies that *to its knowledge* it has not processed one or more transfers of funds within the preceding 90 calendar days *for or on behalf of, directly or indirectly*, an IRGC-Linked Person Designated Under IEEPA.” [Emphasis added.]

Extension of Time to Respond and New Reporting Requirement

Revisions to 1060.300(c)(2)(i); 1060.300(c)(1)(viii); and 1060.300(c)(2)(iii)

FinCEN requested comment as to whether 30 calendar days to report the information required by this rule to FinCEN would be sufficient. Considering comments received, FinCEN is revising the time frame to respond to 45 calendar days from the date of the written request from FinCEN. Also, FinCEN does recognize the possibility that there may be certain situations in which additional time for a foreign bank to respond is needed. For this reason, we are amending the final rule to require that if a U.S. bank receives a certification from a foreign bank after the 45 calendar day deadline, the U.S. bank is required to report that information to FinCEN within 10 calendar days of receiving that certification. This additional obligation does not relieve the U.S. bank of its obligation to report to FinCEN within 45 calendar days the results of the U.S. bank’s inquiry, regardless of whether the foreign bank has responded.

“that the bank cannot determine” and “or if the bank has information that is inconsistent with the certification”

Revisions to 1060.300(c)(1)(v) and the Model Certification

FinCEN is revising the language in section 1060.300(c)(1)(v) of the final rule to clarify our expectations with regard to the U.S. bank’s responsibilities as they relate to the information reported by a foreign bank. Section 1060.300(c)(1)(v) proposed that a bank report to FinCEN the following information regarding a specified foreign bank:

“the name of any specified foreign bank, for which the bank maintains a correspondent account, *about which the bank has not been able to establish to its satisfaction that the foreign bank* does not maintain a correspondent account for an Iranian-linked financial institution designated under IEEPA, has not processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account, and/or has not processed one or more transfers of funds within the preceding 90 calendar days related to an IRGC-linked person designated under IEEPA, together with the reason(s) for this, such as the failure of the foreign bank to respond to the inquiry by or a request from the bank, the failure of the foreign bank to certify its response, *or if the bank knows, suspects, or has reason to suspect that the certification is incorrect.*” [Emphasis added.]

FinCEN is amending section 1060.300(c)(1)(v) by revising the phrase “about which the bank has not been able to establish to its satisfaction that the foreign bank” to read as follows: “that the bank cannot determine;” and revising the phrase “or if the bank knows, suspects, or has reason to suspect that the certification is incorrect” to read as follows: “or if the bank has information that is inconsistent with the certification.”

In addition, FinCEN is also revising the corresponding portion of the model certification to be completed by the bank. The proposed language in the model certification stated as follows: “I, _____(name of signatory), have read and understand this Certification; the statements made in this Certification are complete and correct, to the best of the knowledge of the Bank; and the Bank does not know, suspect, or have reason to suspect that the Certification made by Foreign Bank is incorrect. I am authorized to submit this document on behalf of the Bank.”

In the final rule, FinCEN is revising the portion of the model certification to be completed by the bank to read as follows: “I, _____(name of signatory), have received and reviewed this Certification; the Bank has no information that is inconsistent with the Certification made by Foreign Bank. I am authorized to submit this document on behalf of the Bank.”

This revision is consistent with the revisions made to section 1060.300(c)(1)(v). FinCEN believes that this revision to the model certification, together with the amendments to

section 1060.300(c)(1)(v) discussed above, will alleviate the concerns raised by commenters and more accurately describe FinCEN's expectations with regard to the U.S. bank's obligations as they relate to information received from a foreign bank.

“to the best of the knowledge of the bank”

Revisions to 1060.300(a)(1)

For purposes of providing additional clarity as requested by commenters, FinCEN modified the final rule language in 1060.300(a)(1) in the following way: the phrase “to the best of the knowledge of the bank” was removed, consistent with revisions to section 1060.300(c)(1)(v) and to the portion of the model certification to be completed by the bank.

9. Explanation of decision to provide any payment or gift to respondents.

Not Applicable

10. Assurance of confidentiality of responses. Disclosure of information provided by foreign banks to U.S. banking institutions is governed by the policies of the U.S. banking institutions and their regulators.

11. Justification of sensitive questions. There are no questions of a sensitive nature in the collection of information.

12. Estimated burden of information collection.

Title: Certification for Purposes of Section 104(e) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 and 31 CFR § 1060.300 Appendix A.

OMB Number: 1506-XXXX.

Current Action: This is a new regulation to comply with the congressional mandate to prescribe regulations under section 104(e) of CISADA.

Type of Review: Approval of a new collection of information.

Affected Public: Businesses or for-profit institutions..

Burden: FinCEN estimates that approximately 350 banks maintain correspondent accounts for foreign banks. The total estimated annual burden hours is 2825. Approximately 900 CISADA-related reports anticipated each year (provided by a varying number of banks) multiplied by three burden hours per report. (2700 total annual burden hours). Approximately 250 reports from banks that do not maintain a correspondent account with a specified foreign bank (provided by a

varying number of banks) multiplied by 30 minutes of burden per report. (125 total annual burden hours). Total burden hours 2825

13. Estimated total annual cost burden to respondents.

Not Applicable

14. Estimated annualized cost to the government.

Not Applicable

15. Reasons for change in burden.

This is a new requirement

16. Plans for tabulation, statistical analysis and publication.

Not Applicable

17. Request not to display the OMB expiration date. FinCEN requests that the expiration date of the control number of the regulation not be displayed so that the regulation will not have to be amended every three years just to reflect the change in the expiration date. This request will not affect the normal 3 year PRA renewal process.

18. Exceptions to the certification statement on OMB Form 83-I.

Not Applicable