



July 22, 2024

**VIA ELECTRONIC SUBMISSION**

U.S. Department of Treasury  
Financial Crimes Enforcement Network  
Policy Division  
P.O. Box 39  
Vienna, VA 22183

U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549

**Re: *Customer Identification Programs for Registered Investment Advisers and Exempt Reporting Advisers*  
*Docket Number FINCEN-2024-0011*  
*File Number S7-2024-02*  
*RIN 1506-AB66, 3235-AN34***

To Whom It May Concern:

On behalf of its members, the Insured Retirement Institute (“IRI”)<sup>1</sup> appreciates the opportunity to provide these comments to the Department of Treasury Financial Crimes Enforcement Network Bureau (“FinCEN”) and the Securities and Exchange Commission (“SEC”) in response to its Joint Notice of Proposed Rulemaking (the “Joint NPRM”) on Customer Identification Programs for Registered Investment Advisers and Exempt Reporting Advisers (the “Proposal”).<sup>2</sup>

IRI received and reviewed the comments on the Proposal by the SPARK Institute, Inc. (“SPARK”). IRI shared this letter with our membership with SPARK’s permission. Following discussion with our members, IRI supports SPARK’s comments regarding its requests and recommendations regarding the Proposal. Further, IRI supports SPARK’s specific comments, presenting recommendations, clarifications, and proposals as detailed in its comment letter.

In addition to supporting SPARK’s comments, IRI would like to highlight specific concerns about the Proposal that are especially important to our members. These points particularly pertain to the Proposal’s impact on

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<sup>1</sup> The Insured Retirement Institute (IRI) is the leading association for the entire supply chain of insured retirement strategies, including life insurers, asset managers, broker dealers, banks, marketing organizations, law firms, and solution providers. IRI members account for 90 percent of annuity assets in the U.S., include the foremost distributors of protected lifetime income solutions, and are represented by financial professionals serving millions of Americans. IRI champions retirement security for all through leadership in advocacy, awareness, research, diversity, equity, and inclusion, and the advancement of digital solutions within a collaborative industry community.

<sup>2</sup> 89 FR 44571 (May 21, 2024).

retirement plan participants and the necessity for a specific exclusion of employer-based retirement plans from the scope and definitions of the Proposal.

#### Recommendation for a Carveout in Final Rule for Employer-Sponsored Retirement Plans.

The Proposal raises concerns and recommendations consistent with IRI's written comments, submitted on April 15, 2024 ("April 15 Comments")<sup>3</sup>, in response to another FinCEN Proposed Rule on Anti-Money Laundering/Countering the Financing of Terrorism Programs and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers.<sup>4</sup> In our April 15 Comments, IRI recommended an explicit exemption for investment advisers of employer-sponsored retirement plans as necessary and appropriate based on generally low AML risk. At the very least, investment advisers to **retirement plan participants** should be exempted due to the impacts on managed accounts. The risk of money laundering, terrorist financing, or other illicit financial activity to the plan participants is low based on employer-sponsored plans being highly regulated by the Employee Retirement Income Security Act of 1974 ("ERISA")<sup>5</sup> and the Internal Revenue Code ("Code")<sup>6</sup>. Further, employers sponsoring ERISA retirement plans are held to a fiduciary standard of care and subject to the highest standards of care in protecting these retirement plan participants, beneficiaries, and their related assets and investments.

In the joint Proposal, FinCEN and the SEC expressly include "ERISA accounts" within the definition of "account."<sup>7</sup> In Section II. A., under the definition of "Account," the Proposal sets forth, "While ERISA accounts are excluded from the definition of "account" in the CIP rules applicable to mutual funds,<sup>8</sup> they are not being excluded here to harmonize the applicability of this proposed rule with the AML/CFT Program, and SAR Proposed Rule, which would require RIAs and ERAs to apply AML/CFT program and SAR reporting requirements to all of their accounts, including accounts opened for the purpose of participating in an employee benefit plan established pursuant to ERISA."<sup>9</sup>

Based on IRI's comments regarding the high standard of care associated with all accounts linked to ERISA retirement plans, it is evident that these accounts pose a low risk of harm to plan participants from illicit financial activities. Therefore, we strongly urge FinCEN and the SEC to consider an explicit carve out from the Proposal for employer-based retirement plan accounts.

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<sup>3</sup> IRI Comments to FinCEN Proposed Rule on *Anti-Money Laundering/Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers*, available at: <https://www.regulations.gov/comment/FINCEN-2024-0006-0033>.

<sup>4</sup> 89 FR 12108.

<sup>5</sup> 29 U.S.C. 1001 Et Seq.

<sup>6</sup> 26 U.S. Code § 401.

<sup>7</sup> 89 FR 44571, Sec. II. A.

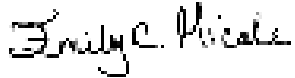
<sup>8</sup> Proposal citing, 31 CFR 1024.100(a)(2)(ii).

<sup>9</sup> 89 FR 44571, Sec. II. A.

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IRI appreciates the opportunity to comment on the Proposal and welcomes any opportunity to collaborate with FinCEN and the SEC to refine it. If you have questions about any of our comments or if we can further assist regarding the Proposal, please feel free to contact the undersigned.

Sincerely,

A handwritten signature in black ink that reads "Emily C. Micale". The signature is written in a cursive style with a large initial "E".

Emily Micale  
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