AMERICAN GAMING ASSOCIATION

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July 31, 2017

Secretary of the Treasury Steven Mnuchin
U.S. Department of the Treasury
1500 Pennsylvania Avenue N.W.
Washington, DC 20220

Dear Secretary Mnuchin:

RE: Request for Comments, 82 C.F.R., 27217 (June 14, 2017) pursuant to Executive Orders 13771 and 13777
Via electronic submission

On behalf of the American Gaming Association (AGA), the national trade association representing licensed commercial and tribal casino operators and gaming suppliers supporting 1.7 million U.S. jobs across 40 states, we welcome this opportunity to comment on Treasury Department regulations that can be, "eliminated, modified, or streamlined in order to reduce burdens," as part of the Department's implementation of the Regulatory Reform Agenda specified in Executive Orders 13777 and 13771.

Our comments focus on the anti-money laundering (AML) regulations that the Treasury Department's Financial Crimes Enforcement Network (FinCEN) applies to commercial and tribal casinos as "financial institutions" under the Bank Secrecy Act (BSA).[1]

The AGA supports FinCEN's efforts to enhance compliance with the BSA. The casino gaming industry recognizes the importance of anti-money laundering efforts and makes extensive efforts to comply with all such requirements. Our members' efforts include extensive investment in employee training, as well as the implementation of internal controls and systems. Moreover, the industry honors its commitment to foster a culture of compliance across gaming operations by identifying and implementing best practices throughout the industry as appropriate based on varying risk profiles.[2]

We welcome the Treasury Department's current review of its regulations, including AML requirements, to reduce unnecessary regulatory burdens and ensure that the gaming industry can allocate internal resources most effectively. We offer a number of suggestions for ways in which the current regulatory obligations may be modified to ensure continuing effectiveness while eliminating unnecessary burdens.

We also think both sides – the government and the industry - can communicate better to achieve our shared goals. For example, we would like a better understanding of how the

[1] 31 C.F.R. Chapter X, §§ 1021.100 to 1021.670.
[2] AGA, "Investing in America's Financial Security: Casinos' Commitment to Anti-Money Laundering Compliance," (January 2016), https://www.americangaming.org/sites/default/files/AGA%20AML%20Research%20Report%20Final%20011916.pdf.; AGA, "Best Practices for Anti-Money Laundering Compliance," (January 2017), https://www.americangaming.org/sites/default/files/Best%20Practice%202017.pdf.

information we provide through our BSA reports is used by law enforcement. In 2016 alone, the industry filed nearly 58,000 suspicious activity reports (SARs).

We are eager to understand how those reports advance law enforcement's efforts and investigations and which aspects of those reports led to the successful resolution of a complex case or served as the missing link that ultimately connected the dots in a complex financial crime investigation.

This type of feedback will help us tailor and enhance our AML programs to make them more effective and ultimately provide government and law enforcement with more meaningful information.

31 C.F.R. § 1021.311: Filing Obligations: Align Currency Transaction Reports (CTRs) Reporting Threshold 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."[3]

When the first regulations for the BSA were proposed in June 1971, the CTR threshold was $5,000.[4] The final rule issued in April 1972 changed the threshold to $10,000.[5] This threshold has remained the same for nearly a half-century.

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."[6]

In 2015, FinCEN reported that financial institutions were filing CTRs at a rate of 15.5 million annually, and that each CTR consumed approximately 45 minutes of effort.[7] This results in over 11 million hours annually for preparing and filing CTRs and hundreds of millions of dollars of costs. A recent AGA study estimated that casino CTR filings increased by 75 % between 2011 and 2014 alone, which indicates that the industry currently files well over a million CTRs per year.[8]

Due to inflation, the current threshold has become so low that it effectively captures transactions of little or no value to law enforcement.

To alleviate this misallocation of compliance and enforcement efforts, we respectfully suggest that Treasury align the $10,000 CTR reporting threshold with inflation. If the threshold were aligned with the Consumer Price Index in 1972, inflation would increase it to nearly $60,000 today. Conversely, today's $10,000 threshold is the equivalent of a threshold of about $1,700 in 1972.

[3] 31 U.S.C. § 5311 (emphasis added).
[4] 36 Fed. Reg. 11208, 11209 (June 10, 1971) (proposed rule).
[5] 37 Fed. Reg. 6819, 6912 (Apr. 5, 1972) (final rule) (effective July 1, 1972).
[6] 31 C.F.R. § 1021.311.
[7] 81 Fed. Reg. 5518 (Feb. 2, 2016).
[8] AGA, "Investing in America's Financial Security," p. 24.

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Industry and government auditors and examiners spend valuable time ensuring industry compliance with the current 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.

Raising the CTR reporting threshold to $60,000 will materially reduce the burden on the industry, while also providing the U.S. government and law enforcement with more meaningful and relevant data pursuant to the objectives of the BSA.[9]

31 C.F.R. § 1021.320: Reports by Casinos of Suspicious Transactions: Create Streamlined Suspicious Activity Report (SAR) Form for Structuring

Of the total SARs filed by casinos in 2016, roughly one-quarter involved structuring situations in which the customer was suspected of attempting to evade the $10,000 reporting threshold in some fashion. Yet under federal law-enforcement policy, almost no structuring prosecutions will be pursued this year in the absence of evidence that the funds came from illegal sources.[10]

We recognize the law enforcement interest in knowing about structuring situations for those that involve illegally-sourced funds. Therefore, in recognition of the interests of law enforcement as well as the regulatory reduction objectives in the executive orders prompting these comments, we respectfully suggest that FinCEN contemplate guidance that casino SARs for structuring situations need not include the detailed factual narratives that are typically included in all SAR submissions, in the absence of information that illegal-source funds were involved.

Such a "SAR light" would still provide notice to the government of a customer's structuring conduct should the government otherwise learn that the customer's funds derived from illegal sources. In those instances, the government then can 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 enable the industry to re-allocate those resources to other higher priority aspects of BSA compliance, including know your customer obligations and enhanced due diligence.

31 C.F.R. § 1021.320: Reports by Casinos of Suspicious Transactions: Clarify Obligations for "Cyber" Related SARs

On September 6, 2016, FinCEN issued an advisory on email compromise schemes and shortly thereafter an advisory on cyber-events and cyber-enabled crime as well as Frequently Asked Questions (FAQs).[11]

Subsequently, questions have arisen regarding the interpretation and application of this guidance, creating a burden on the gaming industry's BSA compliance efforts.

[9] Even a number in between the current CTR threshold and the inflation aligned figure of nearly $60,000 would substantially reduce the burden on the industry.
[10] *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).
[11] FIN-2016-A003; FIN-2016-A005.

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The AGA seeks to provide uniform guidance on compliance to its members with the SAR rules as they relate to cyber-events and cyber-enabled crime.

Therefore, we respectfully suggest that FinCEN issue additional guidance clarifying:

- When a SAR is required on a cyber-event or a cyber-enabled crime; and
- That a SAR is only required when the cyber-event or cyber-enabled crime is targeted at licensed gaming entities that operate as financial institutions, and that a SAR is not required when the cyber-event or cyber-enabled crime is targeted at non-financial institutions within a casino's broader corporate structure, such as restaurants or hotels.

In addition, we respectfully suggest that FinCEN expand its Cyber SAR Guidance to include additional examples (applicable to non-bank entities including casinos) demonstrating when a Cyber SAR is mandatory and when a Cyber SAR is voluntary.

These clarifications would significantly reduce the burden on the industry that results from the current ambiguity stemming from existing guidance.

31 C.F.R. § 1021.320: Reports by Casinos of Suspicious Transactions: Clarify Obligations for SARs Related to 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.

To ensure that this trend of state-based marijuana legalization does not lead to unintended consequences for the gaming industry's operations, we respectfully request clarification regarding the scope and application to our industry of FinCEN's 2014 marijuana guidance.[12]

For example, the guidance appears designed primarily for banks and other financial institutions that have corporate entity customers. Casino patrons, on the other hand, are individuals.

Accordingly, we seek clarification of the industry's obligation in preparing SARs for individuals who own or are employed by such state-licensed marijuana-related businesses. Specifically, we need to know whether and how casinos should use the 2014 marijuana guidance for filing SARs on patrons whose gaming funds appear or are known to be from marijuana-related businesses (e.g., whether to file a Marijuana Limited SAR).

31 C.F.R. § 1010.810(b): Enforcement: Align Criteria for IRS BSA Compliance Examinations with Law Enforcement Priorities

The IRS has not published its instructions for BSA compliance examinations of casinos. Indeed, AGA members have experienced application of variable criteria during BSA compliance examinations at different casino properties.

We respectfully suggest disclosure of IRS examination criteria for casinos. Providing such criteria will enable casinos to more clearly understand compliance expectations are while also

[12] FIN-2014-G001.

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ensuring that casinos' AML programs are effective. Similarly, it would seem beneficial for IRS examiners to have those criteria known throughout the industry.

On a related point, we respectfully suggest that examination criteria be more closely aligned with the potential risks present in the casino environment as well as the priorities and objectives of FinCEN and law enforcement. We are concerned that some regulatory expectations will not provide law enforcement with the most meaningful BSA reports, while also creating significant operational burdens for the industry.

The gaming industry has benefited from increased engagement with law enforcement agencies to better understand how to most effectively implement AML programs. This engagement has provided the industry with critical information that has shaped internal AML programs as well as allocation of resources. Importantly, it has also highlighted the types of SARs that are most meaningful as well as those that may provide little to no value to law enforcement.

One example in the latter category concerns the scenario in which a patron: (i) departs from a casino with a significant number of chips in his or her possession (ii) without offsetting chip redemptions or chip buy-ins at another table, and (iii) the casino accordingly does not know the disposition of the chips ("chip walk").

In and of itself, this scenario often will not be suspicious. As explained in the industry's Best Practices for AML compliance, 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.[13]

For example, the patron may be a local customer, well known to the casino, who may be expected to return in the near future and to use those chips on a subsequent visit. Alternatively, there may be a long line at the cage on the day in question, and the patron chooses to skip the line and use the chips on a future visit.

The industry has received feedback from law enforcement that a SAR for these situations provides little value. Consequently, the industry has established measures to identify when "chip walk" behavior may properly be considered suspicious, and reports such activity on SARs.

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 allocation, even though the examination expectation is not aligned with law enforcement priorities. Law enforcement must comb through a large number of SARs to find the few instances where those priorities are implicated.

[13] AGA, "Best Practices for Anti-Money Laundering Compliance," (January 2017), https://www.americangaming.org/sites/default/files/Best%20Practice%202017.pdf.

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Instead, Treasury should encourage the more critical aspects of casino BSA compliance, such as know your customer obligations and enhanced due diligence.

31 C.F.R. § 1010.810(b): Enforcement: Clarify Findings in Internal Revenue Service (IRS) Examination Closing Letters

The closing letters issued upon conclusion of a casino's IRS examination for BSA compliance often reflect a zero-tolerance attitude toward compliance issues that nevertheless result in no recommended sanction.

Thus, the closing letters will state that the BSA compliance program of the casino has "material deficiencies," even though some or many of the identified deficiencies are not material and have not triggered escalated review or potential enforcement action.

Moreover, such unsupported statements in examination letters are problematic when casinos' closing letters are reviewed by FinCEN or when casinos face external audit or review by any bank with which they may have a relationship. This type of characterization may also impose substantial further transaction costs on the casinos.

Moreover, they are unwarranted by the circumstances present. At the very least, we respectfully suggest that the IRS should make clear the levels of deficiency (possibly through the creation of a well - defined rating system) that would trigger such a damaging statement in an examination closing letter.

In closing, we thank you for your attention to these important matters. Please do not hesitate to contact us if we can provide supplemental information that would assist the Treasury in resolving these issues. The AGA stands ready to work with Treasury leadership to provide information and context on our sector with regard to its operations and commitment to BSA/AML compliance.

Sincerely,

G. Freeman

Geoff Freeman
President and CEO

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