

March 28, 2022

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

Re: Notice of Proposed Rulemaking, Pilot Program on Sharing of Suspicious Transaction Reports With Foreign Branches, Subsidiaries and Affiliates, Docket Number FINCEN-2022-0002, RIN Number 1506-AB51

Dear FinCEN,

As the national trade association representing licensed commercial and tribal casino operators and gaming suppliers, the American Gaming Association (“AGA”) appreciates this opportunity to comment in response to the Department of Treasury’s Financial Crimes Enforcement Network’s (“FinCEN”) Notice of Proposed Rulemaking (“NPRM”) on the Pilot Program on Sharing of Suspicious Transaction Reports With Foreign Branches, Subsidiaries and Affiliates.¹

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 72 commercial and tribal casino operators, U.S.-licensed gaming suppliers, financial institutions, destination marketing organizations, and other key stakeholders in the gaming industry.

Since 1985, state-licensed casinos have been defined as “financial institutions” under the BSA. Since that time, our members have developed and implemented rigorous and sophisticated AML programs 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 applicable BSA requirements and prevent money laundering and other criminal activities through gaming. Each year, our members file tens of thousands of Suspicious Activity Reports (“SARs”) and Currency Transaction Reports (“CTRs”). In addition to maintaining robust AML programs, our members work hand-in-hand with federal, state, and local law enforcement and regulators on a regular basis. These relationships provide real-time intelligence, foster open two-way channels of communication, and encourage proactive compliance.

AGA has established a BSA Working Group with representation from all of our member companies. Within that group, gaming compliance professionals can share best practices, discuss trends, and identify policy

¹ 87 Fed. Reg. 3719 (Jan. 1, 2022).

and regulatory priorities. In addition, for the past several years, AGA has published a guide on Best Practices for Anti-Money Laundering Compliance (“the Guide”), which we are in the process of updating. This Guide provides critical guidance on Know Your Customer procedures, risk assessments, training, CTR and SAR reporting, including the need for SAR disclosure controls, 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.

AGA members are committed to taking effective and proactive risk-based measures to prevent and detect financial crime and ensure that the gaming industry is an active and trusted partner with law enforcement and our regulators. AGA embraces the objectives of the AML Act and FinCEN’s related modernization efforts to ensure that BSA compliance incorporates effective communication within financial institutions and with law enforcement to provide information that is most useful to law enforcement to combat money laundering, terrorist financing, and other financial crime. AGA believes that measures, like the proposed SAR sharing pilot program, will further that goal.

AGA welcomes the opportunity to engage again with FinCEN to present the unique BSA challenges and capabilities presented by the gaming industry that should be taken into consideration in connection with this and all the rulemaking to implement the AML Act and modernize the AML/BSA regime.

II. Pilot Program for SAR Sharing with Foreign Affiliates

The NPRM was issued in response to section 6212(a) of the Anti-Money Laundering Act of 2020 (“AML Act”).² This provision directs FinCEN to establish by regulation a pilot program to allow financial institutions subject to the SAR statutory and regulatory reporting requirement to be able to share SARs and SAR related information³ with their non-U.S. branches, subsidiaries, and affiliates for the purpose of combatting illicit finance risk. Under the proposal, FinCEN would require an application and approval process for eligible financial institutions, including casinos, that wish to be considered to participate in the pilot program.⁴ FinCEN proposes internal controls for safeguarding the confidentiality and security of the information shared during the participation⁵ and other requirements, including, among others, quarterly reporting to FinCEN and recordkeeping.⁶ It is anticipated that the sharing may be two way -- the foreign affiliate also will share SARs it has filed in the foreign jurisdiction to the extent permissible under the foreign law with the U.S. casino or other financial institution. Under the statute and the proposed regulations, any foreign SARs and SAR information disclosed under the program will be subject to the same disclosure restrictions applicable to U.S. SARs.⁷

² Codified at 31 U.S.C. § 5318 (g)(8).

³ “SAR and SAR related information” is proposed to be defined as defined as the SAR report and information that would reveal the existence of a SAR. Proposed 31 CFR § 1010.240 (a) (4).

⁴ Proposed 31 CFR § 1010.240(c)(1)

⁵ Proposed 31 CFR § 1010.240(c)(2).

⁶ Proposed 31 CFR § 1010.240(c)(4).

⁷ Proposed 31 CFR § 1010-240(e)

AGA appreciates that FinCEN proposes that casinos will be eligible to participate in the pilot program. SAR sharing bolsters BSA compliance and AML risk management and creates compliance efficiencies for casinos similar to those for other BSA financial institutions. Since 2017, pursuant to FinCEN guidance requested by AGA and our members, casinos have been authorized to share SARs and SAR related information with parent entities and other U.S. domestic affiliate casinos subject to the BSA.⁸ Because patrons often play at more than one casino in a casino group on the same gaming trip or within a close period of time, this guidance has been very helpful in assessing patron risk, identifying and monitoring for suspicious activity at more than one casino and, in some cases, has allowed the filing at joint SARs based on activity at multiple casinos. By providing a more complete picture of the nature and scope of potential suspicious, domestic SAR sharing assists in managing AML risk at the casino and enterprise level, and we believe has resulted in casinos filing SARs that are more comprehensive and beneficial to law enforcement.

Similarly, our member casinos that have non-U.S. casinos affiliates have observed, especially prior to the pandemic, that the same patrons may frequent both their U.S. and non-U.S. casinos. As the pandemic travel restrictions ease, we expect this pattern to resume, if not increase. AGA also expects that our members will continue to establish new affiliates in countries where gaming laws are becoming less restrictive, including non-U.S. affiliates that offer online gaming and sports betting. SAR sharing will not only facilitate the investigation and reporting of suspicious activity in the United States and in those countries, but SAR history will inform decisions whether to allow gaming by, or retain, patrons that pose too great a financial crime risk enterprise wide.

A. Proposed Clarification in the Final Regulations

Casinos, as defined in the BSA regulations (casinos licensed by State or tribal authorities as casinos),⁹ are eligible to apply and participate in the pilot program. In some cases, if the foreign affiliate is a sports gaming operator, it may not be technically licensed as a casino by gaming authorities in the foreign jurisdiction. In the final regulations, we recommend that FinCEN clarify that for purposes of the pilot program, a foreign branch, subsidiary, or affiliate of a BSA casino may be a foreign gaming business licensed by a foreign jurisdiction whether or not licensed by the foreign jurisdiction as a casino.

B. Restrictions on Sharing with Casino Affiliates in the PRC

Under the proposal, consistent with section 6212(a), sharing SARs and related information with affiliates in the People's Republic of China ("PRC") and certain other jurisdictions would be prohibited.¹⁰ Several of our members have large casino affiliates in Macau, a special administrative region of the PRC. These casinos operate under strict local gaming regulations, including anti-money laundering requirements. A number of patrons play in Macau and also at the casino company's U.S. casinos. If these members decide to apply to participate in the pilot program, they may ask FinCEN for an exception to the PRC restrictions as provided in the statute and the proposed regulations.¹¹ If the pilot leads to FinCEN's requesting that Congress

⁸ FIN-2017-G001, Sharing Suspicious Activity Reports with U.S. Parents and Affiliates of Casinos (Jan. 4, 2017).

⁹ 31 CFR § 1010.100 (t) (5) (definition of casino).

¹⁰ Proposed 31 CFR § 1010.240 (d).

¹¹ Proposed 31 CFR § 1010.240 (d)(2) (exception process).

authorize a further extension to the pilot program,¹² we urge FinCEN to recommend eliminating the PRC restriction on sharing with respect to casinos.

III. Conclusion

AGA members with foreign gaming affiliates welcome that FinCEN proposes to give them the opportunity to be considered to participate in this the pilot program to better manage their enterprise-wide risk and enhance the quality of information that will be reported to law enforcement. AGA members are cognizant of the heightened need for measures to safeguard the security and confidentiality of SARs when disseminated outside the United States and stand ready to provide FinCEN with the information it needs to assess the utility of the program.

Thank you for your consideration of our comments. We look forward to working closely with FinCEN as you continue forward with this rulemaking and other measures to implement the AML Act and modernize and increase the efficiency and effectiveness of BSA/AML compliance.



William Miller Jr.
President & CEO
American Gaming Association

¹² Section 6212(a) provides for a three-year pilot beginning with the date of enactment of the AML Act, with the possibility of a two-year extension with Congressional notification, and further legislation if FinCEN proposes to continue the pilot longer. The proposal refers to the three-year duration and the possibility of a two-year extension. 31 U.S.C. 5318(g)(8)(D)(iii) and proposed 31 CFR § 1010.240(g).