American Bankers Association
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December 29, 2010

Financial Crimes Enforcement Network (FinCEN)
Department of the Treasury
P. O. Box 39
Vienna, VA 22183

Attention: Cross-Border Electronic Transmittals of Funds (CBETF Proposal)

Dear Sir or Madam:

The American Bankers Association (ABA)[1] appreciates the opportunity to comment on the Financial Crimes Enforcement Network (FinCEN) proposal to further its efforts against money laundering and terrorist financing by adding two significant new reporting obligations for the private sector. If adopted, the new rules would require financial institutions to report transmittals orders associated with cross-border electronic transmittals of funds (CBETFs) and require all banks to submit an annual list of taxpayer identification numbers of accountholders that transmitted or received a CBETF.

## Overview of ABA Comments

ABA appreciates the important role banks play in the fight against terrorist financing, money laundering, and other financial crimes. We support statutorily authorized government efforts to track effectively illegal financial transactions by terrorists and criminals; nevertheless, banks should not be burdened—and law enforcement should not be distracted—by massive reporting of legitimate activity by law-abiding people. However, the CBETF Proposal constitutes just such an unauthorized expansion of financial reporting to government law enforcement agencies of the legal activities of law-abiding people engaged in international transactions and we seriously question whether this proposal is the best use of limited resources.

The CBETF Proposal is predicated on the conditional Congressional mandate of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) whose time for action lapsed over three years ago. The CBETF Proposal transforms a limited record-keeping obligation based on joint agency standards that currently exists into a universal cross-border reporting obligation that far exceeds these standards and fundamentally expands the sweep of government surveillance of legitimate transactions without a clear and current Congressional endorsement of such a regime.

[1] The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's $13 trillion banking industry and its 2 million employees. The majority of ABA's members are banks with less than $165 million in assets. Learn more at www.aba.com.

Despite this lack of timely Congressional authorization, FinCEN's CBETF Proposal proceeds with at least a measure of recognition of prior ABA comment that any such reporting system must be mindful of the complexity of cross-border transaction systems and the costs incurred in imposing on them a new reporting requirement. ABA acknowledges FinCEN's effort to manage such costs by proposing a phased-in CBETF reporting obligation that is limited to banks that exchange payment instructions directly with foreign institutions, excludes proprietary systems and transmittals under the Electronic Funds Transfer Act or similar clearinghouse payments, and facilitates acceptance of, and submission by, third party centralized repositories such as SWIFT.

Nevertheless, the CBETF Proposal needs further adjustment to be workable. As proposed, the requirement exceeds current FinCEN data management capabilities and fails to impose adequate standards on law enforcement for data use accountability or security. Consequently, ABA believes that FinCEN must obtain affirmative Congressional authorization to impose CBETF reporting after clearly demonstrating that both system feasibility and accountability deficiencies have been fully remedied. Because these fundamental deficiencies are inadequately addressed by this proposal, ABA believes that it would be arbitrary and capricious for FinCEN to proceed to a final rule without an intervening additional public notice and comment period for a satisfactorily revised proposal.

In addition, ABA and its members strongly oppose the unwarranted requirement to annually report taxpayer identification information for accountholders engaged in cross-border electronic transfers. FinCEN's authority under IRTPA does not include imposing tax reporting obligations on institutions or subjecting their accountholders to a new tax-based reporting regime. There is absolutely nothing in the IRTPA with its singular focus on terrorist financing and money-laundering that authorizes the annual reporting requirement in this proposal. The bootstrapping of a tax-related reporting requirement on the IRTPA policy foundation illustrates the hazard of subjecting the legitimate activity of law-abiding citizens and businesses to unfettered government surveillance under the banner of security from terrorism.

The cross-border messaging report and the annual taxpayer identification report share the common material deficiency of lack of accountability for use in terrorist finance activity detection. As a consequence, the reporting process proposed enables, rather than restrains, misuse. For, once swept into the maw of FinCEN's data collection initiative, there is no limit to the government's appetite for consuming that data in service to whatever purpose it chooses.

## The Conditional Mandate of IRTPA Has Expired Unfulfilled

The predicate for FinCEN's CBETF Proposal is Section 6302 of IRTPA. Section 6302 charges the Treasury Secretary with issuing regulations requiring financial institutions to report cross-border electronic transmittal of funds within a set statutory timeframe, if and only if three actions precede such rule-making: (1) determining whether a CBEFT reporting system is reasonably necessary to conduct efforts against money laundering or terrorist financing; (2) reporting to Congress on the feasibility of such a reporting program; and (3) certifying that "FinCEN has the technological systems *in place* to effectively and efficiently receive, keep, exploit, protect the security of, and disseminate information from …" such a reporting system.

In accordance with 31 U.S.C. 5318(n)(5)(A) as amended by IRTPA Section 6302 all three of these actions must be completed and rules must be in final form by December of 2007—three years after the National Intelligence Reform Act of 2004.

As ABA has pointed out in several comments and letters over the course of the Treasury Secretaries' good faith efforts to comply with Section 6302, none of the conditions precedent to authorize regulatory requirements to report CBETF has been met. The record demonstrates that alternative methods of CBETF information are effective and therefore this data collection is not "reasonably *necessary*"[2]; the reporting system is not feasible[3]; and there has been no certification of FinCEN's *in place* technology being up to the task of handling such CBETF reporting. Consequently, the statutory deadline has passed without all necessary conditions being met.

Accordingly, ABA believes that FinCEN's statutory authority to require CBETF reporting by U.S. financial institutions has expired.

## FinCEN's CBETF Proposal Makes Progress toward Reporting Feasibility, but Remains Fundamentally Flawed

Despite the fatal lapse of timely rule-writing, FinCEN proposes to institute a reporting process sometime after January 1, 2012 claiming it will have the necessary technological capacity and system controls in place to make limited CBETF reporting operational. However, this projection of "in place" controls is pure conjecture and does not meet the IRTPA requirement for certification of system feasibility.

ABA acknowledges FinCEN's effort to meet demands for an effective and efficient system that is better tailored to feasible data collection by proposing a phased-in CBETF reporting obligation limited to banks (and money service businesses) that exchange payment instructions directly with foreign institutions, excludes proprietary systems and transmittals under the Electronic Funds Transfer Act or similar clearinghouse payments, and, with respect to banks, facilitates acceptance of, and submission by, third party centralized repositories such as SWIFT. However, ABA finds that the Proposal still remains fundamentally flawed because it continues to exceed FinCEN's current data capabilities and it fails to provide necessary controls to assure data use accountability and security.

***The proposed reporting process incorporates elements that improve compliance feasibility.***

FinCEN proposes a staged implementation of reporting that contemplates the ability to limit any further expansion of reporting obligations. ABA considers this to be a reasonable approach especially given the significance of the compliance burdens that a universal reporting

[2] In a letter to Secretary Paulson on August 2, 2006 ABA pointed out that the Terrorist Financing Tracking Program demonstrated that alternatives to universal reporting of CBETF existed and were being successfully utilized thereby proving that it was not reasonably *necessary* to compel the expansive reporting of legitimate activity that would be encompassed by a CBETF system.(See letter at http://www.aba.com/Industry+Issues/recentcommentletters.htm )

[3] See joint trades letter dated March 5, 2007articulating why the FinCEN Feasibility study actually demonstrates why CBETF data reporting is not feasible. (Also at http://www.aba.com/Industry+Issues/recentcommentletters.htm )

requirement would entail and the uncertainty of the capacity of FinCEN's technical systems to handle the hundreds of millions of transactions annually conducted.

The primary components of this staged approach are:

- To limit the scope of the subject transactions to those defined as "transmittal of funds" under current regulation, 31 CFR 102.11(jj) thereby excluding ACH and transmissions subject to the Electronic Funds Transfer Act and not imposing an aggregation requirement.
- To further reduce the scope of the reporting requirement for depository institutions to transactions involving exchange of transmittal orders through non-proprietary messaging systems where the U.S. institution sends or receives the order directly to or from an account domiciled outside the United States (a.k.a. "first in, last out" or FILO) and excluding transactions where there is no third-party customer.
- To adopt a "Hybrid Reporting Model" which would allow banks to rely on accepted third party centralized repositories to report CBEFT information to FinCEN at the direction of its financial institution members or permit the use of such third-party message formats for self-reporting. (75 FR 60384)

ABA supports these components with the following caveats:

- No further stages of reporting would be implemented without separate public notice and comment and a record that demonstrates the necessity of the expansion, its continued feasibility and demonstrable restraint on compliance burden and supervisory expectations.
- The proposed first stage would be modified to reach only one messaging system—SWIFT. More specifically, the initial phase should be limited to SWIFT MT103 and MT202COV message formats. Although other messaging systems and a more general reliance on the Hybrid Reporting Model may be warranted following a first-phase experience with SWIFT, other systems have idiosyncratic attributes that distinguish them from SWIFT and should not be included in the initial phase. A separate case for each of them must be separately made.

ABA stresses that FinCEN's proposed limitations of first stage reporting are key to its support of *this part* of the proposal; although, as explained later, these do not in and of themselves sufficiently meet other necessary conditions for being implemented at this time or in the future until other deficiencies described below are remedied.

By keeping the reporting obligation restricted to FILO financial institutions utilizing non-proprietary messaging systems (i.e., SWIFT), FinCEN makes a rational demarcation between banks obligated to report and those that are not. In addition, by limiting the reporting obligation to messaging systems and not financial settlement systems (75 FR 60385), FinCEN eliminates the complications and compliance pitfalls that would result from settlement complexities and accepts the relatively minor and infrequent inaccuracies that messaging systems can incur.

Although ABA sees value in the Hybrid Reporting Model, we have reservations about FinCEN's statement that nevertheless "the reporting obligation and accountability for compliance rest with the bank." (75 FR 60385) FinCEN should fully endorse the acceptability of centralized repository reporting in lieu of bank filings as there is no reasonable basis to expect a material difference between the two and the imposition of trust-but-verify compliance programs will only cause banks to incur fruitless expense for no demonstrated law enforcement value. Bank reliance on their centralized transmittal facilitator and repository for vital business purposes should be a sufficient basis for FinCEN endorsing similar reliance for reporting compliance purposes. If the bank has met generally accepted regulatory standards for conducting business with a third-party service provider, that should be sufficient. In other words, if reliance on SWIFT is good enough for executing the transactions, it is good enough for reporting them.

Finally, we endorse the exemptions set forth in the proposal that exclude: (i) transactions between domestic and foreign banks where, in each case, there is no third-party customer; or (ii) transmittal orders communicated solely through systems proprietary to a bank. Clarity and appropriate latitude when implementing these exemptions in any future rule will improve compliance and reduce unnecessary supervisory burden.

***The proposed reporting process contains elements that must be applied with regulatory latitude to make compliance feasible.***

Paradoxically, FinCEN proposes to reduce bank compliance burden by eliminating any threshold for CBETF transactions subject to reporting. While ABA believes this is intended to alleviate compliance burdens, it exceeds existing record-keeping requirements based on Section 21 of the Federal Deposit Insurance Act. Therefore, this changes existing requirements, but there is no finding in the proposal that such additional information is reasonably necessary to identify cross-border money laundering or terrorist financing nor is the change supported by the record as required by 31 USC 5318(n)(2), added by IRTPA Section 6302. It follows that only if the additional data elements are readily available in the transaction messaging should they be expected to be provided for any particular transaction under the existing $3,000 threshold.

For many large institutions that regularly conduct CBETF the requested data elements for transactions below the current $3,000 threshold are generally recorded as a matter of business practice. However, other institutions or departments within institution that have less frequent CBETF may not consistently record such non-mandatory information on transactions that are below the existing threshold. Consequently, the proposal must allow compliance with the data reporting obligation for any sub-threshold transaction to be made on an "if available" basis.

ABA believes that FinCEN accepts this proposition. In its explanation of what occurs in the absence of submitting a copy of the standard transmittal order, FinCEN clearly states that a bank may submit enumerated data—"if available." (75 FR 60391) FinCEN further explains at footnote 67 of the proposal (75 FR 60388) that it fully expects to receive and accept as compliant reportable fields "that might be empty or contain incomplete data." FinCEN reasons that this will be due to the reporter's position in the transmittal chain "and on the amount of the transaction"—e.g., the amount transacted is below existing record-keeping thresholds. ABA

recommends that this is made crystal clear in any ultimate reporting rule. There should be no future supervisory doubt about the fact that such incompleteness does constitute compliance.

Another new data element proposed by FinCEN that would apply to reporting other than by submitting a copy of the transmittal order information is the "unique transaction identifier number." This data element would be new to reporting whether or not the transaction exceeded existing thresholds. While ABA doubts the necessity (as opposed to the convenience) of such a data element given the other travel rule information that will be available, as long as the reporting of this number is required as described in the proposal only "if such an identifier exists," then reporting an identifier would be feasible because it would essentially be voluntary. (75 FR 60391)

In all cases where reporting is dependent on the availability or existence of data, FinCEN must clearly state in any final rule that availability or existence is measured against what is readily contained in an institution's cross-border transaction data files and does not require an institution to scour other files to find the missing or incomplete data. Without such regulatory clarity, supervisory expectations will impose costly burdens in the form of tracking systems or missing data confirmation obligations that will defeat the policy choice FinCEN intends by adopting the "if available" standard for compliance.

As proposed, reported data would be submitted to FinCEN on a weekly basis.[4] ABA has serious reservations about the speed of filing. It's worth noting that both FINTRAC in Canada and AUSTRAC in Australia, which process lower volumes, use 10-day systems for filing. ABA strongly recommends that FinCEN coordinate its timing with that for these two countries. That will simplify the process for institutions that operate globally by having a uniform timing for submitting data.

While the proposal suggests that more frequent filing would be permitted, FinCEN needs to confirm that more frequent filing will be optional and may be conducted on a case-by-case basis or as the regular mechanism for an institution at its sole election.

ABA acknowledges FinCEN's effort to make electronic filing as efficient as possible given the wide range of capabilities or technical constraints faced by a diverse banking industry with a variety of resource limitations. As long as FinCEN administers the limited first stage system with regulatory latitude and incorporates the proposed authority to allow the Director of FinCEN to authorize a financial institution to report in a different matter where burdensome obstacles are demonstrated, the reporting processes proposed afford manageable options to FILO participants. But as we point out below, as important to the industry as achieving reporting flexibility and efficiency is, that accomplishment is not sufficient to authorize FinCEN to embark on this massive data collection endeavor.

[4] The reporting requirement would specifically apply to the SWIFT MT-202COV format that took effect in November 2009.

***The CBETF proposal is materially deficient by failing to assure accountability and security.***

It is clear that IRTPA does not authorize any CBETF data collection final rule without a substantiated certification by the Treasury Secretary that FinCEN "has the technological systems in place to effectively and efficiently receive, keep, exploit, protect the security of, and disseminate information from reports of cross-border electronic transmittals of funds to law enforcement…" The proposal contained in the current notice for comment does not substitute for such a certification and does not supply the basis for the Secretary to make such a certification. Until a fully substantiated certification is made any proposal is statutorily inadequate. Only after such a certification is made can there be a proposal published for notice and comment that can lead to a final rule. This administrative procedure is the only avenue the public has to challenge the adequacy of the underlying certification.

FinCEN concedes that it is does not have the technological systems today to enable the Secretary to make the "in place" certification. Beyond that concession, ABA believes that FinCEN does not fully appreciate just how far short it remains from such a capability.

Key to the ability of FinCEN to keep, exploit, protect and disseminate CBETF data securely is the existence of internal and external controls that ensure reported information is being used by authorized law enforcement personal for the permitted anti-money laundering and counter-terrorist financing purposes IRTPA intends. Security of the data cannot be assured without controls that make recipients accountable for the use they make of the data. The CBETF Proposal establishes no such controls in the rules articulated in the Federal Register notice and consequently must fail as a predicate for final agency action or the necessary certification.

For all the arguments of utility of the proposed data collection, no one asserts that anything but a small fractional percentage of the hundreds of millions of transactions captured annually by the scope of this rule will relate to criminal or terrorist activity. This means that the system's primary responsibilities are to receive, keep and protect information about the legitimate activity of law-abiding persons and businesses, and to ensure that it is secure from being exploited by or disseminated to law enforcement for inappropriate or unauthorized purposes.

As ABA advocated in its BSA Reform Task Force Report: *A New Framework for Partnership—Recommendations for Bank Secrecy Act/Anti-Money Laundering Reform*[5], a data expansion initiative that is as vast as what is proposed here should never proceed without the utility of the system being subject to validating metrics from inception and the continuing collection being managed securely. FinCEN's CBETF Proposal converts what has been data access on an as needed basis into a system of data collection in advance of need. The due process implications of this change should not be ignored. FinCEN must be true to its gatekeeper role and not allow its obligation to control law enforcement access to be compromised by FinCEN's FIU interests.

ABA believes that there must be publicly vetted standards of accountability for access and use of CBETF data. This must include the means to audit use and access in order to ensure data security. Data security is not just security from system breaches but also security from sensitive financial information being subject to law enforcement manipulation for reasons other than the

[5] The report is available at http://www.aba.com/Issues/Issues_AntiMoney.htm . See p. 26.

authorized purpose for which the access was initially provided. There is no way this can be accomplished without FinCEN establishing and policing a detailed set of controls to track and verify use of the information disseminated to law enforcement. Under IRTPA, these controls are part of the technological system required to be "in place" before the requisite certification can be executed, a proposal for reporting can be made, or a final rule can be issued.

For the reasons expressed above and despite FinCEN's progress in addressing the considerable costs incurred by industry CBETF reporting, FinCEN has not fulfilled the conditions required by IRTPA and has no prospects of doing so given the terms of the Act. Accordingly, FinCEN should suspend its work on this initiative and avoid taking any additional steps along this path that would cause it or the industry to incur further expense or waste resources.

**There Is No Legal Authority or Policy Basis to Require Annual Tax Reports**

In addition to CBETF reporting, the proposal would establish a separate reporting obligation requiring an annual report by banks of the account number and accountholder's U. S. taxpayer identification number of all accounts used to originate or receive CBETFs subject to reporting. This new annual report would be filed by April 15 of the year following the transaction date year.

FinCEN articulates no legal basis for this extraordinary requirement. Tax reporting is not a power the Treasury Secretary may delegate to FinCEN. Nor is tax reporting or tax evasion encompassed by IRTPA. This *ultra vires* extension of its CBETF initiative demonstrates that the lure of acquiring data for purposes beyond the focus of Congressional mandates is a very real danger that infects all data collection for law enforcement use. This almost nonchalant approach to unauthorized reporting is most troubling. It calls into serious question the vigilance of FinCEN as regulatory gatekeeper to ensure that BSA data is controlled in accordance with the limited purposes for which its collection is authorized and that distinctions erected by differing mandates are respected.

ABA strongly opposes this tax reporting requirement on legal grounds as well as for the policy reasons set forth below that further illustrate how little consideration FinCEN has given the proposal.

While FinCEN believes this mandate will impact all banks and credit unions, it presumes that since some of the data is already required to comply with customer identification program (CIP) requirements, "the economic impact of this proposal will not be significant." FinCEN estimates that this annual tax reporting would take no more than one hour and cost each affected financial institution approximately $24.47 annually.

ABA believes that this is the most problematic element of the proposal and strongly opposes the annual tax reporting. This goes far beyond the initial proposal and feasibility study mandated by Congress in IRTPA. Moreover, the assertion by FinCEN that costs for producing this information are completely wrong – every bank and banker suggests that the $24.47 could be the cost *per account* but is nowhere close to what it would cost even the smallest institution. Equally

problematic is that FinCEN estimates one hour would be required for this reporting each year, a calculation that ABA believes is completely inaccurate.

Unfortunately, FinCEN does not document how it derived its estimates. Without knowing how FinCEN calculated this amount, there is no basis to challenge it or demonstrate the incorrectness of the figure. However, every financial institution has stressed this element of the proposal will require substantial systems changes. This would create an entirely different paradigm for encoding wires to ensure data is properly captured. While data on a taxpayer identification number might be housed in customer files, the information is probably not coordinated with the data in wire systems. Equally important, if one considers that when the customer identification program (CIP) rules went into effect nearly 10 years ago, there was no requirement that existing accounts updated and the rule clearly applies when *opening* an account.[6] FinCEN and the other federal regulatory agencies clearly understood that updating existing accounts at the time the rule was implemented would be an impossible task where the costs would far outweigh the benefits. While over time the number of accounts that pre-date CIP requirements has steadily diminished, FinCEN must acknowledge that there are accounts that were grandfathered when CIP was implemented and so the information may not be included in customer data files.

The proposal also fails to address other issues. Many banks limit wire transfers to existing and established customers for a variety of reasons. However, the proposal neglects to address instances where wires may be processed for non-account holders; presumably nothing would be reported on non-customers in the annual report but that should be clearly specified.

Equally problematic is that current wire transfer systems are not set up to capture the data in a meaningful way, making it impossible to track the requisite information without major changes to international wire systems. The requirement will be particularly difficult for incoming transactions that go through one or more U.S. and/or foreign institutions before they reach the final destination. In some instances, it may be possible to track an outgoing message using trancodes but that is not true for incoming wires. And, there is currently nothing in place to track and follow incoming wires on the basis of customer TIN.

While an originating foreign institution is usually identified somewhere in the message on an incoming wire, the information in the necessary fields is not always consistent, accurate or potentially searchable. Many wire transfers are received through a U.S. intermediary (first-in bank), where the originator is listed with a name and, as a result, there is no systematic way to capture whether the originating organization is domestic or international. Some fields are free-form which makes it difficult to build a process to identify foreign originators. Similarly, where multiple banks are involved in transactions, information concerning one or more of the instructing banks may be lost due to spacing limitations and the free-form format. While an originating bank can usually determine the wire would be subject to reporting, a receiving bank that takes a wire from another domestic institution may not necessarily detect that the wire originated off-shore. As a result, it is impossible to readily detect and determine if an incoming wire would be subject to reporting.

[6] 31 CFR 103.121(b)(2)(i).

Consequently, for both legal and policy reasons, the proposal to annually report the taxpayer identification number of accountholders conducting CBETF must be withdrawn.

## Despite FinCEN's Efforts Significant Regulatory Burden Remains

FinCEN underestimates the burden even its staged reporting process will impose on banks.

*Number of Institutions Reporting.* The requirement for banks would apply to any and all cross border transfers of funds with no threshold, but FinCEN estimates no more than 300 depository institutions would be impacted; it is not clear whether the agency has considered new initiatives by SWIFT likely to greatly expand the number of institutions that would be covered.[7]

ABA is concerned that FinCEN offers very little backing to substantiate the estimates for the number of institutions subject to reporting. We believe the initial number may be far greater than FinCEN estimates and could greatly increase in the near-term. Since it is not entirely clear how FinCEN derived its figures, ABA has no way to challenge them.

*Number of Reports.* FinCEN estimates that a large institution is likely to file approximately 40,000 reports weekly while small institutions would report 115 transactions each week. FinCEN believes that most of the information is already available and that only minor modifications to existing automated systems will be needed.

All financial institutions agree that FinCEN's numbers seriously understate the volumes of wires and financial institutions that will report. As noted previously, it appears that FinCEN has based these estimates on data that is nearly six years old – but if one considers the substantial increase in Australia during that time period then it is clear that FinCEN has understated the impact. During the years from 2005 to 2010, Australian reports increased steadily at a growth rate between 10% and 15% each year, rising from 11,411,961 filings in 2005 to 2006 (approximately when FinCEN conducted its study) to 18,095,756 filings in 2009-2010. In other words, Australia nearly doubled the number of reports filed. At a minimum, based on the experience in Australia, it can be assumed that FinCEN's figures should be at least doubled, although ABA suspects that even doubling the numbers will not reach the proper levels. It is generally conceded that the American cross-border wire activity is several orders of magnitude greater than that conduct by Australian banks.

Since it is not entirely clear what is covered or what is to be reported, and since there have been no specifications from a technical aspect, banks cannot with precision estimate the potential costs, although all banks have agreed that it will be significant. Perhaps more important, to work and be able to process the massive amounts of data it will receive, the overall impact should calculate the substantial costs to the federal government – both in data processing upgrades and substantial human resources that will be needed to process the data.[8]

[7] Separately, money services businesses (MSBs) would be required to report international transactions of $1,000 or more; FinCEN estimates that this would affect no more than 700 MSBs.

[8] To be able to properly analyze the data, the human resources will need to be trained and experienced data analysts and not merely clerical workers.

Separately, FinCEN estimates a one-time cost to set the systems in place at $250,000, there is nothing to explain how FinCEN derived that figure, but most bankers suspect that it is very low based on their analysis of the complexity to upgrade software and systems to provide the data and the need for vendor involvement.

As an aside, it is worth noting that any additional costs for wire transfers will be passed along to customers. The impact will be particularly felt by consumers who send remittances overseas and FinCEN should consider that separate provisions under section 1073 of the Dodd-Frank Act that are intended to encourage remittances while this proposal would add to the burdens and costs and likely discourage remittances. In effect, while FATF is taking steps to encourage economic inclusion, the impact of this proposal and the increased costs for consumers moves in the other direction.

When assessing the overall burden, the estimates in the proposal appear to overlook the need to develop interfaces between various internal systems to collect the data for these reports. This will be especially important with respect to BSA/AML monitoring and reporting systems and wire transfer systems.

While ABA believes that one approach for the initial phase would be to restrict the information to SWIFT message formats, i.e., the MT103 and the MT202COV, and while that would be simpler and easier to implement, it would still entail significant costs. A conservative calculation from a bank with a significant volume of MT103 and MT202COV messages believes start-up costs would be in the neighborhood of $200,000 and annual fees for the duplicate files transmitted to FinCEN in the neighborhood of $1million to $2 million: figures that are substantially over what FinCEN estimates.

## Conclusion

ABA supports appropriate efforts to combat money laundering and terrorist financing. Our over-arching goal is to identify efficient and effective ways to detect and deter attempts to misuse the international financial system to commit criminal or terrorist acts. Since the resources – both financial and human – are limited, ABA wants to be sure that resources are utilized in pursuing illegal activity not conducting information surveillance over the financial activity of law-abiding persons and businesses.

ABA recommends that FinCEN cease pursuing a CBETF reporting program. The record amassed over the past six years demonstrates that the conditions to the mandate Congress expressed in 2004 have not been met and are not within reach of FinCEN's capability now or in any reasonably foreseeable future. The very important due process controls necessary to keep secure and protect against the misuse of individually sensitive lawful financial transaction data are not in place and have no prospect of ever being in place given the current structure, conflicted mission, inadequate law enforcement oversight authority and limited funding of FinCEN.

Thank you for the opportunity to comment. If you have any questions or need additional information, please contact the undersigned.

Sincerely,

Richard R. Riese
Senior Vice President

Robert G. Rowe, III
Vice President & Senior Counsel