

## Proposed Legislation Would Require Financial Institutions to Report Data for Accounts with Annual Activity of \$600

Banking Law / September 27, 2021 / Jeff Novel

In May 2021, as part of the American Families Plan, the Biden Administration proposed that financial institutions should report consumer and business account activity exceeding \$600 annually. Proponents of the legislation claim that it will give the Internal Revenue Service ("IRS") additional information to assist with audits while the proposed legislation has raised compliance and privacy concerns from critics.

The proposed American Families Plan legislation would require that financial institutions report transaction data for any consumer or business account with at least \$600 of annual inflows or outflows. The U.S. Department of Treasury explained that the purpose of this proposal is to increase the visibility of gross receipts and expenses which would provide additional information to aid IRS audits. Specifically, proponents of this legislation argue that it would provide the IRS with information needed to effectively audit those self-employed taxpayers who self-report their income. Further, proponents note that that proposed law would include not only traditional financial institutions, but also payment settlement entities (e.g., PayPay, Venmo, Square, etc.) and cryptocurrency exchanges and custodians which currently have few reporting obligations.

Financial institutions are currently required to report any deposits or withdrawals of \$10,000 or more under the Financial Recordkeeping and Reporting of Currency and Foreign Transactions Act of 1970 (31 U.S.C. 5311 et. seq.) which is more commonly known as the Bank Secrecy Act ("BSA"). The purpose of the BSA is to require United States financial institutions to maintain appropriate records and file certain reports involving currency transactions. Currency Transaction Reports ("CTRs") and Suspicious Activity Reports ("SARs") are the primary means used by banks to satisfy the requirements of the BSA. BSA regulations also include the requirement that a financial institution's records be sufficient to enable transactions and activity in customer accounts to be reconstructed if necessary. In addition to BSA requirements, financial institutions also provide their customers and the IRS with Form 1099-INTs relating to any accounts that earn interest of more than \$10 annually. Apart from these reports, the IRS has little information regarding consumer and business account activity.

Many financial institutions and trade groups have reacted negatively to the proposed legislation. The American Bankers Association, jointly with bankers' associations from all 50 states and Puerto Rico, submitted a **letter** to the U.S. Senate Committee on Finance in July 2021. In this letter, the various banking associations noted that the requirements of the proposed legislation are far more expansive and vastly more complicated than the few sentences of description suggest. In particular, critics argue that the proposed reporting would require significant resources to build, police and maintain. Further, there are concerns that providing this new information to the IRS—which experiences 1.4 billion cyberattacks annually—will lead to additional data leaks which will harm taxpayers.

Although the legislation has not been finalized, this provision of the American Families Plan should be closely monitored by financial institutions to evaluate their changing reporting requirements.

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