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September 25, 2006

Submitted via regcomments@fincen.gov

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

*Attention: PRA Comments—CTR Form*

Dear Chief Counsel Staff:

The American Bankers Association (ABA) files this letter in response to a notice and solicitation for comments published by the Financial Crimes Enforcement Network (FinCEN) on July 27, 2006, proposing an extension without change of the Currency Transaction Report (CTR), FinCEN Form 104, pursuant to the Paperwork Reduction Act of 1995, Public Law 104-13, 44 U.S.C. 3506(c)(2)(A). Cash transaction reporting (CTR) is intended to collect information to facilitate the identification, investigation and prosecution of individuals involved in money laundering, the financing of terrorism and other financial crimes.

The American Bankers Association, on behalf of the more than two million men and women who work in the nation's banks, brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership--which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks--makes ABA the largest banking trade association in the country.

#### Summary of ABA Comments

ABA is an active and original participant in the Bank Secrecy Act Advisory Group (BSAAG) and has worked diligently to bring a spirit of constructive cooperation to the efforts of the industry and the agencies in meeting their obligations to combat money laundering and terrorism financing. ABA and its members strongly believe that the value of the CTR program has been substantially diminished by several developments: enhanced customer identification programs, more robust suspicious activity reporting, and the use of the more focused and intensive 314(a) inquiry/response process. We believe that the current CTR regime generates too many reports that capture immaterial activity about routine business transactions that waste time and resources of both banks and law enforcement. Accordingly, we urge FinCEN to suspend collection of CTR information for seasoned business customers and otherwise to streamline the exemption process.

ABA responds to FinCEN's request for comment by addressing the four categories enumerated in the notice in the narrative that follows.

### There is no need to collect transaction data on seasoned customers

ABA and its members strongly believe that the current CTR standards have long departed from the statutory requirement that such reporting achieve "a high degree of usefulness." The utility of the information contained on a CTR about a seasoned business customer is clearly outweighed by the enormous volume of unhelpful information submitted on an annual basis and the burdens placed on financial institutions to monitor and report such transactions when this information is otherwise already screened for suspicious activity and reported through the generation of a Suspicious Activity Report (SAR). A SAR provides FinCEN and law enforcement with precise information based on an internal investigation conducted by financial institutions triggered by suspicious activity, including inappropriate or unusual currency transactions, as well as structuring of funds to avoid CTR reporting requirements.

The millions of CTRs filed annually do not equate to millions of suspicious transactions, but rather, are normally reporting ordinary legitimate business transactions being conducted by innocent customers. In those limited instances where cash deposits or withdrawals that satisfy the CTR thresholds are suspicious—out of the ordinary course of business for the customer or otherwise questionable—a financial institution will review the customer's account and make a determination based on the full factual context whether or not there is sufficient cause to file a SAR. Filing CTRs on routine, legitimate transactions inundates the BSA data system with white noise that drowns out the focused filing of SARs about truly suspect cash transaction behavior.

As published in the U.S. Money Laundering Threat Assessment released earlier this year, the number of CTRs filed on an annual basis now tops 13.1 million with no signs of abating. Indeed, the continued growth this year alone prompted FinCEN to move its estimated number of filings set forth in the notice to over 15 million per annum. Even at FinCEN's conservative estimate of around 25 minutes per report for filing and record-keeping, it means that financial institutions as a whole devote around 6.28 million staff hours of work to handling CTRs in a single year. Based on judgmental sampling conducted by ABA, three-quarters of bank filings were for business customers who had been with the bank for over a year. That equates to industry spending over 4.5 million staff hours filing notices on well-established, routine business customer transactions!

The two million report increase from 13 to 15 million represents the addition of more than 400 new employees dedicated to CTR reporting in one year alone! This upward trend is only likely to continue and demand more and more staff to report on more and more transactions, further burying the real needles of money laundering under an exponentially growing mound of the hay of legitimate business transactions, mindlessly recorded at great expense and increasing opportunity cost.

To continue to require CTR filings for business customers whose identity has been verified under a bank's Customer Identification Program (CIP) and tested under a period of experience with the bank, and that in any event remain subject to risk-based suspicious activity reporting, is an inefficient use of resources by bankers and law enforcement. It also diverts scarce examiner resources by focusing on compliance with **technical** reporting standards, rather than evaluating bank internal controls for detecting transactions that possess a likelihood of involving money laundering and terrorist financing. To solve these problems, FinCEN must revamp the existing exemption process to embrace the seasoned business customer concept.

### Exempt Seasoned Customers from CTRs

Accordingly, ABA believes that the best way to improve the utility of cash transaction reporting is to eliminate the routine reports being filed on legitimate American businessmen and businesswomen. This can be achieved by establishing a seasoned customer exemption for business entities, including sole proprietorships, as endorsed by

FinCEN last year in testimony before Congress and memorialized in H.R. 5341, passed by the House of Representatives on June 27, 2006 by voice vote<sup>1</sup>.

It is important to remember that identifying information about each customer and the transaction experience during the qualifying year will be available for law enforcement searches. Of course, all seasoned business customers would continue to be subject to suspicious activity monitoring and reporting, thereby alerting law enforcement to the kind of conduct that has been investigated and affirmatively considered as having a heightened potential for being illegal or otherwise of value in addressing money laundering or terrorist financing.

Eliminating CTR filings for seasoned customers would have the following benefits: The vast majority of the projected 15 million CTRs filed annually would stop, saving many hours a year in filling out forms and law enforcement resources devoted to processing them. There would be an improvement in the quality of SARs, eliminating those that are filed on routine, legitimate cash transactions that approach but do not reach current CTR levels. Further, banks would be able to focus their energies on detecting genuinely suspicious handling of currency regardless of artificial thresholds.

By adopting a simple seasoned customer exemption, we all would make an enormous stride forward in focusing our anti-money laundering efforts – by both law enforcement and the banking industry – on the real crooks and terrorists with far greater likelihood of detecting and stopping their activities.

#### The estimate of the burden of the collection is deficient

ABA recognizes that precise estimates of time spent to perform the reporting and recordkeeping obligations imposed by part 103 are difficult to quantify. Accordingly, we appreciate FinCEN's good faith effort to arrive at representative numbers for completing the various forms and maintaining the required records. Unfortunately, the estimate of burden as published is deficient in the following ways:

First, as justification for a three year renewal of the collection, the average number of annual filings recited in the notice woefully underestimates the reporting likely to occur. Using current numbers of 15,000,000 per year neglects that this figure is itself already 2,000,000 more than recited in the National Money Laundering Threat Assessment issued 9 months previously. The growth of filing continues to grow, and no one should be surprised if we see filings over 20,000,000 annually before this renewal expires.

Second, the record-keeping estimate fails to capture the burden incurred by banks to maintain their CTRs for five years. Rather than multiply this modest per report factor of 5 minutes by a single year's filings, the record-keeping burden should be based on five years worth of filings.

Third, the estimate is flawed because it does not account for the costs of the systems employed by filers to complete the reporting process. While much is made about automated reporting, it is not free. It is an expense some banks incur because of their scale. It is also a cost that prohibits other banks from adopting the technology and consigns them to a manual reporting process. Those banks that do not have automated filing programs expend more than 25 minutes per report when completing, reviewing, filing, recording and auditing a CTR.

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<sup>1</sup> Nearly identical language was passed by the House in March by a vote of 415-2 as part of H.R. 3505, the Financial Services Regulatory Relief Act. [See, http://financialservices.house.gov/news.asp?FormMode=release&id=824&NewsType=1](http://financialservices.house.gov/news.asp?FormMode=release&id=824&NewsType=1)

Fourth, the estimate does not properly account for the training, administration or monitoring effort that precedes report filing, filing and storing. Front-line personnel must be trained, exemptions must be administered, and the bank's entire cash transaction activity must be monitored. Although each of these predicate components of a CTR program is a necessary part of the reporting process and entitled to be included in the Paperwork Reduction Act estimation mandate, FinCEN has failed to capture this significant segment of burden.

We urge FinCEN to address these deficiencies so that the estimate better reflects the burden that CTR filing entails.

The quality, utility, and clarity of the collection can be enhanced

Virtually everyone concedes that the exemption process—particularly Phase II—has failed. FinCEN, in a Report to Congress, issued October 2002, confirmed the ABA's belief about the problem plagued exemption process. The Report cites among the reasons institutions do not utilize the exemption process, the following:

- The fear of regulatory action if an exemption turns out to be wrong;
- Difficulty in determining whether a customer is eligible for exemption;
- The additional costs associated with due diligence; and
- Lack of staff time to review CTRs for possible exemptions.<sup>2</sup>

The flaws recited in FinCEN's Report have not been addressed 4 years later—and FinCEN has back-tracked from the commitment it made a year ago to support real progress on this front by pursuing a seasoned business customer exemption.

If FinCEN is serious about improving the quality and utility of the CTR regime, it should apply immediate and substantial resources, and give priority, to the following initiatives:

- First, adopt a seasoned business customer exemption with minimal technical requirements, broad applicability and virtually no exceptions. FinCEN should follow the language contained in H.R. 5341. If to accommodate any exceptions FinCEN considers it necessary to depart from the simplicity of that bill, it should make its departure, rationale and procedural demarcation crystal clear.
- Second, simplify the exemption process so that know-your-customer (KYC) aspects are excluded in establishing qualifications for exemption. Leave KYC to the suspicious activity detection and reporting program.
- Third, abandon the renewal requirement for CTR exemptions. Unless the underlying business no longer qualifies, the exemption should apply continuously without imposing unnecessary periodic compliance red-tape. A bank should only have an obligation to notify FinCEN when an exemption no longer applies and then resume reporting.

Technical means to minimize burdens have been exhausted

Many financial institutions have taken steps to purchase and implement sophisticated software solutions that (i) enable tellers readily to record large cash transactions in a format facilitating reporting and (ii) monitor daily transactions to identify bank-wide activity

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<sup>2</sup> "Report to Congress: Use of Currency Transaction Reports", Submitted by the Financial Crimes Enforcement Network on Behalf of the U.S. Department of Treasury, October 2002.  
<http://www.fincen.gov/section366report.pdf>

that triggers the CTR threshold filing requirements on a daily aggregation basis. These systems often are costly and labor intensive to implement, including allocation of resources necessary to develop an information data feed to be supplied in order for the software filters to function properly and detect activity. At this point, the value of technical solutions has reached a plateau for most banks—and yet volume and total burden increases unabated.

As we examine the utility of the information being filed through CTRs, we should also be cognizant of other regulatory requirements which have burdened institutions with implementation of systems and processes to scan data in furtherance of law enforcement initiatives, namely the creation of the 314(a) lists. In order to satisfy this targeted search process, most institutions have had to develop data feeds and an automated interface to facilitate the scanning of large volumes of customer information in an efficient manner on a bi-weekly basis. These specific law enforcement requests typically are as a result of specifically identified suspects and permit financial institutions to conduct directed and narrowly scoped searches which help reduce the burden of submitting large volumes of CTRs to be reviewed and linked to suspicious activity. The information provided on CTR filings alone, without additional investigation, is not sufficient to identify and detect suspicious activity. Financial institutions are in a better situation to link the customer's transactions more efficiently to abnormal behavioral patterns.

Once again, the logic of efficient information collection leads to the adoption of a seasoned customer exemption process.

#### Conclusion

ABA is committed to working with FinCEN to achieve the goal of eliminating unnecessary CTR filings and enhance the value of the Bank Secrecy Act processes. ABA continues to believe that this goal is best accomplished when government-industry partnerships work together. As we did in 2005, ABA reaches out to FinCEN to help cut through the paralysis that has plagued this issue and finally fashion a workable solution.

Accordingly, we hope that on the occasion of this Paperwork Reduction Act burden evaluation process, FinCEN continues to support the need to emphasize quality over quantity in mandates such as currency transaction reporting. A good place to begin is by evaluating the necessity and worth of a program yielding 15 million CTRs in light of increased SAR filing, 314(a) searches, and implementation of automated systems to monitor daily customer transactions. We stand ready to assist this initiative in any way we can.

Respectfully submitted,



Sepideh Behram  
Senior Compliance Counsel, Center for Regulatory Compliance

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**From:** Gmarasig@aba.com  
**Sent:** Tuesday, September 26, 2006 9:32 AM  
**To:** Comments, Regulation  
**Subject:** Corrected version of ABA's comment letter filed yesterday on PRA Comments-CTR Form  
**Importance:** High

Please accept the attached corrected version of ABA's comment letter on Currency Transaction Report, FinCEN Form 104, 71 *Federal Register* 42719; July 27, 2006. This should be substituted for the version filed yesterday, September 25, 2006. Thank you.

For questions or comments about the letter, please contact ABA's Sepideh Behram at [sbehram@aba.com](mailto:sbehram@aba.com) or call 202-663-5029.

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