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## 4.0 DATA REASONABLY NECESSARY TO IDENTIFY ILLICIT FINANCE

FinCEN, acting jointly with the Board of Governors of the Federal Reserve System, has taken some steps to address the particular vulnerabilities to money laundering and other illicit uses of electronic funds transfers. The existing Bank Secrecy Act funds transfer regulation consists of two rules: the “Funds Transfer Rule” (issued jointly by the Board of Governors of the Federal Reserve System and FinCEN as required by Section 1829(b) of the Federal Deposit Insurance Act) and the “Travel Rule.”<sup>12</sup> The recordkeeping rule generally requires institutions to collect and retain records of certain specified data regarding funds transfers of \$3,000 or more that the institution processes.<sup>13</sup> The travel rule requires financial institutions to include, to the extent feasible, information collected under the recordkeeping rule that will travel throughout the payment chain. Any record that a financial institution is required to maintain pursuant to the Funds Transfer rule “shall be submitted or made available to the Secretary [through his delegate, FinCEN] or the Board [of Governors of the Federal Reserve] upon request.”<sup>14</sup>

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- 12 See 31 C.F.R. § 103.33 generally and 31 C.F.R. § 103.33(g) (travel rule). The Annunzio-Wylie Anti-Money Laundering Act of 1992 (Pub. L. No. 102-550, § 1515) required the Secretary and the Board to jointly issue regulations requiring insured depository institutions to maintain records of funds transfers. The Treasury – and not the Board – is authorized to issue regulations requiring nonbank financial institutions to maintain records of transmittals of funds. Accordingly, although the recordkeeping rule and travel rule are derived from separate rulemakings, they are promulgated in one regulation found at 31 C.F.R. § 103.33. The government has found certain categories of entities involved in the payment chain of wire transactions to pose a low threat of money laundering or terrorist financing and thus has excepted certain parties of the transaction from requirements of the current rules. Compliance with both the recordkeeping and travel rules is waived if both parties to the transaction are any of the following: (1) banks or brokers or dealers in securities or futures commission merchants or introducing brokers or their subsidiaries; (2) government entities; or (3) the transmitter and recipient are the same person and the transaction involves a single bank or broker-dealer. See 31 C.F.R. § 103.33(e)(6) and (f)(6). In addition, “funds transfer” is defined under 31 C.F.R. § 103.11 to exclude all funds transfers governed by the Electronic Fund Transfer Act of 1978, as well as any other funds transfers that are made through an automated clearing house, an automated teller machine, or a point-of-sale system. Therefore, since such transfers are excluded from the “funds transfer” definition, they are exempt from the requirements of 103.33.
- 13 Earlier this year the Department of the Treasury and the Federal Reserve jointly issued an Advance Notice of Proposed Rulemaking announcing that they are reviewing and considering a reduction in the \$3,000 threshold, particularly in light of international standards, and seeking comment on the potential benefits and burdens of any such reduction. 71 Fed. Reg. 35,564 (June 21, 2006) See Interpretive Note to FATF Special Recommendation VII (requiring countries to mandate that cross-border wire transfers contain accurate and meaningful originator information). Countries may adopt a de minimus threshold of no more than \$1,000 or 1,000 Euros. Countries are expected to be in compliance with the Special Recommendation by December 2006.
- 14 See 12 U.S.C. § 1829b(b)(3)(C). Any information reported to Treasury or the Board in accordance with section 1829b(b)(3)(C) falls within an exception to the Right to Financial Privacy Act, 12 U.S.C. § 3401 et seq. See 12 U.S.C. § 3413(d) (excepting disclosures pursuant to Federal law or rule). Moreover, the Right to Financial Privacy Act does not apply to money transmitters. See 12 U.S.C. § 3401(1) (defining a “financial institution” for purposes of the Act’s coverage to include banks and other depository institutions).

In combination, these rules require U.S. financial institutions to obtain and maintain information about certain funds transfers that identifies, at a minimum:

- the name and address of the originator;
- the amount of the transfer;
- the execution date of the transfer;
- any payment instructions received;
- the name and address of the beneficiary (if available);
- the account number of the beneficiary (if available);
- any other specific identifiers of the beneficiary (if available); and
- the beneficiary's financial institution.<sup>15</sup>

Existing regulations make no distinction between domestic and international funds transfers; financial institutions must obtain and maintain the required information about all funds transfer transactions above the \$3,000 threshold. Therefore, institutions reporting cross-border electronic funds transfers would need to segregate cross-border funds transfers from information about domestic funds transfers. Reporting institutions also would need to segregate cross-border funds transfers above the \$3,000 threshold.

While the BSA does not require U.S. financial institutions to report to FinCEN the information they maintain about funds transfers, the data is available to FinCEN and to regulators to whom FinCEN has delegated BSA compliance examination authority through the examination process. Information about cross-border funds transfers also is available to law enforcement through normal administrative processes, information requests, subpoenas, or the 314(a) process (See appendix A). These processes can involve delays to access of information for days, weeks, months, or years. Because the Travel Rule is a recordkeeping requirement rather than a reporting requirement, information is not available to regulators and law enforcement on a real time basis. Therefore, as a practical matter, regulators, and law enforcement currently tend to seek access to this information only in connection with an existing investigation or in the course of a compliance examination.

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15 Strictly speaking, the applicable rules use parallel but not identical language to describe the relevant transactions and the persons sending and receiving funds through different types of institutions (i.e., originator, transmitter, beneficiary, recipient, bank, and non-bank financial institutions). For purposes of simplicity, we describe the transaction as a funds transfer, the person initiating a funds transfer as an originator, the person receiving the funds as a beneficiary, and the parties' bank or financial institution as a financial institution throughout.

A reporting requirement would create a centralized database of this very basic cross-border electronic funds transfer information in a single format and link it with other highly relevant financial intelligence. Furthermore, this very basic information about such transfers provides both a source of information that can provide new leads standing alone and can potentially enhance the use and utility of current BSA data collected by FinCEN when combined with those other data sources. Among the ways in which FinCEN and its partners can exploit this data are individual searches for known subjects, data matching with other sources of lead information, and link analysis with other financial, law enforcement, and intelligence reporting. (Appendix F describes these and other potential avenues of exploiting this data).

#### **4.1 Individual targeting/research of known subjects**

Analysts and investigators researching specific identified subjects are likely to rely primarily on the capacity to search electronic funds transfer data for specific names or account numbers and receive results within seconds. This kind of query and reporting function allows analysts to construct a customized query in response to a specific need. Many commercial software tools provide the query and reporting capabilities for retrieving structured data.

#### **4.2 Data Matching against Other Data Sources**

FinCEN currently uses a large number of databases to identify and analyze financial crimes. FinCEN information comes from four primary sources:

- the Bank Secrecy Act Database that contains SARs, CTRs, Currency and Monetary Instruments Reports, Foreign Bank Account Reports, and other reports;
- several databases of criminal reports sourced from, among others, the Immigration and Customs Enforcement’s TECS II system, the FBI’s National Criminal Information Center, the Drug Enforcement Administration’s Narcotics and Dangerous Drugs Information and NDIC Systems, the United States Secret Service database, and the United States Postal Inspection Service;
- FinCEN’s own database of investigations and queries conducted through FinCEN’s systems; and
- Commercial database services from organizations such as Dun & Bradstreet, LEXIS/NEXIS, and credit bureaus,<sup>16</sup> as well as commercially available lists of “Politically Exposed Persons.”<sup>17</sup>

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16 FinCEN only has access to credit bureau header information, not full credit reports. Header information typically consists of identifying information such as name, address, SSN, etc.

17 See <https://www.world-check.com> and <http://www.worldcompliance.com>. Many government agencies and financial institutions employ such lists for intelligence and risk management purposes respectively.

In addition, FinCEN analysts have access to other lists and databases maintained by federal government agencies that they may use to cross-reference BSA data, or as the basis of a search of the data. These sources include the Office of Foreign Assets Control's list of Specially Designated Nationals, the Social Security Administration's Death Master File, and the State Department's list of Designated Foreign Terrorist Organizations.

### **4.3 Link Analysis**

Link analysis is a technique used to explore associations within a large collection of data of different types. Link analysis requires a variety of readily available data, some of which provide indicators of money laundering activity (i.e., SARs, law enforcement data, case files, etc.). In the case of financial data, the connections might include names, addresses, phone numbers, bank accounts, businesses, funds transfers, and cash deposits. Combining and linking these pieces of data from multiple sources adds layers of understanding to the behavior that the data represents.

Link analysis depends on the integration of one or more sets of data records. Within each data set, each record has several data fields containing information. These might be records of an individual (with fields of name, address, and phone number), bank account (account number, owner, bank), or business (name, owners' names, board members, address). As noted, FinCEN already collects multiple Bank Secrecy Act reports, each containing specific data fields. While there are many differences between them, there are also many fields common to the various reports. Likewise, even the limited pieces of data necessary to a funds transfer message overlap some of the information collected in these reports. Link analysis looks for matching fields in each of these records. For example, two reports identifying two separate individuals but each associating its subject with the same phone number as the other, could indicate that two persons know each other well, or even live at the same address.

Link analysis is useful in financial investigations because it can integrate many disparate sources of information. As noted, with the exception of SARs, the individual reports that FinCEN currently receives, and even the records that might be available through cross-border funds transfer reporting, provide few indicators of suspicion. However, link analysis provides a way of combining these different records so that analysts can detect the patterns and relationships between the different sets of data. FinCEN employs link analysis to identify relationships between the various BSA reports it currently collects.