
1.0 EXECUTIVE SUMMARY

Section 6302 of the Intelligence Reform and Terrorism Prevention Act of 2004¹ amended the Bank Secrecy Act (BSA) to require the Secretary of the Treasury to prescribe regulations “requiring such financial institutions as the Secretary determines to be appropriate to report certain cross-border electronic transmittals of funds, if the Secretary determines that reporting of such transmittals is reasonably necessary to conduct the efforts of the Secretary against money laundering and terrorist financing.” Section 6302 requires further that, prior to prescribing the regulations contemplated by the Intelligence Reform and Terrorism Prevention Act, the Secretary shall submit a report to Congress that:

- i) identifies the information in cross-border electronic transmittals of funds that may be found in particular cases to be reasonably necessary to conduct the efforts of the Secretary to identify money laundering and terrorist financing, and outlines the criteria to be used by the Secretary to select the situations in which reporting under this subsection may be required;
- ii) outlines the appropriate form, manner, content, and frequency of filing of the reports that may be required under such regulations;
- iii) identifies the technology necessary for the Financial Crimes Enforcement Network to receive, keep, exploit, protect the security of, and disseminate information from reports of cross-border electronic transmittals of funds to law enforcement and other entities engaged in efforts against money laundering and terrorist financing; and
- iv) discusses the information security protections required by the exercise of the Secretary's authority under this subsection.²

The Secretary of the Treasury submits this Feasibility Report in accordance with the above requirements. Based on extensive fieldwork and analysis of information and data, and as discussed in substantial detail in this Report, we have determined that:

- i) The basic information already obtained and maintained by U.S. financial institutions pursuant to the Funds Transfer Rule, including the \$3,000 recordkeeping threshold, provides sufficient basis for meaningful data analysis.³

1 Pub. L. No.108-458 (Dec. 17, 2004), codified at 31 U.S.C. § 5318(n).

2 Section 6302 also provides that no regulations shall be prescribed until the Secretary certifies to Congress that FinCEN has the technical systems in place to effectively and efficiently receive, keep, exploit, protect the security of, and disseminate the reported information.

3 Section 6302 provides that information required to be reported under that section shall not exceed the information already required to be retained by financial institutions pursuant to section 21 of the

- Any reporting requirement should apply only to those U.S. institutions that exchange payment instructions directly with foreign institutions.
 - The \$3,000 threshold should apply only to discrete transactions and not to the aggregated total value of multiple transactions conducted very closely to one another in time.
- ii) Any reporting requirement should permit institutions to report either through a format prescribed by FinCEN, through the submission of certain pre-existing payment messages that contain the required data, or through an interactive online form for institutions that submit a low volume of such reports. The filing system should accommodate automated daily filing, periodic filing via manual upload, and discrete single report filing on an as-needed basis.
- iii) FinCEN would implement a federated data warehouse architecture to receive, keep, exploit, protect the security of, and disseminate information submitted under any reporting requirement. FinCEN would implement a separate path for the processing, enhancement, and storage of report information and would provide a single point of entry for users to submit queries to all BSA data systems, including cross-border funds transfer information, in a way that is invisible to the user.
- iv) FinCEN would apply existing policies and procedures that comply with all applicable legal requirements, industry and government best practices, and the Department of the Treasury's Information Technology Security Program Directive to every phase of the design and implementation of any system built to accommodate reporting of cross-border funds transfer data. Such compliance would be subject to certification.
- FinCEN also would impose strict limits on the use and re-dissemination of the data it provides to its law enforcement, regulatory, and foreign counterparts and strictly monitor those persons and organizations to which it grants access to the data.
 - Cross-border funds transfer data would be technologically protected and secure and would only be available to FinCEN and the law enforcement and regulatory agencies authorized by law to access it.

Federal Deposit Insurance Act (12 U.S.C. § 1829b and regulations promulgated thereunder (31 C.F.R. § 103.33(e) and (f) (the Funds Transfer Rule) and 31 C.F.R. § 103.33(g) (the Travel Rule)), unless:

- i) the Board of Governors of the Federal Reserve System (Board) and the Secretary jointly determine that particular items of information are not currently required to be retained under those law and regulations; and
- ii) The Secretary determines, after consultation with the Board, that the reporting of such additional information is reasonably necessary to conduct the efforts of the Secretary to identify cross-border money laundering and terrorist financing.

We conclude that, although construction of such a system is feasible, completion of such a system by December 2007 is not feasible. We estimate that the work would require approximately three and one-half years of effort. Further, we estimate that development and implementation of the proposed system would cost approximately \$32.6 million.

Other Considerations

In the course of conducting this study, FinCEN has identified a number of questions not posed by Congress that will affect *how* to implement the statutory requirements. These issues are discussed more completely elsewhere in this Report.

A significant concern is the cost, both to U.S. financial institutions and to the government, of implementing the reporting requirement and building the technological systems to manage and support the reporting. Related to these concerns are questions about the government's ability to use such data effectively. These concerns must be weighed carefully as we proceed.

Another concern is the potential effect that any reporting requirement could have on dollar-based payment systems such as: (1) a shift away from the U.S. dollar toward other currencies (i.e., the Euro) as the basis for international financial transactions; (2) the creation of mechanisms and facilities for clearing dollar-based transactions outside the United States; and (3) interference with the operation of the central payments systems. The U.S. has economic and national security interests in the continued viability and vitality of dollar-based payments and these possible outcomes must inform and guide the rulemaking process.

Next Steps

We propose an incremental development and implementation process. If the concerns noted above or any as-yet unidentified issues would impede the project or cause it to be infeasible, this incremental approach provides the opportunity to alter or halt the effort before FinCEN or the U.S. financial services industry incurs significant costs. As discussed in greater detail in this Report, the first phase in this project will comprise:

- Engaging with partners in the law enforcement, regulatory and intelligence communities to develop detailed user requirements to meet the most central needs of those who access BSA data.
- Engaging in a detailed discussion with representatives of the U.S. financial services industry, along with representatives of the major payment systems and members of the Canadian and Australian financial services industries. These discussions would focus on quantifying the cost the proposed requirement would impose on reporting institutions and the potential impact on the day-to-day operation of the payment systems.

- Engaging outside support to obtain and analyze a sizable sample of cross-border funds transfer data and exploring means of extracting value from the data, and identifying means to effectively and intelligently use the data to advance efforts to combat money laundering and illicit finance.

Based on these efforts, FinCEN will create a development plan that incorporates a series of milestones and would permit pilot testing of different aspects of the reporting system. This incremental development approach will enable FinCEN to build the system in manageable stages and to test the system's functionality at each stage before moving on to the next.