August 21, 2006

Financial Crimes Enforcement Network
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Attn: 1506-AA86

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551
Docket No. R-1258

Re: Threshold for the Requirement to Collect, Retain, and Transmit Information on Funds Transfers and Transmittals of Funds
71 FR 35564 (June 21, 2006)

America's Community Bankers (ACB)[1] is pleased to comment on the advance notice of proposed rulemaking (ANPR)[2] issued by the Financial Crimes Enforcement Network (FinCEN) and the Board of Governors of the Federal Reserve System (Federal Reserve) that requests comment on possible changes to the wire transfer regulations in 31 CFR 103.33. The ANPR requests comment on two issues:

1. Whether the Department of the Treasury (Treasury) should lower or eliminate the current $3,000 threshold that triggers recordkeeping and data transmission requirements for wire transfers.
2. Whether Treasury should require financial institutions to report information to the federal government about international wire transfers.

ACB Position

ACB strongly supports focused efforts to identify and thwart terrorism and financial crime. We agree that the ability of law enforcement and intelligence officials to "follow the money" of terrorists and other criminals is key to the safety and security of our country.

ACB does not oppose amending the $3,000 threshold that triggers additional recordkeeping and data transmission requirements for wire transfers. We do not believe that such a change would

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[1] America's Community Bankers is the national trade association committed to shaping the future of banking by being the innovative industry leader strengthening the competitive position of community banks. To learn more about ACB, visit *www.AmericasCommunityBankers.com*.
[2] 71 Fed. Reg. 35564 (June 21, 2006).

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significantly impact community banks. Nevertheless, we urge FinCEN and the Federal Reserve to ensure that: 1) any change in the threshold comply with provisions in the Bank Secrecy Act (BSA) that require mandatory records to have a "high degree of usefulness" in identifying, tracking, and thwarting terrorism and financial crime; and 2) that all institutions have ample time to come into compliance and to plan for any increased costs that may be associated with a threshold adjustment.

While an adjustment to the recordkeeping threshold would not impact most community banks, any new wire transfer reporting obligations would significantly increase the heavy compliance burden already shouldered by ACB members. We do not believe that imposing additional reporting obligations meets the standard set forth in the Intelligence Reform Act that any cross-border reporting obligation be "reasonably necessary" to shut down financial crime. Moreover, the success of the SWIFT program and the significant challenges associated with managing and analyzing existing BSA data lead us to believe that a cross-border wire transfer reporting requirement would not meaningfully improve the ability of Treasury to track and disrupt money laundering and terrorist financing. We also believe that the burdens a cross-border reporting regime would impose on community banks would outweigh any benefits to law enforcement.

Background

Since 1995, regulations implementing the Bank Secrecy Act have required financial institutions to collect, retain, and transmit the following information on funds transfers of $3,000 or more:

- Name and address of the originator or transmitter;
- Amount of the payment or transmittal order;
- The execution date;
- Any payment instructions from the originator or transmitter; and
- The identity of the beneficiary's bank or recipient's financial institution.

Institutions must also retain as many of the following items as are received with the payment order:

- Name and address of the beneficiary;
- Account number of the beneficiary; and
- Any other specific identifier of the beneficiary.[3]

Tracking terrorist finance has become a high priority for the United States since these rules were adopted. As a result, regulators are evaluating the burdens and benefits of lowering or eliminating the $3,000 threshold that triggers additional recordkeeping and data transmittal requirements. Such a change would broaden the investigative reach of law enforcement, but would increase the compliance responsibilities for financial institutions.

Law enforcement and the Financial Action Task Force (FATF)[4] support lowering or eliminating the $3,000 threshold. Law enforcement believes that changing the threshold would disrupt

[3] 31 CFR 103.33(e) and (g).

[4] FATF is an international, intergovernmental body whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing.

illegal activity by forcing money launderers and terrorist financiers to use costlier, alternative means of transferring funds to avoid higher risks of detection. In addition, FATF has recommended that banks worldwide be required to retain and transmit information on wire transfers of $1,000 or more. According to FATF, this approach will help identify low value originators or transmitters without driving legitimate transactions underground and below regulatory review.

Reduction or Elimination of Recordkeeping and Travel Rule Threshold

Community bank compliance and operational professionals that provided feedback for this ANPR expect little to no impact to their organizations if the recordkeeping threshold were to be lowered or eliminated. Many community banks collect, retain, and transmit the required information for all wire transfers, not just those above the $3,000 threshold. It is easier for tellers and back office personnel to comply with one set of recordkeeping and transmittal procedures rather than a bifurcated rule based on the amount of a transaction. This standardized approach also helps institutions reduce compliance risk by decreasing the chance that human error will result in unsatisfactory compliance with regulatory recordkeeping requirements.

While we believe that reducing or eliminating the $3,000 recordkeeping and transmittal requirements will have a minimal effect on most community banks, we urge FinCEN to ensure that any amendment to the wire transfer rules provides all institutions ample time to come into compliance. It is possible that some community banks may incur increased costs due to software reconfigurations, increased data storage, and additional personnel needed to implement any such changes. We request an implementation period of one year. This transition period will enable any institutions not currently keeping records below the $3,000 threshold with adequate time to adjust their procedures and provide for additional data storage.

We remind FinCEN and the Federal Reserve that the purpose of the Bank Secrecy Act is to require reports and records that "have *a high degree of usefulness* in criminal, tax, or regulatory investigations or proceedings or in the conduct of intelligence or counterintelligence activities…."(emphasis added).[5] Therefore, we urge FinCEN and the Federal Reserve to ensure that any amendments to the wire transfer transmission and recordkeeping rules meet this statutory standard. FinCEN should not amend the wire transfer recordkeeping requirements to garner more information simply because such an amendment does not initially appear to pose a substantial burden on financial institutions. ACB strongly believes that before moving forward with a formal proposal, FinCEN and the Federal Reserve should thoroughly analyze how any amended recordkeeping or reporting requirement would be "highly useful" in thwarting terrorism and financial crime.

Cross-Border Wire Transfer Reporting

Treasury is also evaluating whether to require financial institutions to report certain international funds transfers to the federal government. Section 6302 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Intelligence Reform Act) requires Treasury to study the

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[5] 31 U.S.C. 5311.

feasibility of "requiring such financial institutions as the Secretary determines to be appropriate to report to the Financial Crimes Enforcement Network certain cross-border electronic transmittals of funds…." The Act requires any such cross-border reporting requirement to be "reasonably necessary" for Treasury to track and prevent money laundering and terrorist financing. Treasury must report its findings and conclusions to Congress.

In March of this year, FinCEN surveyed the financial services industry to collect information about the feasibility and impact of implementing a cross-border wire transfer reporting requirement.[6] Treasury is still studying this issue and has not requested comment on a specific cross-border reporting regime. This ANPR also requests industry feedback about a possible cross-border reporting requirement.

Community bankers strongly support targeted efforts to track terrorist finance. However, we are very concerned about the possibility of being subject to another broad anti-money laundering compliance requirement. For the following reasons, we do not believe that imposing additional reporting obligations meets the standard set forth in the Intelligence Reform Act that any cross-border reporting obligation be "reasonably necessary" to shut down financial crime.

SWIFT Program Success. Additional information about law enforcement's ability to access cross-border wire transfer data has become available since Congress passed the Intelligence Reform and Terrorism Prevention Act of 2004 and since FinCEN and the Federal Reserve requested feedback on this issue. In June of 2006, it became widely known that the Terrorist Finance Tracking Program already enables law enforcement to obtain valuable cross-border wire data for suspect transactions. Under this program, the United States subpoenas records on terrorist-related transactions from the Society for Worldwide Interbank Financial Telecommunication (SWIFT), the premier messaging service used by banks around the world to issue international funds transfers.

In discussing the value of the SWIFT subpoena before Congress, Treasury Under Secretary Stuart Levey testified that the program generates "connections and leads nearly every day, which are then disseminated to counter-terrorism experts in intelligence and law enforcement agencies." Under Secretary Levey also characterized the program as "valuable," "powerful," and "successful."[7]

In discussing the importance of the SWIFT program, Treasury officials have emphasized that the SWIFT subpoena is narrowly focused on terrorist finance. Then Treasury Secretary John Snow stated that the SWIFT program "is not a 'fishing expedition,' but rather a sharp harpoon aimed at the heart of terrorist activity."[8] ACB is pleased that the SWIFT program successfully identifies terrorist finance. We urge FinCEN and Treasury to continue to focus anti-terrorism efforts on transactions that are truly suspicious. This carefully tailored program has been of significant

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[6] See ACB comment letter filed on April 16, 2006.

[7] Testimony of Stuart Levey, Under Secretary, Terrorism and Financial Intelligence, U.S. Department of the Treasury Before the House Financial Services Subcommittee on Oversight and Investigations. (July 11, 2006). http://www.treas.gov/press/releases/hp05.htm.

[8] Statement of Treasury Secretary John W. Snow on Disclosure of Terrorist Finance Tracking Program. (June 22, 2006). http://www.treas.gov/press/releases/js4332.htm.

value to law enforcement, and we believe its success demonstrates that requiring financial institutions to report cross-border wire transfer data is not "reasonably necessary" to track and prevent money laundering and terrorist financing.

OIG Report and the BSA Direct Program. ACB is doubtful that any cross-border reporting data could be quickly integrated into existing data storage systems or that law enforcement analysts could readily use information contained in these reports. On May 18, 2006 the Treasury's Office of the Inspector General (OIG) issued a report titled *Terrorist Financing/Money Laundering: FinCEN Has Taken Steps to Better Analyze Bank Secrecy Act Data But Challenges Remain.*[9] The report concluded that FinCEN's case management system is unable to manage data currently being reported and that certain internal controls over BSA and law enforcement data were weak and could allow these data to be compromised. In addition, FinCEN announced on July 13, 2006 that it halted the BSA Direct Retrieval and Sharing project because of cost overruns and missed milestones. The goal of this project was to improve data quality and enhance the ability of law enforcement to access, query, and analyze BSA data. ACB believes that these two developments do not support the adoption of a cross-border wire transfer reporting requirement.

Regulatory Burden. In light of the success of the SWIFT program, the May OIG report, and the termination of the BSA Direct program, ACB believes that the burdens a cross-border reporting regime would impose on community banks would outweigh any benefits to law enforcement.

BSA compliance costs have skyrocketed since the Patriot Act was signed into law. Increasingly, financial institutions believe that the federal government does not fully comprehend the amount of time, personnel, and monetary resources that BSA compliance drains from a institution's ability to serve its community. Many community banks have been required to fund BSA compliance, monitoring, and reporting obligations at the expense of other investments that directly relate to the business of community banking, such as hiring a new loan officer to reach out to the community's small businesses or developing and marketing a new product.

If FinCEN determines to move forward with a proposed rule, we suggest that such a reporting requirement be limited to correspondent banks. Most community banks use a correspondent bank to provide cross-border transactions. As a result, most community banks do not deal directly with institutions located outside of the United States. Any reporting requirement should be limited to institutions that transmit funds directly to a foreign bank. The Department of the Treasury would still receive data about cross-border transfers originated by community banks, but that information would come from the correspondent. This approach would avoid placing additional regulatory burdens on community banks with limited resources.

Conclusion

ACB appreciates the opportunity to comment on this important matter. We reiterate our strong support for focused efforts to identify and thwart terrorism and financial crime.

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[9] The report is available at http://www.treasury.gov/inspector-general/audit-reports/2006/OIG06030.pdf.

While we believe that reducing or eliminating the $3,000 recordkeeping and transmittal requirements will have a minimal effect on most community banks, FinCEN should ensure that any amendment to the wire transfer rules provides all institutions ample time to come into compliance and to plan for increased costs due to software reconfigurations, increased data storage, and additional personnel that may be needed to implement any such changes. We also reiterate that any amendment to the regulations implementing the BSA must comply with statutory requirement that required records have a "high degree of usefulness" in identifying, tracking, and thwarting terrorism and financial crime.

Finally, ACB re-emphasizes that recent developments weigh heavily against imposing a new cross-border wire transfer requirement. We strongly believe that such a requirement would not significantly improve the ability of Treasury to "follow the money" due to the success of the SWIFT program and the significant challenge of managing and analyzing existing BSA data.

Should you have any questions, please contact the undersigned at 202-857-3187 or via email at kshonk@acbankers.org.

Sincerely,

Krista J. Shonk
Regulatory Counsel