American Bankers Association

BAFT-IFSA

June 1, 2011

Financial Crimes Enforcement Network
P. O. Box 39
Vienna, VA 22183

Attention: CISADA Reporting Requirements under Section 104(e), RIN 1506-AB12

Dear Sir or Madam:

The American Bankers Association (ABA)[1] and BAFT-IFSA[2] (together, "the Associations") appreciate the opportunity to comment on the Financial Crimes Enforcement Network (FinCEN) proposal designed to support America's efforts in the war on terror. On April 27, 2011, the Financial Crimes Enforcement Network issued a proposed rule to implement provisions in section 104(e) of the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 (CISADA) signed by President Obama July 1, 2010. The law expands available sanctions against Iran and the options available to the White House to take action against Iran.

Basically, the proposal would enlist banks in the United States to contact their correspondents in other countries to obtain information from those correspondents for FinCEN and Treasury to identify potential sanctions targets. The Associations' members are prepared to assist the federal government in the war on terror in all appropriate, practical, and effective ways, but in finalizing the rule it is very important that FinCEN acknowledge that U. S. banks have no authority or ability to compel the production of this information and can only pass along to FinCEN the information they receive.

By the same token, foreign correspondents may not be capable of easily identifying whether or not they have processed a reportable covered transaction or hold a reportable account for a designated person. Therefore, to obtain the information, FinCEN and Treasury must take steps to make it as simple as possible for foreign banks to identify whether covered accounts or transactions are present. And finally, FinCEN must recognize that there are many times that foreign correspondents will be subject to laws in their own countries that bar releasing this information, just as United States laws and mandates, such as the Right to Financial Privacy Act and SAR confidentiality rules,[3] restrict sharing information by United States institutions.

Background

CISADA was enacted July 1, 2010. One provision of the statute[4] requires Treasury to adopt strict conditions for any correspondent or pay-through account maintained by a foreign bank in

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[1] The American Bankers Association brings together banks of all sizes and charters into one association. The ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than $125 million in assets – represent over 95 percent of the industry's $13.3 trillion in assets and employ over 2 million men and women.

[2] BAFT-IFSA is the association for organizations actively engaged in international transaction banking. It serves as the leading forum for bringing the financial community and its suppliers together to collaborate on shaping market practice, influencing regulation and legislation through global advocacy, developing and adapting new and existing instruments that facilitate the settlement of products and service offerings for clients, providing education and training, and contributing to the safety and soundness of the global financial system.

[3] Under the Suspicious Activity Report (SAR) rules, United States banks are required to keep the information strictly confidential, with some very limited exceptions. See http://www.fincen.gov/news_room/nr/html/20101122.html

[4] CISADA section 104(c)(2)

the United States which engages in any activity that facilitates Iranian efforts to acquire weapons of mass destruction (WMD) or WMD delivery systems or that supports designated foreign terrorist organizations. This proposal would implement a second provision of the statute, section 104(e), which is a companion to the preceding section.

CISADA section 104(e) requires Treasury to adopt rules that apply when a U.S. bank has a correspondent account for a foreign institution. The provision requires Treasury to issue rules requiring U.S. banks to undertake one or more of the following: (a) audit the foreign bank for activities involving possible transactions supporting WMD or terrorism; (b) report to Treasury on such activities; (c) certify the foreign financial institution is not knowingly engaged in such activities; or (d) establish due diligence policies and controls designed to reasonably detect such activities.

As proposed by FinCEN, when a bank in the United States that maintains a correspondent account for a foreign bank receives a written request from FinCEN, the U.S. bank would be required to ask the foreign bank and in turn report to FinCEN certain information about possible correspondent accounts and funds transfers. The information that would be requested and reported to FinCEN would be whether the foreign bank maintains a correspondent account for an Iranian-linked financial institution designated under the International Emergency Economic Powers Act (IEEPA); has processed one or more transfers of funds in the prior 90 calendar days related to an Iranian-linked financial institution designated under IEEPA outside of a foreign correspondent account; or has processed one or more funds transfers in the prior 90 calendar days related to an Islamic Revolutionary Guard Corps (IRGC)GC-linked person designated under IEEPA.

General Comments on the Proposal

The Associations appreciate the need for the federal government to take all appropriate actions to protect against terrorist activities and weapons of mass destruction. However, at the outset, the Associations point out that 30 days to respond to a complex proposal such as this is an extremely abbreviated and inadequate timeframe. The quick turnaround seems inconsistent with the President's January 18, 2011, Executive Order, *Improving Regulation and Regulatory Review.*[5] The limited time to analyze and respond to the proposal is further handicapped by the many regulatory proposals underway to implement the Dodd-Frank Act.[6] For example, there has been a great deal of concern about the possible impact the onslaught of rules and regulations will have on community banks and their ability to survive independently; without the ability to assess the proposal carefully, it is impossible to assess whether this will be one more added data collection burden that will impact the time and resources of even smaller banks or whether it will truly be limited to large multi-national banks with established and ongoing foreign correspondent relationships.

In addition, a longer period to analyze and consider the proposal or greater industry involvement as the proposal was being developed would have permitted better and more thorough feedback, more likely to result in a more effective and successful rulemaking. Our concern is motivated by ensuring that the information banks provide to FinCEN and the federal government is collected efficiently and effectively and that any steps do not alienate businesses and discourage foreign persons and companies from doing business with the United States. If one of the unintended

[5] http://www.whitehouse.gov/the-press-office/2011/01/18/improving-regulation-and-regulatory-review-executive-order
[6] The *Dodd-Frank Wall Street Reform and Consumer Protection Act*, Public Law 111-203, enacted July 21, 2010. A number of commentators have pointed out that the speed of the process may detract from the quality of the rules.

consequences is alienating or driving away financial transactions, it not only negatively impacts the American economy but also undermines the ability of Treasury and other federal agencies to track and develop the critical information needed to wage the war on terror.

Still, the Associations appreciate the efforts by FinCEN and Treasury to craft a regulation that focuses on developing meaningful and properly targeted information, especially since this has the potential easily to become a logistical and operational nightmare. The Associations also share Treasury's concerns that broad-based requests would be burdensome and would be likely to produce meaningless information that must be processed by enforcement authorities, steps that could consume resources unnecessarily and distract from focusing on genuine problems.

Overall, the Associations find that FinCEN has taken elements of the four options Congress outlined in the statute and incorporated them with existing and long-standing requirements to develop a rule that considers the costs to industry, the ability of the industry to comply, appropriate use of limited enforcement resources and need for information. While other resources, including existing direct communications channels between the United States government and other governments might achieve the results more effectively, that would not satisfy the statutory mandate. In developing the final rule, the Associations believe that a number of adjustments to the proposal will assist Treasury better to focus resources and help make the rule more workable.

Comments & Recommendations to Improve the Proposal

Alternative Sources of Information. While the Congressional mandate relies on bank monitoring and reporting, the Associations also believe it is important to point out alternative resources that might better serve the same purposes. For example, there is an existing reporting regime under section 311 of the USA PATRIOT Act for foreign correspondent reporting. Similarly, another Patriot Act resource is the decade-old 314(a) reporting process which can also be tailored and focused to a limited number of institutions and that provides a much faster response. The Associations encourage FinCEN to highlight these existing resources that both supplement and complement the goals of CISADA section 104(e) and that should be considered when developing and applying the final rule under this proposal.

Given the limited authority of United States banks to compel this information, and given limited resources for both banks and FinCEN, the Associations encourage FinCEN to place greater reliance on a resource that is likely to be far more reliable when collecting information to identify sanctions targets: government-to-government requests. FinCEN, as the United States' Financial Intelligence Unit (FIU), has developed relations with other FIUs throughout the world, primarily as a member of the Egmont Group.[7] An alternative system could be from central bank to central bank. The most important benefit of the inter-governmental approach, though, is that it presents the opportunity to urge other countries to adopt and implement the same or similar sanctions.

Thresholds & Exchanges Rates. The Associations believe thresholds have value in two roles: to separate transactions or accounts of limited risk from those that have material risk worth

[7] Recognizing the benefits inherent in the development of a network, in 1995 a group of Financial Intelligence Units (FIUs) met at the Egmont Arenberg Palace in Brussels and decided to establish an informal group whose goal would be to facilitate international cooperation. Now known as the Egmont Group, these FIUs meet regularly to find ways to cooperate, especially in the areas of information exchange, training and the sharing of expertise. See www.egmontgroup.org for additional information.

reporting and to facilitate compliance. In this instance, there is room for both roles to apply. The Associations believe that when evaluating account activity, FinCEN should apply the $3,000 threshold that exists in other existing anti-money laundering rules. Monitoring transactions of lesser value can be overly burdensome with little corresponding benefit for capturing truly material conduct meriting sanctions. Similarly, a threshold for minimum aggregate through-put in an account can also serve to better focus resources on identifying the riskiest accounts. Of course, in applying any threshold, the Associations are mindful that parsing activity at the margins of the threshold can incur its own compliance costs. Consequently, thresholds should always be applied permissively and not as technical standards that generate compliance complexities and expense or a "gotcha" supervisory regime.

Since information would be reported in U.S. dollar figures and since exchange rates can fluctuate substantially over time, the Associations urge FinCEN to specify with clarity how foreign currencies are to be converted. This is critical to ensure consistent data. The Associations also urge FinCEN to recognize the burden and difficulty of making these calculations after-the-fact. A far simpler and less burdensome requirement that might still give FinCEN the data it needs would be to let banks report the number of transactions or use the currency in which transactions occurred. Collecting this information in the actual currency in which the transaction occurred will facilitate reporting but will also provide additional insight into how these transactions are structured.

Information Reporting. Given the potential limited benefits from these requests, especially when weighed against the costs and burdens, the Associations appreciate that FinCEN and Treasury have indicated the intent is to use the requests in a very focused and targeted way. This reaffirms the critical coordinated effort in the war on terror that draws upon government intelligence information to guide banks in the use of their financial expertise, and we strongly recommend that FinCEN incorporate the concept of targeted and focused requests in the final rule.

For efficiency and to minimize confusion, the Associations also recommend that FinCEN coordinate how the requests are issued. When a single foreign correspondent maintains accounts with more than one U.S. bank, instead of requiring duplicate reports from each U.S. bank, identifying a single contact would be far less burdensome for both reporting institutions and for government analysts. In addition, it might also help encourage foreign correspondents to provide data if they do not receive the same request multiple times.

The Associations also recommend that FinCEN, when balancing the need and effect of such requests, should consider that a barrage of requests from the United States could create, over time, an unintended consequence of alienating foreign correspondents. To avoid the annoyance, foreign banks might be driven to find alternate ways to direct transactions to avoid dealing with the United States. Again, this has a two-part negative impact: the immediate detriment to the economy and the decreasing ability of the United States to receive valuable information on international transactions.

It is equally important that FinCEN work with banking regulators to articulate that the information is provided only in response to FinCEN's requests and that it is coordinated with other sources to develop sanctions targets.[8] There have been reports that some bank examiners have

[8] For example, see the President's May 23 Executive Order on Iranian sanctions which clearly demonstrates the collaborative nature of the sanctions program (http://www.whitehouse.gov/the-press-office/2011/05/23/executive-order-concerning-further-sanctions-iran).

suggested, even before a final rule is in place, that banks contact foreign correspondents about these issues as a "pro-active" measure. The Associations believe that this type of activity by examiners in the field does a disservice to the industry and undermines federal efforts by creating confusion and results in actions that are likely to be inconsistent with the goals of the U.S. government. Equally important, the final rule should clarify that a request for information or even a positive report is not a mandate to close an account; otherwise, it would undermine the utility of the information gathering process to say nothing of the potential damage such an approach could have on U.S. foreign relations.

The Associations also recommend that the final rule clearly address what kinds of restrictions, if any, may be imposed on the extent to which such a request for information may be shared, either internally or externally. This is especially important since it is likely that a request will be deemed as a possible signal that the named bank is being investigated by U.S. officials.

Timeline for Responding to a FinCEN Request. If a bank does maintain a foreign correspondent account for one of the foreign banks listed in the FinCEN request, within 30 days the US bank would be required to report to FinCEN. The Associations are concerned that 30 days is an extremely short timeframe, especially since producing these data is outside the control of the United States bank. The Associations recommend 90 days, consistent with other foreign correspondent regulations FinCEN already has in place, as a more logical and consistent timeframe that will help improve the likelihood of quality information.

A more adequate timeframe is important for several reasons. First, the foreign bank may not be using English as its primary language, and it may take time to translate the request, especially since these can be highly nuanced information collections or involve significant spelling variants. More significant, since a request may conflict with foreign privacy or data security laws, the ability to respond accurately may involve legal or regulatory interpretations of those laws by the foreign bank. In some countries, arcane legal systems may take time to sort through to determine how a foreign bank may respond. In others, where regulatory approval may be needed, it is likely to take longer than 30 days. Since there is no authority to compel a foreign bank to respond, many may just answer with a simple no, and the U.S. bank would have no way to verify the accuracy of the response.

Information Reported to FinCEN. There are two distinct truisms at work here. First, U. S. banks cannot compel their correspondents to respond to these proposed requests. Second, a U.S. bank has no ability to verify the information reported by the foreign correspondent. Consequently, the Associations strongly recommend that the final rule acknowledge that the only obligation of the U.S. bank is to request the data and pass along just the information it receives as received. When the U.S. bank submits the report, the Associations recommend that FinCEN include clarification in the final rule that the signature of the reporting official of the U.S. bank is merely verifying that it is forwarding the information it received and that the signature conveys no attestation as to the substance of the data since the U.S. bank has no way to do that.[9]

If FinCEN takes the approach that the U.S. bank is reporting the information as received from the foreign bank, which the use of the model form contemplates, and that the U.S. bank is not

[9] This would be consistent with steps FinCEN applied under USA Patriot Act sections 313, *Prohibition on U.S. Correspondent Accounts with Foreign Shell Banks,* and section 319(b), *Bank Records Related to Anti-Money Laundering Programs.* There, FinCEN acknowledged that institutions are not required to verify or otherwise determine if the information contained is correct or accurate but whether it is internally consistent.

expected to analyze or evaluate the information it receives, that will expedite the ability of the U.S. bank to get the information to FinCEN more quickly. On the other hand, if the U.S. bank is expected to evaluate and assess the information before it can forward it to FinCEN, the longer will be the time before that information will reach FinCEN, and the limitations on the ability of the U.S. bank to verify and analyze the information will little compensate for the delay.

In responding to one of these requests, one option for a U.S. bank would be to identify a foreign bank where the U.S. bank cannot determine to its satisfaction that the foreign correspondent does not maintain such an account or has not processed such funds transfers in the preceding 90 calendar days. The Associations are concerned that experience may show that this option will be fairly common. The Associations urge FinCEN to acknowledge in the final rule that this option meets federal expectations of compliance and that the U.S. bank is not expected to take further action until the government adds that bank to a sanction list or otherwise takes official action.[10]

Some banks have expressed concerns that regulators, particularly bank examiners, may invent additional expectations for what a bank can do. For example, there is fear that lack of sufficient response could be deemed to require termination of account relationships, putting U.S. banks at a severe competitive disadvantage to their foreign competitors. Because US banks have no way to enforce responses, we urge FinCEN to acknowledge that a report from a U.S. bank that it has received insufficient information from its correspondent is not only acceptable but sufficient and does not require the reporting U.S. bank to close or restrict the account.

Follow-Up Reporting. When asking a foreign correspondent for information, the U.S. bank would also ask the foreign bank to report if it establishes a correspondent account for an Iranian-linked financial institution designated under IEEPA within 365 calendar days after its response to the request and that would in turn have to be reported to FinCEN. The Associations are concerned that this may be one of the most difficult elements of the entire proposal. While it is certainly possible for a United States bank to ask for this information, it is equally important for FinCEN and Treasury to recognize the extreme limitations associated with this part of the proposal.

The greatest barrier to compliance with this request is its structure. The request is based on whether the United States has designated an entity under IEEPA. Following the adoption of CISADA, the Office of Foreign Assets Control (OFAC) published the Iranian Financial Sanctions Regulations (IFSR).[11] Under the IFSR, *if* Treasury determines certain foreign financial institutions are knowingly engaged in sanctionable activities under the statute, it may list them in Appendix A to the IFSR. If a bank is listed, a U.S. bank may not open or maintain a correspondent account for that bank.[12] One of the uses for the information FinCEN would collect under this proposal would be to help OFAC determine whether to bar a foreign bank from maintaining an account in the United States.

Since IEEPA is a United States law, and while there may be parallels with international sanctions, this requires foreign banks to develop filter systems to comply with an alien statute. In other words, compliance with this part of the proposal operates on the assumption that a foreign bank is willing and able to undertake the expense and burden of monitoring and

[10] When a response or lack thereof impugns the legitimate business use of the account, a SAR would be a possible action. Under the SAR system, if a matter involves time-sensitive issues, law enforcement agencies can be contacted and FinCEN already has a hotline that can be used for reporting.
[11] 31 CFR Part 561
[12] As of April 27, 2011, there were no banks listed in the appendix.

complying with a foreign law. Second, the IEEPA lists are constantly changing, so this requires any affected foreign bank that has a correspondent relationship with a bank in the United States to develop systems to monitor and track whether or not a transaction might be covered; it is unclear why a foreign bank would want to undertake this expense. Third, while FinCEN points out that designations on the OFAC lists have a tag[13] that provides some indicator, and while the entire list of sanctioned entities is available by a link, foreign banks would have to sort through the entire OFAC list as a first step to identify which entities are covered and then, after developing this list in question, apply it to its own records. To address these issues and to facilitate compliant responses, the Associations strongly recommend that FinCEN or OFAC create a special section/list for IEEPA designations that is readily and easily accessed by institutions around the world.[14] And finally, the Associations suggest that FinCEN emulate the SAR reporting system to start the timeline for a foreign bank to respond to these requests within 30 calendar days after it identifies a covered entity.

In the event a U.S. bank does receive notice from its foreign correspondent that an affected entity opens an account, the proposal mandates that the U.S. bank report to FinCEN within 10 days. The Associations request FinCEN to clarify this slightly by specifying that once the office or department of the U.S. bank that communicates the outgoing 104(e) requests to foreign correspondents receives notice back that the foreign correspondent has opened an account with a designated entity, that office of the U.S. bank then has 10 days to report to FinCEN.

Finally, the proposal notes that if FinCEN specifically includes it in the request, a U.S. bank would be required to report in writing that it does not maintain a correspondent account for a foreign bank specified in the FinCEN request; FinCEN does not anticipate extensive use of this type of request. The Associations appreciate and support this element of the proposal. Barring significant need, asking for a written confirmation of a negative should be unnecessary. Since banks are subject to extensive review and supervision, the banking agencies should be able to assess appropriate compliance with the requirement to report useful information during normal examinations.

Proposed Definitions and Additional Guidance

According to FinCEN, the initial proposal would be limited to banks and not other types of financial institutions. The Associations agree with FinCEN that limiting initial reporting to banks will be efficient by building on existing requirements for foreign correspondent. Moreover, that will avoid redundancy and overlapping information. The Associations urge FinCEN to clarify that this only applies to depository institutions and not to non-depository institutions, even though the two may be within the same bank holding company structure. In reading the proposed rule, the Associations also believe that FinCEN intends to exclude broker-dealer activities and asks this be clarified.

FinCEN is using the terminology “processed one or more transfer of funds” to cover transactions conducted outside a correspondent account. This is an area of the proposal that needs further

[13] Affected entities would be those designated under IEEPA and published on OFAC’s Specially Designated Nationals (SDN) list; such persons or entities that are blocked under these sanctions are identified with an IFSR or IRGC tag located at the end of their SDN listing. The list of these entities, as of April 11, 2011, was posted on the OFAC website at http://www.treasury.gov/resource-center/sanctions/Programs/Documents/irgc_ifsr.pdf.

[14] FinCEN provides the following link on page 24413 of the Federal Register (http://www.treasury.gov/resource-center/sanctions/Programs/Documents/irgc_ifsr.pdf). However, while the names are listed throughout OFAC’s SDN List, the Associations recommend a separate summary list.

clarity to identify which transactions FinCEN intends to reach, especially since the broader the scope, the more difficulty foreign banks will have to identify covered transactions.

When defining *correspondent accounts,* and to focus efforts to combat risk, it appears FinCEN intends to cover accounts typically designated as Due To Foreign Bank accounts (U.S. dollar settlement accounts that foreign banks maintain with U.S. banks). The Associations suggest FinCEN clarify that the term also includes Due From Foreign Bank accounts (foreign currency settlement accounts that U.S. banks maintain with non-U.S. banks). The Associations also suggest FinCEN clarify that "correspondent accounts" do not include transaction accounts banks opened and maintained solely for international trade transactions with foreign banks since trade advances, letters of credit, foreign exchange, and bank-to-bank funding in these domestic transactional accounts already are extensively monitored through other anti-money laundering and sanctions programs, controls, and filters and should not be confused with the unique mandates that apply to foreign correspondent accounts. And finally, the Associations suggest that FinCEN clarify that other accounts, such as the SWIFT Relationship Management Application, which function to facilitate communications between correspondents but are not true correspondent accounts, be excluded.

The term *foreign bank* would be a bank organized under foreign law located outside the United States. The definition would not cover an agency, branch or office in the United States of a bank organized under foreign law (although the proposal limits this to foreign banks and not other foreign financial institutions). The Associations believe that the definition is appropriate as proposed and does not have any further recommendations for expanding this particular element of the proposal. However, the Associations request clarification that the definition clearly excludes U.S. representative offices of foreign banks.

Certification Form. To assist banks with the process, FinCEN has proposed a model certification form which U.S. banks could forward to foreign correspondent banks.

To facilitate compliance with the entire filing system, the Associations strongly recommend that FinCEN set the program up to encourage and facilitate e-filing as much as possible. Since FinCEN is taking many other steps to streamline the e-filing process, it only makes sense to set this program up based on an e-filing system.

To facilitate compliance, the model will outline why the request is being made and include definitions of key terms such as foreign bank. The Associations urge FinCEN to ensure that the final model is presented in simple and straightforward English as much as possible, since many of the foreign banks that will complete the form may not use English as their primary language; the more complex and legalistic the terms in the form, the harder it will be for non-English speaking bankers to respond and the greater potential for incorrect information due to misunderstanding.

The Associations suggest that one definition which should be added to the model is a definition outlining what is covered by "transfer of funds." For clarity, "a foreign bank" also should be more clearly defined on the model form, including an explanation whether subsidiaries or branches of a single bank operating in different countries are one foreign bank or separate foreign banks.

While the proposed model includes links to websites that have key information to US government documents, and websites with information about designated entities and individuals, as noted above, the Associations believe that it would be simpler and produce better

information if requests also included a list of the IEEPA entities covered by that particular request.

At this point, the Associations do not have additional comments on the particular elements of the model form. However, since this is a new reporting system and to ensure that information is collected and reported as efficiently and accurately as possible, the Associations recommend that FinCEN revisit the model form after it has been used for 12 to 18 months to identify revisions that will make it more effective.

Record Retention

The proposal would require banks to maintain copies of any report filed with FinCEN and the supporting documentation for five years. The Associations recommend that, if FinCEN goes to an e-filing system, that would obviate the reason and need for banks to maintain paper copies of what has been filed. Given all the steps that FinCEN is taking in this direction, that only makes sense.

The Associations also question the necessity for five years to retain records. Given that the purpose underlying the proposal is to implement sanctions in the near-term, holding information for five years does not seem to meet any ongoing need. The Associations recommend that FinCEN eliminate or significantly shorten the term required for retaining documentation. Moreover, if information is reported to FinCEN electronically, FinCEN can take the responsibility for maintaining the records and, as with other filing systems FinCEN has in place, verify to the bank that the report was submitted and received. While reporters may wish to retain back-up copies, it should be left to the bank to make that decision and not be included in the regulatory requirement.

In all events, additional clarification by FinCEN will help alleviate possible confusion. First, the Associations recommend FinCEN clarify what is covered by "supporting documentation" since the term is subject to varying interpretation by different institutions or by examiners. Similarly, the Associations request FinCEN clarify that document retention does not include the written request from FinCEN. And finally, the Associations urge FinCEN to address the following in the final rule: (1) does any retention period start with the date the request is issued or when the institution reports to FinCEN? (2) If there is a follow-up report, does that start a new retention period or does that report become part of the original request/report?

Regulatory Burden. FinCEN certifies that the rule would not have a significant economic impact, that it would not require expenditures by the private sector exceeding $100 million per year, and that it would not impact a substantial number of small entities. However, it provides no data to support these conclusions. Moreover, FinCEN estimates approximately 350 banks maintain foreign accounts, of which only 5% are likely to have an account affected by a FinCEN written request; nothing is provided to support the 5% estimate. However, FinCEN states, "it will rely on information available to Treasury to help limit the number of banks requested to provide information." These regulatory burden estimates are inadequate and do not seem to be a good faith effort to fulfill requirements to assess adequately the regulatory burden.

While FinCEN believes there will be a series of requests at the outset, "subsequent requests will be infrequent." Overall, FinCEN estimates the impact of a request about a specific foreign bank will require no more than three hours for a US bank to comply. The Associations certainly appreciate efforts by FinCEN to focus the rule and its application. There is no way for the Associations to verify the estimates that FinCEN has set forth, but we believe that this has the

potential for being an extremely burdensome and complex rule. We also note that the burden rests upon FinCEN to provide adequate and realistic regulatory burden estimates, not upon the industry. Therefore, we urge FinCEN to engage in a more rigorous regulatory burden evaluation, while at the same time FinCEN should do whatever possible to ensure the final rule incorporates a clear and narrow focus on the goals of the regulation as much as possible. Otherwise, we are concerned that overly broad application could result in unintended consequences that do a disservice to the U.S. banking system, the American economy, and the ability of the federal government to carry on diplomatic responsibilities.

Finally, as with any other data collection process, FinCEN should track and report on the effectiveness of the system. As recommended by the ABA in the 2008 white paper, *A New Framework for Partnership, Recommendations for Bank Secrecy Act/Anti-Money Laundering Reform,* "…reporting obligations should be…validated using appropriate metrics to ensure accountability and to improve transparency. This will enhance system efficiency and the ability of legislators and regulators to strike the proper balance among individual privacy, law enforcement, national security and financial system integrity policy concerns."[15]

Conclusion

The Associations appreciate FinCEN's efforts to develop a rule that is focused and designed to obtain information that provides useful data to help the United States carry out its sanctions programs. To guard against inappropriate interpretations or applications of the rule, the Associations recommend a number of steps to help FinCEN meet its goals.

The Associations stand behind efforts by FinCEN and the federal government to stop terrorist financing. We believe that if FinCEN continues working with the private sector and makes the changes we have recommended, it will let the United States continue to play a leading role in the global economy and the war on terror and avoid actions or mandates that could easily sideline the United States. If regulations or the application of regulations drive transactions offshore, then federal authorities would be unable to identify terrorist threats to U.S. interests adequately and in a timely fashion, an outcome we want to avoid.

We look forward to continue working with FinCEN to achieve our mutual goals. Thank you for the opportunity to comment. If you have any questions or need additional information, please feel free to contact the undersigned.

Sincerely,

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[15] The full report is at http://www.aba.com/Compliance/CCBSA.htm