

DEPARTMENT OF THE TREASURY

31 CFR Part 1060

RIN 1506-AB12

Financial Crimes Enforcement Network; Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (“CISADA”) Reporting Requirements Under Section 104(e)

AGENCY: Financial Crimes Enforcement Network (“FinCEN”), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY:

FinCEN, to comply with the congressional mandate to prescribe regulations under section 104(e) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (“CISADA”) and consistent with its statutory mission under 31 U.S.C. 310, is proposing to issue regulations that would require a U.S. bank that maintains a correspondent account for a foreign bank to inquire of the foreign bank, and report to FinCEN, with respect to whether the foreign bank maintains a correspondent account for, or has processed one or more transfers of funds within the preceding 90 calendar days, other than through a correspondent account, related to any financial institution designated by the U.S. Government in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction, or in connection with Iran's support for international terrorism. In addition, FinCEN is proposing to require a U.S. bank that maintains a correspondent account for a foreign bank to inquire of the foreign bank, and report to FinCEN, with respect to whether the foreign bank has processed one or more transfers of funds within the preceding 90 calendar days related to

Iran's Islamic Revolutionary Guard Corps ("IRGC") or any of its agents or affiliates designated by the U.S. Government. Under the proposed regulations, U.S. banks will only be required to report this information to FinCEN upon receiving a specific written request from FinCEN.

DATES: Written comments are welcome and must be received on or before [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES:

FinCEN: You may submit comments, identified by Regulatory Identification Number (RIN) 1506-AB12, by any of the following methods:

- *Federal E-rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. Include 1506-AB12 and the caption "Attention: CISADA Reporting Requirements Under Section 104(e)" in the submission. Refer to Docket Number FINCEN-2011-0002.

- *Mail:* FinCEN, P.O. Box 39, Vienna, VA 22183. Include 1506-AB12 and the caption "Attention: CISADA Reporting Requirements Under Section 104(e)" in the body of the text. Please submit comments by one method only. Comments submitted in response to this notice of proposed rulemaking will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

Inspection of comments: Public comments received electronically or through the U.S. Postal Service in response to a notice and request for comment will be made available for public review as soon as possible on <http://www.regulations.gov>. Comments received may be physically inspected in the FinCEN reading room located in Vienna, Virginia. Reading room appointments are available weekdays (excluding

holidays) between 10 a.m. and 3 p.m., by calling the Disclosure Officer at (703) 905–5034 (not a toll-free call).

FOR FURTHER INFORMATION CONTACT:

The FinCEN regulatory helpline at (800) 949–2732 and select Option 8.

SUPPLEMENTARY INFORMATION:

I. Statutory Provisions

On July 1, 2010, the President signed CISADA¹ into law. Section 104(c) of CISADA requires the Secretary of the Treasury (“the Secretary”) to prescribe regulations to prohibit, or impose strict conditions on, the opening or maintaining in the United States of correspondent accounts and payable-through accounts for foreign financial institutions that the Secretary finds knowingly engage in sanctionable activities described in section 104(c)(2) of CISADA. The relevant statutory language reads as follows:

“(c) PROHIBITIONS AND CONDITIONS WITH RESPECT TO CERTAIN ACCOUNTS HELD BY FOREIGN FINANCIAL INSTITUTIONS.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Secretary of the Treasury shall prescribe regulations to prohibit, or impose strict conditions on, the opening or maintaining in the United States of a correspondent account or a payable-through account by a foreign financial institution that the Secretary finds knowingly engages in an activity described in paragraph (2).

(2) ACTIVITIES DESCRIBED.—A foreign financial institution engages in an activity described in this paragraph if the foreign financial institution—

(A) facilitates the efforts of the Government of Iran (including efforts of Iran’s Revolutionary Guard Corps or any of its agents or affiliates)—

(i) to acquire or develop weapons of mass destruction or delivery systems for weapons of mass destruction; or

(ii) to provide support for organizations designated as foreign terrorist organizations under section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)) or support for acts of international terrorism (as defined in section 14 of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note));

¹ Pub. L. No. 111-195, 124 Stat. 1312 (2010).

(B) facilitates the activities of a person subject to financial sanctions pursuant to United Nations Security Council Resolution 1737 (2006), 1747 (2007), 1803 (2008), or 1929 (2010), or any other resolution that is agreed to by the Security Council and imposes sanctions with respect to Iran;

(C) engages in money laundering to carry out an activity described in subparagraph (A) or (B);

(D) facilitates efforts by the Central Bank of Iran or any other Iranian financial institution to carry out an activity described in subparagraph (A) or (B);
or

(E) facilitates a significant transaction or transactions or provides significant financial services for—

(i) Iran’s Revolutionary Guard Corps or any of its agents or affiliates whose property or interests in property are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.); or

(ii) a financial institution whose property or interests in property are blocked pursuant to that Act in connection with—

(I) Iran’s proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction; or

(II) Iran’s support for international terrorism.

(3) PENALTIES.—The penalties provided for in subsections (b) and (c) of section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) shall apply to a person that violates, attempts to violate, conspires to violate, or causes a violation of regulations prescribed under paragraph (1) of this subsection to the same extent that such penalties apply to a person that commits an unlawful act described in section 206(a) of that Act.”

On August 16, 2010, the Office of Foreign Assets Control (“OFAC”) published the Iranian Financial Sanctions Regulations, 31 CFR Part 561 (the “IFSR”). Section 561.201 of the IFSR implements section 104(c) of CISADA. It states that the Secretary will, consistent with authorities under CISADA, prohibit or impose strict conditions on the opening or maintaining in the United States of correspondent accounts or payable-through accounts for a foreign financial institution that the Secretary finds knowingly engages in one or more of the sanctionable activities described in section 561.201(a) of the IFSR.

Section 104(e) of CISADA requires the Secretary to prescribe regulations to establish one or more specific requirements for U.S. financial institutions maintaining correspondent accounts for foreign financial institutions, in connection with the sanctionable activities described in section 104(c)(2) of CISADA. The relevant statutory language reads as follows:

“(e) REQUIREMENTS FOR FINANCIAL INSTITUTIONS MAINTAINING ACCOUNTS FOR FOREIGN FINANCIAL INSTITUTIONS.—

(1) IN GENERAL.—The Secretary of the Treasury shall prescribe regulations to require a domestic financial institution maintaining a correspondent account or payable-through account in the United States for a foreign financial institution to do one or more of the following:

(A) Perform an audit of activities described in subsection (c)(2) that may be carried out by the foreign financial institution.

(B) Report to the Department of the Treasury with respect to transactions or other financial services provided with respect to any such activity.

(C) Certify, to the best of the knowledge of the domestic financial institution, that the foreign financial institution is not knowingly engaging in any such activity.

(D) Establish due diligence policies, procedures, and controls, such as the due diligence policies, procedures, and controls described in section 5318(i) of title 31, United States Code, reasonably designed to detect whether the Secretary of the Treasury has found the foreign financial institution to knowingly engage in any such activity.

(2) PENALTIES.—The penalties provided for in sections 5321(a) and 5322 of title 31, United States Code, shall apply to a person that violates a regulation prescribed under paragraph (1) of this subsection, in the same manner and to the same extent as such penalties would apply to any person that is otherwise subject to such section 5321(a) or 5322.”

In order to comply with the congressional mandate to prescribe regulations under section 104(e) of CISADA, and consistent with its statutory mission under 31 U.S.C. 310, FinCEN is implementing section 104(e)(1)(B) of CISADA. FinCEN took into consideration the possibility of implementing any one or more of the options under

section 104(e)(1) of CISADA, and determined that implementing section 104(e)(1)(B) is the most useful vehicle for effecting the intent of section 104(e) at this time. Section 104(e)(1)(B) of CISADA authorizes the Secretary to prescribe regulations that require a domestic financial institution maintaining a correspondent account in the United States for a foreign financial institution to report to the Department of the Treasury (“Treasury”) with respect to transactions or other financial services provided with respect to sanctionable activities described in section 104(c)(2) of CISADA that may be carried out by the foreign financial institution.

Section 104(e)(1)(B) of CISADA authorizes Treasury to require a domestic financial institution maintaining a correspondent account for a foreign financial institution to report to Treasury with respect to transactions or other financial services the foreign financial institution may provide with respect to sanctionable activities described in section 104(c)(2) of CISADA. FinCEN believes that among the services included within the concept of “transactions or other financial services provided” by a foreign financial institution are correspondent accounts the foreign financial institution maintains for other foreign financial institutions and transfers of funds the foreign financial institution processes for other foreign financial institutions, individuals, or entities. Because a foreign financial institution’s provision of correspondent account services and transfer of funds services to a financial institution designated by the U.S. Government in connection with Iran’s proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction, or in connection with Iran’s support for international terrorism may be relevant to the sanctionable activities described under section 104(c)(2) of CISADA, FinCEN is focusing this reporting requirement on the provision of

information relating to such correspondent accounts and transfers of funds.² In addition, because a foreign financial institution's provision of transfer of funds services to the IRGC or any of its agents or affiliates designated by the U.S. Government may also be relevant to the sanctionable activities described under section 104(c)(2) of CISADA, FinCEN is also focusing this reporting requirement on the provision of information relating to such transfers of funds.³

FinCEN is proposing to implement section 104(e)(1)(B) of CISADA by issuing regulations that would require a bank that maintains a correspondent account for a foreign bank to inquire of the foreign bank, and report to FinCEN, with respect to whether the foreign bank maintains a correspondent account for an Iranian-linked financial institution designated under the International Emergency Economic Powers Act ("IEEPA");⁴ whether the foreign bank has processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account; and whether the foreign bank has processed one or more transfers of funds within the preceding 90 calendar days related to an IRGC-linked person designated under IEEPA.⁵ Specifically, if a bank receives a written request from FinCEN and the bank maintains a correspondent account for the foreign bank(s)⁶ specified in FinCEN's request, the bank will be required to report to FinCEN the following information:

² See, e.g., CISADA subsection 104(c)(2)(E)(ii), which includes focus on the provision by foreign financial institutions of significant financial services to financial institutions that are of concern under CISADA.

³ See, e.g., CISADA subsection 104(c)(2)(E)(i), which includes focus on the provision by foreign financial institutions of significant financial services to entities or individuals that are of concern under CISADA.

⁴ See below Section III. A. for the definition of Iranian-linked financial institution designated under IEEPA.

⁵ See below Section III. A. for the definition of IRGC-linked person designated under IEEPA.

⁶ The specific foreign banks about which FinCEN will be requesting information will be those foreign banks which are of interest to Treasury as they relate to CISADA.

- the name of any specified foreign bank that certifies that it maintains a correspondent account for an Iranian-linked financial institution designated under IEEPA, and certain information with respect to such account;
- the name of any specified foreign bank that certifies that it has processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account, and certain information with respect to such transfers of funds;
- the name of any specified foreign bank that certifies that it has processed one or more transfers of funds within the preceding 90 calendar days related to an IRGC-linked person designated under IEEPA, and certain information with respect to such transfers of funds;
- the name of any specified foreign bank that certifies that it does not maintain a correspondent account for an Iranian-linked financial institution designated under IEEPA, and/or it has not processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution or an IRGC-linked person designated under IEEPA; and
- the name of any specified foreign bank for which the bank has not been able to establish to its satisfaction that the foreign bank does not maintain a correspondent account for an Iranian-linked financial institution designated under IEEPA, and/or has not processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution or an IRGC-linked person designated under IEEPA, together with the reason(s) for this,

such as the failure of the foreign bank to respond to the inquiry by or a request from the bank, the failure of the foreign bank to certify its response, or if the bank knows, suspects, or has reason to suspect that the certification is incorrect.⁷

In addition, FinCEN is proposing to require a bank to request, upon inquiry of a specified foreign bank, that the foreign bank agree to notify the bank if the foreign bank subsequently establishes a new correspondent account for an Iranian-linked financial institution designated under IEEPA at any time within 365 calendar days from the date of the foreign bank's initial response, and report such information to FinCEN.

FinCEN is also proposing to require a bank to report to FinCEN instances in which the bank does not maintain a correspondent account for a foreign bank specified in a written request from FinCEN. This requirement will only apply when FinCEN specifically requests in writing that the bank report such information. To the extent possible and based on all available information, FinCEN intends to send requests directly to banks that FinCEN believes may maintain correspondent accounts with the specified foreign bank(s). The number of banks that receive a request may vary in each specific case, based on the availability of information to FinCEN and other circumstances.

II. Background Information

A. *31 CFR Part 561 Iranian Financial Sanctions Regulations - Office of Foreign Assets Control*

On August 16, 2010, OFAC published the IFSR, 31 CFR Part 561. As noted above, section 561.201 of the IFSR implements section 104(c) of CISADA. It states that the Secretary will, consistent with authorities under CISADA, prohibit or impose strict

⁷ If a foreign bank does not respond to an inquiry made by a bank under this proposed rulemaking, the bank will be in compliance with these proposed reporting requirements so long as the bank reports to FinCEN that the foreign bank did not respond to the bank's inquiry.

conditions on the opening or maintaining in the United States of correspondent accounts or payable-through accounts for a foreign financial institution that the Secretary finds knowingly engages in one or more of the sanctionable activities described in section 561.201(a) of the IFSR. The names of foreign financial institutions that are found by the Secretary to knowingly engage in such sanctionable activities, and for which U.S. financial institutions may not open or maintain correspondent accounts or payable-through accounts in the United States, will be published in the *Federal Register* and listed in appendix A to the IFSR. If the Secretary decides to impose strict conditions on the opening or maintaining of a correspondent account or a payable-through account for a foreign financial institution, the actual condition(s) to be imposed will be specified upon the identification of the foreign financial institution in an order or regulation published in the *Federal Register*.

B. Use of CISADA Reports

The reports will be used primarily to provide Treasury with potentially useful information from U.S. banks regarding the nature of foreign bank activities that may be relevant to CISADA. Based on the reports, Treasury officials may decide to take immediate action under section 104(c) of CISADA, or, among other things, to consult with those foreign banks that maintain correspondent accounts with Iranian-linked financial institutions designated under IEEPA, that have processed one or more transfers of funds related to an Iranian-linked financial institution or an IRGC-linked person designated under IEEPA, or that have been unwilling to respond to inquiries from the banks at which the foreign banks maintain correspondent accounts. An investigation by OFAC into the activities of such foreign banks could result in a finding by the Secretary

under section 104(c) of CISADA and section 561.201 of the IFSR. For example, when a bank reports that a foreign bank maintains a correspondent account for an Iranian-linked financial institution designated under IEEPA, or has processed one or more transfers of funds related to an Iranian-linked financial institution or an IRGC-linked person designated under IEEPA, OFAC could use the information to corroborate or supplement data derived from other sources and may request further information from the foreign bank to clarify whether the foreign bank is facilitating significant transactions or providing significant financial services for an Iranian-linked financial institution or an IRGC-linked person designated under IEEPA. Such transactions or services can be the basis for prohibiting or imposing strict conditions on the foreign bank's correspondent or payable-through accounts in the United States under section 104(c) of CISADA and section 561.201 of the IFSR.

III. Section-By-Section Analysis

A. General (§ 1060.300(a))

FinCEN proposes to add 31 CFR § 1060.300(a). This section would add a requirement that upon receiving a written request from FinCEN, a bank that maintains a correspondent account for a specified foreign bank shall inquire of the foreign bank and report to FinCEN within 30 days, to the best of the knowledge of the bank, with respect to any correspondent account maintained by such foreign bank for an Iranian-linked financial institution designated under IEEPA, any transfer of funds related to an Iranian-linked financial institution designated under IEEPA processed by such foreign bank within the preceding 90 calendar days, other than through a correspondent account, and

any transfer of funds related to an IRGC-linked person designated under IEEPA processed by such foreign bank within the preceding 90 calendar days.

Definitions:

Bank

For the purpose of this proposed rulemaking the term “bank” is defined in 31 CFR § 1010.100(d). A bank includes each agent, agency, branch, or office within the United States of persons doing business in one or more of the following capacities: commercial banks or trust companies, private banks, savings and loan associations, national banks, thrift institutions, credit unions, other organizations chartered under banking laws and supervised by banking supervisors of any State, and banks organized under foreign law.

FinCEN and Treasury have determined that limiting the reporting requirement in this proposed rulemaking to banks will provide useful information as it relates to CISADA, while limiting the obligations of the financial industry. Although there are other financial institutions that could fall within the scope of this rule in light of the breadth of the definition of financial institution in CISADA and the breadth of the definition of correspondent account, this rule focuses on those financial institutions deemed to provide the services most traditionally associated with correspondent banking. FinCEN and Treasury may consider expanding this reporting requirement to other types of financial institutions that maintain correspondent accounts with foreign financial institutions if we determine that information will be useful for Treasury’s implementation of CISADA. FinCEN requests comment as to whether this rulemaking should be

expanded to include other types of financial institutions, such as those financial institutions included in FinCEN's definition of "covered financial institution."⁸

Correspondent Account

For the purpose of this proposed rulemaking the term "correspondent account" is defined in 31 CFR § 1010.605(c)(1)(ii) and means an account established for a foreign bank to receive deposits from, or to make payments or other disbursements on behalf of, the foreign bank, or to handle other financial transactions related to such foreign bank.⁹ Although there is a reference in section 104(e) of CISADA to payable-through accounts, as FinCEN is incorporating this requirement into its regulations, such payable-through accounts are subsumed within the definition of a correspondent account at 31 CFR § 1010.610(b)(1)(iii)(B).¹⁰

Processed One or More Transfers of Funds

FinCEN is using the general phrase "processed one or more transfers of funds." This terminology is meant to address circumstances through which transfers of funds are made without requiring a correspondent account, specifically including circumstances in which financial institutions are part of a common payments or clearing mechanism that provides for transfers of funds among participants without requiring bilateral correspondent account relationships. FinCEN requests comment as to whether this

⁸ See 31 CFR § 1010.605(e) (defining a "covered financial institution" as any one of a number of specific U.S. financial institutions, including banks, broker-dealers, futures commission merchants, and mutual funds).

⁹ This definition of correspondent account is consistent with the proposed rule's focus on U.S. banks' correspondent account relationships with foreign banks.

¹⁰ 31 CFR § 1010.610(b)(1)(iii)(B) states ". . . a payable-through account means a correspondent account maintained by a covered financial institution for a foreign bank by means of which the foreign bank permits its customers to engage, either directly or through a subaccount, in banking activities usual in connection with the business of banking in the United States."

terminology should be further clarified, and if so, how and what terms should be used in the alternative.

Foreign Bank

For the purpose of this proposed rulemaking the term “foreign bank” is defined in 31 CFR § 1010.100(u) and means a bank organized under foreign law, or an agency, branch, or office located outside the United States of a bank. The term does not include an agent, agency, branch, or office within the United States of a bank organized under foreign law.

FinCEN and Treasury have determined that limiting the reporting requirement in this proposed rulemaking to information pertaining to the activities of foreign banks will provide useful information as it relates to CISADA, while limiting the obligations of the financial industry. Although there are other foreign financial institutions that maintain correspondent accounts with U.S. financial institutions that could provide useful information with respect to CISADA-relevant activities, this rule focuses on those foreign financial institutions deemed to receive the services most traditionally associated with correspondent banking. FinCEN and Treasury may consider expanding this reporting requirement to include reports to FinCEN with respect to other types of foreign financial institutions serviced by U.S. financial institutions if we determine that such information will be useful for Treasury’s implementation of CISADA. FinCEN requests comment as to whether this rulemaking should be expanded to include other types of foreign financial institutions, such as those included in FinCEN’s definition of “foreign financial institution,”¹¹ or OFAC’s definition of “foreign financial institution”¹² in the IFSR.

¹¹ See 31 CFR § 1010.605(f).

¹² See 31 CFR § 561.308.

Iranian-Linked Financial Institution Designated Under IEEPA

For the purpose of this proposed rulemaking the term “Iranian-linked financial institution designated under IEEPA” means a financial institution designated by the United States Government pursuant to IEEPA (or listed in an annex to an Executive order issued pursuant to such Act) in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction, or in connection with Iran's support for international terrorism.¹³

IRGC-Linked Person Designated Under IEEPA

For the purpose of this proposed rulemaking the term “IRGC-linked person designated under IEEPA” means Iran’s Islamic Revolutionary Guard Corps or any of its agents or affiliates designated by the United States Government pursuant to IEEPA (or listed in an annex to an Executive order issued pursuant to such Act).¹⁴

The names of persons whose property and interests in property are blocked pursuant to IEEPA are published on OFAC’s Specially Designated Nationals and Blocked Persons List (“SDN List”). Iranian-linked financial institutions designated under IEEPA are those whose property and interests in property are blocked pursuant to 31 CFR Part 544 or 31 CFR Part 594 in connection with Iran’s proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction or Iran’s support for international terrorism and are identified by “[IFSR]” tags located at the end of their entries on the SDN List (e.g., [NPWMD][IFSR] or [SDGT][IFSR]). IRGC-linked persons designated under IEEPA are those whose property and interests in property are blocked pursuant to one or more parts of 31 CFR Chapter V and are identified by

¹³ See CISADA subsection 104(c)(2)(E)(ii).

¹⁴ See CISADA subsection 104(c)(2)(E)(i).

“[IRGC]” tags located at the end of their entries on the SDN List (e.g., [NPWD][IRGC] or [SDGT][IRGC]). OFAC’s electronic SDN List can be found at the following URL:

<http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>. The

following financial institutions meet the criteria of Iranian-linked financial institutions designated under IEEPA ([IFSR] tags), and the following persons meet the criteria of IRGC-linked persons designated under IEEPA ([IRGC] tags):

http://www.treasury.gov/resource-center/sanctions/Programs/Documents/irgc_ifsr.pdf.

These listings are part of the SDN List, administered by OFAC. Please note that OFAC’s SDN List is dynamic and should be reviewed regularly for the most current information regarding Iranian-linked financial institutions designated under IEEPA and IRGC-linked persons designated under IEEPA.

B. Duty to Inquire (§ 1060.300(b))

This section describes a bank’s duty to inquire of a specified foreign bank for which the bank maintains a correspondent account, as to whether such foreign bank maintains a correspondent account for an Iranian-linked financial institution designated under IEEPA, and/or has processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution or an IRGC-linked person designated under IEEPA. Upon receiving a written request from FinCEN, a bank that maintains a correspondent account for a specified foreign bank shall inquire of such foreign bank for the purpose of having such foreign bank certify: whether it maintains a correspondent account for an Iranian-linked financial institution designated under IEEPA; whether it has processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution designated under IEEPA,

other than through a correspondent account; and whether it has processed one or more transfers of funds within the preceding 90 calendar days related to an IRGC-linked person designated under IEEPA. In addition, when the bank makes its inquiry, the bank shall request that the foreign bank agree to notify the bank if the foreign bank subsequently establishes a new correspondent account for an Iranian-linked financial institution designated under IEEPA at any time within 365 calendar days from the date of the foreign bank's initial response.

To assist a bank in obtaining the required information from a specified foreign bank, FinCEN is proposing a model certification format for a bank to provide to a specified foreign bank when the bank makes its inquiry regarding whether the specified foreign bank maintains a correspondent account for an Iranian-linked financial institution designated under IEEPA, and/or has processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution or an IRGC-linked person designated under IEEPA. This proposed model certification will not appear in the Code of Federal Regulations; however, it is included at Appendix A to this *Federal Register* notice. In addition, FinCEN will use its website to make this proposed model certification available to the public. FinCEN requests comment as to the effectiveness of the proposed model certification.

The proposed model certification includes language identifying the purpose for which the bank is requesting information from the foreign bank. As proposed, the model certification will include the following language: "The information contained in this Certification is sought for purposes of Section 104(e) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 ("CISADA") (Public Law 111-

195). This Certification will be used to provide the Department of the Treasury with information regarding the nature of foreign bank activities that may be relevant to CISADA.” In addition, the model certification will define foreign bank, bank, correspondent account, Iranian-linked financial institution designated under IEEPA, and IRGC-linked person designated under IEEPA in accordance with the proposed rule.

In the certification, a foreign bank that maintains a correspondent account with a bank is asked to certify to the bank either that (1) it does not maintain a correspondent account(s) for an Iranian-linked financial institution designated under IEEPA; or (2) it maintains a correspondent account(s) for an Iranian-linked financial institution designated under IEEPA. If a foreign bank certifies that it maintains a correspondent account(s) for an Iranian-linked financial institution designated under IEEPA, it is asked to report the following related information for each such correspondent account: the name of the Iranian-linked financial institution designated under IEEPA, the full name(s) on the correspondent account and the correspondent account number(s), applicable information regarding whether the correspondent account has been blocked or otherwise restricted, other applicable identifying information for the correspondent account, and the approximate value in United States Dollars (“USD”) of transactions processed through the correspondent account within the preceding 90 calendar days.

In the certification, a foreign bank that maintains a correspondent account with a bank is also asked to certify to the bank either that (1) it has not processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account; or (2) it has processed one or more transfers of funds within the preceding 90

calendar days related to an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account. If a foreign bank certifies that it has processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account, it is asked to report the following related information for each Iranian-linked financial institution designated under IEEPA: the name of the Iranian-linked financial institution designated under IEEPA, the identity of the system or means by which the transfer(s) of funds was processed, the full name on the account(s) and the account number(s), if applicable, other applicable identifying information for the transfer(s) of funds, and the approximate value in USD of such transfer(s) of funds processed within the preceding 90 calendar days.

In the certification, a foreign bank that maintains a correspondent account with a bank is also asked to certify to the bank either that (1) it has not processed one or more transfers of funds within the preceding 90 calendar days related to an IRGC-linked person designated under IEEPA; or (2) it has processed one or more transfers of funds within the preceding 90 calendar days related to an IRGC-linked person designated under IEEPA. If a foreign bank certifies that it has processed one or more transfers of funds within the preceding 90 calendar days related to an IRGC-linked person designated under IEEPA, it is asked to report the following related information for each IRGC-linked person designated under IEEPA: the name of the IRGC-linked person designated under IEEPA, the identity of the system or means by which the transfer(s) of funds was processed, the full name on the account(s) and the account number(s), if applicable, other

applicable identifying information for the transfer(s) of funds, and the approximate value in USD of such transfer(s) of funds processed within the preceding 90 calendar days.

As part of the certification, the foreign bank is asked to agree to notify, in writing, the bank at which it maintains a correspondent account if the foreign bank establishes a new correspondent account for an Iranian-linked financial institution designated under IEEPA at any time within 365 calendar days from the date of the foreign bank's response. The certification form sets forth the expectation that the notification shall be due to the bank within 30 calendar days of such change. If a bank does not utilize the proposed model certification, the bank will need to request separately that the foreign bank provide such information with respect to the establishment of a new correspondent account for an Iranian-linked financial institution designated under IEEPA.

C. Filing Procedures (§ 1060.300(c))

What to File (§ 1060.300(c)(1))

This section describes the filing procedures a bank shall follow to report to FinCEN information required by this proposed rulemaking. Upon receiving a written request from FinCEN, a bank is required to report to FinCEN, in such format and manner as may be prescribed by FinCEN, the following information for any specified foreign bank:

- the name of any specified foreign bank, for which the bank maintains a correspondent account, that certifies that it maintains a correspondent account for an Iranian-linked financial institution designated under IEEPA, together with the name of the Iranian-linked financial institution designated under IEEPA, the full name(s) on the correspondent account and the correspondent account number(s),

applicable information regarding whether the correspondent account has been blocked or otherwise restricted, other applicable identifying information for the correspondent account, and the approximate value in USD of transactions processed through the correspondent account within the preceding 90 calendar days;

- the name of any specified foreign bank, for which the bank maintains a correspondent account, that certifies that it has processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account, together with the name of the Iranian-linked financial institution designated under IEEPA, the identity of the system or means by which such transfer(s) of funds was processed, the full name on the account(s) and the account number(s), if applicable, other applicable identifying information for such transfer(s) of funds, and the approximate value in USD of such transfer(s) of funds processed within the preceding 90 calendar days;
- the name of any specified foreign bank, for which the bank maintains a correspondent account, that certifies that it has processed one or more transfers of funds within the preceding 90 calendar days related to an IRGC-linked person designated under IEEPA, together with the name of the IRGC-linked person designated under IEEPA, the identity of the system or means by which such transfer(s) of funds was processed, the full name on the account(s) and the account number(s), if applicable, other applicable identifying information for such

transfer(s) of funds, and the approximate value in USD of such transfer(s) of funds processed within the preceding 90 calendar days;

- the name of any specified foreign bank, for which the bank maintains a correspondent account, that certifies that it does not maintain a correspondent account for an Iranian-linked financial institution designated under IEEPA, that certifies that it has not processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account, and/or that certifies that it has not processed one or more transfers of funds within the preceding 90 calendar days related to an IRGC-linked person designated under IEEPA;
- the name of any specified foreign bank, for which the bank maintains a correspondent account, about which the bank has not been able to establish to its satisfaction that the foreign bank does not maintain a correspondent account for an Iranian-linked financial institution designated under IEEPA, has not processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account, and/or has not processed one or more transfers of funds within the preceding 90 calendar days related to an IRGC-linked person designated under IEEPA, together with the reason(s) for this, such as the failure of the foreign bank to respond to the inquiry by or a request from the bank, the failure of the foreign bank to certify its response, or if the bank knows, suspects, or has reason to suspect that the certification is incorrect;

- the name of any specified foreign bank, for which the bank maintains a correspondent account, that notifies the bank that it has established a new correspondent account for an Iranian-linked financial institution designated under IEEPA at any time within 365 calendar days from the date of the foreign bank's initial response, together with the name of the Iranian-linked financial institution designated under IEEPA, the full name(s) on the correspondent account and the correspondent account number(s), applicable information regarding whether the correspondent account has been blocked or otherwise restricted, and other applicable identifying information for the correspondent account; and
- if applicable, confirmation that the bank does not maintain a correspondent account for the specified foreign bank(s), but only in instances in which FinCEN specifically requests that the bank report such information.

If a bank utilizes the proposed model certification to inquire of a specified foreign bank, the bank can submit the certification from the specified foreign bank to FinCEN in order to comply with this proposed reporting requirement. If a bank does not utilize the proposed model certification to inquire of a specified foreign bank, the bank can report to FinCEN, in such format and manner as may be prescribed by FinCEN, the information required by this proposed rulemaking. If a specified foreign bank, for which the bank maintains a correspondent account, does not adequately respond to the bank's inquiry, the bank can report to FinCEN, in such format and manner as may be prescribed by FinCEN, the name of the foreign bank for which the bank has not been able to establish to its satisfaction that the foreign bank does not maintain a correspondent account for an Iranian-linked financial institution designated under IEEPA, has not processed one or

more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account, and/or has not processed one or more transfers of funds within the preceding 90 calendar days related to an IRGC-linked person designated under IEEPA, together with the reason(s) for this, such as the failure of the foreign bank to respond to the inquiry by or a request from the bank, the failure of the foreign bank to certify its response, or if the bank knows, suspects, or has reason to suspect that the certification is incorrect.

If a bank receives a notification from a specified foreign bank regarding the establishment of a new correspondent account for an Iranian-linked financial institution designated under IEEPA, the bank shall report to FinCEN, in such format and manner as may be prescribed by FinCEN, the information required by this proposed rulemaking, including the name of the specified foreign bank, the name of the Iranian-linked financial institution designated under IEEPA for which the specified foreign bank has established a new correspondent account, the full name(s) on the correspondent account and the correspondent account number(s), applicable information regarding whether the correspondent account has been blocked or otherwise restricted, and other applicable identifying information for the correspondent account.

If a bank receives a written request from FinCEN regarding a specified foreign bank, for which the bank does not maintain a correspondent account, and FinCEN has specifically requested that the bank report instances in which the bank does not maintain a correspondent account for such specified foreign bank, the bank shall report this information to FinCEN, in such format and manner as may be prescribed by FinCEN.

When to File (§ 1060.300(c)(2))

A bank is required to report the information required by this proposed rulemaking to FinCEN within 30 days of the date of the written request from FinCEN. If a bank receives notification from a foreign bank that the foreign bank has established a new correspondent account for an Iranian-linked financial institution designated under IEEPA, the bank is required to report the information required by this proposed rulemaking within 10 days of receiving that notification. FinCEN requests comment as to whether these proposed timeframes are appropriate.

D. Record Retention (§ 1060.300(d))

This section describes the recordkeeping requirements applicable to this proposed rulemaking. A bank shall maintain for a period of five years a copy of any report filed and the original or any business record equivalent of any supporting documentation for a report, including a foreign bank certification or other responses to an inquiry under this proposed rulemaking.

E. No Other Action Required (§ 1060.300(e))

Paragraph (e) states that “[n]othing in this section shall be construed to require a bank to take any action, or to decline to take any action, other than the requirements identified in this section, with respect to an account established for, or a transaction engaged in with, a foreign bank. However, nothing in this section relieves a bank of any other applicable regulatory obligation.” While this paragraph clarifies that the section does not require a bank to take any steps with respect to the foreign bank other than those relating to the collection of information outlined in this section, it also clarifies that this section does not preclude a bank from taking any other action, including restricting or terminating a correspondent account relationship with a foreign bank, or filing a

suspicious activity report, based on the bank’s risk-based assessment of the facts and bank policy.

IV. Executive Order 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

V. Unfunded Mandates Reform Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), Public Law 104–4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (“RFA”) (5 U.S.C. 601 *et seq.*), FinCEN certifies that this proposed regulation would not have a significant economic

impact on a substantial number of small entities. The proposed rule would apply to banks that maintain correspondent accounts with foreign banks. As previously stated in our final rules implementing section 312,¹⁵ 313,¹⁶ and 319(b)¹⁷ of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107–56, most banks that maintain correspondent accounts with foreign banks tend to be large banks. We expect that small banks will be less likely to maintain correspondent accounts with foreign banks. In most cases, small banks utilize their domestic correspondent accounts with large banks to conduct transactions with foreign banks. Accordingly, a regulatory flexibility analysis is not required. FinCEN invites comments on the impact of this proposal on small entities.

VII. Paperwork Reduction Act

The collection of information contained in this proposed rule is being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and an individual is not required to respond to, a collection of information unless it displays a valid OMB control number. Comments on the information collection should be sent to the Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503, or by the Internet to oira_submission@omb.eop.gov with a copy to the Financial Crimes Enforcement

¹⁵ Anti-Money Laundering Programs; Special Due Diligence Programs for Certain Foreign Accounts, 71 FR 496 (Jan. 4, 2006).

¹⁶ Anti-Money Laundering Requirements—Correspondent Accounts for Foreign Shell Banks; Recordkeeping and Termination of Correspondent Accounts for Foreign Banks, 67 FR 60562 (Sept. 26, 2002).

¹⁷ *Id.*

Network by mail or as part of the comments through the Internet. Comments are welcome and must be received by [INSERT DATE 60-DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Reporting Requirements Under Section 104(e) of CISADA

The collection of information in this proposal is in 31 CFR § 1060.300. The information may be transmitted to one or more departments or agencies of the United States of America for the purpose of fulfilling such departments' and agencies' governmental functions. The collection of information is mandatory. FinCEN is proposing to issue regulations that would require a bank to report to FinCEN, upon request, certain information regarding certain foreign banks specified by FinCEN.

Description of Affected Financial Institutions: Banks as defined in 31 CFR § 1010.100(d)

Estimated Number of Affected Financial Institutions: 350 banks

FinCEN estimates that approximately 350 banks maintain correspondent accounts with foreign banks.¹⁸ However, FinCEN estimates that on average only around five percent of banks that maintain correspondent accounts with foreign banks will have an

¹⁸ 177 banks reported a balance due as of September 30, 2010 in either line item 3.a. or 3.b. of Schedule RC-A—Cash and Balances Due From Depository Institutions on the Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices - FFIEC 031, or on the Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only - FFIEC 041. Line item 3.a. represents balances due from foreign branches of other U.S. banks and line item 3.b. represents balances due from other banks in foreign countries and foreign central banks. As of September 30, 2010, 7,020 banks, regulated by either the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the Office of the Comptroller of the Currency, filed either FFIEC 031 or FFIEC 041. 177 of those 7,020 banks reported a balance due for a correspondent account with a foreign bank. These numbers do not include agents, agencies, branches, or offices within the U.S. of a bank organized under foreign law, which are also included within the definition of bank for purposes of this proposed rulemaking. According to the Federal Reserve Board Structure Data for U.S. Banking Offices of Foreign Entities, there are approximately 214 U.S. Offices of Foreign Banking Organizations, as of September 30, 2010. See <http://www.federalreserve.gov/releases/iba/201009/bycntry.htm>. Of those 214 U.S. Offices of Foreign Banking Organizations, approximately 43 only operate in the U.S. as representative offices. See <http://www.federalreserve.gov/releases/iba/201009/bytype.htm>. Representative offices do not maintain correspondent accounts. For this reason, FinCEN is conservatively estimating that it is likely the remaining 171 U.S. Offices of Foreign Banking Organizations do maintain some form of correspondent account with a foreign bank. This results in a total estimate of 348 U.S. banks and foreign banks operating in the U.S. that maintain a correspondent account with a foreign bank.

account with the specific foreign bank about which FinCEN is requesting information. This smaller proportion of actual affected financial institutions in each case of a request is based on the fact that foreign banks generally only hold a limited number of correspondent account relationships with separate U.S. banks. For this reason, the estimated number of financial institutions that may maintain a correspondent account with a specific foreign bank identified in any one request from FinCEN will be in the range of 18 banks. In order to further reduce the number of affected financial institutions, when possible, FinCEN will rely on information available to Treasury to help limit the number of banks requested to provide information with respect to the foreign banks that are the subject of specific requests. In turn, FinCEN intends to send requests directly to banks that FinCEN, based on all available information, believes maintain correspondent accounts with the specified foreign bank(s). The number of banks that receive a request may vary in each specific case, based on the availability of information to FinCEN and other circumstances.

Estimated Average Annual Burden Hours Per Affected Financial Institution: Fewer than 31 hours per bank

FinCEN estimates that while there may be a series of requests to U.S. banks at the outset of implementing this regulation, subsequent requests will be infrequent. The scope of any request may be with respect to one foreign bank or a number of foreign banks (for example, a number of foreign banks operating in the same jurisdiction). FinCEN believes that regardless of the number of requests transmitted, such requests will pertain to 50 foreign banks or fewer in any given year.

Financial Institutions that Maintain a Correspondent Account for a Specified Foreign Bank

A bank will only be required to comply with the requirements of this proposed rulemaking if the bank receives a written request from FinCEN. As noted above, FinCEN estimates that on average fewer than five percent of the banks that maintain correspondent accounts with foreign banks, i.e., fewer than 18 banks, will maintain correspondent accounts with the specific foreign bank about which FinCEN is requesting information. If FinCEN makes requests with respect to fewer than 50 foreign banks per year and fewer than 18 banks are required to respond, per request, with regard to a correspondent account they maintain with a specified foreign bank, there will be fewer than 900 CISADA-related reports per year.

Each time a bank receives a request from FinCEN regarding a specific foreign bank for which it maintains a correspondent account, it will incur a reporting burden associated with section 1060.300(b) (inquiry); a reporting burden associated with section 1060.300(c) (reporting); and a recordkeeping burden associated with section 1060.300(d) (record retention).

The estimated average reporting burden associated with section 1060.300(b) for one request from FinCEN is one hour per responding U.S. bank with respect to each specific foreign bank about which FinCEN is requesting information. The estimated average reporting burden associated with section 1060.300(c) for one request from FinCEN is one hour per bank. The estimated average recordkeeping burden associated with section 1060.300(d) for one request from FinCEN is one hour per bank. This results in a total estimated average burden of three hours per bank with respect to each foreign

bank about which FinCEN is requesting information. In the unlikely scenario in which the same bank were required to respond to FinCEN with respect to each foreign bank about which FinCEN is seeking information in any given year, the estimated annual burden hours would be 150. It is more likely that a particular U.S. bank will only have to respond to FinCEN queries in more limited situations and the average time spent per bank will be much less. FinCEN believes that even with respect to the banks that are most active in the provision of correspondent accounts to foreign banks, they are likely to be required to respond to FinCEN with respect to one fifth of the foreign banks about which FinCEN is seeking information, which corresponds to roughly 30 burden hours per year based on the above calculations.

Financial Institutions that Do Not Maintain a Correspondent Account for a Specified Foreign Bank

In certain instances FinCEN may request that if a bank receives a written request from FinCEN regarding a specified foreign bank, and the bank does not maintain a correspondent account for such specified foreign bank, the bank report this information to FinCEN. As noted above, FinCEN intends to send requests to banks that FinCEN is aware have a correspondent account with a specified foreign bank as often as possible. In instances in which FinCEN is not aware of which banks maintain a correspondent account for a specified foreign bank, FinCEN may send requests to those banks FinCEN believes might have a correspondent account with a specified foreign bank.

In instances in which FinCEN is sending a request to a small number of banks that FinCEN believes might have a correspondent account with a specified foreign bank, FinCEN may request, in the written request sent to those banks, that the banks that do not

have an account with the specified foreign bank report such information to FinCEN.

FinCEN believes that we will rarely be sending a request to a large number of banks that we are not certain have an account with the specified foreign bank for which we are requesting information. In those rare cases, FinCEN would most likely not ask those banks to report if they do not maintain a correspondent account with such foreign bank.

FinCEN believes that the estimated average reporting burden for a bank to report to FinCEN that it does not maintain a correspondent account for the foreign bank specified in a request from FinCEN will only be 30 minutes per request. FinCEN also estimates that across the 50 requests FinCEN anticipates making annually, on average only two to five banks will receive a request from FinCEN regarding a foreign bank for which they do not maintain a correspondent account, and for which FinCEN requests that they report such information. This means that no more than 250 banks will be required to report that they do not maintain a correspondent account with a foreign bank specified in a request from FinCEN in any given year. This also means that no more than 125 estimated annual burden hours will be expended each year. FinCEN also estimates that no single bank will receive a request from FinCEN more than two times per year regarding a specified foreign bank for which it does not maintain a correspondent account, and for which FinCEN requests that it report such information. This corresponds to roughly one estimated average annual burden hour per bank.

Estimated Total Annual Burden: 2825 total annual burden hours

Fewer than 900 CISADA-related reports anticipated each year (provided by a varying number of banks) multiplied by three burden hours per report. (2700 total annual burden hours). Fewer than 250 reports from banks that do not maintain a correspondent

account with a specified foreign bank (provided by a varying number of banks) multiplied by 30 minutes of burden per report. (125 total annual burden hours).

Request for Comments Regarding the Paperwork Reduction Act Analysis

FinCEN is seeking comments on these estimates. Comments are specifically requested concerning:

- Whether the proposed collection of information is necessary for the proper performance of the functions of FinCEN and other components of Treasury, including whether the information will have practical utility;
- The accuracy of the estimated burden associated with the proposed collection of information;
- How the quality, utility, and clarity of the information to be collected may be enhanced; and
- How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology.

VIII. Request for Comments

FinCEN invites comments on any and all aspects of this proposal.

FinCEN specifically invites comment on requests above, as well as the following:

Effects of the Rule on Foreign Correspondent Account Relationships: FinCEN is also seeking comments regarding the impact of this information collection on banks' correspondent account relationships with foreign banks.

Minimum Dollar Threshold for Reporting on Transfers of Funds Related to an Iranian-Linked Financial Institution Designated Under IEEPA or an IRGC-Linked Person

Designated Under IEEPA: FinCEN is also seeking comments regarding whether setting a minimum dollar threshold for a foreign bank to be required to report on transfers of funds processed within the preceding 90 calendar days related to an Iranian-linked financial institution designated under IEEPA or related to an IRGC-linked person designated under IEEPA would lessen the reporting obligations, while still providing useful information. FinCEN seeks comments regarding what that minimum dollar threshold should be.

List of Subjects in 31 CFR Part 1060

Banks, Banking, Counter-terrorism, Foreign banking, Reporting and recordkeeping requirements, Terrorism.

Authority and Issuance

For the reasons set forth above, part 1060 is added to read as follows:

PART 1060—PROVISIONS RELATING TO THE COMPREHENSIVE IRAN SANCTIONS, ACCOUNTABILITY, AND DIVESTMENT ACT OF 2010

Sec.

1060.100 [Reserved]

1060.200 [Reserved]

1060.300 Reporting obligations on foreign bank relationships with Iranian-linked financial institutions designated under IEEPA and IRGC-linked persons designated under IEEPA

1060.400 [Reserved]

1060.500 [Reserved]

1060.600 [Reserved]

1060.700 [Reserved]

1060.800 Penalties

Authority: Pub. L. 111-195, 124 Stat. 1312.

§ 1060.100 [Reserved]

§ 1060.200 [Reserved]

§ 1060.300 Reporting obligations on foreign bank relationships with Iranian-linked financial institutions designated under IEEPA and IRGC-linked persons designated under IEEPA

(a) General.

(1) Upon receiving a written request from FinCEN, a bank (as defined in 31 CFR § 1010.100(d)) that maintains a correspondent account (as defined in 31 CFR § 1010.605(c)(1)(ii)) for a specified foreign bank (as defined in 31 CFR § 1010.100(u)) shall inquire of the foreign bank, and report to FinCEN, to the best of the knowledge of the bank, with respect to any correspondent account maintained by such foreign bank for an Iranian-linked financial institution designated under IEEPA; any transfer of funds related to an Iranian-linked financial institution designated under IEEPA processed by such foreign bank within the preceding 90 calendar days, other than through a correspondent account; and any transfer of funds related to an IRGC-linked person designated under IEEPA processed by such foreign bank within the preceding 90 calendar days.

(2) For the purposes of this section, an “Iranian-linked financial institution designated under IEEPA” means a financial institution designated by the United States Government pursuant to the International Emergency Economic Powers Act (or listed in an annex to an Executive order issued pursuant to such Act) in connection with Iran's proliferation of

weapons of mass destruction or delivery systems for weapons of mass destruction, or in connection with Iran's support for international terrorism. For the purposes of this section, an “IRGC-linked person designated under IEEPA” means Iran’s Islamic Revolutionary Guard Corps or any of its agents or affiliates designated by the United States Government pursuant to the International Emergency Economic Powers Act (or listed in an annex to an Executive order issued pursuant to such Act).

Note to paragraph (a)(2):

Section 104(c) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 ("CISADA"), Pub. L. 111-195, 124 Stat. 1312, provides the Secretary of the Treasury with authority to prohibit, or impose strict conditions on, the opening or maintaining in the United States of a correspondent account or a payable-through account by a foreign financial institution that the Secretary finds knowingly engages in certain specified activities. Those specified activities include facilitating a significant transaction or transactions or providing significant financial services for a financial institution whose property or interests in property are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction, or in connection with Iran's support for international terrorism, or for Iran’s Islamic Revolutionary Guard Corps or any of its agents or affiliates whose property or interests in property are blocked pursuant to that Act.

(b) Duty to inquire.

Upon receiving a written request from FinCEN, a bank that maintains a correspondent account for a specified foreign bank shall inquire of such foreign bank for the purpose of

having such foreign bank certify: whether it maintains a correspondent account for an Iranian-linked financial institution designated under IEEPA; whether it has processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account; and whether it has processed one or more transfers of funds within the preceding 90 calendar days related to an IRGC-linked person designated under IEEPA. Upon such inquiry, a bank shall request that the foreign bank agree to notify the bank if the foreign bank subsequently establishes a new correspondent account for an Iranian-linked financial institution designated under IEEPA at any time within 365 calendar days from the date of the foreign bank's initial response.

(c) Filing Procedures.

(1) *What to file.* Upon receiving a written request from FinCEN, a bank shall report to FinCEN, in such format and manner as may be prescribed by FinCEN, the following information for any specified foreign bank:

(i) the name of any specified foreign bank, for which the bank maintains a correspondent account, that certifies that it maintains a correspondent account for an Iranian-linked financial institution designated under IEEPA, and the following related information:

(A) the name of the Iranian-linked financial institution designated under IEEPA;

(B) the full name(s) on the correspondent account and the correspondent account number(s);

(C) applicable information regarding whether the correspondent account has been blocked or otherwise restricted;

(D) other applicable identifying information for the correspondent account; and

- (E) the approximate value in U.S. dollars of transactions processed through the correspondent account within the preceding 90 calendar days;
- (ii) the name of any specified foreign bank, for which the bank maintains a correspondent account, that certifies that it has processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account, and the following related information:
- (A) the name of the Iranian-linked financial institution designated under IEEPA;
- (B) the identity of the system or means by which such transfer(s) of funds was processed;
- (C) the full name on the account(s) and the account number(s), if applicable;
- (D) other applicable identifying information for such transfer(s) of funds; and
- (E) the approximate value in U.S. dollars of such transfer(s) of funds processed within the preceding 90 calendar days;
- (iii) the name of any specified foreign bank, for which the bank maintains a correspondent account, that certifies that it has processed one or more transfers of funds within the preceding 90 calendar days related to an IRGC-linked person designated under IEEPA, and the following related information:
- (A) the name of the IRGC-linked person designated under IEEPA;
- (B) the identity of the system or means by which such transfer(s) of funds was processed;
- (C) the full name on the account(s) and the account number(s), if applicable;
- (D) other applicable identifying information for such transfer(s) of funds; and
- (E) the approximate value in U.S. dollars of such transfer(s) of funds processed within the preceding 90 calendar days;

(iv) the name of any specified foreign bank, for which the bank maintains a correspondent account, that certifies that it does not maintain a correspondent account for an Iranian-linked financial institution designated under IEEPA, that certifies that it has not processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account, and/or that certifies that it has not processed one or more transfers of funds within the preceding 90 calendar days related to an IRGC-linked person designated under IEEPA;

(v) the name of any specified foreign bank, for which the bank maintains a correspondent account, about which the bank has not been able to establish to its satisfaction that the foreign bank does not maintain a correspondent account for an Iranian-linked financial institution designated under IEEPA, has not processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account, and/or has not processed one or more transfers of funds within the preceding 90 calendar days related to an IRGC-linked person designated under IEEPA, together with the reason(s) for this, such as the failure of the foreign bank to respond to the inquiry by or a request from the bank, the failure of the foreign bank to certify its response, or if the bank knows, suspects, or has reason to suspect that the certification is incorrect;

(vi) the name of any specified foreign bank, for which the bank maintains a correspondent account, that notifies the bank that it has established a new correspondent account for an Iranian-linked financial institution designated under IEEPA at any time

within 365 calendar days from the date of the foreign bank's initial response, and the following related information:

(A) the name of the Iranian-linked financial institution designated under IEEPA;

(B) the full name(s) on the correspondent account and the correspondent account number(s);

(C) applicable information regarding whether the correspondent account has been blocked or otherwise restricted; and

(D) other applicable identifying information for the correspondent account; and

(vii) if applicable, confirmation that the bank does not maintain a correspondent account for the specified foreign bank(s), but only in instances in which FinCEN specifically requests that the bank report such information.

(2) *When to file.* (i) A bank shall report to FinCEN within 30 days of the date of the request from FinCEN. (ii) Reports based on subsequent notifications received from a foreign bank regarding the establishment of a new correspondent account for an Iranian-linked financial institution designated under IEEPA shall be due within 10 days of receipt of the notification.

(d) *Retention of records.* A bank shall maintain for a period of five years a copy of any report filed and the original or any business record equivalent of any supporting documentation for a report, including a foreign bank certification or other responses to an inquiry under this section.

(e) *No other action required.* Nothing in this section shall be construed to require a bank to take any action, or to decline to take any action, other than the requirements identified in this section, with respect to an account established for, or a transaction engaged in

with, a foreign bank. However, nothing in this section relieves a bank of any other applicable regulatory obligation.

§ 1060.400 [Reserved]

§ 1060.500 [Reserved]

§ 1060.600 [Reserved]

§ 1060.700 [Reserved]

§ 1060.800 Penalties

A person violating any requirement under this part is subject to the penalties provided for in sections 5321(a) and 5322 of title 31, United States Code, in the same manner and to the same extent as such penalties would apply to any person that is otherwise subject to such section 5321(a) or 5322.

Dated: _____

James H. Freis, Jr.
Director,
Financial Crimes Enforcement Network

Note: This appendix will not appear in the Code of Federal Regulations; however, FinCEN will use its website to make this proposed model certification available to the public.

Appendix A

Certification for Purposes of Section 104(e) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 and 31 CFR § 1060.300

[OMB Control Number xxxx-xxxx]

The information contained in this Certification is sought for purposes of Section 104(e) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (“CISADA”) (Public Law 111-195). This Certification will be used to provide the Department of the Treasury with information regarding the nature of foreign bank activities that may be relevant to CISADA.

This Certification may be completed by a **foreign bank** that maintains a **correspondent account** with a U.S. **bank** (see definitions below). An entity that is not a foreign bank is not required to complete this Certification.

A **Foreign Bank** is a bank organized under foreign law, or an agency, branch, or office located outside the United States of a bank (see definition at 31 CFR § 1010.100(u)). A **Bank** includes each agent, agency, branch, or office within the United States of persons doing business in one or more of the following capacities: commercial banks or trust companies, private banks, savings and loan associations, national banks, thrift institutions, credit unions, other organizations chartered under banking laws and supervised by banking supervisors of any State, and banks organized under foreign law (see definition at 31 CFR § 1010.100(d)).

A **Correspondent Account** for a foreign bank is an account established for a foreign bank to receive deposits from, or to make payments or other disbursements on behalf of, the foreign bank, or to handle other financial transactions related to such foreign bank (see definition at 31 CFR § 1010.605(c)(1)(ii)).

An **Iranian-Linked Financial Institution Designated Under IEEPA** is a financial institution designated by the United States Government pursuant to the International Emergency Economic Powers Act (“IEEPA”) (or listed in an annex to an Executive order issued pursuant to such Act) in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction, or in connection with Iran's support for international terrorism. Iranian-Linked Financial Institutions Designated Under IEEPA are identified by “[IFSR]” tags located at the end of their entries on the Specially Designated Nationals and Blocked Persons List (“SDN List”) (e.g., [NPWMD][IFSR] or [SDGT][IFSR]). The Office of Foreign Assets Control’s (“OFAC”) electronic SDN List can be found at the following URL:

<http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>. The following financial institutions meet the criteria of Iranian-Linked Financial Institutions Designated Under IEEPA ([IFSR] tags): http://www.treasury.gov/resource-center/sanctions/Programs/Documents/irgc_ifsr.pdf. These listings are part of the SDN List, administered by OFAC. Please note that OFAC's SDN List is dynamic and should be reviewed regularly for the most current information regarding Iranian-Linked Financial Institutions Designated Under IEEPA.

An IRGC-Linked Person Designated Under IEEPA is Iran's Islamic Revolutionary Guard Corps or any of its agents or affiliates designated by the United States Government pursuant to IEEPA (or listed in an annex to an Executive order issued pursuant to such Act). IRGC-Linked Persons Designated Under IEEPA are identified by "[IRGC]" tags located at the end of their entries on the SDN List (e.g., [NPWMD][IRGC] or [SDGT][IRGC]). OFAC's electronic SDN List can be found at the following URL: <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>. The following persons meet the criteria of IRGC-Linked Persons Designated Under IEEPA ([IRGC] tags): http://www.treasury.gov/resource-center/sanctions/Programs/Documents/irgc_ifsr.pdf. These listings are part of the SDN List, administered by OFAC. Please note that OFAC's SDN List is dynamic and should be reviewed regularly for the most current information regarding IRGC-Linked Persons Designated Under IEEPA.

A. The undersigned financial institution, _____ ("**Foreign Bank**") hereby certifies as follows:

B. Correspondent Account maintained for an Iranian-Linked Financial Institution Designated Under IEEPA: Check box to certify.

- Foreign Bank hereby certifies that it **does not** maintain a correspondent account(s) for an Iranian-Linked Financial Institution Designated Under IEEPA.
- Foreign Bank hereby certifies that it **does** maintain a correspondent account(s) for an Iranian-Linked Financial Institution Designated Under IEEPA. (If this box has been selected please fill out the below information for each correspondent account maintained for an Iranian-Linked Financial Institution Designated Under IEEPA).

	Iranian-Linked Financial Institution Designated Under IEEPA	Full Name(s) on Correspondent Account	Correspondent Account Number(s)	Applicable Information regarding whether the Correspondent Account has been Blocked or Otherwise Restricted	Other Applicable Identifying Information for the Correspondent Account	Approximate Value in U.S. Dollars ("USD") of Transactions Processed through the Correspondent Account Within Preceding 90

						Calendar Days
1						
2						
3						
4						
5						

(Add more rows as needed)

C. Processed one or more transfers of funds related to an Iranian-Linked Financial Institution Designated Under IEEPA other than through a correspondent account:

Check box to certify.

- Foreign Bank hereby certifies that it **has not processed** one or more transfers of funds within the preceding 90 calendar days related to an Iranian-Linked Financial Institution Designated Under IEEPA, **other than through a correspondent account** detailed above.
- Foreign Bank hereby certifies that it **has processed** one or more transfers of funds within the preceding 90 calendar days related to an Iranian-Linked Financial Institution Designated Under IEEPA, **other than through a correspondent account** detailed above. (If this box has been selected please fill out the below information for each Iranian-Linked Financial Institution Designated Under IEEPA).

	Iranian-Linked Financial Institution Designated Under IEEPA	Identify System or Means by Which Transfer(s) of Funds Was Processed	Full Name on Account(s) (if applicable)	Account Number(s) (if applicable)	Other Applicable Identifying Information for the Transfer(s) of Funds	Approximate Value in USD of Transfer(s) of Funds Processed (other than through a Correspondent Account) Within Preceding 90 Calendar Days
1						
2						
3						
4						
5						

(Add more rows as needed)

D. Processed one or more transfers of funds related to an IRGC-Linked Person Designated Under IEEPA: Check box to certify.

- Foreign Bank hereby certifies that it **has not processed** one or more transfers of funds within the preceding 90 calendar days related to an IRGC-Linked Person Designated Under IEEPA.
- Foreign Bank hereby certifies that it **has processed** one or more transfers of funds within the preceding 90 calendar days related to an IRGC-Linked Person Designated Under IEEPA. (If this box has been selected please fill out the below information for each IRGC-Linked Person Designated Under IEEPA).

	IRGC-Linked Person Designated Under IEEPA	Identify System or Means by Which Transfer(s) of Funds Was Processed	Full Name on Account(s) (if applicable)	Account Number(s) (if applicable)	Other Applicable Identifying Information for the Transfer(s) of Funds	Approximate Value in USD of Transfer(s) of Funds Processed Within Preceding 90 Calendar Days
1						
2						
3						
4						
5						

(Add more rows as needed)

E. General

Foreign Bank hereby agrees to notify in writing the Bank if Foreign Bank establishes a new Correspondent Account for an Iranian-Linked Financial Institution Designated Under IEEPA at any time within 365 calendar days from the date of this response. Foreign Bank agrees to provide such notification within 30 calendar days of such change.

Foreign Bank understands that the Bank will provide a copy of this Certification to the U.S. Department of the Treasury. Foreign Bank further understands that the statements contained in this Certification may be transmitted to one or more departments or agencies of the United States of America for the purpose of fulfilling such departments' and agencies' governmental functions.

I, _____(name of signatory), certify that I have read and understand this Certification, that the statements made in this Certification are complete and correct, and that I am authorized to execute this Certification on behalf of Foreign Bank.

[Name of Foreign Bank]

[Signature]

[Printed Name]

[Title]

Executed on this _____ day of _____, 20____.

To be completed by the Bank:

I, _____(name of signatory), have read and understand this Certification; the statements made in this Certification are complete and correct, to the best of the knowledge of the Bank; and the Bank does not know, suspect, or have reason to suspect that the Certification made by Foreign Bank is incorrect. I am authorized to submit this document on behalf of the Bank.

[Name of Bank]

[Signature]

[Printed Name]

[Title]

Submitted on this _____ day of _____, 20____.