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Submitted via [regcomments@fincen.gov](mailto:regcomments@fincen.gov)

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

*Attention:* PRA Comments—31 CFR Part 103

Dear Chief Counsel Staff:

On December 20, 2004, the Financial Crimes Enforcement Network (FinCEN) published a notice and request for comment on its continuing collection of information pursuant to 31 CFR Part 103. This collection is intended to facilitate the identification, investigation and prosecution of individuals involved in money laundering, the financing of terrorism and other financial crimes.

The ABA brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership – which includes community, regional, and money center banks and holding companies, as well as savings associations, trust companies, and savings banks – makes ABA the largest banking trade association in the country. Moreover, ABA is an active and original participant in the Bank Secrecy Act Advisory Group (BSAAG) and has worked diligently to bring a spirit of constructive cooperation to the efforts of the industry and the agencies in meeting their obligations to combat money laundering and terrorism financing. We appreciate the opportunity to contribute our views toward an improvement of the effectiveness of the information collection associated with the currency transaction reporting (CTR) process.

ABA recognizes that precise estimates of time spent to perform the various reporting and recordkeeping obligations imposed by part 103 are difficult to quantify. Accordingly, we appreciate FinCEN's good faith effort to arrive at representative numbers for completing the various forms and maintaining the required records. Our major observation in this regard is to suggest that the number of CTRs being filed is likely to be trending higher under current standards and therefore the use of 12,400,000 as the annual number of responses for the future period covered by this estimate is too low. By any measure, these are enormously time consuming tasks whose estimation on a filing-by-filing basis unfortunately does not capture the even larger expenditures for monitoring and analyzing the underlying transactions to identify reportable events. Nevertheless,

ABA prefers to focus its comments on ways to improve the “practical utility” of these reporting and exemption processes as invited to be addressed in the notice.

ABA notes that the purpose of Subchapter II of Chapter 53 of Title 31 establishing the BSA regulatory regime is to require certain reports or records when they have “a high degree of usefulness” for the prosecution and investigation of criminal activity, money laundering, counter-intelligence and international terrorism. ABA and its members strongly believe that the current CTR reporting standards have long departed from this goal of achieving a high degree of usefulness.

### CTR Threshold

We applaud FinCEN Director Fox for his ongoing commitment to address all options for improving the CTR system. The Director established a subcommittee of the Bank Secrecy Act Advisory Group (BSAAG) to consider the various methods of ensuring that both government collection and industry reporting provided some form of utility to the congressional mandated goals. In response to this charge, ABA has continued to advocate improving the value of CTRs by increasing the threshold for reporting to a level more in line with inflation-adjusted transaction activity than the 35 year old level of over \$10,000.

We pressed this point in a September 2004 memo to the BSAAG CTR Reduction Subcommittee and urged pertinent research on how the more robust suspicious activity reporting process has made low threshold CTR reporting redundant. We believe that maintaining the CTR threshold at this current level generates too many reports that capture extensive immaterial activity wasting banker and law enforcement time that could be spent on SAR issues. The fact that a couple percent of reports for transactions between \$10,000 and \$20,000 can yield a positive match with already identified criminal subjects does not amount to reporting with “a high degree of usefulness” as mandated by the statute. In fact, it suggests that law enforcement has other preferred means of identifying persons of interest and that CTRs are lagging indicators. We suspect that this is especially the case after the introduction of 314(a) of the USA PATRIOT Act, where criminal suspects’ accounts can be more precisely identified and then better directed means can be used to monitor their activity rather than sifting through the universe of CTRs.

Accordingly, ABA strongly advocates that raising the CTR threshold to an amount such as \$20,000 or \$25,000 across the board will have the most significant practical utility in reducing undue paperwork burden.

### CTR Exemption Process

ABA has worked cooperatively with FinCEN and the federal banking regulators to encourage institutions to make better use of statutory exemptions when they were changed in the late 1990’s. Our Association did extensive outreach to our members and while many institutions adjusted their CTR filing policies and utilized the two-tier exemption process, the general response was lukewarm.

There were a number of reasons for the lack of universal support of the exemption process including, for example, the biennial renewal process for Phase II exemptions. ABA believes that the renewal process needs to be re-considered before we are likely to witness any appreciable increase in the use of the statutory exemptions. The BSAAG subgroup is actively reviewing this option.

ABA believes requiring this set period for mandatory renewal paperwork is unnecessary when there has been no change in the entity's entitlement to exemption. There should only be a requirement to eliminate the exemption when the customer's attributes no longer qualify for exempt treatment. As a reminder, banks certainly have overall SAR obligations, meaning that there will be monitoring of exempt accounts based on their level of risk. Therefore, there will be no loss of critical oversight if the renewal paperwork requirement is eliminated.

Finally, ABA has received reports from members that examiners have threatened penalties and other formal criticisms for simple late filing of biennial renewal forms; a regulatory climate that demands overhaul.

By making these and other previously suggested changes, ABA is confident that there is a greater likelihood of reducing CTRs that have little or no law enforcement value.

### Conclusion

ABA is committed to working with FinCEN to eventually achieve the goal of eliminating unnecessary CTR filings and enhance the value of the Bank Secrecy Act in the 21<sup>st</sup> Century. ABA continues to believe that this goal is best accomplished when government-industry partnerships work together. Accordingly, we hope that on the occasion of this Paperwork Reduction Act burden estimation process, FinCEN continues to support the need to emphasize quality over quantity in mandates such as currency transaction reporting by making significant changes to both the threshold for filing and the overall exemption process. We stand ready to assist this initiative in any way we can.

Sincerely,

A handwritten signature in black ink, appearing to read "John J. Byrne". The signature is fluid and cursive, with a long horizontal stroke at the end.

John J. Byrne  
Director, Center for Regulatory Compliance