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Subject: 1506-AA86



Fed Reg comments
on MSB thresh...

The attached word document is my response to the:
RIN 1506-AA86
Advance Notice of Proposed Rulemaking
Threshold for the Requirement to Collect,
Retain, and Transmit Information on Funds
Transfers and Transmittals of Funds.
71 Federal Register 35564 (June 21, 2006)

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August 19, 2006

Via email

Financial Crimes Enforcement Network
Regulatory Policy and Programs Division
Post Office Box 39
Vienna, VA 22183

Board of Governors of the Federal Reserve System
Division of Reserve Bank Operations and Payment Systems
20th and C Streets, N.W.
Washington, D.C. 20081-0001

*Re: RIN 1506-AA86
Advance Notice of Proposed Rulemaking
Threshold for the Requirement to Collect,
Retain, and Transmit Information on Funds
Transfers and Transmittals of Funds
71 Federal Register 35564 (June 21, 2006)*

This letter is in response to the above-referenced advance notice of proposed rulemaking by the Financial Crimes Enforcement Network (FinCEN) and the Board of Governors of the Federal Reserve System (Board) on June 21, 2006 concerning potential changes to the recordkeeping thresholds for funds transfers and transmittals of funds conducted by bank and non-bank financial institutions. FinCEN and the Board of Governors of the Federal Reserve are evaluating whether to require detailed records of these transactions, as well as the ability of the financial institution involved to readily retrieve such information by accountholder and account number below the current threshold of \$3,000.

This initiative arises from Special Recommendation VII of the Financial Action Task Force's (FATF) Special Recommendations on Terrorist Financing, which recommends that information pertaining to persons initiating funds transfers at \$1,000 or some lower threshold be collected, retained and transmitted to other financial institutions in the payment chain.

I am a former Internal Revenue Special Agent in Baltimore, Maryland. During my career I lead a Financial Investigative Task Force (FITF) from 1984 until I retired in August 2000. Most of my professional career with the IRS focused on investigating money laundering and other financial crimes, especially those that involved violations of the Bank Secrecy Act. Since August 2000 I have remained employed in the BSA/AML arena as the BSA/AML subject matter expert for Mantas, an international AML software vendor for financial institutions and, currently, with Commerce Bancorp in Cherry Hill, New Jersey.

During the past 22 years I have observed money laundering trends and techniques, both in the public and private sectors. It is evident to me that money launderers know and understand the BSA/AML law and regulations. Money launderers demonstrate that they are cunning, patient, knowledgeable and reactive to the currency reporting and record keeping requirements of the BSA. In fact they can change direction far more quickly than government agencies and therefore avoid detection. In the past money launderers have adjusted their patterns of activity prior to regulations becoming final. For example, I began receiving phone calls from financial institutions during late 1989 and early 1990 related to the purchase of monetary instruments designed to evade the record keeping requirements contained in 31 CFR 103.29 although the regulation was not yet effective.

While an advocate of lowering recordkeeping and reporting thresholds during my law enforcement career, I also recognize that further lowering this threshold to \$1,000 will result in money launderers further altering their conduct to either evade this lowered threshold by conducting transactions below \$1,000 or by moving their funds underground through informal, unregulated value transfers systems (IVTS) or by smuggling the funds offshore in bulk. Neither result is desirable.

The effect of money launderers reducing their transactions below the \$1,000 threshold will cause funds transfers by money launderers to appear similar to an assortment of legitimate funds transfers, such as those conducted by foreign workers in the United States to transmit necessary funds to family members in their native countries. The end result will make it difficult if not impossible to detect funds transfers derived from illegal sources when the pool of transactions to be reviewed is at such a low level. Moreover, even if such activity is reported as suspicious, it is unlikely that law enforcement currently has the resources necessary to examine and investigate the substantial increase in records and suspicious activity reports that are certain to result from such lowered thresholds.

The ANPRM itself supports this theory. It states in part that "Law enforcement has stated that criminals are aware of the current threshold and conduct transactions in amounts under the threshold to avoid providing identification." What the ANPRM fails to mention is that even without the requirement to produce identification for transactions in amounts between \$2,600 to \$2,900, financial institutions frequently detect and report suspicious transactions in this dollar range and law enforcement is capable of identifying the criminals involved in those transactions. The methods used to identify the criminals will not be discussed in this response for two reasons; law enforcement knows those methods, and there is no reason to further educate the criminals.

FinCEN issued a Geographic Targeting Order (GTO) during August 1997 which required certain licensed money transmitters in the New York metropolitan area to report information about the senders and recipients of all cash-purchased transmissions to Colombia of \$750 or more. Once the GTO was issued, the volume of wire transfers by these money transmitters dramatically decreased and the number of currency seizures by

state and local law enforcement officers along the I-95 corridor increased significantly. Presumably these transactions were conducted entirely outside of the regulated sector, thereby depriving law enforcement of the ability to review records of these transactions and the opportunity of financial institutions to monitor and detect such activity.

Criminals currently conduct funds transfers under \$3,000 because they are not required to produce identification. However these criminals can still be identified by law enforcement. These transactions are important because money transmitters including MSBs and other financial institutions can more easily identify suspicious transactions at the current threshold. The current \$3,000 threshold has not proven to be a hindrance to law enforcement efforts, as evidenced by the exceptionally large numbers of structured transactions that have recently been identified by money services businesses on suspicious activity reports. However, a reduction in this threshold would have the undesirable effect of shifting a large segment of illegal dollars out of the regulated financial sector entirely. And, those illegal funds that would stay in the system would be much more difficult to identify since – at such low denominations - they will be nearly indistinguishable from legitimate transactions that course through the bank and nonbank system on any given day.

Thank you for the opportunity to respond. Please feel free to contact me with any questions.

Don Temple