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September 19, 2024

The Honorable Sherrod Brown
Chairman
The Honorable Tim Scott
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Patrick McHenry
Chairman
The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Department of the Treasury, Financial Crimes Enforcement Network: Anti-Money Laundering/Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Treasury, Financial Crimes Enforcement Network (FinCEN) entitled “Anti-Money Laundering/Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers” (RIN: 1506-AB58). We received the rule on August 28, 2024. It was published in the *Federal Register* on September 4, 2024. 89 Fed. Reg. 72156. The effective date of the rule is January 1, 2026.

This rule includes certain investment advisers in the definition of “financial institution” under the Bank Secrecy Act (BSA), prescribes minimum standards for anti-money laundering/countering the financing of terrorism programs to be established by certain investment advisers, requires certain investment advisers to report suspicious activity to FinCEN pursuant to BSA, and makes several other related changes to FinCEN regulations.

Enclosed is our assessment of FinCEN’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Andrea Gacki
Director
Financial Crimes Enforcement Network

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF THE TREASURY,
FINANCIAL CRIMES ENFORCEMENT NETWORK
ENTITLED
“ANTI-MONEY LAUNDERING/COUNTERING THE FINANCING OF TERRORISM PROGRAM
AND SUSPICIOUS ACTIVITY REPORT FILING REQUIREMENTS
FOR REGISTERED INVESTMENT ADVISERS AND EXEMPT REPORTING ADVISERS”
(RIN: 1506-AB58)

(i) Cost-benefit analysis

The Department of the Treasury, Financial Crimes Enforcement Network (FinCEN) prepared an analysis of the costs and benefits for this rule. See 89 Fed. Reg. 72209–55. FinCEN estimates that the rule would primarily affect investment advisers and U.S. federal agencies, and estimates that the total present value of costs of the rule over a 10-year time horizon ranges from \$4.3 billion to \$8.7 billion, with a primary estimate of \$7.4 billion, using a 2 percent discount rate. *Id.* at 72209. The annualized costs over a 10-year time horizon range from \$470 million to \$950 million, with a primary estimate of \$810 million, using a 2 percent discount rate. *Id.*

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

FinCEN prepared a Final Regulatory Flexibility Analysis. See 89 Fed. Reg. 72255–61.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

FinCEN determined that this rule will result in expenditures of \$100 million or more, adjusted annually for inflation, for state, local, and tribal governments, in the aggregate, or the private sector in any one year. 89 Fed. Reg. 72274.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that

directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

In its submission to us, FinCEN indicated that the Act is not applicable to the rule.

(v) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On February 15, 2024, FinCEN published a proposed rule. 89 Fed. Reg. 12108. FinCEN stated that it received comments from various interested parties. *See id.* at 72161. FinCEN responded to comments in the rule. *Id.* at 72160–72208.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

FinCEN determined that this rule contains information collection requirements under the Act. 89 Fed. Reg. 72261.

Statutory authorization for the rule

FinCEN promulgated this rule pursuant to 31 U.S.C. § 5312(a)(2)(Y).

Executive Order No. 12866 (Regulatory Planning and Review)

FinCEN stated that this rule is significant under the Order. 89 Fed. Reg. 72209.

Executive Order No. 13132 (Federalism)

Neither the rule nor FinCEN's submission contain a discussion of Executive Order No. 13132.