

November 15, 2011

Regulatory Policy and Programs Division
Financial Crimes Enforcement Network
Department of the Treasury
P. O. Box 39
Vienna, Virginia 22183

Attention: PRA Comments – BSA Required Electronic Filing

Dear Sir or Madam:

The American Bankers Association (ABA)¹ appreciates this opportunity to comment on the proposal by the Financial Crimes Enforcement Network (FinCEN) to require the electronic filing of certain Bank Secrecy Act (BSA) reports not later than June 30, 2012.

ABA has long supported FinCEN's efforts to promote voluntary e-filing, and we have taken many opportunities over the last several years to encourage banks to take advantage of the efficiencies of e-filing. However, the current proposal constitutes a massive and unwarranted expansion of BSA data collection masquerading as a mandatory transition from paper to electronic filing. Without proper notice FinCEN imbeds changes in reporting timelines and substantive obligations. Accordingly, the serious flaws in the proposal extend far beyond the challenges faced by the hundreds of banks not acquainted with e-filing.² Instead, the proposal would impose on all banks dozens of new data elements with a corresponding multiplicity of systems conversions and compliance controls.

Moreover, FinCEN has not conducted a proper analysis of the benefits, costs, and impacts of its proposal and has failed to meet its administrative law obligations to do so. As a consequence, ABA believes that this proposal is an unwarranted departure from existing BSA policy – a policy that assigns to banks the roll of vigilance and reporting of observations, not analysis – while threatening BSA database accuracy and undermining its value for law enforcement.

ABA strongly urges FinCEN to withdraw this proposal and to work through the BSAAG to refocus its e-filing conversion initiative toward the purpose of making e-filing more attractive and efficient for reporters and placing narrative data more effectively into the hands of law enforcement and government analysts for their expert categorization and data mining.

¹ The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's \$13 trillion banking industry and its 2 million employees. ABA's extensive resources enhance the success of the nation's banks and strengthen America's economy and communities. Learn more at www.aba.com.

² One estimate suggests nearly 2,000 smaller depository institutions which rarely file BSA reports are not registered to e-file because they file such a small number of reports. When one adds non-depository institutions – and the challenges FinCEN has faced to identify and register Money Services Businesses (MSBs) – the problems of making the proposed transition are daunting and likely beyond FinCEN's current resources.

The proposal imposes unwarranted data specification and substantive reporting changes.

The proposal represents an explosion of new data elements in both CTRs and SARs. We set forth specifics of this expansion in Part 1 of Appendix A to this letter. Many of the changes described in the 176 pages of specifications of the two forms do not effect a simple transition from paper format to electronic filing, but rather increase and re-categorize entire data fields. These changes are inserted without any explanation, raising serious questions about the adequacy of the notice from an administrative law standpoint.

Among the expanded SAR fields – an expansion of 21 to 104 fields – are thirteen new money laundering fields, 6 new identification/documentation fields, and 19 “other suspicious activity” fields, including an “other” inside the “other” set of categories. There are entirely new categories to fill-in such as “product type involved” (with 20 options) and “instrument type/payment mechanism involved.”

The extensive changes that FinCEN has proposed to the formats and data-fields evidence a policy that is the complete opposite of the original premise of the BSA. When the BSA was adopted, the goal was to ensure that investigators had ready access to bank records and that banks maintained the records that investigators would need. Later, a mandate shifted policy from making criminal referrals to reporting suspicious activities or transactions that have “no business or apparent lawful purpose or are not the type of transactions that the particular customer would be expected to engage in, and the bank knows of no reasonable explanation for the transaction after examining the available facts.”³ This shift endorsed a “see it, say it” obligation with a premium on vigilance and narrative communication and a de-emphasis on analytical accuracy from the criminal referral days – as demonstrated by the adoption of a safe harbor protecting unrefined judgmental reporting. The obligation to convert narrative alerts to actionable information was placed squarely on those with law enforcement expertise.

FinCEN’s proposed expanded data fields, however, would require reporters to be more precise and refined in evaluating and categorizing activities. The massive revision re-assigns the government’s analytical obligation to banks, simultaneously shifting the associated costs. Instead of providing notice to law enforcement that something may merit further investigation, the proposed changes would appoint the reporting entity as investigator, analyst, and arbiter to categorize the activity for database use. In other words, instead of “see it, say it,” the reporting policy becomes “see it, investigate it, analyze it, categorize it, verify it, and then say it.”

Each new data element – whether voluntary or not – imposes on a reporter a compliance regime of training, controls, and independent testing. Examiners will expect nothing less to assure the accuracy of each completed field. In addition, examiners will want explanations about why voluntary fields have not been filled-in when there is information in bank files that might have permitted the bank to complete the field. Some examiners will even question why the bank’s investigative process wasn’t driven to the point of being able to fill-in voluntary reporting fields.

An array of changes to the CTR specifications generates similar training, control, testing, and examination ramifications. TIN type, e-mail address, gender, conductor occupation, alias, and NAIC codes are just a few examples of new specificity that compliance and operating systems will need to accommodate under FinCEN’s proposed e-filing reporting conversion.

³ *Bank Secrecy Act/Anti-Money Laundering Examination Manual*, 2010, prepared by the Federal Financial Institutions Examination Council, p. 67.

The significant increase in reporting specification will also increase examiner second guessing of both CTR and SAR reporting categorization, leading to additional undue compliance burden and uncertainty. Finally, these additional reporting responsibilities threaten the timeliness and value of SAR reporting for law enforcement. More time will be necessary to categorize and confirm new details, yet at the same time the process will increase the risk that information will be inadvertently mischaracterized and misrouted and potentially overlooked. The notion that all these additional reporting requirements could ever lead to more rapid reporting and thereby merit the proposed shortened reporting timeframe is unrealistic.

By turning the clock back to a regime of more detailed categorization by banks and other reporters, FinCEN's proposal actually threatens the timeliness and value of BSA data for law enforcement since the process will actually increase the risk of inadvertent mischaracterization and misrouting. The proposal induces an unwarranted reliance on categorization decisions made by thousands of private sector reporters under different levels of compliance supervision rather than keeping such judgments with government analysts more directly attuned to and experienced with the law enforcers' needs to have narrative data mined for particular purposes. Furthermore, as more emphasis is placed on data reporting categorization, less time will be spent on narrative quality, compounding the erosion of data value to law enforcement.

Another unanswered question is whether the law enforcement community is able to accept the drastically changed fields and data into their own systems. For some time, FinCEN has provided a "data dump" of the BSA data to the Federal Bureau of Investigation (FBI) and other law enforcement agencies; in turn, the FBI integrates the BSA data into its own programs and data processors. Just as banks must be able to integrate the new data fields into their own systems, law enforcement agencies will have to integrate all these changes into their programs and processes.⁴ Errors in reporting and processing will affect FBI efficiencies when investigating and prosecuting cases.

In summary, ABA believes that the FinCEN proposal is an unauthorized departure from BSA data reporting mandates and policy that introduces unwarranted complexity to the reporting process, adds delaying compliance burden to reporting, and undermines ultimate data utility. The proposal should be withdrawn.

FinCEN's proposal fails to meet its administrative law obligations

FinCEN's Notice rests solely on the assertion that it is an exercise of Treasury's paperless initiative and efforts to make government operations more efficient. It succinctly claims, "Specifically, we propose to make mandatory the electronic submission of all BSA reports excluding the CMIR." Nothing in the Federal Register Notice articulates a rationale or need for the dozens of substantive or procedural changes buried in the reporting specifications. In addition, the notice asserts that, "based on information available we believe this change in filing procedures will have minimal impact on depository institutions." The sole support for this assertion is the e-filing of quarterly call report data—a complete non-sequitur for the daily type of e-filing expected in the BSA reporting context.

⁴ Having to defend against allegations of improper data processes is not a good use of the FBI's manpower or resources. For example, past questions about procedures at the FBI laboratory raised the need for the Inspector General to conduct a thorough analysis of procedures, <http://www.justice.gov/oig/special/9704a/>.

ABA believes that the current Federal Register Notice is deficient as a legal matter for undertaking the substantive changes to reporting fields that the e-filing proposal includes. The Notice is also void of any reference to the change proposed for shortening the deadline for CTR filing that limits electronic reporting from 25 to 15 days. This is a material change to reporting obligations.

Finally, the Notice is insufficient in fulfilling its Paperwork Reduction Act obligations for justifying what is an expansive new information collection. Under the *Implementing Guidance for OMB Review of Agency Information Collection* (August 16, 1999), the agency is required to minimize burden on respondents and must in that burden evaluation consider “the value of time, effort and financial resources expended by persons to generate, maintain, retain, disclose or provide information to of for a Federal agency.”⁵ More specifically the *Implementing Guidance* requires the agency to include consideration and calculation of burden and costs attributable to developing, acquiring, installing and utilizing technology and systems for the purposes of

- Collecting, validating and verifying information
- Processing and maintaining information; and
- Disclosing and providing information.

The *Implementing Guidance* defines these considerations as including the elements of design, procurement and operation of each of the above systems. In addition, the agency is obliged to consider the burdens associated with “adjusting the existing ways to comply with any previously applicable instructions or requirements” and training personnel to be able to respond to a collection of information [including] time and money spent by respondents – usually when the respondent must carry out the collection through staff, contractors, or other agents – in training those other agents about how to comply with the collection.”⁶

FinCEN has not undertaken a detailed study in advance of its proposal to be able to comprehensively and accurately identify the burden of its e-filing proposal with all of its data specification and substantive regulatory changes. It is not sufficient to simply solicit industry comment. The agency has the affirmative burden of studying these costs, but here has shirked any effort to evaluate the burden impacts.

The burden of the proposed changes are in fact massive: For example, one requirement for reporting large currency transactions is that reporters aggregate transactions, including denomination exchanges, individual retirement account (IRA) transactions, loan payments, automated teller machine (ATM) transactions, purchases of certificates of deposits, deposits and withdrawals, funds transfers and monetary instrument purchases.⁷ In order to process the CTR electronically, all the systems that manage these additional transactions must be recalibrated and reconfigured to feed into the new programs and will demand compliance program adjustments as well.

To underscore the massive undertaking involved, consider the fact that one day this month, a large filer had nearly 7,600 potential CTR filings. Of those, slightly less than half were single transaction CTRs, but nearly 4,500 were multiple transaction CTRs. Underlying the 4,500 CTR filings were almost 86,000 individual transactions. The changes would require that all the data associated with those 86,000 transactions be calibrated, configured and fed into one database – and allow sufficient time for human eyes to review and eliminate unnecessary filings or possible errors. The change to a shorter filing timeframe alone is clearly unrealistic given this one day scenario from one filer. And, this data demonstrates that FinCEN did not consult the reporting industry when creating the proposal.

⁵ *Implementing Guidance* at p. 44.

⁶ *Id.* at 46.

⁷ FFIEC BSA/AML Examination manual, 2010 edition, page 86.

Appendix A to this comment illustrates numerous other burdens that have not been considered by FinCEN despite its Paperwork Reduction Act obligations. In addition, ABA concurs in the The Clearinghouse Association's comment attachment that recites numerous serious and substantial questions that further illustrate the complexity of the regulatory changes being proposed, the refinement necessary to properly fill-in new or amended fields and the burden that will be generated in constructing and maintaining compliant systems and controls as well as in training staff and auditing performance.

That FinCEN has failed to adequately consider the extensive system changes implicated by the proposal is confirmed by its unrealistic expectation that e-filing would be universal as soon as June 2012. FinCEN's Director acknowledges that when IT changes are so extensive such a deadline is not generally feasible.⁸ In the current environment, the short timeline is virtually impossible.⁹ There are substantial demands being placed on Information Technology (IT) resources that would make this challenging even if there were no competing demands on IT resources. However, in the current environment where there are many other demands imposed by other legislative and regulatory initiatives that rely on the same resources, the proposal is impossible. Moreover, each of these system changes will also have to be integrated into the systems used to comply with the FinCEN mandate. As a result, instead of facilitating e-filing, the proposal could actually have the reverse impact on efficiencies; a number of batch filers have said they may revert to discrete filing for several years until they can recalibrate systems.

A significant number of banks rely on third-party vendors to provide the needed software for all or part of their BSA compliance systems. Many rely on more than one vendor to furnish different operating systems and all the different systems require further integration to feed into the BSA reporting systems. Banks cannot make changes to their internal programs or the interface between different software systems until vendors provide the needed information. Several vendors have said the soonest they could have updates ready would be late April to early May which does not leave sufficient time for the financial institution to integrate the programming and meet the June 30 deadline. Other vendors have not been forthcoming with their plans, in part because they have not been provided with sufficient information by FinCEN to finalize their approach to the drastically changed technical specifications.¹⁰

It follows that FinCEN's Notice is fatally flawed as a matter of administrative law and operational reality. It must be withdrawn.

Revitalizing BSAAG provides a way forward to achieve e-filing efficiencies properly.

In order for law enforcement to receive useful information from an e-filing system, there needs to be serious working sessions and coordination with law enforcement, FinCEN, regulators, and the reporting industry – both filers and their vendors. ABA submitted extensive comments earlier that do not appear to have been acknowledged or incorporated into the final specifications released in September. While FinCEN has made presentations to the industry through several venues, there has never been any serious dialogue or discussion about the challenges or problems. The Bank Secrecy Act Advisory Group

⁸ In testimony before the House Financial Services Subcommittee on Oversight and Investigations, FinCEN Director James H. Freis, Jr., acknowledged that it may take IT systems 12 to 18 months or more to implement changes depending on the significance of the changes.

http://financialservices.house.gov/media/file/hearings/111/j.h.fries_testimonyfinal-4-28-10.pdf

⁹ Under the changes required by the Dodd-Frank Wall Street Reform and Consumer Protection act alone, as of November 11, 2011, there were nearly 3,400 pages of proposed regulations and more than 2,100 pages of regulations or guidance to be implemented.

¹⁰ In the past, relatively simple changes to CTR filing have taken months to implement. Banks must integrate new software into existing systems, including revising software programs, reformatting data, reconfiguring data entry screens, testing the changes to ensure compatibility, and integrating these changes with other software programs and systems. In addition, procedures must be updated, the changes must be communicated internally, and appropriate staff must be retrained. Finally, new audit and compliance programs must be created and where needed, policies and forms updated.

provided a perfect opportunity for extended discussions with interested parties who might help facilitate the revisions to a more efficient filing system, but it was a missed opportunity.

Consequently, ABA urges a new focus and a new process so that the real value of e-filing can be realized in a realistic manner and without imposing undue compliance burden. First, the focus must be on the e-filing transition alone without incorporating substantive reporting changes. There are many banks that are totally unacquainted with e-filing; FinCEN must consider the reasons why that is so and how to enable those banks to realize the value of e-filing. If the agency's motivation is really to fulfill Treasury's paperless initiative, then the focus should be on accomplishing that goal alone.

ABA has serious reservations about the capability of FinCEN to manage a transition that implicates so many changing elements at once. For example, nearly two months ago, a simple question on branch coding and the rationale for converting to an all-numeric field instead of using the standard alpha-numeric system has not been answered, and yet this one change alone will require significant alterations to bank programming. Answers to questions and the ability to discuss the changes with those who understand the technical elements are extremely important and necessary to allow the changes to be engineered, tested and implemented. Without formal responses to the questions posed by the industry, it is impossible to create the necessary technical solutions to implement the proposed requirements. This information must be publicized and widely available to ensure all reporting entities treat the data consistently. Consequently, ABA is convinced that the focus must be narrowed to be manageable.

Second, the process for adopting reporting change needs to leverage the unique capabilities afforded by the Banks Secrecy Act Advisory Group. FinCEN must use the unique statutory structure of this group to make industry, vendors, law enforcement and regulators true partners in helping the agency achieve the benefits from an e-filing system. With the complexity implicated by the BSA data reporting requirements and the value at stake for law enforcement in receiving these reports, the regulatory process of Notice and Comment is cumbersome and ineffective in mediating the appropriateness of electronic data input specifications. This process does not afford an opportunity for an adequate level of industry beta testing of the changes involving the industry. Even those few institutions that were able to submit test data have not received adequate responses to know if the information was received and processed correctly, further delaying their implementation of the changes.

It is clear we must find a better way. Consequently, ABA and its members are prepared to participate in a revitalized BSAAG that tackles the significant and numerous challenges presented by implementing a viable and comprehensive e-filing system that is consistent with the important policy of vigilance and responsive communication of suspicious activity and currency transactions.

Conclusion

As stated at the outset, ABA strongly believes and supports the transition to e-filing. When implemented in a cooperative and reasonable manner, the advantages for e-filing will ensure efficient and useful allocation of resources for the industry, regulators and the law enforcement uses of the data. Forcing through changes without careful thought, though, could lead to an expensive and disastrous process.

ABA stands ready to work *with* FinCEN and others to ensure the process works properly, but we believe a time-out is critical to reach that goal. Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, reading "Robert G. Rowe, III". The signature is written in a cursive style with a horizontal line extending to the right from the end of the name.

Robert G. Rowe, III
Vice President & Senior Counsel

APPENDIX A

Specific concerns about the FinCEN e-filing proposal identified by ABA members:

Part One: SIGNIFICANT DATA CHANGES IDENTIFIED and ASSOCIATED BURDENS

- The technical specs for CTR changes are 64 pages and for the SAR, 112 pages.
- The new specifications state that a CTR must be filed by the 15th calendar day after the day of the transaction which changes the prior specifications of filing by the 25th calendar day, a significant change in procedures that wasn't included for comment (it is critical to note that incomplete information for aggregated CTRs often requires banks to go back to the customer or person who conducted the transaction for additional information which also takes time). This major revision to the timeline will significantly shorten the amount of time to complete and file CTRs. One large institution with a large volume of CTR filings estimates that today it takes five days from the date of the transaction to the creation of the CTR due to processing time and that this change alone will require increasing CTR processing staff from 100 full time employees (FTEs) to ~225 FTEs, an increase of ~\$7,500,000 in staffing costs alone.
- Changing the filing time for a CTR from 25 days to 15 days is not a minor forms change but a major change to the reporting process: One large institution estimates the reduced time will require 2 ½ times the personnel to handle the new deadline
- Another significant change involving the CTR is the need for financial institutions to integrate these changes with their DOEP systems. So far, nothing has been released on the possible changes to DOEP formats, further complicating the transition and suggesting banks may again revert to eliminating exemptions if the problem for exempting customers becomes unworkable. This would be a clear setback for FinCEN's efforts to eliminate unnecessary data reporting.
- One estimate is that the CTR changes alone involve 43 expanded files and 90 entirely new fields; the changes will affect screen formats and other systems that will all have to be changed, tested and then employees re-trained.
- Recordkeeping requirements for CTRs would be changed: the July 2010 e-filing specifications document provided (at page one) that, "Filers are required to retain a copy of the CTR data or have the ability to reconstruct the data filed electronically for a period of five years." The new September 2011 e-filing specifications (also at page one) change the "or" to "and" such that it reads that, "Filers are required to retain a copy of the BSA CTR data and all original supporting documentation or business record equivalent for five years from the date of the report."
- The old CTR form required occupation only for owner, not the transactor. The new CTR form requires occupation for both owner and transactor. In addition, NAICS has been added for both.
- For 'new' fields that are not 'required fields,' a series of collection, storage and submission expectations will impose new compliance control, training and testing requirements associated with each field. These fields include:
 - Contact Telephone Number
 - Contact Telephone Extension
 - Gender
 - AKA
 - TIN Type
 - Foreign Taxpayer Identification Number (not yet defined)
 - E-mail address
 - NAICS
- "Foreign Taxpayer Identification Number" is not currently is a new element and is undefined.
- FinCEN seems to expect NAICS codes for *all* conductors and beneficiaries NAICS predominately are used for non-individuals. The instructions appear to expect the NAICS code to match the occupation provided. NAICS coding, which is not always precise, may not meet the

expectations/requirement as stated. For example, NAICS does not include common occupations such as waiter or waitress, nurse, car salesperson, electrician or student and so the NAICS code would reflect the business where that individual is employed. Further instruction will be needed for proper completion of this new field. Can an available NAICS code be used to populate the occupation/type of business field to ensure consistency? What about institutions which capture SIC where direct translation to NAICS is not obvious. And, what about individuals, since NAICS codes are primarily designed for non-individuals? Or what if there are two optional NAICS codes, e.g., a grocery store that sells remittances services?

- The SAR form is NOT just an electronic version of the existing format but a significant change to the entire filing process:
 - Something as simple as moving from a single field for name (last name/first name/middle) to 6 fields (separate fields for each of first, middle and last name and one field for unknown) is not only a case management and SAR filing coding change but a customer system of record change and an account opening systems change.
 - Requiring NAICS code to go with (and possibly match) the occupation or type of business field is a new requirement.
 - Allowing multiple addresses and forms of identification for each subject is a new requirement.
 - The number of fields for reporting suspicious activity greatly changed, greatly expanding from the current 21 fields (1 BSA, 1 terrorist financing, 18 fraud and 1 other).
 - The “other” fields, one for each of the ten new categories of suspicious activity, expand to 50-characters.
 - “Structuring” is a new category of suspicious activity (Record 3A, fields 73-79 from the September 2011 filing specifications) that seems to replace the old “BSA” category (Record 3!, field 267). There are 6 substantive structuring activities, plus a catch-all “other” (if “other” is checked, a description of that category is required).
 - The existing “terrorist financing” category now requires either a known or suspected terrorist or terrorist organization or “other.” Like structuring, if “other” is checked, a description of that activity is required.
 - The old form had 18 types of fraud-related activity. The new form has ten fraud categories, with at least 4 of those categories new additions (healthcare, mail, mass-marketing and pyramid scheme).
 - There would be 13 new “money laundering” fields including an “other” field.
 - There would be 6 new fields for “identification/documentation” including an “other” field.
 - There would be 19 new “other suspicious activity” fields, including an “other” (for this “other” category). One of these new fields is particularly troubling, i.e., “suspected public/private corruption (domestic)”. It is expected that the PEP/SFPF vendor industry will use this category to create a “domestic PEP” industry which will spawn an audit and regulatory expectation that financial institutions will need to identify, monitor for, and report on domestic political figures (as an aside, when coupled with the identification of relatives and associations, one might argue that there will be few individual customers who are not PEPs, undermining the entire rationale for the designation).
 - There are separate categories for suspicious activity related to insurance, securities and mortgage fraud, all which appear to apply to all financial institution filers and not just those in the affected industries.
 - “Product Type(s) Involved” has 20 categories or types of products involved in the reported activity, all new information that was not previously reported as a separate field. “Instrument Type(s)/Payment Mechanism Involved” is also a new category not previously required.
- All these changes require re-training of staff, complete recalibration of systems and serious overhaul to case management processes to ensure information is properly filed.

- Another significant change is the expansion of the tax field to permit foreign taxpayer identification information – need to ensure that this is clearly understood by all users.
- FinCEN has also changed the date formats for both CTRs and SARs, going from a CYYMMDD format to a MMDDCCYY format, a change that will require revised coding that will require time and significant expense.
- “Continuing Activity Report” is a new SAR field that must be integrated into current systems.
- The definition for ‘date of the report’ with respect to identifying the proper record retention period appears to have changed from the current definition, which uses “date of transaction,” but the change is not entirely clear and could affect timelines.
- New specifications state that financial institutions should retain a copy of the BSA CTR data and all original supporting documentation or business record equivalent suggesting a system of record (SOR) for ownership and/or demographic information at the time the CTR is created may no longer meet FinCEN expectations that the filer maintain a ‘back up’ of that information for that specific date.
- The general instructions state that, “All individuals (except employees of an armored car service operating as an agent of the reporting financial institution) conducting reportable transactions for themselves or for another person, must be identified by means of an official document.” However, under the Item Instructions – Part I, *Person Involved in Transaction*, number 20 states that the filer should “Enter in Item 20 the information used to identify the individual or entity recorded in Item 4” where Item 4 refers to the individual’s last name or entity’s legal name (basically, the conductor or beneficiary). This suggests that FinCEN expects a conductor should present identification for the beneficiary (when conducting for another person?)
- One new field added is the “Financial Institution ID Number Type” which reflects the following options: CRD, IARD, NFA, RSSD and SEC numbers. But there is no definition and no instructions about what to do when the institution has multiple RSSD numbers.
- Beta testing is needed to verify systems work but no allowance is made for this or the costs that will be incurred.
- The proposed timeline leaves no room for testing and integration of different systems, especially vendor-provided software.
- One vendor suggests a minimum of six months will be needed before a deadline to provide changes to the bank to let the bank test and integrate the program before the system goes live – that would mean all final changes would have to be in place by the end of December (a time when all financial institutions are undergoing significant and extremely labor intense systems work for year-end reporting). Banks working with multiple vendors and having to interface different systems from different vendors will require additional lead time.
- The new formats need to be integrated with other systems – including vendor provided programs.
- Case management systems for investigating and verifying need to report possible suspicious activities must be integrated, but there has been no time permitted to do so. Many bankers report serious concerns about potential damage to their current case management programs.
- Training for the massive and significant changes will take time once procedures have been finalized (training is one of the four pillars of AML compliance programs) and will be vital because the changes significantly alter all elements of the BSA program.
- Reduced time for filing CTRs will cause significant increase in number of employees needed (one large bank estimates going from 100 to 250 FTE).
- Impact estimated by one mid-size bank to update or purchase a new case management system to work with these proposed changes will be several millions.

Part Two: OTHER CHALLENGES FOR REPORTERS

- Because many smaller institutions only file a very small number of reports annually – one estimate puts the number of banks not yet set up to file at 1,875 – FinCEN needs to take steps to be certain that every depository institution is registered and set up to e-file. That alone will require extensive outreach; adding in non-depositories like MSBs increases this challenge exponentially. Given the difficulties with identifying the numbers of MSBs that are out there, it is questionable whether all possible filers could be registered and in the database in such a short period of time. Therefore, it might be more beneficial for FinCEN to make this the first step and then after all filers are using e-filing take the step to transition to the new formats.
- FinCEN needs to greatly expand the number of possible reporters from each institution and to confirm that multiple subsidiaries within the holding company can access the same data without requiring multiple sign-ons. Recent changes to FBAR filing makes this very difficult for compliance, given that offices may be all over the globe and pushing it all through three locations could be difficult – with a large institution that is filing regionally, three will be far too restrictive. FinCEN needs to adjust the ability to expand the numbers.
- FinCEN needs to fully identify the optional fields in one place and explain that they are truly optional. FinCEN also must clearly acknowledge in the rule that many banks do not collect this information in their customer databases under existing regulations and therefore do not have that information available. Reporters also should not be required to begin collecting this data when there is no change to the regulations.
- The whole issue of gender being integrated from customer files into the reporting systems must be addressed. The conflict first became significant during discussions of the Customer Information Program (CIP) rules under section 326 of the Patriot Act in 2002. Despite industry requests that the conflict between requirements for CIP and the restrictions under fair lending and ECOA be resolved, the issue is still open. For the proposed changes, at a minimum, all employees would have to be carefully retrained to that BSA compliance does not violate fair lending compliance (and because of lack of regulatory guidance in the last ten years, that is not always simple).
- Where banks have merged or recently converted systems, case investigation may require access to older systems not integrated into current customer management programs. The ability to do that can take time and may require discrete filings for certain reports, a problem that needs to be addressed. For example, data from past records that is available but not integrated into current systems will have to be coordinate into reports, possibly requiring discrete filings by a normally batch filing institution.
- Similarly, where a bank has to correct a previously filed form, FinCEN needs to explain how to make adjustments when the prior form was filed using the old format and the correction is to be submitted using the new and significantly changed format.
- There are serious challenges for vendors. Vendors need to update their systems and get the updates to banks to integrate into their systems. As noted, some institutions will need to integrate updates from more than one vendor, presenting further challenges. For example, a frontline program that coordinates the first stage of CTR data collection may need to be integrated with a program from another vendor that actually coordinates the data from the deposit database. The lack of final specifications means this cannot even begin until the changes are in place.
- For financial institutions that may have switched vendors in the last few years, preparing an amended filing will be a challenge if it must use information from a discontinued system, especially given that paper forms may not be available in the future.

Part Three: FINCEN IS NOT PREPARED

- FinCEN has not responded to questions and the industry questions whether FinCEN has sufficient staffing to meet such an ambitious timeframe. For example, one simple question from ABA on the reason for solely numeric coding for branch locations as opposed to the standard alpha numeric coding – submitted on September 17 – has still not been answered.
- Many questions submitted by vendors in writing have not been answered; one vendor reports questions submitted last May have yet to be answered.

- Every filer will need to submit test files to get new forms approved. One banker estimates there are approximately 82,500 filers of CTRs and 82,500 filers of SARs for a total of 162,500 filers. If each can submit up to three test files per change that will equate to approximately 500,000 test files. Even allowing a two to four week turnaround for each file, the number of staff needed to handle that volume is far beyond FinCEN's current capabilities or staffing.
- FinCEN needs to have significant resources dedicated to answering questions and responses must be consolidated and published to ensure that different filers are not given conflicting information. It is not clear that the personnel necessary to respond to these questions are available.
- At a minimum, with such an ambitious timeline, questions must be answered initially by the next business day if not immediately but FinCEN is estimating four weeks for responses, a timeline that is totally unrealistic for a June 30 deadline (as an aside, many bankers express serious reluctance to rely on oral responses). It will be important also to make questions and answers available to the industry and vendors so that FinCEN does not get repeat questions (and risk different answers).
- Current programming is handled by IRS Service Center in Detroit and while the goal is to move all this from Detroit to FinCEN's own servers – an admirable effort that makes a great deal of sense – if the IRS is involved to help with the transition in any way, the timing seems to completely overlook the massive volume of incoming data they experience in the first quarter leading up to April 15 – which would be the same time that the major work for this transition would also be occurring.
- During a recent webinar to review changes to the MSB definition (a completely separate regulatory issue) that was held Thursday, September 15, FinCEN's servers were apparently so overloaded that many were not able to get into the program. Although FinCEN did later post the webinar, that cut off many from the ability to participate in the live discussion. The ability to handle these volumes will be even more critical for these massive changes (and this capacity issue is another factor that calls into question the agency's ability to handle these volumes).
- If the current systems experience any kinds of failure, paper filings provide recourse if there are problems. However, the final rule will have to address and specifically articulate how FinCEN will handle systems failures or other issues where e-filing may not work. For instance, what happens where there is a major flood or other natural disaster that affects timelines and data process capabilities, whether at FinCEN or at the reporting institution. Or what if FinCEN has some kind of systems challenge or power failure on the last day a report is due so that the reporter cannot file even though the delay is not the fault of the filer?