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Re: **FinCEN** RIN 1506-AA86
FRB Docket No. R-1258
Threshold for Retention of Funds Transfer Information
71 *Federal Register* 35564 (June 21, 2006)

Ladies and Gentlemen:

The American Bankers Association (ABA) files this letter in response to the solicitation of comments published as a joint advance notice of proposed rulemaking by the Financial Crimes Enforcement Network (FinCEN) on June 21, 2006, as part of its review of the threshold requirements for collecting and retaining information for funds transfers and transmittals of funds for bank and non-bank financial institutions.

The American Bankers Association, on behalf of the more than two million men and women who work in the nation's banks, 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.

Summary of ABA Comment

The ABA and its members' are committed to combating terrorism, money laundering and other illicit activity using effective methods that properly balance benefit and burden. ABA encourages FinCEN to develop BSA/AML policies that convert a system of mass data-gathering into a focused program of providing materially useful information. ABA believes that the proposed threshold reduction for maintaining funds transfer information is generally in line with normal business data maintenance practices for most institutions. However, we caution FinCEN that this is not an endorsement of a universal wire data reporting requirement, nor is it a concession that all the information enumerated by the regulation is necessary for

there to be sufficient utility to aid money laundering or terrorist financing investigatory efforts.

Finally, the results of ABA's discussions with community banks call into question the extent to which these records are actually sought by law enforcement for any of their customers. Indeed, those conversations lead ABA to support FinCEN's request for information from law enforcement to demonstrate the value of this recordkeeping regime.

Impact of Reduction in Threshold

Under 31 C.F.R. 103.33, banks are to collect, retain and transmit upon request, information on funds transfers in amounts of \$3,000 and more. The Advance Notice seeks information on the impact of lowering the current \$3,000 threshold. The essence of the threshold reduction proposed is not to mandate new reporting, but rather to ensure that transfer information is being retained for those limited instances where law enforcement and regulatory agencies make a request in furtherance of combating money laundering and terrorist financing.

ABA has discussed this issue with its members and reports the following basic observations:

- Many ABA members across the spectrum of modest sized community banks, regional banks and large nationwide banks have, over time, adopted recordkeeping systems or practices that capture funds transfer originator and beneficiary information for transactions below the existing threshold that would satisfy regulatory standards.
- Some ABA members have recordkeeping systems that do not capture all of the regulatorily required information for funds transfers below the current threshold. Banks in these circumstances generally engage in funds transfers on behalf of customers thereby capturing basic originator information. Furthermore, the overwhelming majority of transfers by these banks in the range below the current threshold are domestic transfers. This group of banks report never having had a law enforcement inquiry specifically seeking funds transfer information about any of their customers.

The ABA also notes the burdens this threshold reduction will have on financial institutions in the instances where such wire transfer information is requested. While most community and large banks retain the requisite wire transfer information, regardless of dollar amount, the difference between the smaller and larger institutions is the method by which this information is housed. In many instances, smaller institutions retain the information through a manual process and house it in an off-the-shelf software, typically in a list format. In some instances, these small institutions retain this information in hard copy paper format, which has the potential to make searching and production of information more manually intensive, as well as causing a longer response time to law enforcement requests. In contrast, larger institutions generally retain the information in software specifically developed to process wires and which can be scanned and queried for reports more readily.

The ABA cautions that access to funds transfer information by an unrestricted or boundless request could cause many small institutions to take on additional costs and resources not otherwise planned for, extending the expected response time and production of information, which should be considered as a factor at the time of the submission of the request. Similarly we caution FinCEN and the banking agencies not to raise supervisory expectations about implementing technological solutions that are not necessary to achieve compliance with the regulation—particularly given the limited level of inquiry experienced by most institutions. On a risk-basis, an institution’s normal business records about wire transfers and customer identification are perfectly adequate to help law enforcement “follow the money.”

Appropriateness of FATF Special Recommendation

The Advance Notice states that the Financial Action Task Force (FATF) recommends a de minimis threshold no lower than \$1,000 for funds transfer recordkeeping and advises that the agencies are considering the recommendation and assessing its appropriateness. Furthermore, FATF’s assessment of the US systems and processes in place to combat money laundering and terrorist financing, issued on June 23, 2006, identified the lack of consistency with FATF’s Special Recommendation VII, calling for the establishment of a \$1,000 minimum threshold for retention of funds transfer information.¹ However, regulators would do well to recognize that the underlying FATF threshold recommendation is limited to cross-border wires only. Given the limited role small banks play in cross-border traffic, the agencies should proceed carefully when considering whether to apply a FATF recommendation meant for cross-border activity to institutions primarily engaged in domestic transfers.

ABA generally supports the overall goals of FATF. At its core, FATF Special Recommendation VII “was developed with the objective of preventing terrorists and other criminals from having unfettered access to wire transfers for moving their funds and for detecting such misuse when it occurs. Specifically, it aims to ensure that basic information on the originator of wire transfers is immediately available [to law enforcement, to specialized financial intelligence units, and to beneficiary financial institutions.]” (Emphasis added.) ABA believes that this objective is largely met by the following two facts:

- Banks engaged in substantial funds transfer activity have comprehensive data systems that maintain the full complement of originator information; and
- Banks with more limited funds transfer activity tend to engage in this area for customers only and have fundamental customer/originator identification information at hand in a CIP compliant format sufficient for the rare occasions it is requested.

Accordingly, ABA concludes that FATF Special Recommendation VII provides no compelling basis for altering the industry status quo. Indeed, ABA believes that American banks are already in substantial compliance with FATF VII without needing additional regulatory changes.

¹ Financial Action Task Force: “Summary of the Third Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism”, 23 June 2006.

Relation to CBET Reporting Requirement

Through the Intelligence Reform and Terrorism Prevention Act of 2004, Congress has required the Secretary of the Treasury to determine whether obtaining cross-border electronic transmittal (CBET) data is feasible and also reasonably necessary to conduct his law enforcement efforts. Section 6302 of the Act limits the pool of potential CBET data to be reported to that required to be recorded under the regulations at issue in the Advance Notice. ABA reiterates that while most institutions can and do collect CBET originator data, the varied systems for doing so defy establishing a feasible universal reporting process. At the same time, current data recordkeeping practices enable banks to respond as necessary to targeted investigatory demands—rebutting any need to compel indiscriminate universal CBET reporting.

As ABA has noted in its original input to FinCEN's feasibility study and recently in its letter to Secretary Paulson², mandating a universal CBET reporting requirement is neither feasible, nor reasonably necessary for conducting Treasury's anti-money laundering or counter-terrorism financing responsibilities.

Conclusion

ABA favors BSA data collection requirements that conform to normal business transaction recordkeeping. Having law enforcement use a focused inquiry process to access relevant transaction information is far superior in balancing benefit and burden than requiring banks to engage in universal disclosures of CBET activity. Accordingly, ABA believes that lowering the threshold in 31 C.F.R.103.33 from \$3,000 to \$1,000 is preferable to imposing a mandatory reporting requirement covering CBET. Nevertheless, we urge that any future proposal to reduce the threshold be applied on a risk-adjusted basis that ascribes limited risk to institutions with limited exposure to law enforcement requests, and considers a functional customer identification program as achieving substantial compliance for those institutions primarily engaged in providing domestic wire services to their customers.

Respectfully submitted,



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² See ABA Comment Letter dated April 21, 2006 available at <http://www.aba.com/NR/rdonlyres/365382A4-2EC6-4B41-93A6-28BFAD2779FB/42731/CBWTransfercommentltr2006.pdf> and ABA letter to Secretary Paulson dated August 2, 2006 available at <http://www.aba.com/aba/documents/News/Paulsonltr0806.pdf>