

March 28, 2011

Regulatory Policy and Programs Division
Financial Crimes Enforcement Network
Department of the Treasury
P. O. Box 39
Vienna, VA 22183
Attention: CTR Database & BSA-DOEP Database

Currency Transaction Report and Designation of Exempt Person Report Proposed Data Fields

Dear Sir or Madam:

The American Bankers Association (ABA)¹ appreciates the opportunity to comment on the continuing efforts by the Financial Crimes Enforcement Network (FinCEN) to upgrade its database and simplify and streamline the ability of financial institutions to file reports mandated by the Bank Secrecy Act (BSA). Last year, FinCEN proposed changes to the Suspicious Activity Report (SAR) forms.² Continuing this effort, the current proposals would streamline and upgrade the process for the Currency Transaction Report (CTR)³ used to report large currency transactions and the Designation of Exempt Person (DOEP)⁴ filing used to exempt customers from unnecessary reporting. For simplicity, ABA has combined our comments into a single letter.

As with its earlier proposal for Suspicious Activity Reports, FinCEN does not intend to change the regulatory requirements but to create a modern environment for the filing and analysis of BSA information. As FinCEN upgrades its database, it has requested comment on the technical aspects of the program. The goal is to develop an e-filed dynamic and interactive report that can be used by all BSA filing institutions.

ABA Comments

ABA supports the expansion of e-filing options to meet BSA data reporting obligations. We believe that e-filing has enabled bankers to realize both reporting and record-keeping efficiencies. To the extent that, without imposing new data collection requirements, such e-filing systems also make BSA information more useful and more easily searched by law enforcement is an added benefit.

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.

² 75 *Federal Register* 63545, October 15, 2010, <http://edocket.access.gpo.gov/2010/pdf/2010-26038.pdf> ABA's comments on the proposal are at http://www.fincen.gov/statutes_regs/frn/comment_letters/20101215/comment18.pdf.

³ 76 *Federal Register* 4747, January 26, 2011, <http://edocket.access.gpo.gov/2011/pdf/2011-1587.pdf>

⁴ 76 *Federal Register* 4745, January 26, 2011, <http://edocket.access.gpo.gov/2011/pdf/2011-1586.pdf>

Nevertheless, FinCEN should keep in mind that whenever new formats are implemented, transitional costs are incurred in changing bank procedures and systems to integrate with new input standards. A financial institution must take steps to ensure the changes mesh with its existing programs and that data move from one software program to another smoothly and efficiently without corrupting data in the transition. Testing these interactions is time-consuming and must be factored with all the other changes facing financial institutions. Given the fact that these changes are being proposed at a time when the industry is already undergoing massive changes on the regulatory front, adequate time must be accorded for implementation or adoption. While some revisions may seem to be minor adjustments, each change requires a financial institution to ensure that it is coordinated with its current software programs, sometimes in reliance on vendor re-calibration of systems. ABA recommends a compliance deadline that is no earlier than the beginning of the first calendar quarter that follows 18 months after the government's system to receive the new format is final and demonstrably operational.

Recommended Changes or Improvements

Bankers have generally been enthusiastic about the use of e-filing to streamline and simplify the reporting process. To ensure the continued use and adoption of e-filing by even more bankers, this initiative should not increase the burden on banks to supply data not collected in the normal course of business. It is not the obligation of bank filers to supply either demographic or taxonomic information not germane to the limited role that currency transaction reporting entails. Additional comments specific to individual fields on the two forms are included in the attached appendix.

Pre-populated information. One of the advantages to the system FinCEN is proposing is that it will pre-populate certain information once a filer has registered with the system. ABA supports such a step, since it can be very efficient. However, as with any program that pre-populates information, financial institutions need to be able to override pre-populated data easily. While it can be helpful to pre-populate information from an efficiency perspective, there may be times when the automated system inserts information that would make the report inaccurate in a particular situation, and this must be taken into account. Without the ability to do an override, a financial institution might have to resort to a paper filing from time-to-time to provide accurate information.

As we noted in our earlier comment letter on the proposed revisions to the SAR filing system, ABA also recommends that FinCEN clarify whether discrete filers who use the Adobe format will also be able to take advantage of pre-populated data fields as well as having the ability to provide multiple entries when and where appropriate in the same way as other filers.

Unknown Data. From time to time, institutions must file reports where there may be information that is unknown or unavailable. Bankers have suggested that the likelihood that FinCEN will get a substantial amount of "unknown" data is a serious possibility. For instance, a bank may not have the plus four in a zip code; while FinCEN might want to encourage the use of the full zip code, if it is not available or if the bank only has the first five digits, rather than taking the additional time to research and complete the full zip plus four, filing the zip code without the plus four should be acceptable.

In finalizing the program, ABA recommends that FinCEN ensure that it obtain as much data as possible without taking steps that produce the unintended consequence that, instead of partial data,

it gets no data at all in a particular field. Similarly, a standard approach is needed to allow users of the database to understand whether a field was not completed purposefully or inadvertently.

While many of the following comments are concerns we raised earlier in our comment letter on SAR filing, given their importance to ensure the integrity and utility of the BSA database, ABA believes they must be restated.

Filing format. One of the changes that FinCEN proposes is to convert the current database to an XML-based format. ABA supports the use of the XML-based format, especially if it does improve the processing speed and access to reported information. However, FinCEN must allow sufficient time for the industry to transition to the new format for several practical reasons. First, while federal agencies have been taking steps to move towards universal reliance on XML-format reports, it is not yet universal. Not all financial institutions are in a position to convert easily to this format and forcing a choice between paper and XML might cause some institutions to rely solely on paper format.

For larger institutions that use batch filing and automated systems, FinCEN must first provide technical specifications to the industry. Upgrading to the new specifications and integrating that into existing programs will require sufficient lead time to let software vendors and larger financial institutions ensure that the format that FinCEN has proposed will mesh properly with existing software. Incompatibility could easily skew data in ways that may not be readily apparent; correcting filings can be a time-consuming and burdensome process.

Better communication between FinCEN and the private sector on the technical specifications going forward will facilitate the transition and minimize data errors in the transition.

Adobe System. ABA also believes that the effort to move to the Adobe system for discrete filers is a positive step, and we commend FinCEN for this effort. We also believe that drawing the parallel to tax filing systems with which many are familiar is helpful to allow filers to understand the new protocols. To help all institutions, especially smaller ones, ABA strongly recommends that FinCEN conduct a series of webinars on the operation and use of the Adobe programs for discrete filers. Attendance at the November 4 webinar FinCEN conducted on e-filing⁵ is testament to the interest in such training, and ABA believes that additional sessions will both help smaller filers convert to e-filing and make proper use of the programs.

24/7 filing. Since FinCEN is proposing to move toward an electronic system, ABA suggests that the new program encourage and allow filings during non-business hours. For example, allowing larger companies to file the data on Saturdays and Sundays would streamline the process.⁶ Reverting to a paper file would be especially likely if a filer encounters a problem which cannot be resolved as the deadline to submit a report approaches.

⁵ <http://www.fincen.gov/whatsnew/html/20101008.html>

⁶ Although we recommend allowing filers to submit data during non-business hours, it should be recognized that this should not be seen as having any affect on the calculation of deadlines. Any deadlines should continue to be based on normal business hours.

Improved support. Finally, ABA strongly recommends that FinCEN establish and make available a dedicated telephone line and Internet area for quick response to questions from filers. This type of “customer service” will be especially important in the initial months that the new systems are up and running to let filers avoid possible errors. ABA is concerned that frustration during the transition, especially for smaller filers or filers that do not process substantial volumes, could undermine FinCEN’s goals of moving closer to 100% e-filing. If problems are encountered, the simple fall-back would be submitting a paper file.

Additional Concerns

Specific Data Elements. ABA attaches an appendix to this comment that identifies specific corrections or improvements that we recommend be incorporated in the final format. Although often technical in nature, adoption of these specific suggestions can avoid troublesome compliance issues in the future.

Glossary of terms. As we noted in our comments for changes to the SAR database filing system, ABA encourages FinCEN to take a number of other steps to facilitate the transition and to ensure that the final database achieves the goals that FinCEN has set. When the database fields reference terms or acronyms, these should be defined, if not in the instructions in some easily accessible source; a glossary of terms would be extremely useful, especially to avoid errors and miscommunication and would promote consistency for all parties, including law enforcement.

When questions arise, ABA suggests that FinCEN compile responses to these questions in an easily accessible and identifiable location on the FinCEN website that could be readily and easily updated.

Feedback. ABA urges that the steps that FinCEN has proposed to take for the database process ensure that the changes are subsequently evaluated for their actual utility to law enforcement and are also utilized to expand feedback to the industry. To the extent that any data elements are less important than others, this information should be shared with all filers as a factor in considering future burden reduction and in giving filers a risk-based foundation for measuring their reporting success.

Security. Whenever there is discussion of a database, it is equally critical to remember that data security is extremely important. Therefore, ABA strongly urges FinCEN to ensure that as it makes changes to the database a high priority must be given to maintaining and guarding the integrity, safety, and security of the system.

Summary

Overall, ABA commends FinCEN for making efforts to streamline and improve the efficiency and effectiveness of the BSA filing process. Steps that make the information more useful for regulators and law enforcement – and presumably in providing feedback to the industry – are welcome.

As always, the ABA remains ready to work with FinCEN to streamline the process and hopes that our comments can help make the next steps towards an effective and efficient database both workable and useful for all parties. We continue to encourage FinCEN to leverage the appropriate Bank Secrecy Act Advisory Group subcommittees as readily available partners in developing improvements to the system and whose input at earlier stages can expedite worthwhile change and help avoid unanticipated adverse consequences.

Thank you for the opportunity to comment. If you have any questions or need additional information, please contact the undersigned at ABA by e-mail at rrowe@aba.com or by telephone at 202-663-5029.

Sincerely,

A handwritten signature in black ink that reads "Robert G. Rowe" with a stylized flourish at the end.

Robert G. Rowe, III
Vice President & Senior Counsel

APPENDIX – Specific Comments on Data Fields Currency Transaction Report

- Field 1c – Should be expanded to include backfiling ordered by an agency other than FinCEN (e.g., one of the bank regulatory agencies)
- Field 1d – DCN needs to be defined
- Field 2a – the term “beneficiary” needs to be defined, particularly to avoid confusion with the discussions involving “beneficial ownership” in other contexts
- Field 9a – NAICS code – currently, the CTR requests information on occupation, profession or business – it should be clarified that filers may still provide a generic description in the main entry (field 9) – if NAICS code is added as a new entry, it should clearly be optional and should be supplemented by the SIC (standard industry classification code) and other codes which also are widely used⁷
- Field 13 – information on the zip plus four should be completed *only if available*
- Between Fields 13 and 14, the proposal references several new data fields, such as geocoding and HIFCA or HIDTA data that will be completed using third party information – FinCEN should clarify that FinCEN and not the financial institution will be responsible for supplying the data (the same comments apply to the new enhancements between Fields 35 and 36)
- Field 17 – if only partial information on a date of birth (e.g., month and year but not day), the fields need to be able to accept partial data since having month and year is more useful to law enforcement than a blank field
- Field 18 – contact phone number should clarify that it applies to the person involved in the transaction and not the reporting institution
- Field 20g – further explanation is needed to what is meant by “Number” for form of identification
- Field 21 – Cash-in in amount for individual or entity listed in item 4 – is a new data entry item – where there are multiple persons on whose behalf a transaction is conducted, further clarification will be needed on how this new data field will be coordinated with the existing data field (ABA notes that this is also a change in substance to what is being requested and not an administrative change)
- Field 25b – the term “payments” needs to be explained

- Part III – for information on the filing institution, adjustments are necessary to acknowledge that a larger financial institution may file reports from a regional location or even by branch. This is needed to ensure that law enforcement can properly identify and contact appropriate

⁷ Although not germane to the changes to the form, ABA cautions FinCEN against over-reliance on this information. This coding is generated for statistical analysis and should not be endowed with attributes and qualities, such as indicators of risk, it was not designed to address.

personnel at the institution. As structured, it appears that a large bank would file the legal address of its main office which could be on the other side of the country from where the transaction occurred.

- Field 39 – the acronyms need to be spelled out

Designation of Exempt Person (DOEP)

- Field 1d – DCN needs to be defined
- Field 7a – NAICS code – as noted in the main body of the letter, ABA is concerned that over-reliance on this element may be inappropriate by attempting to use the information for something for which it was not designed
- Field 11 – information on the zip plus four should be completed *only if available*
- Between Fields 11 and 12, the proposal references several new data fields such as geocoding and HIFCA or HIDTA data that will be completed using third party information – FinCEN should clarify that FinCEN and not the financial institution will be responsible for supplying the data (the same comments apply to the new enhancements between Fields 23 and 24)
- Field 19 – RSSD needs to be spelled out