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Jennifer Johnson, Secretary
Board of Governors of the Federal
Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
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Re: FinCEN RIN 1506-AA86; FRB Docket No. R-1258; Funds Transfers

Dir Sir/Madam:

CBA is pleased to submit these comments on the proposal to reduce the threshold for maintaining records of wire transfers from \$3000 to \$1000 or perhaps lower. CBA is a non-profit organization established in 1891 representing most of the depository financial institutions in the state of California, large and small.

INTRODUCTION

The Bank Secrecy Act provides the framework for law enforcement agencies to obtain access to financial records that have a high degree of usefulness in criminal, tax, or regulatory matters, and more recently, to money laundering and the financing of terrorism. Banks carry a heavy burden under BSA by collecting and keeping records, monitoring transactions, filing currency transaction reports, and preparing and filing suspicious activities reports. The BSA, together with other federal laws, also recognize the importance of balancing regulatory burdens on financial institutions with legitimate policy objectives.

As the agencies discussed in the background to the proposal, the \$3,000 threshold was established in the 1990's. We note also that the \$10,000 threshold for CTRs was established legislatively more than three decades ago. Not having been adjusted for inflation, these thresholds have been effectively *lowered* over the years; inflation alone has resulted in an increase of recordkeeping and reporting. CBA has consistently insisted that the recordkeeping

and reporting thresholds should be *raised*, not lowered, as a means of fulfilling the intent of BSA when it was enacted.

CBA OPPOSES LOWERING THRESHOLD

One of the questions posed in the proposal—and it involves the only justification for lowering the threshold—is whether banks' maintenance of additional records, as proposed, would have a high degree of usefulness to law enforcement. We as a bank trade association are not in the best position to respond to this question, but as the impetus for the proposal originates from law enforcement interests, there is little doubt that some agencies will respond affirmatively, if only because it is better to have access to more evidence rather than less.

The agencies are asking the right questions of law enforcement, as discussed in the proposal. We would add: To what extent are records of transfers from between \$3,000 and \$10,000, which are currently required to be kept, actually sought currently in investigations? In other words, how useful are records already required to be kept? Additionally, how often are records sought of transfers in the proposed dollar range (between \$3,000 and \$1,000), and of those, how often have those records been unavailable? Our members have fairly consistently informed us that the records they currently keep are seldom, if ever, sought.

Even if we assume that smaller dollar transfers have some usefulness to law enforcement, we do not support lowering or eliminating the threshold because of the burdens on the industry. In our discussions with members, we have found that some institutions routinely collect and maintain information on all transfers, but some do not. Also, some collect all the information proposed, and others collect some but not all of the information proposed to be collected. Many rely on software to some degree to fulfill their recordkeeping requirements, but some still rely on manual processes. Most importantly, banks differ in the manner in which they store the information, which greatly affects how quickly they can respond to requests for production. Therefore, we have found that the proposed changes would increase the regulatory burden on some banks.

Given the potential burdens, we believe it is imperative that the agencies determine what, if any, tangible benefits are gained by the imposition of the new requirements. CBA concedes that, with sufficient investment of resources, banks can comply with more stringent recordkeeping requirements. But this alone should not form a justification. Lowering the threshold or eliminating it altogether would surely result in capturing most or all of the transactions conducted on behalf of the citizenry, all this in order to preserve the possibility of capturing evidence of wrongdoing by the very few. Before we proceed with the proposal, we must satisfy ourselves that this is reasonable.

Moreover, because of the burden of recordkeeping, as well as the associated regulatory risks, many banks limit funds transfer services to customers only. Increasing the burden, and thus the costs, of providing these services would surely further limit their availability, which adversely affects the vast majority of legitimate users of services.

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For the reasons stated above, we cannot support lowering the threshold unless the agencies ascertain that the benefits to law enforcement are substantial. In the alternative, the agencies may explore a risk-based approach that focuses on those banks or types of banks whose activities warrant greater recordkeeping. Thank you for this opportunity to submit comments, and please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Leland Chan", written in a cursive style.

Leland Chan
General Counsel