

November 16, 2020

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

Re: Anti-Money Laundering Program Effectiveness, Docket Number FINCEN-2020-0011,
Regulatory Identification Number 1506-AB44

Dear FinCEN,

The American Gaming Association (“AGA”) appreciates this opportunity to comment on the Department of Treasury’s Financial Crimes Enforcement Network’s (“FinCEN”) Advance Notice of Proposed Rulemaking on Anti-Money Laundering Program Effectiveness, published in the *Federal Register* on September 17, 2020.

I. Introduction

AGA advocates for the U.S. gaming industry, which supports 1.8 million jobs nationwide, has a \$261 billion annual economic impact, and generates \$41 billion annually in tax revenue. AGA also serves on the Bank Secrecy Act Advisory Group. Our membership spans across the country and consists of 73 commercial and tribal casino operators, U.S.-licensed gaming suppliers, financial institutions, destination marketing organizations, food and beverage suppliers, and other key stakeholders in the gaming industry. Each year, our members file tens of thousands of Suspicious Activity Reports (“SARs”) and Currency Transaction Reports (“CTRs”).

Since 1985, state-licensed casinos have been defined as “financial institutions” under the Bank Secrecy Act (“BSA”). Since that time, our members have developed and executed rigorous and sophisticated Anti-Money Laundering (“AML”) regimes and have served an integral role in aiding FinCEN and the law enforcement community in combatting money laundering and illicit financing. Our members dedicate significant time, resources, and staffing to maintain effective risk-based AML compliance programs to comply with the applicable BSA requirements and to prevent money laundering and other criminal activities through gaming. This includes: establishing a system of AML internal controls, policies, and procedures; ensuring independent testing of AML compliance; training casino personnel on their responsibilities under the programs, especially in the identification of unusual financial transactions or suspicious activities; and designating an individual or individuals responsible for assuring day-to-day AML compliance at all venues. In addition to maintaining robust AML programs, our members work hand-in-hand with federal, state, and local law enforcement on a regular basis. These relationships provide real-time intelligence, foster open channels of communication, and encourage proactive compliance.

AGA has established a BSA Working Group with representation from all our member companies. Within that group, gaming compliance professionals can share best practices, discuss trends, and identify policy and regulatory priorities. In addition to this continuous engagement, AGA also has published a guide on Best Practices for Anti-Money Laundering Compliance for several years, the most recent of which was published in December 2019.¹ This guide provides critical guidance on Know Your Customer procedures, risk assessments, training, recordkeeping, and other key facets of a successful AML program. Accordingly, it is a valuable resource for the gaming industry, other financial sectors subject to the BSA, government agencies, and law enforcement to help most effectively and efficiently guide their efforts in protecting the gaming industry and the broader financial system from money laundering and other illicit conduct.

We are grateful to FinCEN for their commitment to making AML programs more effective and providing additional guidance and regulator direction for the gaming industry. As discussed in this comment, the gaming industry has unique challenges and opportunities when it comes to BSA compliance, as compared to other financial institutions, which informs what would be conducive to AML Program Effectiveness for AGA members. The following represents the AGA's views on these issues.

II. The AGA Recommends Additional Regulatory Updates and Guidance to Further FinCEN's Objective of Enhancing AML Program Effectiveness Within the Gaming Industry

FinCEN's proposed rule regarding AML Program Effectiveness as sufficiently clear regarding the concept that FinCEN is considering for an "effective and reasonably designed" AML program. The AGA further supports the core elements defined in the proposed rule as consistent with our understanding of the purpose of AML programs. In addition, we share FinCEN's objective of increasing the effectiveness of AML programs and believe that the publication of Strategic AML Priorities would be particularly helpful to the gaming industry in executing their AML programs most efficiently and effectively.

To further enhance the effectiveness of AML programs, particularly within the gaming industry, we recommend that FinCEN consider implementing the following regulatory amendments.

A. Law Enforcement Feedback Loops Regarding SARs

Law enforcement and regulatory feedback is essential to the effectiveness of the AML framework, as it enables the regulated financial sector to more effectively tailor and design internal controls while also ensuring that AML compliance programs are appropriately designed to detect the most significant threats and meet regulatory expectations. Accordingly, consistent with the objectives of the Strategic AML Priorities, the AGA recommends establishing feedback mechanisms through which law enforcement provides the gaming industry with real-time information regarding how the SARs we are filing are advancing law enforcement efforts. In particular, the gaming industry, which filed over 51,000 SARs in 2019, would benefit from feedback loops with the government and law enforcement regarding what is most helpful to them in casino SARs and which SARs are leading to investigations and prosecutions. By enhancing transparency into the use of SARs via a feedback mechanism, filers could provide the government and law enforcement more meaningful

¹ American Gaming Association, "Best Practices for Anti-Money Laundering Compliance 2019-2020," available at https://www.americangaming.org/wp-content/uploads/2019/12/AGA-AML-Best-Practices_12-9.pdf.

information and focus their compliance resources in accordance with the goals of AML Program Effectiveness.

B. Incorporation of Casinos in 314(A) and FinCEN Exchange

Consistent with FinCEN’s stated objectives for publishing the Strategic AML Priorities, the AGA suggests that casinos and other gaming operators subject to the BSA are authorized to participate in FinCEN Exchange. AGA members have a keen interest in participating in FinCEN Exchange, which would give casinos and gaming operators a better understanding of FinCEN and law enforcement priorities. As with a feedback loop, this would help the industry identify additional suspicious activity and thus provide law enforcement with more useful SARs. For many of these same reasons, AGA members would also welcome the opportunity to participate in information sharing under section 314(a) of the USA Patriot Act. By welcoming AGA members into these two information-sharing mechanisms, the industry would be better poised to serve as an additional channel of critical information for law enforcement and would be better able to assist law enforcement in investigations, thereby enhancing AML program effectiveness.

C. Increased SAR Sharing Abilities

The AGA suggests that FinCEN consider an amendment to BSA regulations to allow for the sharing of SARs with a financial institution’s foreign branches, subsidiaries, and affiliates. Many U.S. gaming entities have foreign branches or subsidiaries. Allowing for international SAR sharing among these entities would provide financial institutions with a more holistic view of patron activity, create efficiencies in AML compliance programs, and enhance an institution’s ability to combat illicit finance risks and comply with the BSA.

Similarly, as discussed further in Section H below, AGA members would appreciate an amendment to BSA regulations that allows for SAR information sharing between partners, given the novel expansion in partnerships between brick and mortar casinos and online gaming operators, the latter of which often has the information necessary for the former to file SARs.

D. Raise CTR and SAR Reporting Thresholds to Align with Inflation

The BSA’s purpose is “to require certain reports or records where they have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.”² The current CTR threshold of \$10,000 was established nearly half a century ago in 1972.³ If the CTR threshold were to be increased by inflation, the current threshold would be \$60,000. Due to inflation, current CTR and SAR thresholds are so low that they now often capture transactions of little or no value to law enforcement.

In 2015, FinCEN reported that financial institutions were filing approximately 15.5 million CTRs per year, and that each CTR consumed approximately 45 minutes of effort.⁴ This results in over 11 million hours annually for the preparation and filing of CTRs and hundreds of millions of dollars in costs. The gaming industry continues to shoulder a heavy burden in preparing and submitting CTRs for all currency transactions that exceed \$10,000, when aggregated, over a 24-hour “gaming day.”

² 31 U.S.C. § 5311.

³ 37 Fed. Reg. 6819, 6912 (Apr. 5, 1972) (final rule) (effective July 1, 1972).

⁴ 81 Fed. Ref. 5518 (Feb. 2, 2016).

Industry and government auditors and examiners spend valuable time ensuring industry compliance with the current CTR threshold, while the industry may also face regulatory sanctions should they miss reporting transactions that have little or no material value to the government or law enforcement. To alleviate this misallocation of compliance and enforcement efforts in accordance with the objectives of AML Program Effectiveness, the AGA recommends increasing the CTR reporting threshold to align it with inflation since its promulgation.

For similar reasons, the AGA also recommends increasing the SAR reporting thresholds, which have been in place for over 20 years, since 1996.

E. SAR Lite Recommendation for Structuring

Casinos filed over 51,000 SARs in 2019, and over 21,000 of those SARs related to structuring. Pursuant to federal law enforcement policy, structuring prosecutions generally are not brought unless there is evidence that the funds came from illegal sources.⁵ Accordingly, the AGA recommends the creation of a “SAR Lite” for structuring-related offenses that would not require detailed factual narratives in the absence of information indicating that the individual’s funds are derived from illegal sources. A SAR Lite would still provide notice to the government of a customer’s structuring conduct should the government otherwise learn that the customer’s funds are derived from illegal sources. In those instances, the government could then pursue inquiries with the casino concerning the customer’s financial activity, while the casino would be relieved from undertaking the burdensome narrative preparation for a significant percentage of its SARs. This would significantly enhance AML program effectiveness by allowing the industry to reallocate these resources to higher priority aspects of BSA compliance, including those related to Know Your Customer obligations and enhanced due diligence.

F. SAR Lite Recommendation for Chip Walking

The gaming industry has benefited from increased engagement with law enforcement agencies to better understand how to implement AML programs most effectively. This engagement has provided the industry with critical information that has shaped internal AML programs as well as the allocation of resources. Importantly, as discussed above for structuring SARs, this engagement has highlighted the types of SARs that are most meaningful as well as those that may provide little to no value to law enforcement. One other example in the latter category concerns chip walking, which arises when a patron leaves a casino with a significant number of chips in his or her possession, without offsetting chip redemptions or chip buy-ins at another table and where the casino does not know the disposition of the chips. The gaming industry filed over 8,800 SARs in 2019 for chip walking.

In and of itself, chip walking often will not be suspicious. There are often innocent, mundane reasons for this behavior, particularly when the operator reasonably expects the patron will return to the casino in the near future. For example, the patron may be a local customer who is well known to the casino and expected to soon return to use those chips on a subsequent visit. Alternatively, there may be a long line at the cage on the day in question, so the patron chooses to skip the line and use or exchange the chips at a later date.

⁵ See “Criminal Investigation Enforced Structuring Laws Primarily Against Legal Source Funds and Compromised the Rights of Some Individuals and Businesses,” Treasury Inspector General for Tax Administration (April 4, 2017).

The industry has received feedback from law enforcement that a SAR for these situations provides little value. The current examination environment, however, includes no recognition that there are legitimate reasons for a patron to depart from a casino with chips. Furthermore, there seems to be an evolving regulatory expectation that a SAR will be filed for any occurrence of a “chip walk,” usurping the casino’s ability to follow their own risk-based AML compliance criteria, which distinguish between suspicious and non-suspicious chip walks.

This dichotomy imposes a costly operational burden both on the casino industry and law enforcement. The casino industry must make extensive resource allocations for this conduct, even though the examination expectation is not aligned with law enforcement priorities. Meanwhile, law enforcement must comb through a large number of SARs to find the few instances in which those priorities are implicated.

Accordingly, the AGA suggests that FinCEN consider regulatory updates that allow for a SAR Lite, similar to as discussed above, for chip walking. This would facilitate the goals of AML Program Effectiveness.

G. Clarify the Obligations for SAR Filings for Marijuana-Related Businesses

The current legal situation of marijuana-related businesses that are licensed in an increasing number of states yet are still illegal under federal law continues to present complexities and challenges for many types of financial institutions, including casinos. FinCEN guidance to date on this issue appears designed primarily for banks and other financial institutions that have customers that are marijuana-related businesses and does not address providing services to the principals of these businesses who may be casino patrons.

The AGA requests that FinCEN provide updated guidance regarding SAR filing expectations for individuals associated with marijuana-related businesses, particularly those who own or are employed by state-licensed marijuana-related businesses. Specifically, the gaming industry would welcome guidance on whether and how casinos should use FinCEN’s 2014 marijuana guidance for filing SARs on patrons whose gaming funds appear or are known to be from marijuana-related businesses and in what situations casinos should or must file SARs on these patrons (e.g., whether casinos should file a Marijuana Limited SAR for such patrons).

H. Targeted Guidance with Respect to Sports Betting and Online Gaming Issues

Since the Supreme Court’s 2018 decision in *Murphy v. National Collegiate Athletic Association*, sports betting and online gaming has been rapidly increasing in prominence within the gaming industry, resulting in approximately \$3.68 billion in gross gaming revenue. This new area poses novel considerations that are not addressed by current BSA regulations, which were written for gaming at brick and mortar casinos long before there was online gaming. For instance, consistent with state gaming requirements, it is common for a casino company (“licensee”) to have an agreement with another entity to operate the online gaming platform/sportsbook (“operator”), with the licensee having very little or no day-to-day involvement with the operator. In such cases, while the sports betting/icasino license itself belongs to the licensee, the operator functions independently (to varying degrees, depending on jurisdiction) of the licensee with the licensee typically receiving a fee and/or some percentage of revenue. In such cases, the operator performs all functions of the sports betting/icasino operation, including: (i) developing and operating the sportsbook/icasino software; (ii) branding and marketing the platform; (iii) managing the online gaming/sportsbook account creation process; (iv) processing all deposits and withdrawals; (v)

underwriting all bets made; (vi) managing all back of house accounting; and (vii) handling all customer service functions and any patron dispute resolutions.

Since the operator, and not the licensee, is typically handling all customer interactions, as well as processing all financial transactions, the AGA would appreciate guidance from FinCEN with respect to whether AML obligations in such circumstances rest with the licensee or may be fulfilled by the operator that actually runs the online gaming platform/sportsbook. It would relatedly be helpful to know, among other things, whether casinos may reasonably rely on online gaming partners' monitoring programs and to what extent the casino must oversee any AML functions delegated to an operator.

Relatedly and furthermore, the AGA suggests that current regulations be updated to allow for SAR information sharing between the two partners because in these arrangements, the operator is often the entity with the information needed for SAR filing while the licensee is the entity with the SAR filing obligation.

The AGA would appreciate the opportunity to provide additional specific information and insights to FinCEN on these issues in a virtual or in-person meeting in the coming months.

I. Geolocation Data as an Optional Field in SARs

To increase the effectiveness of AML programs, we suggest expanding the geolocation data fields for cyber indicators on the SAR form and in the SAR reporting process, beyond the current standard of an IP address, to provide other optional geolocation fields. This would assist in ensuring that SARs truly reflect the most accurate, highly useful and relevant data, as IP addresses are often deficient sources of information in light of their dynamic and occasionally inaccurate nature as well as their ability to be spoofed and anonymized.

Incorporating multi-source, device-based geolocation data collection into a financial institution's onboarding or authentication process acts as a powerful deterrent to bad actors, facilitates the identification and prevention of suspicious activity in real-time, and has been proven to reduce fraud, particularly in novel industries, such as mobile sports wagering and internet gaming. Moreover, many financial institutions already collect multi-source, device-based geolocation data (*e.g.*, GPS, WiFi Triangulation, GSM). Accordingly, this data is readily available for compliance purposes and would be an apt optional field within SARs that would further the goals of AML Program Effectiveness.

III. AGA Supports the Issuance of Strategic AML Priorities, Without an Explicit Requirement for Incorporation into Risk Assessments

The AGA and its members support an explicit requirement for a risk assessment process that identifies, assesses, and reasonably mitigates risks in order to achieve an "effective and reasonably designed" AML program. In addition, the AGA and its members support FinCEN issuing Strategic AML Priorities as a helpful tool to facilitate AML Program Effectiveness. We believe that publishing AML law enforcement priorities will increase transparency, which will, in turn, result in more efficient and effective AML compliance planning and prioritization of resources. It will also serve as a resource against which to periodically check current AML program effectiveness. We believe that publishing these priorities every two years, with updates as needed in between for new priorities, as they arise, would be most effective.

While the AGA strongly supports the publication of Strategic AML Priorities, we do not think that there should be a requirement that risk assessments are updated to account for those priorities. We believe that the focus should instead be on generally assessing whether updates to AML compliance policies and procedures are appropriate based on the relevance of Strategic AML Priorities to the particular industry or institution. Making updates to risk assessments a requirement, particularly when updates to the Strategic AML Priorities are made in real-time, might divert too much time and resources to this process, without much, if any, additional benefit compared to a general requirement that AML compliance programs consider updates for such priorities. Accordingly, such a requirement is more likely to frustrate the goals of AML Program Effectiveness.

IV. Conclusion

The AGA and our members appreciate the opportunity presented by this rulemaking to weigh in on AML Program Effectiveness and what it means to our industry. To truly be effective in combating money laundering, we need to remain vigilant in our compliance, work closely with law enforcement and regulators, prioritize resources, and keep innovating.

To help facilitate communication with our federal partners, we ask that there be a feedback loop on SARs filings, that the gaming industry be allowed to participate in the 314(a) and FinCEN Exchange programs, and that SAR information be shared with appropriate foreign entities and gaming partners. To better align with strategic priorities, we request an increase in the SAR and CTR filing thresholds and the creation of a “SAR lite” specifically for chip walking and structuring, which are unique to the gaming industry. We also support the inclusion of optional fields for other types of geolocation data, besides IP addresses.

As we face new kinds and ways of doing business, we support updated guidance with respect to marijuana-related businesses and online gaming. All of these elements come together to represent a more effective and responsive AML regime. We look forward to continuing an ongoing dialogue with FinCEN and other financial institutions as we all work towards our shared goal of combatting money laundering.

Thank you for your consideration of these requests.