



February 25, 2005

Office of Chief Counsel
Financial Crimes Enforcement Network
U.S. Department of the Treasury
P.O. Box 39
Vienna, Virginia 22183

Attention: PRA Comments – Designation of Exempt Person
69 FR 77316 (December 27, 2004)

Dear Sir or Madam:

America's Community Bankers (ACB)¹ is pleased to comment on the Financial Crimes Enforcement Network's (FinCEN) request for comment on its continuing collection of information through its "Designation of Exempt Person" form. FinCEN also has requested comments regarding draft revisions of the current form.² Depository institutions use the Designation of Exempt Person form to identify which customers are exempt from currency transaction reporting (CTR) requirements.³

ACB Position

ACB believes that the revised form's more detailed instructions provide needed guidance to institutions that use the exemption process. We also welcome new Item 19, which expressly permits the exempt designation to be made on behalf of one or more affiliate banks. However, we request FinCEN to clarify the scope of centralized filing for subsidiaries. New language regarding the monitoring of suspicious activity by bank affiliates also is a helpful clarification.

Background

The Bank Secrecy Act (BSA) and its implementing regulations require financial institutions to report transactions in currency that exceed \$10,000. The statute also establishes a process that allows financial institutions to exempt certain customers from CTR reporting. Under the exemption rules, CTRs are not required to be filed for transactions with other banks, certain governmental entities, or businesses for which

¹ America's Community Bankers is the member driven national trade association representing community banks that pursue progressive, entrepreneurial and service-oriented strategies to benefit their customers and communities. To learn more about ACB, visit www.AmericasCommunityBankers.com.

² 69 Fed. Reg. 77316 (Dec. 27, 2004)

³ 31 U.S.C. 5313, 31 C.F.R. 103.22.

reporting would serve little or no law enforcement purpose. To use the exemption process, a financial institution must file a Designation of Exempt Person form for each customer to indicate that no further CTRs will be filed on the customer's cash transactions that exceed \$10,000. This form must be filed for each customer that the institution wants to exempt from CTR filing.

Estimated Burden Hours

As a general matter, many community banks have elected not to use the exemption process set forth in the Department of the Treasury's regulations. As a result, it is challenging for ACB to provide detailed comment on FinCEN's estimated burden hours for filing and maintaining records of the Designation of Exempt Person form. Community banks that use the exemption process indicate that FinCEN accurately estimates the time it takes to complete the Designation of Exempt Person Form. However, FinCEN's one-hour recordkeeping estimate is not adequate. Institutions monitor, review, and document account activity for each exempted account on a monthly basis. It is not uncommon for financial institutions to spend one hour each month monitoring the activity of every exempted account. That totals 12 hours each year for each exempted customer.

Financial institutions of all sizes indicate that filing a CTR on all cash transactions over \$10,000 is less burdensome and more cost effective than implementing an exemption process. Barring any significant change in the CTR filing process or the exemption regulations, many institutions will continue to file reports on all transactions that exceed the \$10,000 threshold. The exemption process was well intentioned, but community banks have been reluctant to use the exemption system because:

- It is not cost effective for small institutions that do not file many CTRs.
- They fear regulatory action in the event that an exemption is used incorrectly.
- They lack time to conduct the research necessary to determine whether a customer is eligible for an exemption.
- It is easier to automate the process and file on every transaction that triggers a reporting requirement.
- The regulations and the exemption procedures and requirements are overly complex.

Form Instructions

ACB strongly supports the expanded instructions provided in the draft Designation of Exempt Person form.

We support including information about filing the form electronically via the Patriot Act Communications System (PACS). Community banks that use the PACS system have indicated that it is efficient and user-friendly.

The more detailed instructions regarding supporting documentation and the customer's address are also helpful. Specifically requesting institutions not to file supporting documents unless otherwise instructed clarifies FinCEN's expectations and will keep institution staff from appending documents unnecessarily. Similarly, it is helpful for institutions to know to enter the permanent street address of the exempted customer instead of a P.O. Box.

Subsidiaries

The proposed revisions to the Designation of Exempt Person Form also permit a parent bank holding company or one of its bank subsidiaries to designate the exempt persons on behalf of all bank subsidiaries. ACB believes that this approach will enable institutions to consolidate the exemption filing of multiple affiliate banks. Enabling institutions to streamline and simplify filing the Designation of Exempt Person form may make institutions more likely to use the exemption process. BSA compliance consistently tops community banks' list of the most burdensome regulatory requirements. ACB strongly supports any initiative to minimize that burden without compromising the effectiveness of anti-money laundering initiatives.

Centralized filing of the Designation of Exempt Person form is an important step toward making the exemption process easier to manage. However, we suggest that the scope of centralized filing be clarified. Item 19 of the revised form would allow a filer to make an exempt designation "for one or more affiliate banks." However, the directions to Item 19 refer to "bank subsidiaries." As a result, it is unclear whether the directions to Item 19 apply to all subsidiary banks or all bank subsidiaries.

Community banks commonly have insurance company or broker-dealer subsidiaries that are subject to BSA reporting requirements. ACB understands that only banks may exempt customers from CTR reporting, and we request FinCEN to state this limitation in the directions to Item 19. We also suggest that the instructions to the revised form expressly incorporate the definition of "bank" as provided in 31 C.F.R. 103.11(c) and the current Designation of Exempt Person form.

Biennial Renewal

The biennial renewal certification section of the revised Designation of Exempt Person form would specify that the bank and any listed bank subsidiaries have a system of monitoring the currency transactions of an exempt person for suspicious activity. We believe that the inclusion of this language helps clarify the responsibility of bank subsidiaries regarding suspicious activity reporting. However, we request FinCEN to provide guidance on the level of scrutiny that is required to meet the monitoring requirements. For example, guidance on the frequency of reviewing transactions would be helpful. If an institution's policy is intended to result in a risk-focused approach to oversight, such guidance would be useful. Regulatory expectations regarding the monitoring of exempted accounts have differed over time. We believe that including a


brief description of minimum monitoring requirements in the directions to Part V of the form would be helpful for bankers and examiners alike.

Conclusion

Thank you for the opportunity to comment on this important matter. We believe that the revised Designation of Exempt Person form will be helpful to institutions that use the CTR exemption process. However, sweeping changes must be made to the CTR reporting system before the majority of community banks will adopt the exemption process.

Should you have any questions, please contact the undersigned at 202-857-3121 or cbahin@acbankers.org or Krista Shonk at 202-857-3187 or kshonk@acbankers.org.

Sincerely,



Charlotte M. Bahin
Senior Vice President
Regulatory Affairs