

**Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (“CISADA”) Reporting Requirements Under Section 104(e) – Summary of Revisions to the Regulation Text and Model Certification in the Final Rule as a Result of Comments Received Regarding the Notice of Proposed Rulemaking (“Notice”)**

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.