



**International Bancshares
Corporation**

February 18, 2021

Via email: Comments@fdic.gov

Federal Deposit Insurance Corporation
Mr. Robert E. Feldman, Executive Secretary
Attn: Comments: RIN 3064-AF56
550 17th Street N.W.
Washington, D.C. 20429

Re: Comments on Notice of Proposed Rulemaking Modifying Requirements for Suspicious Activity Reports (RIN 3064-AF56)

Dear Sir:

The following comments are submitted by International Bancshares Corporation ("IBC"), a publicly-traded, multi-bank financial holding company headquartered in Laredo, Texas. IBC maintains 187 facilities and 284 ATMs, serving 88 communities in Texas and Oklahoma through five separately chartered banks ("IBC Banks") ranging in size from approximately \$400 million to \$10 billion, with consolidated assets totaling approximately \$14 billion. IBC is one of the largest independent commercial bank holding companies headquartered in Texas.

This letter responds to the notice of proposed rulemaking ("Notice") by the Federal Deposit Insurance Corporation ("FDIC") related to certain Bank Secrecy Act ("BSA") Suspicious Activity Reports ("SAR").

Under the proposed rule change, the FDIC would have the authority to issue exemptions from the SAR regulatory requirements if the exemption request was consistent with safe and sound banking practices. According to the FDIC, the purpose of the rule change is to grant relief to institutions that develop innovative solutions to meet BSA requirements more efficiently and effectively. FDIC desires express regulatory power to issue SAR exemptions in order to foster technology and innovation in the area of monitoring and reporting financial crime and terrorist financing.

The rule change is also meant to bring the FDIC's regulation in-line with the recently proposed changes to the Office of the Comptroller of the Currency's ("OCC") SAR regulation and the Financial Crimes Enforcement Network's ("FinCEN," together with the FDIC and OCC, the "Agencies") existing SAR regulation. Generally, FinCEN's SAR regulation is narrower in scope than the FDIC's regulation, which also requires SARs to be filed for any known or suspected instance of insider abuse in any amount, and further requiring the prompt notification to the institution's board of directors when a SAR has been filed.

IBC Banks historically average 360 SARs per month per bank using a manual process for all steps except final filing of the SAR. IBC Bank's manual SAR process is as follows:

1. An investigator from the Financial Investigation Unit prepares a case report documenting his findings and recommendation of whether to file a SAR. As part of the case report, the investigator will attempt to contact the relevant customer in order to obtain the underlying facts and documentation. The investigator's case report includes all pertinent documentation to the case, including transactions, and customer identifying information.
2. The case report is then reviewed and approved by a BSA approver.
3. The investigator then submits the case report and all related documentation and information to a SAR drafter who reviews the case report and the documentation to build the SAR. The SAR drafter verifies any transaction or customer identifying information and begins to build the SAR in the IBC Banks' AML surveillance system, Financial Crime Risk Management. The SAR drafter must verify that all required information is accurately included and select the pertinent categories applicable, dependent on the type of suspicious activity and transactions that are being included. The SAR drafter then writes the SAR narrative, taking into account the details of what the investigator identified in their case report.
4. The SAR drafter then submits the draft SAR to the Quality Assurance department, which conducts a review of the SAR, including categories and narrative, for accuracy and compares the draft SAR to the case report to ensure nothing is missed.
5. The SAR is then filed using FinCEN's electronic filing system.

The Notice invites input on several general and specific issues related to the proposed SAR regulation changes. IBC has provided comments to the specific issues below.

1. In particular, would the proposed rule have any costs or benefits to covered entities that the FDIC has not identified?

IBC Comment: The potential benefits to institutions that receive exemptions may be much greater than FDIC realizes, and may greatly disadvantage small and mid-size institutions that are not in a position to implement proprietary or expensive third-party technology and other solutions. The FDIC seems primarily interested in SAR exemptions for novel and innovative technological solutions to meet SAR requirements. In fact, the FDIC specifically lists the following as areas of particular interest related to SAR monitoring, investigating, and filing: (i) automated form population using natural language processing, transaction data, and customer due diligence information; (ii) automated or limited investigation processes depending on the complexity and risk of a particular transaction and appropriate safeguards; and (iii) enhanced monitoring processes using more and better data, optical scanning, artificial intelligence, or machine learning capabilities. This apparently singular focus on high-tech solutions will disadvantage small and mid-sized

institutions that are unable to afford, build, or implement such novel and innovative solutions to meet their SAR requirements.

IBC believes small and mid-sized institutions will be disadvantaged at the expense large institutions that are able to buy or build their way into a SAR exemption. As these solutions continue to improve and lower costs, small and mid-sized institutions will still struggle under manual SAR processes and lower tier technology.

While the FDIC states that the rule change will not have an effect on small institutions because it will not impose significant *new* costs or burdens on such institutions, this is a bit disingenuous. If all large institutions were suddenly exempt from paying taxes, the tax burden on small institutions would not increase but it would be impossible to argue that they were not disadvantaged by such an exemption for large institutions.

In fact, the FDIC even admits that the proposed rule will likely result in cost savings for those entities that receive exemptions: "The FDIC expects the proposed rule will result in cost savings for FDIC-supervised institutions that obtain exemptions from SAR filing requirements." (Notice, page 12). The FDIC estimates that SAR compliance costs account for 1.9% of annual non-interest expenses for FDIC-supervised institutions. As more institutions are allowed exemptions, the gap in SAR costs amongst FDIC-supervised institutions will only grow as small and mid-sized institutions are unable to access novel and innovative solutions and large institutions are able to build on their already robust base of options.

2. The FDIC invites comments on the proposed exemptions to 12 CFR 353.3.

IBC Comment: No additional comment.

3. The FDIC invites comments on whether any additional detail relating to the procedures that would be followed in considering, granting, or revoking exemptions are necessary.

IBC Comment: IBC strongly urges the FDIC to issue clear guidance regarding the form, process, and content related to exemption requests and revocations. The FDIC should provide a model form for the exemption request which includes all the information the FDIC requires in order to consider and rule on a request.

The FDIC and FinCEN should agree that FinCEN will defer to and honor the FDIC's final exemption decisions. FinCEN and the FDIC should of course work together (as applicable) to evaluate and consider exemption requests, but the ultimate decision should be FDIC. IBC appreciates that, unlike the OCC's proposed exemption rule, the FDIC will work with FinCEN in this process and not require institutions to duplicate work when both agencies' approval is required.

In that vein, IBC recommends that the Agencies should harmonize their exemption authority in order to receive, evaluate, and maintain exemptions cohesively. If the Agencies are not consistent in handling exemptions, one group of regulated institutions may be disadvantaged.

IBC also requests that the FDIC include a safe harbor in the rule to allow a wind-down period if the FDIC revokes an exemption. The proposed rule gives the FDIC blanket authority to revoke or amend exemptions at any time. It is impossible to change a process or system as large as SAR compliance without substantial time, effort, and cost. The FDIC should allow an institution a sufficient period of time to transition its SAR program in the event the FDIC revokes the institution's exemption. Without a sufficient transition timeline, it is likely the SAR program would be compromised during the process. Institutions should also be granted some level of protection in reliance on the FDIC's grant of exemption.

The FDIC should also provide clear guidance governing how exemption requests will be evaluated and how the various considerations will be weighed. Will more weight be given to broad machine learning applications and algorithms, or will the FDIC favor requests that focus on cost and time savings, regardless of technical sophistication? Will the FDIC evaluate requests in the context of the requesting institution, or against the entire population of FDIC-supervised institutions? If a small institution requests an exemption for a novel automation process that is otherwise already dwarfed by existing and approved technology that is unaffordable for the small institution, will the FDIC still consider the exemption?

IBC also requests the FDIC make clear how the exemption landscape will affect FDIC's SAR requirements. At what point, if at all, will the FDIC formally recognize the solutions for which it grants exemptions? For example, if four institutions have been granted exemptions for a specific technology or protocol, will the FDIC consider issuing formal regulatory acceptance of such technology or protocol?

Most concerning to IBC is how the FDIC intends to address confidentiality related to the exemption requests. Such requests may contain trade secrets, proprietary information, and other sensitive business information. The FDIC should clearly articulate how the requests will be maintained and what, if any, portions are subject to public disclosure, and how an institution can prevent public disclosure, if at all. This is also important in considering whether the FDIC will formally bless an exemption method once it has gained a critical mass, as discussed above.

Finally, we should also understand that SAR reporting is way beyond any law enforcement value. Over filing of small dollar SARs with no law enforcement value continues to be a serious problem and a heavy financial burden for the industry. If the federal government continues to refuse to provide real data to support the filing of so many needless SARs, a severe limitation on filing should be advanced by at least providing a minimum dollar amount that is meaningful to file a SAR. Because the government legal resources are limited, most federal agencies indicate they

will not pursue cases involving sums under \$250,000, so why file SARS under this threshold. We recommend a general exemption for SARS under \$250,000 or at a minimum exempt SARs under \$10,000 as proposed as a threshold for SARs in the H.R. 6068 Counter Terrorism and Illicit Finance Act.

Thank you for the opportunity to share IBC's view.

INTERNATIONAL BANCSHARES CORPORATION



Dennis E. Nixon, President and CEO