
8.0 CONCLUSIONS AND RECOMMENDATIONS

8.1 Project Risks

There are a number of significant challenges facing the development and implementation of cross-border electronic funds transfer reporting in the United States. On a technical level, development of information technology systems capable of receiving, storing, analyzing, and disseminating an estimated 350-500 million records a year is a daunting task. In the regulatory context, developing a clear definition of what actually constitutes a cross-border electronic funds transfer is also difficult. Certain kinds of cross-border funds transfers traverse the United States without involving any U.S.-based sender or recipient, and the collection of such information implicates serious policy issues related to the privacy of data regarding both U.S. persons and non-U.S. persons, as well as the role of the U.S. dollar in the international economy. In addition, imposing yet another compliance cost on the U.S. financial services industry requires careful consideration of financial institutions' ability to implement compliance processes and the impact that might have on industry operations and the costs to customers. Last, but not least, any data collection and analysis effort such as the one contemplated by the Intelligence Reform Act also implicates personal privacy concerns. Properly maintaining and securing the data from unauthorized access, as well as managing the appropriate and intelligent use of the data, are paramount.

Technical Issues

The technical alternatives for the receipt, storage, analysis, and dissemination of the data described in this study presume an electronic reporting system that could receive data in standardized formats, normalize the data, and load it into a data warehouse. The technology for implementing this type of communication between the financial institutions and FinCEN already exists, and FinCEN has already implemented it in the BSA E-Filing system.

Section 361 of the USA PATRIOT Act specifies that FinCEN must establish and “maintain a government-wide data access service, with access to . . . information collected by the Department of the Treasury, including report information . . . (such as reports on cash transactions, foreign financial agency transactions and relationships, foreign currency transactions, exporting and importing monetary instruments, and suspicious activities). . . .” To fulfill its mandate under the USA PATRIOT Act, FinCEN must provide a powerful data warehouse and communication infrastructure that permits external users to access and analyze the BSA data in meaningful ways. The anticipated volume of cross-border electronic funds transfer reporting makes this a difficult task.

Any reporting system should leverage existing technology and integrate the various collections of data maintained by FinCEN. The proposed system would require:

- Integration with and enhancement of the BSA E-Filing system currently utilized or in development by FinCEN for the receipt of Bank Secrecy Act data.
- Processing, integrating and enhancement of data submitted by filers, which will share many common data elements, but may be in multiple formats and data structures, to create a uniform data structure.
- Storage of 2-3 years (going forward, not retroactive) worth of cross-border funds transfer data for online access with up to 7-8 additional years' data archived and accessible through other means.
- Integration with other databases including BSA data accessible to external users through a secure web-based interface.
- High-performance and high-availability system with 24/7/365 support, including maintenance, support and help desk services.
- Audit trail capability to track connections to and submissions to the databases, and to provide receipt acknowledgements for data submissions by users.
- Compliance with applicable industry and government standards and security measures appropriate to the handling of Sensitive but Unclassified (SBU) data for the use of Law Enforcement and Regulatory organizations.

These issues highlight the need to conduct a detailed requirements analysis and system design process prior to development. Below we propose an incremental approach to conducting such an analysis and planning for future development.

Regulatory Approach

The definition of “cross-border electronic transmittal of funds” lies at the heart of a successful implementation of the reporting requirement. The nature of the electronic funds transfer process as it has evolved in the United States poses specific difficulties in creating a definition that at once captures all of the nuances of the payment systems and avoids needless complexity.

Further, the regulation must also provide a clear definition of what types of electronic funds transfers an institution must report, and what particular information it should report about each transfer. For the purposes of our study, we have focused on electronic “funds transfers” as defined in 31 C.F.R. § 103.11 in which a U.S. institution sends or receives a payment instruction directing the

transfer of funds to or from an account domiciled outside the U.S.³² Refining an appropriate regulatory definition of what transactions fall within the new reporting requirement will implicate a number of concerns that we identify below.

Institutional Costs

U.S. financial institutions already comply with a wide array of reporting and record-keeping obligations under the Bank Secrecy Act. In the event that the Treasury Department imposes such a reporting requirement, relatively few and mostly large institutions would need to modify the information technology they currently employ and assign staff to manage the implementation process. Institutions would need to train staff in the use and maintenance of the system and the details of the reporting procedures. Some institutions may need or choose to rely on third-party vendors to provide the necessary tools or modifications to their systems. Many vendors currently provide financial institutions with technology to assist them in complying with Bank Secrecy Act regulations. It is possible, if not likely, that the vendors would expand their services to offer the service of extracting the appropriate funds transfer data and reporting that data to FinCEN on behalf of customer institutions. Whether done internally or through outsourcing, reporting institutions will incur some additional costs.

It is very difficult to estimate the costs of compliance with precision, and we have been unable to quantify the costs to U.S. financial institutions. Coordination of the flow of information presents a number of challenges in implementing the proposed system. U.S. financial institutions process and record funds transfers in myriad ways. The development of business processes within U.S. financial institutions to extract the required data from whatever systems they use and transform it into properly formatted reports may be necessary. Any new reporting requirement must necessarily include a reasonable amount of time in which institutions can develop and implement their compliance processes.

Privacy and Confidentiality

Throughout the conduct of this study, many have raised concerns about privacy and the security of personally identifiable and sensitive data about persons' financial transactions. FinCEN has always taken seriously the importance of safeguarding the financial data it collects. Nonetheless, as previously discussed, a system such as the one contemplated in this report raises important questions about the collection of a very large set of private information about persons within and outside the United States without any indicia of suspicious

³² Section 6302 contemplates a reporting requirement that is coextensive with the scope of the BSA funds transfer rule (31 C.F.R. § 103.33). Accordingly, this study does not address any debit card type of transmittals, point-of-sale (POS) systems, transaction conducted through an Automated Clearing House (ACH) process, or Automated Teller Machine (ATM).

activity. Policymakers must weigh the potential value of the data in supporting government efforts to safeguard the financial system from abuse and to deter, detect, and prevent illicit financing carefully against these concerns.

The privacy issues raised by the proposed system should turn primarily on the specific content of the reports proposed and the integration of those reports with other data sets and not on the volume of the reporting. The amount of information in a funds transfer message is limited, far more so than the data already collected by FinCEN through its Suspicious Activity Reports, Currency Transaction Reports, and Currency and Monetary Instrument Reports. In addition, the proposed reporting requirement would not establish a new source of information. Funds transfer data, whether domestic or cross-border is already available to the government but can be difficult to obtain and analyze (see appendix F). Rather, the proposed requirement is an administrative change that would permit investigators and analysts to access and employ data already available in a more effective way.

In addition to the concerns about personal privacy, there are practical, technical concerns regarding the prevention of unauthorized access to data by network intruders, particularly in light of the types of personal and business information contained in funds transfer data. FinCEN is sensitive to these concerns, and practiced in minimizing such risk. FinCEN stands between financial institutions and law enforcement, balancing regulatory costs and privacy concerns against the important value gained by law enforcement access to financial information. As with the current Bank Secrecy Act reports, FinCEN plays an important role as an intermediary between the sensitive information and unfettered or inappropriate access by law enforcement.

8.2 Pre-Acquisition Planning

In its response to FinCEN's March 2006 survey, the American Bankers Association "proposes for discussion whether piloting a single channel specific reporting requirement and then evaluating what has been achieved from a law enforcement perspective for what cost from an economic and privacy basis, isn't a preferred alternative to attempting to implement a comprehensive definition-and-exception driven cross-border, cross-system regime." We believe that there is some value to a phased implementation of a cross-border funds transfer reporting system.

Building on the ABA's suggestion, we propose a multi-phase development process. The pre-acquisition phase of the process would involve three parallel efforts.

8.2.1 User Requirements Analysis

First, FinCEN would engage with its partners in the law enforcement, regulatory and intelligence communities to develop detailed user requirements. This effort would focus on determining the functionality required to meet the most central needs of those who access BSA data.

8.2.2 Institutional Cost Analysis

Second, FinCEN proposes to engage in a detailed discussion with representatives of the U.S. financial services industry that would be subject to the proposed requirement, along with representatives of the major payment systems and members of the Canadian and Australian financial services industries.

There is no quantitative data on the labor or cost involved in implementing processes to comply with the proposed requirement. We propose that the reporting requirement should fall upon a relatively small segment of the financial services industry, and primarily upon large institutions with correspondingly more substantial resources. We recommend that, as part of the planning and requirements analysis phase of development, FinCEN engage in detailed discussions with representatives of industry, particularly with officials familiar with and responsible for the operation of funds transfer systems within U.S. financial institutions, to determine the specific needs of industry members. This exchange also should involve, to the extent possible, representatives from the major payment systems and institutions doing business in Australia and Canada.

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. In turn, the outcome of these discussions would lead to exploration of means to minimize or avert these impacts.

8.2.3 Value Analysis

Third, FinCEN would engage outside support in obtaining and analyzing a large collection of funds transfer data and exploring means of extracting value from the data. This effort would require correlating funds transfer data with BSA data to validate conclusions contained in this report and to identify means of effectively and intelligently using the funds transfer data to advance efforts to combat money laundering and illicit finance. Based on its own experience and that of other users of BSA data, FinCEN is convinced of the analytical value of funds transfer data (see Appendix F). Once FinCEN identifies and tests potential analytical techniques for employing the funds transfer data, however, it can select those techniques that best combine acceptable costs, reasonable analytical value, and realistic resource requirements. That process will drive the system design process.

All three of these efforts would provide vital information required to develop detailed requirements for the proposed regulation and technological system. If any of these efforts were to reveal insurmountable obstacles to the project, this multi-faceted pre-acquisition effort provides the opportunity to halt the effort before FinCEN or the U.S. financial services industry incur significant development and implementation costs. In fact, this approach would provide such answers prior to the issuance of a contract for development of the technological systems. In other words, this approach provides a clear decision point at which FinCEN or policy makers may terminate the effort if appropriate.

8.3 System Development and Deployment

Based on the above-described pre-acquisition efforts, FinCEN will create a development plan that incorporates a series of milestones that would permit pilot testing of different aspects of the reporting system. Key components of the system development that would benefit from such pilot testing are the data acquisition component (modification of BSA E-Filing), the ETL process, and the data analysis component. FinCEN would divide the development of the data acquisition component into phases that address batch delivery of SWIFT messages, batch delivery of non-SWIFT messages, manual upload of prepared reports, and online completion of reporting forms. The development of the Enhancement, Transformation, and Load (ETL) process would parallel these same phases, addressing the processing of the various reporting forms. This type of collaborative, incremental development approach would 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. The results of these different stages of development would provide vital experience and lessons that would assist in the creation of appropriate final regulations, including clear definitions of which transfers U.S. financial institutions would need to report and the creation of appropriate and practical exclusions from the reporting requirement, if any.