



# The Financial Crimes Enforcement Network

## Welcomes

[REDACTED]

[REDACTED]

Australia Transaction Report and Analysis Center

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Australia Transaction Report and Analysis Center

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Enhancing Capability Program

Australia Transaction Report and Analysis Center

## Agenda

### Monday, September 13, 2010

(Room 4204)

9:00 a.m. – 9:15 a.m.

Meet and Greet

Mr. Jim Freis, Director

[REDACTED]

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9:15 a.m. – 10:00 a.m.

FinCEN IT Modernization Overview

[REDACTED]

Technology Solutions and Services Division (TSSD)

#### Discussion:

- FinCEN's past experience on analytical tools purchases:
  - Best practices
  - Use to-date
  - Effectiveness
- Problems FinCEN attempted to solve by implementing commercial, analytical solutions/products?
- What parts of FinCEN will be using products?

1.

- bc 2.
- What comparisons were made when making a decision to purchase/which other vendors were considered?

- 10:00 a.m. – 10:45 a.m.      **FinCEN IT Modernization Program Governance**  
[REDACTED]  
*Technology Solutions and Services Division (TSSD)*
- 10:45 a.m. – 11:00 a.m.      **Break**
- 11:00 a.m. – 12:00 p.m.      **AUSTRAC/FinCEN Round-table Discussion on IT Modernization**  
*Moderator: [REDACTED]*  
*Financial Crimes Enforcement Network*  
*Australia Transaction Report and Analysis Center*
- 12:00 p.m. – 2:00 p.m.      **Lunch**
- 2:00 p.m. – 2:45 p.m.      **Proposed CMIR Project Discussion**  
[REDACTED] - *Global Support*  
*International Programs Division (IPD)*
- 2:45 p.m. – 3:30 p.m.      **Regulatory Overview on Cross-Border Electronic Transmittals of Funds Rulemaking**  
[REDACTED]  
*Regulatory Policy and Programs Division (RPPD)*
- 3:30 p.m. – 4:00 p.m.      **Identification of unregistered MSB's in Australia**  
[REDACTED]  
*Regulatory Policy and Programs Division (RPPD)*

## Tuesday, September 14, 2010

*(Room Director's Conference Room)*

- 9:00 a.m. – 10:30 a.m.      **New Advanced Analytic Methods**  
[REDACTED]  
*Office of the Director (OOD)*

*Discussion:*

- *Advanced Analytics discussion on systems and tools*
  - *Further discussion on commercial "off-the-shelf" packages*
  - *AUSTRAC areas of interest:*
    - *Enhanced entity resolution*
    - *New data consolidation*
    - *Extraction and entity linkage tool*
    - *Capture and integration of external data*

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- *New pattern recognition monitoring systems*
- *More powerful macro analysis tools*
- *FinCEN's past experience with analytical tools purchases:*
  - *Best practices*
  - *Use to-date*
  - *Effectiveness*
- *What components of the product suite are being considered?*
- *What other technologies and analytical techniques are being engaged and to what effect within the broader US law enforcement and security environment?*

10:30 a.m. – 11:00 a.m.      **Health Care Fraud Initiative**  
[REDACTED]  
*Analysis and Liaison Division (ALD)*

11:00 a.m. – 11:15 a.m.      **Break**

11:15 a.m. – 11:45 a.m.      **Conference Call with FINTRAC for Upcoming Visit**  
*AUSTRAC/FinCEN-OOD, RPPD, TSSD, IPD*

12:00 p.m. – 1:00 p.m.      **AUSTRAC Cross Border Analytics Discussion**  
[REDACTED]  
*Australia Transaction Report and Analysis Center*

1:00 p.m. – 2:00 p.m.      **Lunch**

2:00 p.m. – 3:30 p.m.      **AUSTRAC Cross Border Analytics Discussion, cont.**  
[REDACTED]  
*Australia Transaction Report and Analysis Center*

3:30 p.m.      **Conclusion**

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## Department of the Treasury Financial Crimes Enforcement Network

### Fact Sheet: Notice of Proposed Rulemaking: Cross-Border Electronic Transmittal of Funds

- The draft rule applies to those financial institutions in the United States that are either the first U.S. financial institution to receive an incoming reportable cross border electronic transmittal of funds (CBETF), or the last U.S. financial institution to process an outgoing CBETF.
  - Regarding *banks*, there is no threshold on the amount of a CBETF that must be reported to FinCEN, meaning that all CBETFs must be reported. It is believed that the imposition of a threshold on *banks* would actually increase the cost of compliance by requiring segregation of transactions.
  - Regarding *money transmitters*, CBETFs exceeding \$1,000 must be reported to FinCEN. It is believed that this is an appropriate threshold for *money transmitters* as the industry, in large part, already observes this threshold and collects this information.
  - To fulfill reporting requirements, financial institutions can submit to FinCEN a copy of the funds transmittal order. This process is expected to require little additional effort by the financial institution to report data that it currently maintains.
  - It is anticipated that depository institutions will be able to comply with this rule by submitting copies of the SWIFT MT-103 and MT202-COV messages associated with the CBETFs to FinCEN.
  - The draft rule allows for third party reporting. As the major carrier of international transmittal orders, the Society for World Interbank Financial Telecommunication (SWIFT) is the most likely provider of third-party reporting services to banks.
  - All reporting shall be completed electronically unless an institution can demonstrate that this would be unnecessarily onerous. FinCEN will provide for discrete internet-based electronic reporting for institutions that require such a service portal; it is expected that this service will be utilized by small- and medium-sized money transmitters.
  - FinCEN proposes to exempt reporting of transfers processed directly between U.S. and foreign banks that do not involve third-party customers, as well as bank transfers processed solely through proprietary systems (e.g. bank transfers processed between branches of a single bank).
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U.S. Department of the Treasury  
Financial Crimes Enforcement Network

# FinCENnews

FinCEN's web site is located at: <http://www.fincen.gov>



FOR IMMEDIATE RELEASE  
January 17, 2006

(703) 905-3770

**FinCEN Report to Congress states that the reporting of cross-border wire transfer data is technically feasible for the government but requires further collaboration**

The Financial Crimes Enforcement Network today announced that the Department of the Treasury has delivered a Congressionally mandated report to Capitol Hill stating that the reporting of cross-border wire transfer data by financial institutions is technically feasible for the government and may be valuable to the government's efforts to combat money laundering and terrorist financing. The report outlines an inclusive and incremental approach to resolving remaining technical and policy issues that relate to whether and how to implement a regulatory requirement for the reporting of cross-border wire transfer data.

"FinCEN is firmly committed to working with the financial services industry and our partners in the regulatory and law enforcement communities to consider the design and implementation of a suitable and efficient potential reporting regime," said William F. Baity, FinCEN's Acting Director. "I believe this inclusive, step-by-step approach will allow us to determine the right balance between providing real anti-money laundering and anti-terrorist financing benefits without imposing a burden and will go a long way in helping our efforts to protect our economic and national security."

The FinCEN report is the result of an extensive study of the technical feasibility to the government of imposing a requirement that U.S. financial institutions report to FinCEN records that financial institutions currently maintain concerning international wire transfers. FinCEN also began a process of assessing the potential value in collecting such information and evaluated opportunities for combining the data with other Bank Secrecy Act data. In the report, which is required by the Intelligence Reform and Terrorism Prevention Act of 2004, FinCEN proposes an incremental process which includes spending the next year studying and resolving the remaining issues. Specifically, FinCEN will conduct a cost-benefit analysis with the participation of both the financial services industry and law enforcement, to determine and quantify both the benefits to the public of such a system and the costs to all parties affected by any such potential regulatory requirement. FinCEN also will work to ensure that all technical capacity and privacy concerns are addressed. This research will provide the foundation on which policy makers will make a final decision whether to implement such a requirement. If policy makers choose to proceed, that decision would be followed by an administrative rulemaking allowing for public comment.

Section 6302 of the Intelligence Reform and Terrorism Prevention Act of 2004 directs the Secretary of the Treasury to study the feasibility of "requiring such financial institutions as the Secretary determines to be appropriate to report to the Financial Crimes Enforcement Network certain cross-

border electronic transmittals of funds, if the Secretary determines that reporting of such transmittals is reasonably necessary to conduct the efforts of the Secretary against money laundering and terrorist financing.”



# FinCEN Department of the Treasury

## 2008 Cross-Border Electronic Funds Transfer Survey

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Final Report  
March 2008



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## Introduction

In order to evaluate the cost and impact that a proposed cross-border electronic funds transmittal reporting requirement would have, CFI Group was contracted by FinCEN through the Federal Consulting Group (FCG) to conduct a survey. CFI Group surveyed those organizations that would be directly affected by this proposed requirement, depository institutions and money transmitters. In the survey, respondents were presented with the specifications of the proposed requirement and then asked a series of questions about the impact the requirement would have on their operations, costs, and potential benefits. The findings are provided in this report. The questionnaire that was used for the study can be found in Appendix A. The following passage from the introduction of the survey explains in detail the background that necessitated the study and the following report.

*Section 6302 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Act) requires, among other things, that the Secretary of the Treasury study the feasibility of "requiring such financial institutions as the Secretary determines to be appropriate to report to the Financial Crimes Enforcement Network (FinCEN) certain cross-border electronic transmittals of funds, if the Secretary determines that reporting of such transmittals is reasonably necessary to conduct the efforts of the Secretary against money laundering and terrorist financing." Prior to prescribing any such regulations, however, the Secretary must report to Congress regarding what cross-border information would be reasonably necessary to combat money laundering and terrorist financing; outline the criteria to be used in determining what situations require reporting; outline the form, manner, and frequency of reporting; and identify the technology necessary for FinCEN to keep, analyze, protect, and disseminate the data collected.*

*To meet these requirements, FinCEN completed a study that assessed the overall feasibility of establishing a limited cross-border funds transmittal reporting requirement for certain financial institutions. FinCEN reported the results of that study to Congress in October 2006. The report concluded that while it may be feasible to establish a limited cross-border funds transmittal reporting requirement on certain financial institutions, it would require additional time and resources to identify and would require a cost-benefit analysis to determine if it would be appropriate to implement a reporting regime. The report also provided general responses regarding FinCEN's administrative approach and needed data security measures to support any data reporting. The report also concluded that the basic information already obtained and maintained by U.S. financial institutions (banks and non-bank financial institutions) pursuant to the Funds Transfer Rule, including the \$3,000 recordkeeping threshold, provides sufficient basis for meaningful data analysis. In addition, any reporting requirement should apply only to those U.S. institutions that exchange payment instructions directly with foreign institutions. Finally, the \$3,000 recordkeeping threshold should apply only to discrete transactions and not to the aggregated total value of multiple transactions conducted very closely to one another in time.*

*To better understand the implications for the U.S. financial services industry and the government the report recommended proceeding further on an incremental basis to validate the continued appropriateness of any reporting requirement. To that end, FinCEN is identifying and quantifying the potential benefits and costs of any potential cross-border funds transmittal reporting requirement. To determine the benefit to U.S. anti-money laundering and counter-terrorist financing activities, FinCEN is engaging law enforcement, regulatory, and intelligence communities to identify and quantify the value of the potential data reporting. FinCEN is also evaluating its ability to manage, protect, and analyze any reported data and the associated costs and benefits. For the costs to the financial services industry, economy, and payments system, FinCEN is engaging with the industry and key regulatory and payment system participants, including via this survey.*

## Executive Summary

- Identification of which transfers and transmittals would be reportable under the new requirements is not an issue for depository institutions or money transmitters. Respondents almost uniformly said they would be able to identify transmittals that would need to be reported to FinCEN under the proposed requirement – 89% of depository institution respondents and all money transmitter respondents replied they would be able to identify payments that needed to be reported.
- Collectively, it is estimated from survey data that depository institutions (i.e. domestic and foreign SWIFT banks) accounted for approximately 1.1 billion to 1.6 billion transmittals in 2006 with U.S. SWIFT banks accounting for approximately one billion of those.
- On average the largest SWIFT banks (i.e. those with assets over \$1 billion) reported for the year 2006 having over 1.3 million transactions that would have been considered reportable. For smaller banks (i.e. those with assets of \$1 billion or less) the average number of transactions is a fraction of that (just over 6 thousand). It is estimated that in 2006 domestic SWIFT banks collectively had approximately 143 million transactions that could be considered reportable. For foreign SWIFT banks it is estimated between 81 million and 137 million of such transactions occurred in 2006.
  - Overall, respondents expect a 27% increase in the number of reportable transactions in 2010 compared to the number of 2006 transactions. Thus, for 2010 it is estimated that domestic SWIFT banks would conduct approximately 182 million transactions that would be reportable. For foreign SWIFT banks the estimate for 2010 ranges from 103 million to 147 million.
- With respect to transactions that are under \$3,000 but would otherwise have been reportable, it appears that foreign SWIFT banks would conduct more of these types of transactions than U.S. SWIFT banks. The estimate for U.S. SWIFT banks is approximately 90 million in total, but for all foreign SWIFT banks the total number of these types of transactions ranges from 120 to 170 million.
- Respondents expected an increase in cost associated with complying with the new reporting requirement compared to the cost of responding to subpoenas or other legal demands. The largest U.S. SWIFT banks expect an average cost of implementation on the order of one-quarter million dollars and an annual expense on average in excess of 80 thousand dollars. Foreign SWIFT banks on average, expect much lower costs for implementation – just over 50 thousand dollars and annual costs on the order of approximately 60 thousand dollars.
  - The total implementation costs for the proposed requirement to all domestic SWIFT banks ranges from approximately \$13 million to \$28 million. In addition to the implementation costs, there are annual costs associated with the reporting requirement. These total to a range of approximately \$5 to \$12 million dollars annually for domestic banks. The total implementation costs to all foreign SWIFT banks would range from approximately just under \$4 million to just over \$5 million. The total annual costs to all foreign SWIFT banks could be greater than implementation costs with a range of approximately \$2 million to \$6 million.
- For money transmitters, there are not enough data points to extrapolate to the entire population, however one of the responses collected was among the 6 largest money transmitters (those with over 100,000 branches). They estimated the implementation cost to be approximately \$250,000 and the annual costs to be just over \$50,000. *Assuming these costs are representative of the 6 money transmitters of this size, the total implementation costs would be approximate 1.5 million and the total annual costs to the (6) largest money transmitters would be approximately \$300 thousand.*
- With respect to annual costs, personnel and on-going management account for nearly two-thirds of estimated annual costs overall. For implementation costs, software development, systems upgrades and programming collectively account for nearly half of the costs.

- Respondents do not expect a decrease in the volume, value or quality of transmittals as a result of the new reporting requirement. Thus, it can be inferred the 27% increase in the number of transmittals from 2006 to 2010 reported by respondents is likely expected due to growth in business.

## Data Collection

### Sample

Data were collected via e-mail and fax from January 4, 2008 through February 15, 2008. FinCEN supplied CFI Group with a list of contacts to be surveyed. These included depository institutions, of which there were a total of 147 domestic banks and 100 foreign banks. In addition to depository institutions, 32 money transmitters were included in the sample. **Depository institutions are defined as all depository institution members of the Society for Worldwide Interbank Financial Telecommunications (SWIFT) user group located or doing business in the United States, including offices or agents of non-U.S. chartered depository institutions. Money transmitters are defined as all nonbank financial institutions that were registered with FinCEN as a "Money Transmitter" on November 10, 2007 and reported at least one branch location in the United States.**

The tables below provide a breakdown of the three main types of organizations that were included in the study: domestic banks, foreign banks and money transmitters. Organizations are stratified by assets or in the case of money transmitters by number of branches. For banking institutions the entire population of SWIFT banks was provided in the sample. For money transmitters, a small portion of the population was provided as a sample.

For U.S. banks, i.e. U.S. SWIFT banks with a U.S. location, over two-thirds (69%) of the banks in the sample have assets of over \$1 billion. These institutions are classified as stratum 1 banks. Another 18% of the U.S. banks were known to have assets between \$100 million and \$1 billion (classified as stratum 2) and 5% of the U.S. banks had assets under \$100 million (classified as stratum 3). There were a small number of U.S. banks (7%) where the assets were unknown or undefined. This group is represented as stratum 4.

**Figure 1: Population of Domestic Banks**

All U.S. SWIFT banks with a U.S. location by strata (assets)	Total Population	Percentage of total
Stratum 1 (Assets > \$1 billion)	102	69%
Stratum 2 (Assets \$100M to \$1B)	27	18%
Stratum 3 (Assets < \$100M)	7	5%
Stratum 4 (Assets undefined)	11	7%

Most foreign banks do not report data to the FDIC and no information about their total assets is available. This includes 80% of the foreign banks, i.e. foreign SWIFT banks with a U.S. location. For those few foreign banks where data on assets exist, 8% have assets over \$1 billion (stratum 1). Eleven percent have assets between \$100 million and \$1 billion (stratum 2) and one bank was known to have assets under \$100 million (stratum 3). For both foreign and domestic banks, the sample provided by FinCEN was the population. However, the data on assets for four-fifths of the foreign SWIFT banks are unknown. These organizations are classified as stratum 4.

**Figure 2: Population of Foreign Banks**

All Foreign SWIFT banks with a U.S. location by strata (assets)	Total Population	Percentage of total
Stratum 1 (Assets > \$1 billion)	8	8%
Stratum 2 (Assets \$100M to \$1B)	11	11%
Stratum 3 (Assets < \$100M)	1	1%
Stratum 4 (Assets undefined)	80	80%

Only a small sample of contact information for money transmitters was available for the survey. The total sample of money transmitters included 32 contacts. The breakdown by strata as defined by number of branches is given below. Given the small sample and small number of responses from money transmitters reporting for this group is somewhat limited.

**Figure 3: Sample and Population of Money Transmitters**

Registered money transmitters by strata (branches)	Total Population	Survey Sample Size
Stratum 1 (100,000+ branches)	6	2
Stratum 2 (100 to 100,000 branches)	67	13
Stratum 3 (1 to 99 branches)	8,054	17

**Responses**

Summing the sample of domestic SWIFT banks, foreign SWIFT banks and money transmitters yields a total of 279 potential respondents. Among these groups a total of 81 responses were collected for a 29% response rate. This is a relatively high response rate given the significant time commitment required for the survey (estimated at 2 hours). Of the 81 responses collected, 35 were collected from domestic SWIFT banks, 40 were collected from foreign SWIFT banks and 6 were collected from money transmitters. Foreign SWIFT banks had the highest rate of response (40%), followed by domestic SWIFT banks (29%) and money transmitters (19%).

The responses received from domestic SWIFT banks were representative of the population with respect to their assets. In both the overall sample and among those who had responded, 69% had assets of over \$1 billion. Thus responses from the largest institutions were proportionate to both their population in the sample and to the universe of domestic SWIFT banks.

**Figure 4: Domestic Banks Responses**

Domestic Bank Responses	Number of responses	Percentage of domestic responses
Stratum 1 (Assets > \$1 billion)	24	69%
Stratum 2 (Assets \$100M to \$1B)	5	14%
Stratum 3 (Assets < \$100M)	1	3%
Stratum 4 (Assets undefined)	5	14%

Given that a majority of foreign SWIFT banks report no figures for assets to the FDIC, very few of the responses from foreign SWIFT banks have asset data associated with them. Only 7 of the 40 foreign SWIFT bank respondents do have asset data associated with them. For purposes of analysis in this report, where appropriate, banks will be grouped by strata regardless of domestic or foreign status.

**Figure 5: Foreign Banks Responses**

Foreign Bank Responses	Number of responses	Percentage of foreign bank responses
Stratum 1 (Assets > \$1 billion)	3	7.5%
Stratum 2 (Assets \$100M to \$1B)	4	10%
Stratum 3 (Assets < \$100M)	0	0%
Stratum 4 (Assets undefined)	33	82.5%

Only 6 money transmitters responded to the survey. Of these, 4 had fewer than 100 branches, one had more than 1,000 but fewer than 100,000 branches and one had more than 100,000 branches.

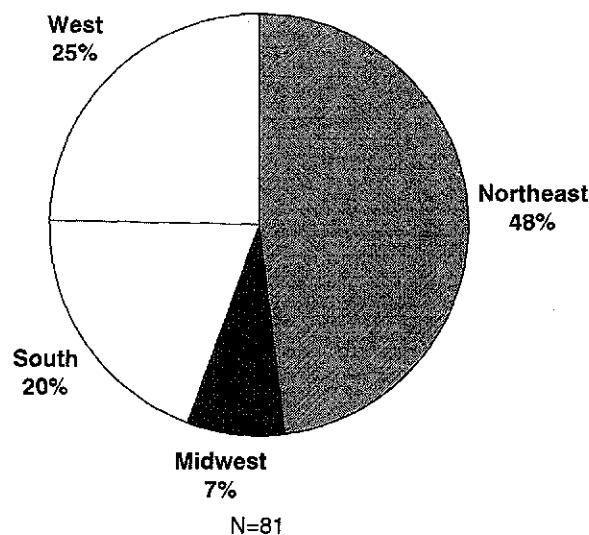
**Figure 6: Money Transmitters Responses**

Registered money transmitters by strata (branches)	Number of responses
Stratum 1 (100,000+ branches)	1
Stratum 2 (100 to 100,000 branches)	1
Stratum 3 (1 to 99 branches)	4

**Respondent Location**

The figure below provides the geographic region of the U.S. branch from where the respondent was located. Nearly half of the respondents were located in the Northeast and one-quarter of the respondents were from the West. A total of 16 states were represented by the location of institutions' headquarters. However, the states of New York and California accounted for 69% of respondents.

**Figure 7: Location of respondent**



**The Northeast region includes:** Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Pennsylvania and Vermont. **The Midwest region includes:** Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin. **The South region includes:** Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia and West Virginia. **The West region includes:** Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming.

## Key Findings

### Identifying payments or transmittals that would need to be reported

Respondents were asked based on the description of potentially reportable cross-border electronic funds transfer/transmittals would their institutions be able to identify the payment or transmittal orders that would need to be reported to FinCEN. This did not seem to be an issue for a majority of respondents.

All of the money transmitters surveyed (sample of 6) and 89% of depository institutions that responded claimed they would be able to identify the payments that would need to be reported to FinCEN. Among depository institutions there was a small, but not a significant difference between foreign SWIFT banks (92.5%) and domestic SWIFT banks (86%) being able to identify the payments or transmittal orders that would need to be reported to FinCEN.

### Number of electronic funds transmittals processed in 2006 and estimates for 2010

Respondents were asked about (1) the total number of electronic funds processed in 2006 that would have been considered reportable, (2) the number of transmittals processed in 2006 that were under \$3,000 that would have otherwise met the requirements and been considered reportable and (3) the estimated number of transactions in 2010 that could be considered reportable. The following section reports on all three items and compares responses from questions (1) and (3) to illustrate the change in the number of reportable transactions from 2006 to the expected number in 2010.

*Note: The tables below group banks by strata regardless of domestic or foreign status.*

Among Stratum 1 banks, (which also includes responses from foreign banks known to have assets over \$1 billion), the mean number of transactions conducted in 2006 that would have been considered reportable was 1.365 million. There was a great range among respondents, even within each stratum group, as to the number of transactions. This range is also reflected by the difference between average and median numbers shown in the table below. However, smaller banks on average had very few reportable transactions.

**Figure 8: Average and median number of transactions processed in 2006 that would have been considered reportable**

	Banks Stratum 1 (Assets over \$1B)	Banks Strata 2 and 3 (Assets \$1B and under)	Banks Stratum 4 (Assets unknown)	Money Transmitters
Average number of transactions	1,365,940	6,171	257,866	65,357
Median number of transactions	41,188	83	1,408	3,772
N	26	10	37	6

**Figure 9: Reportable Transactions for Bank Stratum 1 (Assets over \$1 Billion)**

Total number of transactions processed that could be considered reportable	Number of institutions in category for 2006	Number of institutions in category for 2010 estimate
1,000,000 or more	5	7
100,000 to 999,999	5	3
50,000 to 99,999	3	2
1,000 to 49,999	6	4
1 to 999	4	4
0	3	3

The table shows the breakdown of institutions by number of transactions. Five banks had over 1 million transactions in 2006 that could be considered reportable and there were five banks between 100,000 and



999,999. Nine banks had between 1,000 and 99,999 and seven banks reported less than 1,000 transactions that would be in this category.

Regardless of the number of transactions an institution claimed were reportable in 2006, most estimated that the number of reportable transaction would go up significantly from 2006 to 2010 with the mean score for number of reportable transactions for 2010 at 2 million.

There were only 10 banks that had known assets under \$1 billion. Overall, this group reported much lower numbers of transactions that the stratum 1 banks reported. On average 6,852 transactions would have been reportable in 2006 among this group. For 2010, that number is estimated to increase to 9,282.

**Figure 10: Reportable Transactions for Bank Strata 2 and 3 (Assets \$1 Billion and under)**

Total number of transactions processed that could be considered reportable	Number of institutions in category for 2006	Number of institutions in category for 2010 estimate
50,000 to 99,999	0	1
1,000 to 49,999	4	3
1 to 999	4	4
0	2	2

Most of the foreign banks and a few of the domestic banks fall into the category of unknown assets. Of these, the average number of reportable transactions in 2006 was just over one-quarter million (257,866).

Only one of the stratum 4 banks had over 1,000,000 reportable transactions in 2006 and only six had at least 100,000, while 17 had fewer than 1,000 reportable transactions. As was found with the other groups, the number of reportable transactions is expected to increase in 2010. Of those with at least 1,000 reportable transactions in 2006, on average a 20% increase in the number of reportable transactions was expected for 2010.

**Figure 11: Reportable Transactions for Bank Stratum 4 (Assets unknown)**

Total number of transactions processed that could be considered reportable	Number of institutions in category for 2006	Number of institutions in category for 2010 estimate
1,000,000 or more	1	1
100,000 to 999,999	5	4
50,000 to 99,999	2	3
1,000 to 49,999	12	14
1 to 999	11	12
0	6	3

A total of six money transmitters responded to the survey. On average, they had 65,357 reportable transactions in 2006. Only three money transmitters that responded expected reportable transactions in both 2006 and 2010 on average a 22% increase in the number of transactions was expected.

**Figure 12: Reportable Transactions for Money Transmitters**

Total number of transactions processed that could be considered reportable	Number of institutions in category for 2006	Number of institutions in category for 2010 estimate
100,000 to 999,999	1	1
50,000 to 99,999	0	0
1,000 to 49,999	2	2
1 to 999	1	0
0	2	3

In sum, while there is great variance in the number of transmittals across all groups, most expect an increase in reportable transmittals. Across all respondents the average expected increase for 2010 is approximately 27% higher than the 2006 figure\*.

\*This figure (27%) was derived from regression analysis of responses to Q1i (independent variable) and Q1iii (dependent variable). The coefficient of the equation was 1.273 indicating an expected increase of 27.3%. The model equation has an adjusted R-squared of .985.

**Figure 13: Average and median number of transactions processed in 2006 that would have been considered reportable compared to 2010 estimates**

	Banks Stratum 1 (Assets over \$1B)	Banks Strata 2 and 3 (Assets \$1B and under)	Banks Stratum 4 (Assets unknown)	Money Transmitters
Average number of transactions - 2006	1,365,940	6,171	257,866	65,357
Average number of transactions - 2010	2,024,451	8,360	303,165	90,151
Percent increase	48%	35%	18%	38%
Median number of transactions - 2006	41,188	83	1,408	3,772
Median number of transactions - 2010	45,252	90	2,063	4,000
Percent increase	10%	9%	47%	6%
N	24	10	37	6

**Transmittals processed in 2006 that were under \$3,000 that would have otherwise met the requirements and been considered reportable**

Respondents were asked about the transmittals that were processed in 2006 that were under \$3,000 and would have otherwise met the requirements to be considered reportable. For the largest banks (i.e. assets over \$1 Billion), the average number is just over 700 thousand transmittals. For smaller banks (i.e. assets \$1 Billion and under) the average is just over two thousand. Although the sample of money transmitters is quite small, those in this group who were surveyed had a considerable number of transmittals under \$3,000 that would otherwise met requirements. The average for this group was over 900 thousand transmittals.

**Figure 14: Average and median number of transmittals processed in 2006 that were under \$3,000 that would have otherwise met the requirements and been considered reportable**

	Banks Stratum 1 (Assets over \$1B)	Banks Strata 2 and 3 (Assets \$1B and under)	Banks Stratum 4 (Assets unknown)	Money Transmitters
Average number of transactions	704,133	2,290	1,717,588	8,462,901
Median number of transactions	10,550	144	2,639	915,245
N	24	10	35	6

The following tables provide a further breakdown of the number of transmittals by strata and organization type for transactions under \$3,000.

**Figure 15: Transactions under \$3,000 otherwise reportable for Bank Stratum 1 (Assets over \$1 Billion)**

Total number of transmittals processed that were under \$3,000 that would have otherwise met the requirements and been considered reportable	Number of institutions in category for 2006
1,000,000 or more	5
100,000 to 999,999	2
50,000 to 99,999	2
1,000 to 49,999	7
1 to 999	5
0	3

**Figure 16: Transactions under \$3,000 otherwise reportable for Bank Strata 2 and 3 (Assets \$1 Billion and under)**

Total number of transmittals processed that were under \$3,000 that would have otherwise met the requirements and been considered reportable	Number of institutions in category for 2006
1,000 to 49,999	2
1 to 999	5
0	3

**Figure 17: Transactions under \$3,000 otherwise reportable for Bank Stratum 4 (Assets unknown)**

Total number of transmittals processed that were under \$3,000 that would have otherwise met the requirements and been considered reportable	Number of institutions in category for 2006
1,000,000 or more	1
100,000 to 999,999	1
50,000 to 99,999	1
1,000 to 49,999	14
1 to 999	13
0	5

**Figure 18: Transactions under \$3,000 otherwise reportable for Money Transmitters**

Total number of transmittals processed that were under \$3,000 that would have otherwise met the requirements and been considered reportable	Number of institutions in category for 2006
1,000,000 or more	3
100,000 to 999,999	1
50,000 to 99,999	0
1,000 to 49,999	0
1 to 999	0
0	2

**Computing total number of transactions**

Respondents provided the total number of transactions processed in 2006 that could be considered reportable and also gave this figure as a percentage of all electronic funds transmittals processed. Thus, the total number of transmittals can also be derived. The average number of total transmittals for the largest banks is over 10 million. That number drops considerably for smaller banks with strata 2 and 3 banks only averaging slightly over 27 thousand transmittals. The institutions with unknown assets, largely foreign banks, average just over 1.4 million total transmittals.

**Figure 19: Average and median number of funds transmittals processed in 2006**

	Banks Stratum 1 (Assets over \$1B)	Banks Strata 2 and 3 (Assets \$1B and under)	Banks Strata 4 (Assets unknown)	Money Transmitters
Average number of transactions	10,065,825	27,286	1,421,185	23,218,230
Median number of transactions	612,500	1,618	22,000	1,339,467
N	23	8	32	4

Extrapolating from the survey responses to the entire sample for depository institutions provides the following estimates: (1) total number of transmittals from all banks in 2006, (2) total number of transmittals from all banks that were considered reportable in 2006, (3) total number of transmittals under \$3,000 that would have otherwise been considered reportable, and (4) total expected number of transmittals in 2010.

Using the average number of total funds transmittals processed in 2006, the total number of transmittals by domestic banks should be on the order of 1 billion\*. Calculating this figure for foreign banks is slightly more problematic since there are not much data on how banks are distributed among strata with respect to assets. Using the Stratum 4 average of 1.4 million transactions for all foreign banks yields a figure of 140 million total transactions. However, should Stratum 1 averages be more appropriate (10 million transactions) even for half of the foreign bank population, then the number of transmittals would be significantly higher – closer to 570 million total transactions. Thus, the total number of foreign transmittals processed in 2006 is estimated to range from between 140 and 570 million\*\*. **Collectively it is estimated from the data supplied by the banks that domestic and foreign banks conducted approximately 1.1 billion to 1.6 billion transmittals in 2006.**

*\*For domestic transmittals multiplying the average number by strata times the number of institutions in each stratum yields the following: (Stratum 1) 10MM x 102 = 1.02 Billion; (Stratum 2 and 3) 27K x 34 = .9M; (Stratum 4) 1.4 MM x 11 = 15.4 MM.*

*\*\* For foreign transmittals the upper range is derived by the following: (50% of foreign banks Stratum 1) 10MM x 50 = 500MM; (50% of foreign banks Stratum 4) 1.4MM x 50 = 70MM. The lower range uses 1.4MM x 100.*

With respect to the total number of transactions that are under \$3,000 but otherwise reportable, banks in stratum 4 and stratum 1, and money transmitters have the highest average number of these types of transactions. Extrapolating the averages to the overall population yields approximately 90 million transactions domestically that are under \$3,000 but otherwise reportable\*. For the foreign SWIFT bank population the estimated totals are higher with a range of 120 million to 170 million\*\*. **Collectively, it is estimated that foreign and domestic SWIFT banks conducted between 210 million and 260 million of these types of transactions in 2006.**

*\*For domestic transmittals multiplying the average number by strata times the number of institutions in each stratum yields the following: (Stratum 1) 700K x 102 = 71 MM; (Stratum 2 and 3) 2.3K x 34 = 78K; (Stratum 4) 1.7 MM x 11 = 18.7 MM.*

*\*\* For foreign transmittals the lower range is derived by the following: (50% of foreign banks Stratum 1) 700K x 50 = 35MM; (50% of foreign banks Stratum 4) 1.7MM x 50 = 85MM. The upper range uses the Stratum 4 (1.7MM) x 100. **The total number of domestic SWIFT banks transactions in 2006 that could be considered reportable based on averages is approximately 143 million\*. For foreign SWIFT banks this estimate is between 81 million and 137 million\*\*.***

*\*For domestic transmittals multiplying the average number by strata times the number of institutions in each stratum yields the following: (Stratum 1) 1.37 MM x 102 = 140 MM; (Stratum 2 and 3) 6.2 K x 34 = .2 MM; (Stratum 4) 258K x 11 = 2.8 MM.*

*\*\* For foreign transmittals the lower range is derived by the following: (50% of foreign banks Stratum 1) 1.37 MM x 50 = 68.5MM; (50% of foreign banks Stratum 4) 258K x 50 = 12.9 MM. The upper range uses the Stratum 4 (1.37MM) x 100 = 137MM.*

Given the strong relationship between the estimates provided for the number of reportable transactions for 2010 and the number of reportable transactions in 2006, **it is estimated that the total number of reportable transactions for domestic SWIFT banks expected in 2010 is approximately 182 million. For foreign SWIFT banks the expected number of reportable transactions in 2010 is estimated to be between 103 million and 174 million\*\*\*.**

*\*\*\* Figures for 2010 are derived from 2006 reported figures times the coefficient from the regression between these two variables 1.273.*

**Expected cost to implement reporting requirements**

The largest domestic SWIFT banks (e.g. with over \$1 billion in assets) estimated an average cost of just under 250 thousand dollars for the implementation of systems for the new requirements and an annual recurring cost of just over 82 thousand dollars. There are also a large proportion of respondents that believe the costs will be quite a bit less, as the median costs for stratum 1 banks are just over 100 thousand for implementation and approximately 35 thousand for annual costs.

The average costs are considerably lower for foreign SWIFT banks. The average implementation costs were estimated to be just over 52 thousand and annual costs estimated at approximately 64 thousand dollars. Average and median costs for those with unknown assets and assets of \$1 billion or less represent a small sample, but are provided below. Again, median costs are considerably lower among foreign banks with implementation estimated at about 40 thousand and annual costs just over 20 thousand.

**Figure 20: Average and median expected costs for implementation of new requirement (one-time costs)**

	Domestic Banks Stratum 1 (Assets over \$1B)	Domestic Banks Strata 2 and 3 (Assets \$1B and under)	Domestic Banks Stratum 4 (Assets unknown)	All Foreign Banks
Average one-time implementation cost estimate	249,787	32,167	153,827	52,466
Median one-time implementation cost estimate	101,380	40,000	123,328	39,840
N	17	3	4	31

**Figure 21: Average and median expected annual costs of new requirement (recurring annual costs)**

	Domestic Banks Stratum 1 (Assets over \$1B)	Domestic Banks Strata 2 and 3 (Assets \$1B and under)	Domestic Banks Stratum 4 (Assets unknown)	All Foreign Banks
Average annual cost	82,409	37,833	76,853	63,851
Median annual cost	34,625	50,000	36,914	20,496
N	16	3	5	32

Extrapolating the mean (i.e. average) and median cost estimates for one-time implementation and annual costs over the entire population yields the following figures for total costs to domestic and foreign SWIFT banks to execute the new requirement.

**Figure 22: Estimated implementation and annual costs to all U.S. and foreign SWIFT banks**

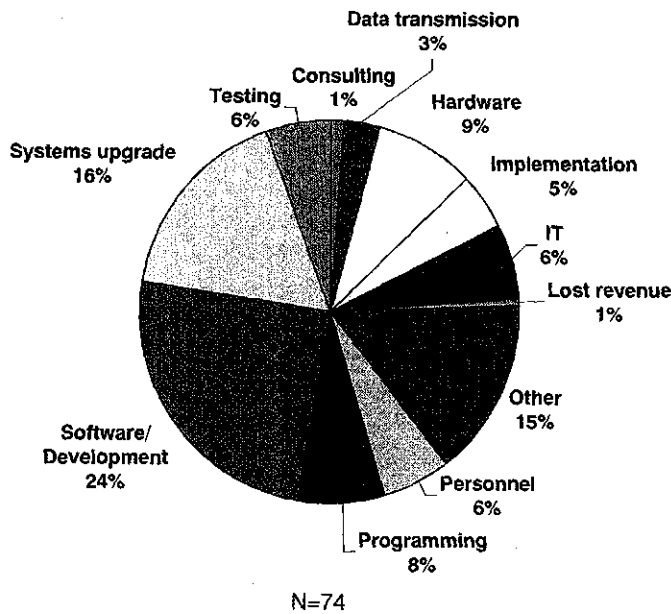
Depository Institution Type	Total Population	Total Implementation Cost (Based on Median)	Total Implementation Cost (Based on Mean)	Total Annual Cost (Based on Median)	Total Annual Cost (Based on Mean)
Domestic Banks (Assets over \$1 Billion)	102	10,340,760	25,478,274	3,531,750	8,405,718
Domestic Banks (Assets \$1 Billion and under)	34	1,360,000	1,093,678	1,255,076	2,613,002
Domestic Banks (Assets unknown)	11	1,356,608	1,692,097	406,054	845,383
<b>Total Domestic SWIFT Banks</b>	<b>147</b>	<b>13,057,368</b>	<b>28,264,049</b>	<b>5,192,880</b>	<b>11,864,103</b>
<b>Total Foreign SWIFT Banks</b>	<b>100</b>	<b>3,984,000</b>	<b>5,246,600</b>	<b>2,049,600</b>	<b>6,385,100</b>

The table on the previous page derives total costs from multiplying the total population for each organization type or strata by the median and mean costs provided by each group. **The total one-time costs to all domestic SWIFT banks for implementing changes for the proposed requirement ranges from \$13 million to just over \$28 million.** With the median-derived costs being the lower end of the range and the mean-derived cost being the upper range. As would be expected, domestic SWIFT banks with assets over \$1 billion would account for a majority of this cost as they comprise 69% of the population in numbers and estimate a significantly higher cost than other domestic groups. Estimates show that the domestic banks with assets over \$1 billion would account for between 79% and 90% of the total one-time implementation costs to all domestic SWIFT banks. **The estimated annual, or recurring costs would be between just over \$5 million to just under \$12 million based on extrapolating the median and mean annual costs from the data.**

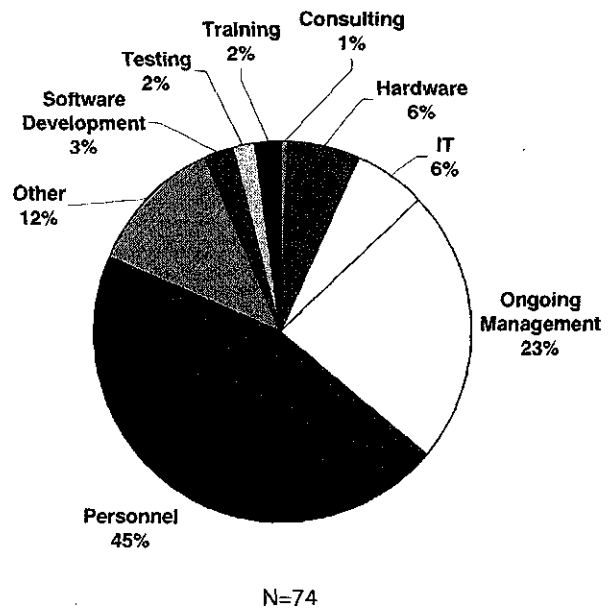
Foreign SWIFT banks are estimated to have significantly lower total costs. Based on estimated costs provided by respondents, **the total one-time costs to all foreign SWIFT banks for implementation would be between just under \$4 million to just over \$5 million. Annual costs would range from \$2 million to approximately \$6.4 million.**

The charts below show a breakdown of one-time implementation and annual costs for all depository institutions (i.e. domestic and foreign SWIFT banks). These figures are from open-end responses to expected expenses that were coded (codes shown in Appendix B) for all respondents. Software/development, systems upgrades and programming are estimated to account for nearly half of the implementation costs. Personnel and on-going management are estimated to account for two-thirds of the annual costs.

**Figure 23: One-time implementation costs by source**



**Figure 24: Annual costs by source**



**Money Transmitter Costs**

Given the small number of money transmitters that responded to the survey, there are very few data points to work with for estimates.

One response was collected from the stratum 1 group (100,000 plus branches). They estimated the implementation cost to be approximately \$250,000 and the annual costs to be just over \$50,000. **Assuming these costs are representative of the 6 money transmitters of this size, the total implementation costs to this group would be approximate \$1.5 million and the total annual costs to the (6) largest money transmitters would be approximately \$300 thousand.**

**Figure 25: Costs to Stratum 1 – 100,000+ branches**

Type of Cost	Pct. of total cost	Total one-time cost
Software/Development	82.8%	250,006
Type of Cost	Pct. of total cost	Total annual cost
Ongoing Management/Transmission	17.2%	51,934

Only one respondent from stratum 2 (1,000 to 100,000 branches) replied and none from stratum 3 replied. The only cost data provided was for implementation, which was \$25,000 for personnel. No estimates were given for annual costs. Thus, no data to extrapolate costs to these strata are available from the survey.

**Figure 26: Costs to Stratum 2 – 1,000 – 100,000 branches**

Type of Cost	Pct. of total cost	Total one-time cost
Personnel/Other	100%	25,000

Very large variations were provided in the three estimates from stratum 4 money transmitters. One respondent gave an estimated annual expense cost of over \$1 million, while the two other gave more modest costs of \$60,000 and \$4,000. Only one of these respondents provided any type of implementation cost (\$1,000). Given the large population of this group (8,000+), it would not be possible to extrapolate any reliable total cost to the group from the survey data.

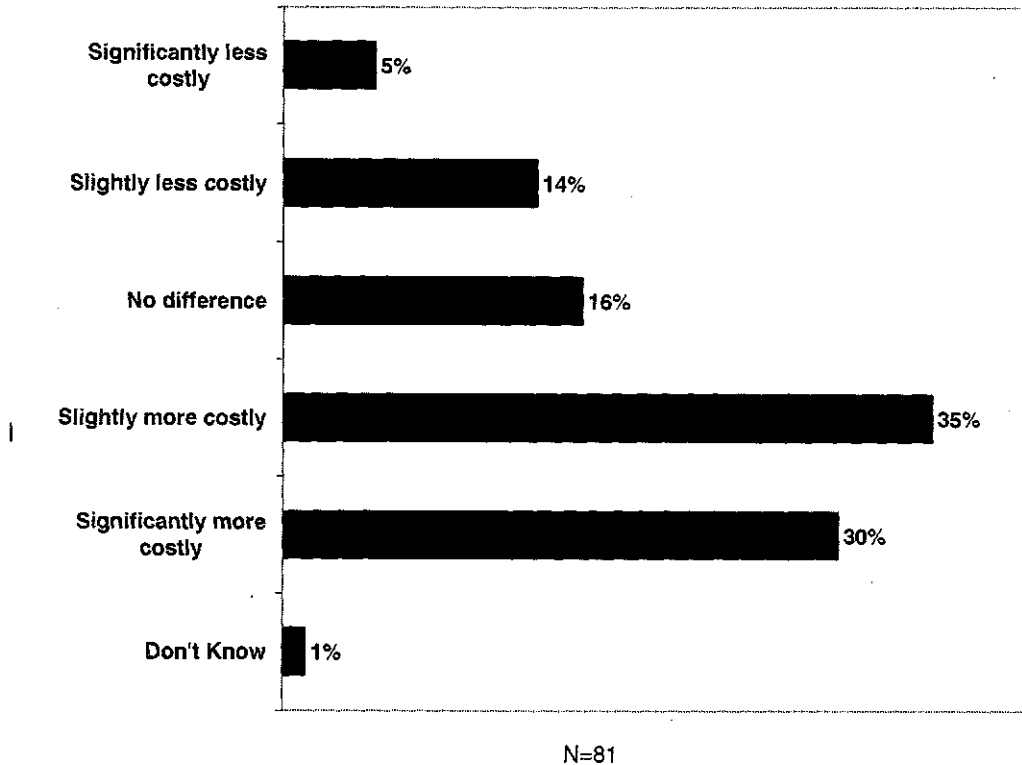
**Figure 27: Costs to Stratum 4 – Under 100 branches**

Type of Cost	Pct. of total cost	Total one-time cost
Other	20%	1,000
Type of Cost	Pct. of total cost	Total annual cost
IT/Personnel/Other	100%	1,133,548
Personnel	100%	60,000
Personnel	80%	4,000

**How the cost of complying with the reporting rule compares to responding to subpoenas**

Overall, respondents thought that complying with the potential reporting rule would be more costly than responding to subpoenas. The mean score on a 5-point scale was 3.7 (where 1 means "significantly less costly" and 5 means "significantly more costly.") Across all respondents, 65% thought complying would be slightly or significantly more costly than responding to government subpoenas.

**Figure 28: Q3. How the costs of complying with the potential reporting rule would differ from the costs of responding to government subpoenas or other legal demands for the exact same information.**





**How the reporting requirement would affect volume, value and quality of transmittals**

While they do believe the reporting requirement will affect costs to some degree, for the most part respondents do not believe that the reporting requirements will affect the volume, value or quality of transmittals.

**Volume**

With respect to volume of transmittals, a majority (59%) thought there would be no change as a result of the requirement. However, 23% thought they would experience a slight or significant decrease and 16% thought there would be a slight or significant increase. The mean score for expected change in volume on a 5-point scale was 2.95 (where 1 means "significant decrease" and 5 means "significant increase.")  
*Thus, it can be inferred that the expected 27% increase in the number of transmittals from 2006 to 2010 reported by respondents is mostly expected due to an anticipated growth in business or similar factors and not directly from the proposed reporting requirement.*

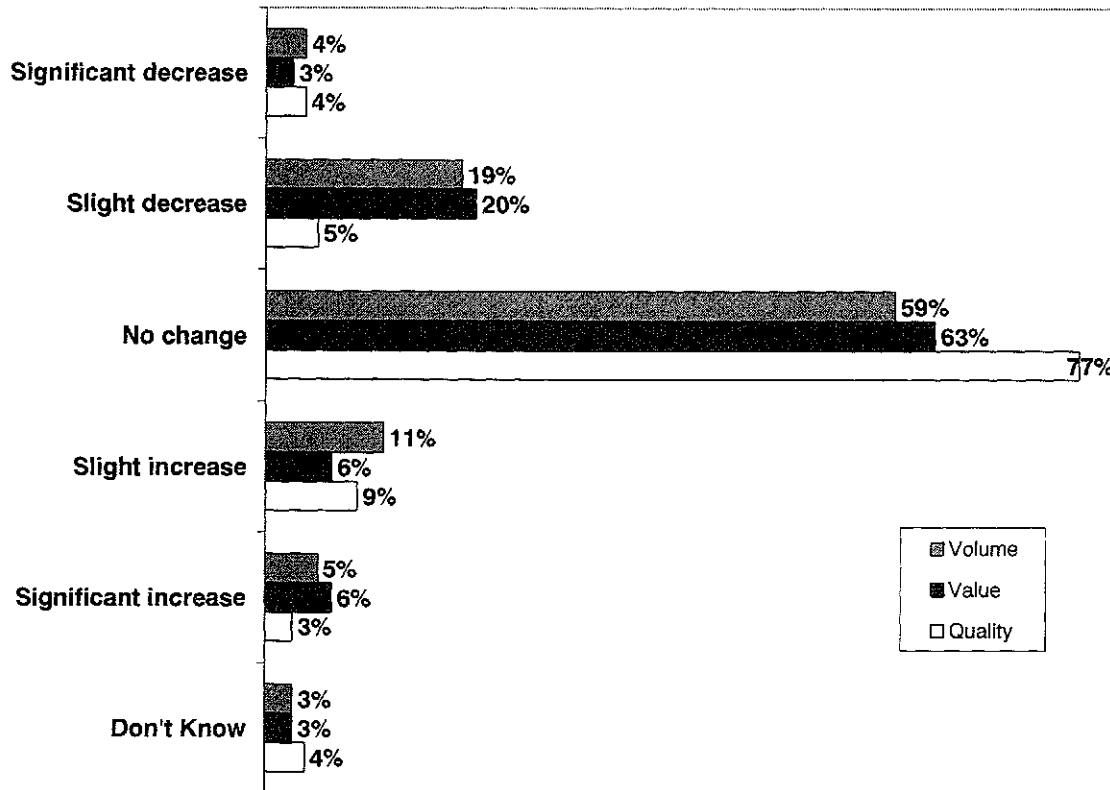
**Value**

In considering changes to the value of transmittals a majority (63%) thought there would be no change. As with volume, 23% thought they would experience a slight or significant decrease in value. However, only 12% thought there would be a slight or significant increase. The mean score for expected change in value on a 5-point scale was 2.94 (where 1 means "significant decrease" and 5 means "significant increase.")

**Quality**

While respondents mostly expected no changes in volume or value of transmittals, the new requirements were expected to have even less of an effect on the quality of transmittals. Over three-quarters of respondents (77%) thought there would be no change in the quality of transmittals. Only 9% thought they would experience a slight or significant decrease and 12% thought there would be a slight or significant increase. The mean score for expected change in value on a 5-point scale was 3.01 (where 1 means "significant decrease" and 5 means "significant increase.")

**Figure 29: Q5. Requirements expected effect on volume, value and quality of transmittals**



**Verbatim responses**

The following section includes the frequency of coded verbatim comments to all open-ended questions shown by institution type and/or size. Please note, that in those instances where a respondent gave multiple open-ended responses to a question, only the primary or first point was categorized.

**Q4. What alternative reporting methods or implementation approaches would reduce the cost to your institution of complying with a potential reporting requirement? How?**

The most commonly suggested methods for reducing costs to their institution included obtaining information from SWIFT from existing sources, which was mentioned by 19 respondents; less frequent reporting (12 respondents) and an automated system or reporting (9 mentions). Other suggestions with the number of mentions are listed in the table below.

**Figure 30: Verbatim comments to: What alternative reporting methods or implementation approaches would reduce the cost to your institution of complying with a potential reporting requirement? How?**

Comment	Domestic SWIFT Banks (Assets over \$1 Billion)	Domestic SWIFT Banks (Assets \$1 Billion and under)	Domestic SWIFT Banks (Assets unknown)	Foreign SWIFT Banks	Money Transmitters	Total Comments
<i>Obtain information from SWIFT/Existing sources</i>	9	1		8	1	19
<i>Less frequent reporting</i>	2	1	1	8		12
<i>Automated system/Software</i>	4	1	1	2	1	9
<i>Risk-based approach/Higher dollar threshold</i>	1			3		4
<i>Less selective criteria</i>			1			1
<i>Format</i>		1	1			2
<i>Uniform reporting standards</i>					1	1
<i>Use of 314a information gathering mechanism</i>	1					1
<i>Other comments</i>	5		1	1		7
<i>No suggestions</i>	2	1		11		14

In those instances where a respondent gave multiple open-ended responses to a question, only the primary or first point was categorized.

**Q5b. Please indicate any other area within your institution that you think maybe effected by the new reporting requirement.**

Respondents did not have many comments about the effect that the requirements might have on their institution. Among those effects that were mentioned most were compliance, wire transfers and operations or workload. All comments with number of mentions are listed in the table below.

**Figure 31: Verbatim comments to: Please indicate any other area within your institution that you think maybe effected by the new reporting requirement.**

Comment	Domestic SWIFT Banks (Assets over \$1 Billion)	Domestic SWIFT Banks (Assets \$1 Billion and under)	Domestic SWIFT Banks (Assets unknown)	Foreign SWIFT Banks	Money Transmitters	Total Comments
<i>Compliance</i>	3			5		8
<i>Wire transfers</i>	4	1	1			6
<i>Operations/Workload</i>	4	1				5
<i>International/Trade</i>				3		3
<i>Customer Service</i>	1			1		2
<i>Fees</i>		1				1
<i>Other</i>	3		1	1	2	7
<i>Not sure/None</i>	3			2		5

In those instances where a respondent gave multiple open-ended responses to a question, only the primary or first point was categorized.

**Q6. Would there be any potential unintended consequences that would adversely affect your institution (e.g., such as an anticipated shift to a competitor or to an informal funds transmittal system or an effect on your institution's business model) associated with such a potential reporting requirement being imposed on all U.S. financial institutions to which the recordkeeping rule applies? Please explain.**

For the most part respondents did not think that there would be unintended adverse consequences from the reporting requirement (34 mentions). There was some concern about banks moving wire transfer processing abroad and customers using informal or other funds transmittal systems. Both had 8 mentions. Additional expenses and passthrough to customers was mentioned (5 mentions). Other comments are listed with number of mentions in the table below.

**Figure 32: Verbatim comments to: Would there be any potential unintended consequences that would adversely affect your institution (e.g., such as an anticipated shift to a competitor or to an informal funds transmittal system or an effect on your institution's business model) associated with such a potential reporting requirement being imposed on all U.S. financial institutions to which the recordkeeping rule applies? Please explain.**

Comment	Domestic SWIFT Banks (Assets over \$1 Billion)	Domestic SWIFT Banks (Assets \$1 Billion and under)	Domestic SWIFT Banks (Assets unknown)	Foreign SWIFT Banks	Money Transmitters	Total Comments
<i>No effect/No long-term effect</i>	7	2	2	20	3	34
<i>Banks move wire transfer processing abroad</i>	4		1	3		8
<i>Customers using informal/Other funds transmittal systems</i>	1	1		4	2	8
<i>Additional expenses/Passthrough to customers</i>	4	1				5
<i>Operations/Workload</i>			2	2		4
<i>Privacy concerns</i>			2	2		4
<i>Loss of customers</i>	2					2
<i>Additional monitoring</i>	1					1
<i>Slower transmissions</i>	1					1
<i>Wire payment system</i>				1		1
<i>Other</i>				1		1

In those instances where a respondent gave multiple open-ended responses to a question, only the primary or first point was categorized.

**Q7. If a potential cross-border funds transmittal reporting requirement was implemented, what would be the value (if any) to your institution of receiving aggregated, industry-wide reports and analysis from FinCEN on cross-border funds transmittal trends, including reports similar to those currently provided for suspicious activity reports?**

While the most common response (36 mentions) was that there would be slight or no value from the reports and analysis from the requirement, identifying trends was mentioned as a benefit (19 mentions) as was identifying suspicious activity (7 mentions). Other comments are listed with number of mentions in the table below.

**Figure 33: Verbatim comments to: If a potential cross-border funds transmittal reporting requirement was implemented, what would be the value (if any) to your institution of receiving aggregated, industry-wide reports and analysis from FinCEN on cross-border funds transmittal trends, including reports similar to those currently provided for suspicious activity reports?**

<b>Comment</b>	<b>Domestic SWIFT Banks (Assets over \$1 Billion)</b>	<b>Domestic SWIFT Banks (Assets \$1 Billion and under)</b>	<b>Domestic SWIFT Banks (Assets unknown)</b>	<b>Foreign SWIFT Banks</b>	<b>Money Transmitters</b>	<b>Total Comments</b>
<i>Slight/No value</i>	10	1	2	21	2	36
<i>Identifying trends</i>	7	2	2	5	3	19
<i>Identifying suspicious activity</i>	2	2		3		7
<i>Risk assessment</i>	1			3		4
<i>Benchmarking</i>			1	3		4
<i>Significantly valuable</i>				2		2
<i>AML/BSA program</i>	2					2
<i>Monitoring</i>				1		1

In those instances where a respondent gave multiple open-ended responses to a question, only the primary or first point was categorized.

**Q8 i. If a potential cross-border funds transmittal reporting regulation was implemented, what types of outreach or guidance from FinCEN regarding its requirements would be most helpful to the financial services industry?**

Guidance and outreach most mentioned by respondents include webinars and sessions (12 mentions), technical requirement guidance or targeted guidance (10 mentions), clear instructions (9 mentions). Implementation advice, FAQs and a hotline were also mentioned. Other comments are listed with number of mentions in the table below.

**Figure 34: Verbatim comments to: If a potential cross-border funds transmittal reporting regulation was implemented, what types of outreach or guidance from FinCEN regarding its requirements would be most helpful to the financial services industry?**

<b>Comment</b>	<b>Domestic SWIFT Banks (Assets over \$1 Billion)</b>	<b>Domestic SWIFT Banks (Assets \$1 Billion and under)</b>	<b>Domestic SWIFT Banks (Assets unknown)</b>	<b>Foreign SWIFT Banks</b>	<b>Money Transmitters</b>	<b>Total Comments</b>
<b>Webinars/Sessions</b>	3			9		12
<b>Technical requirements guidance/Targeted guidance</b>	7			3		10
<b>Clear instructions</b>		1	1	7		9
<b>Implementation advice</b>	2	1		2		5
<b>FAQs</b>				4	1	5
<b>Hotline</b>		1	2		1	4
<b>Statistics/Standards</b>	2					2
<b>Sufficient time</b>				2		2
<b>Best practices</b>	1					1
<b>Simplify reporting format</b>					1	1
<b>Online database</b>					1	1
<b>Notifications</b>				1		1
<b>Other</b>	5	2	2	6	2	17

In those instances where a respondent gave multiple open-ended responses to a question, only the primary or first point was categorized.

**9. How satisfied is your institution with this survey and its ability to provide sufficient information for FinCEN to assess effectively the potential cost to the financial services industry of the potential reporting requirement?**

Responses were mostly positive regarding respondents' satisfaction with this survey and the information about the potential reporting requirement being sufficient. The most common comments expressed some degree of satisfaction with the survey process (i.e. satisfied, very/significantly satisfied and slightly satisfied). Others thought considering costs and getting input was a good idea. Very few mentioned that they were not satisfied or less than satisfied.

**Figure 35: Verbatim comments to: How satisfied is your institution with this survey and its ability to provide sufficient information for FinCEN to assess effectively the potential cost to the financial services industry of the potential reporting requirement?**

<b>Comment</b>	<b>Domestic SWIFT Banks (Assets over \$1 Billion)</b>	<b>Domestic SWIFT Banks (Assets \$1 Billion and under)</b>	<b>Domestic SWIFT Banks (Assets unknown)</b>	<b>Foreign SWIFT Banks</b>	<b>Money Transmitters</b>	<b>Total Comments</b>
<i>Satisfied</i>	6	2	3	8		19
<i>Very/Significantly satisfied</i>	4			5	2	11
<i>Slightly satisfied</i>	1			7	1	9
<i>Not overly/Not so satisfied</i>	3			2		5
<i>Somewhat/Slightly dissatisfied</i>	1	1		2		4
<i>Somewhat/Reasonably satisfied</i>				2		2
<i>Considering costs/Getting input/Good idea</i>				3		3
<i>Information requested not easily obtained/Difficult to estimate costs</i>	1			1		2
<i>Survey very helpful</i>	1					1
<i>Could be more comprehensive</i>		1				1
<i>Want more information about regulation</i>			1			1
<i>Survey is direct</i>				1		1
<i>Deadline too short/Takes too long</i>				1	1	2
<i>Other</i>	1			3		4
<i>No opinion/Cannot answer</i>	5	1	1	2	1	10

In those instances where a respondent gave multiple open-ended responses to a question, only the primary or first point was categorized.

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## **APPENDIX A : QUESTIONNAIRE**

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**FinCen Banking Act 2007**

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This report is authorized by law [12 U.S.C. §5015]. Your voluntary cooperation in submitting this report is needed to make the results comprehensive, accurate, and timely. FinCEN may not conduct or sponsor, and an organization is not required to respond to, a collection of information unless it displays a currently valid OMB control number. FinCEN regards the individual bank information provided by each respondent as confidential.

Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time to gather and maintain data in the required form, to review the instructions and to complete the information collection. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Barbra Bishop, Financial Crimes Enforcement Network, Vienna, VA (703) 905-5137 or Barbara.bishop@fincen.gov.

Please include the name and phone number of a person that we can contact should there be questions about your responses.

Thank you for your time and cooperation.

This survey is authorized by the U.S. Office of Management and Budget Control No. 1505- 0191.

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I. Institution Information

Type of Institution

{Choose one}

Bank

Non-bank financial institution (Money Transmitter)

Name

{Enter text answer}

Contact Name

{Enter text answer}

Phone Number

{Enter text answer}

Email

{Enter text answer}

## II. Potential Cross-border Electronic Funds Transmittal Reporting Requirements

### A. Background

Section 6302 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Act) requires, among other things, that the Secretary of the Treasury study the feasibility of "requiring such financial institutions as the Secretary determines to be appropriate to report to the Financial Crimes Enforcement Network (FinCEN) certain cross-border electronic transmittals of funds, if the Secretary determines that reporting of such transmittals is reasonably necessary to conduct the efforts of the Secretary against money laundering and terrorist financing." Prior to prescribing any such regulations, however, the Secretary must report to Congress regarding what cross-border information would be reasonably necessary to combat money laundering and terrorist financing; outline the criteria to be used in determining what situations require reporting; outline the form, manner, and frequency of reporting; and identify the technology necessary for FinCEN to keep, analyze, protect, and disseminate the data collected.

To meet these requirements, FinCEN completed a study that assessed the overall feasibility of establishing a limited cross-border funds transmittal reporting requirement for certain financial institutions. FinCEN reported the results of that study to Congress in October 2006. The report concluded that while it may be feasible to establish a limited cross-border funds transmittal reporting requirement on certain financial institutions, it would require additional time and resources to identify and would require a cost-benefit analysis to determine if it would be appropriate to implement a reporting regime. The report also provided general responses regarding FinCEN's administrative approach and needed data security measures to support any data reporting. The report also concluded that the basic information already obtained and maintained by U.S. financial institutions (banks and non-bank financial institutions) pursuant to the Funds Transfer Rule, including the \$3,000 recordkeeping threshold, provides sufficient basis for meaningful data analysis. In addition, any reporting requirement should apply only to those U.S. institutions that exchange payment instructions directly with foreign institutions. Finally, the \$3,000 recordkeeping threshold should apply only to discrete transactions and not to the aggregated total value of multiple transactions conducted very closely to one another in time.

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### Potential Cross-border Electronic Funds Transmittal Reporting Requirements - cont.

To better understand the implications for the U.S. financial services industry and the government the report recommended proceeding further on an incremental basis to validate the continued appropriateness of any reporting requirement. To that end, FinCEN is identifying and quantifying the potential benefits and costs of any potential cross-border funds transmittal reporting requirement. To determine the benefit to U.S. anti-money laundering and counter-terrorist financing activities, FinCEN is engaging law enforcement, regulatory, and intelligence communities to identify and quantify the value of the potential data reporting. FinCEN is also evaluating its ability to manage, protect, and analyze any reported data and the associated costs and benefits. For the costs to the financial services industry, economy, and payments system, FinCEN is engaging with the industry and key regulatory and payment system participants, including via this survey.

**B. Potential description of reportable cross-border electronic funds transmittals**

For the purpose of responding to this survey, please consider the implications of the following potential regulatory requirement for U.S. financial institutions (banks and certain non-bank financial institutions as defined by 31 C.F.R. § 103.11(n)(1) and (3)) to report certain cross-border electronic transmittals of funds. See glossary of terms for any further necessary clarification of terms.

**Potential requirements for banks**

1) Report any Society for Worldwide Interbank Financial Telecommunications (SWIFT) MT103 message that meets the following requirements:

a. Reporting U.S. (domestic) bank (a bank that is physically located or doing business within the United States) either directly sends ("last out") the payment order to a foreign bank (a bank that is physically located or doing business outside the United States) or foreign non-bank financial institution (a money transmitter that is physically located or doing business outside the United States) or directly receives ("first in") the payment order from a foreign bank or foreign non-bank financial institution.

b. Record of the payment order already must be retained under the "Funds Transfer Recordkeeping" rule (31 C.F.R § 103.33(e)).

i. Only a single SWIFT MT103 message that meets the requirements of the recordkeeping rule's \$3,000 threshold would be reported. Multiple SWIFT MT103 messages involving the same customer that are conducted very closely to one another in time and in the aggregate are valued at \$3,000 or more would NOT be reported.

ii. Any transaction exempted from the recordkeeping rule in 31 C.F.R. § 103.33(e)(6) would NOT be reportable.

2) For each reportable message, only the following information (as set forth in the MT103 itself) must be reported:

- a. Name and address of the originator
- b. Amount of payment order
- c. Execution date of the payment order
- d. Name of the beneficiary's bank
- e. Name, address, account number, or other beneficiary identifier (if available)

3) The domestic (U.S.) bank will batch report this information once every business day to FinCEN using the BSA E-Filing system and using the SWIFT MT103 file format.

Potential requirements for nonbank financial institutions (money transmitters)

1) Report any transmittal order that meets the following requirements:

a. Reporting U.S. (domestic) nonbank financial institution (a money transmitter that is physically located or doing business within the United States) either directly sends ("last out") the transmittal order to a foreign bank or nonbank financial institution or directly receives ("first in") the transmittal order from a foreign bank or foreign nonbank financial institution.

b. Record of the transmittal order already must be retained under the "Funds Transfer Recordkeeping" rule (31 C.F.R. 103.33(f)).

i. Only a single transmittal order that meets the requirements of the recordkeeping rule's \$3,000 threshold would be reported. Multiple orders involving the same customer that are conducted very closely to one another in time and in the aggregate are valued at \$3,000 or more would NOT be reported.

ii. Any transaction exempted from the recordkeeping rule in 31 C.F.R. § 103.33(f)(6) would NOT be reportable.

2) For each reportable transmittal order, only the following information (as set forth in the transmittal order itself) must be reported:

a. Name and address of the transmitter

b. Amount of the transmittal order

c. Execution date of transmittal order

d. Name of the recipient's financial institution

e. Name, address, account number, or other recipient identifier (if available)

3) U.S. nonbank financial institutions will batch report this information once every business day to FinCEN using the BSA E-Filing system and a standardized message format established by FinCEN.

While going through the survey if you have questions about terminology, please refer back to the glossary of terms on the following 3 pages.

#### Glossary of Terms

The terms used in the survey generally are defined in 31 C.F.R. § 103.33 and 103.11. The following definitions are provided to assist your institution in better responding to the survey. For a more complete definition of any of the terms used in the survey, please refer to the regulation.

#### Bank

Each agent, agency, branch or office within the United States or any person doing business as a bank as defined by 31 C.F.R. § 103.11(c).

#### Beneficiary

The person to be paid by the beneficiary's bank.

#### Beneficiary's bank

The bank or foreign bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to a deposit account.

#### Business day

For purposes of this survey, the term "business day" refers to any day (including weekends or holidays) during which an institution is open for business.

#### Cross-border transmittal of funds or funds transmittal

A transmittal of funds directly exchanged between a domestic and foreign financial institution. For the purposes of this survey and any potential reporting requirement, only cross-border electronic transmittals of funds are considered.

#### Deposit account

Transaction accounts, savings accounts, and other time deposits as defined by 31 C.F.R. § 103.11(j).

#### Domestic

Located or doing business within the United States. See 31 C.F.R. § 103.11(k).

#### Financial institution (institution)

Each agent, agency, branch, or office within the United States of any person doing business, whether or not on a regular basis or as an organized business concern, as a bank (except bank credit card systems) or a money transmitter. See 31 C.F.R. § 103.11(n).

#### Foreign

Located or doing business outside of the United States or not domestic.

#### Foreign bank

A bank organized under foreign law, or an agency, branch, or office located outside the United States of a bank. The term does not include an agent, agency, branch or office within the United States of a bank organized under foreign law. See 31 C.F.R. § 103.11(o).

Glossary of Terms - Cont.

**Foreign financial institution (foreign institution)**

A financial institution organized under foreign law, or an agency, branch, or office located outside the United States. The term does not include an agent, agency, branch or office within the United States of a financial institution organized under foreign law.

**Funds transfer**

The series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. Funds transfers governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. 95-630, 92 Stat. 3728, 15 U.S.C. 1693, et seq.), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition. See 31 C.F.R. § 103.11(q). For the purposes of this survey and any potential reporting requirement, only electronic funds transfers are considered.

**Money transmitter**

Any person, whether or not licensed or required to be licensed, who engages as a business in accepting currency or funds, or the value of the currency or funds, by any means through a financial agency or institution, a Federal Reserve Bank or other facility of one or more Federal Reserve Banks, the Board of Governors of the Federal Reserve System, or both, or an electronic funds transfer network; or, any other person engaged as a business in the transfer of funds. See 31 C.F.R. § 103.11(uu)(5).

**Originator**

The sender of the first payment order in a funds transfer.

**Originator's bank**

The receiving bank to which the payment order of the originator is issued if the originator is not a bank or foreign bank.

**Payment order**

An instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause to pay, a fixed or determinable amount of money to a beneficiary as defined by 31 C.F.R. § 103.11(y).

**Person**

An individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated institution or group, an Indian Tribe (as that term is defined in the Indian Gaming Regulatory Act codified at 25 U.S.C. 2701-2721 and 18 U.S.C. 1166-68), and all entities cognizable as legal personalities.

**Receiving or recipient's bank**

The bank or foreign bank to which the sender's instruction is addressed.

**Receiving or recipient's financial institution**

The financial institution or foreign financial institution to which the sender's instruction is addressed. The term receiving financial institution includes a receiving bank.

**Recipient or receiver**

The person to be paid by the recipient's financial institution. The term recipient includes a beneficiary, except where the recipient's financial institution is a financial institution other than a bank.



Glossary of Terms - Cont.

**Sender**

The person giving the instruction to the receiving financial institution.

**Transaction**

A deposit, withdrawal, transfer between accounts, or payment involving financial institutions.

**Transmittal of funds or funds transmittal**

The series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order, or a series of transactions beginning with the transmitter's transmittal order, made for the purpose of making payment to the recipient of the order. The term "transmittal of funds" includes a funds transfer. Funds transfers governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. 95-630, 92 Stat. 3728, 15 U.S.C. 1693, et seq.), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition. See 31 C.F.R § 103.11(jj). For the purposes of this survey and any potential reporting requirement, only electronic funds transmittals are considered.

**Transmittal order**

A payment order or the instruction of a sender to a receiving financial institution, transmitted orally, electronically, or in writing, to pay, or cause another financial institution or foreign financial institution to pay, a fixed or determinable amount of money to a recipient as defined by 31 C.F.R § 103.11(kk).

**Transmitter (or transmittor)**

The sender of the first transmittal order in a transmittal of funds. The term transmitter includes an originator, except where the transmitter's financial institution is a financial institution or foreign financial institution other than a bank or foreign bank.

**Transmitter's financial institution**

The receiving financial institution to which the transmittal order of the transmitter is issued if the transmitter is not a financial institution or foreign financial institution or agency, or the transmitter if the transmitter is a financial institution or foreign financial institution or agency. The term transmitter's financial institution includes an originator's bank, except where the originator is a transmitter's financial institution other than a bank or foreign bank.

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**III. Cost to the Financial Services Industry of a Potential Cross-border Electronic Funds Transmittal Reporting Requirement**

Please respond in full to the following nine (9) questions and all their associated subparts.

Please refer to the above description of a potential cross-border electronic funds transmittal reporting requirement (see Section II B on pages 5 and 6) to determine your institution's response. Consider only the electronic funds transfers or transmittals that your institution processes within the United States.

See glossary of terms (pages 7-9) for further clarification of the survey terms.

1. Based upon the description of potentially reportable cross-border electronic funds transfers/transmittals (hereafter "transmittals"), would your institution be able to identify the payment or transmittal orders that would need to be reported to FinCEN?

{Choose one}

Yes

No

i. Total number of electronic funds transmittals your institution processed in 2006 that could be considered reportable cross-border electronic funds transmittals (as described in Section II):

{Enter text answer}

a. Percentage of all electronic funds transmittals your institution processed in 2006:

{Enter text answer}

b. Percentage of the total value of all electronic funds transmittals your institution processed in 2006:

{Enter text answer}

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ii. Total number of electronic funds transmittals your institution processed in 2006 that were valued at less than \$3,000 that otherwise would have met all the other requirements to be considered reportable cross-border electronic funds transmittals.

{Enter text answer}

a. Percentage of all electronic funds transmittals your institution processed in 2006:

{Enter text answer}

b. Percentage of the total value of all electronic funds transmittals your institution processed in 2006:

{Enter text answer}

iii. Estimate the number of electronic funds transmittals your institution expects to process in 2010 that could be considered reportable cross-border electronic funds transmittals (as described in Section II):

{Enter text answer}

a. Percentage of all electronic funds transmittals your institution expects to process in 2010:

{Enter text answer}

b. Percentage of the total value of all electronic funds transmittals your institution expects to process in 2010:

{Enter text answer}

2. What would be the total cost (in thousands of U.S. dollars) to your institution to implement the potential reporting requirement described in Section IIB and report the total number of reportable cross-border electronic funds transmittals expected to be processed in 2010?  
{Enter text answer}

† Please list five (5) major sources of cost to your institution that would be incurred to comply with the potential reporting requirement and indicate the percentage of your estimated total cost for which each accounts. Please also indicate (with an "X") whether it would be a one-time implementation or annual recurring cost.

2.1. Cost in Thousand Dollars

1. Source of Cost {Enter text answer}
- (2) Type of cost  
{Choose one}
  - Recurring (Annual)
  - Implementation (one-time)

2.2. Cost in Thousand Dollars

1. Source of Cost {Enter text answer}
- (2) Type of cost  
{Choose one}
  - Recurring (Annual)
  - Implementation (one-time)

2.3. Cost in Thousand Dollars

1. Source of Cost {Enter text answer}
- (2) Type of cost  
{Choose one}
  - Recurring (Annual)
  - Implementation (one-time)

2.4. Cost in Thousand Dollars

1. Source of Cost {Enter text answer}
- (2) Type of cost  
{Choose one}
  - Recurring (Annual)
  - Implementation (one-time)

2.5. Cost in Thousand Dollars

1. Source of Cost {Enter text answer}
- (2) Type of cost  
{Choose one}
  - Recurring (Annual)
  - Implementation (one-time)

3. Based upon the following sliding scale, please indicate how the cost of complying with the potential reporting rule would differ from the cost of responding to government subpoenas or other legal demands for the exact same information?

Cost of complying

Cost of complying

{Choose one}

- Significantly less costly
- Slightly less costly
- No difference
- Slightly more costly
- Significantly more costly

In responding to this question, please consider all the costs associated with your procedures to comply with a government subpoena or other legal demand for similar data. For example, you should consider the cost of extracting the records or data from your systems, data editing, data validation, data formatting, reporting method, and the time commitment of staff to have follow-up discussions with law enforcement and regulators regarding the data.

4. What alternative reporting methods or implementation approaches would reduce the cost to your institution of complying with a potential reporting requirement? How?  
{Enter answer in paragraph form}

5a. Please indicate the effect that you would anticipate that a reporting requirement as described in this survey might have on cross-border electronic funds transmittals involving your institution with respect to the following areas...

Volume

{Choose one}

- Significant decrease
- Slight decrease
- No change
- Slight increase
- Significant increase

Value

{Choose one}

- Significant decrease
- Slight decrease
- No change
- Slight increase
- Significant increase

Quality or type of payment services provided

{Choose one}

- Significant decrease
- Slight decrease
- No change
- Slight increase
- Significant increase

5b. Please indicate any other area within your institution that you think maybe effected by the new reporting requirement.

{Enter answer in paragraph form}

6. Would there be any potential unintended consequences that would adversely affect your institution (e.g., such as an anticipated shift to a competitor or an informal funds transmittal system or an effect on your institution's business model) associated with such a potential reporting requirement being imposed on all U.S. financial institutions to which the recordkeeping rule applies? Please explain.

{Enter answer in paragraph form}

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7a. How satisfied is your institution with FinCEN's published industry-wide reports and analysis of suspicious activity report filings? Please use a scale from 1 to 10 where 1 means "not at all satisfied" and 10 means "Extremely satisfied."

7b. To what extent do FinCEN's published industry-wide reports and analysis of suspicious activity report filings fall short of or exceed your expectations? Please use a scale from 1 to 10 where 1 means "Fall short of" and 10 means "Exceeds your expectations."

7c. How do FinCEN's published industry-wide reports and analysis of suspicious activity report filing compare to the ideal? Please use a scale from 1 to 10 where 1 means "Not very close to the ideal" and 10 means "Very close to the ideal."

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7d. If a potential cross-border funds transmittal reporting requirement was implemented, what would be the value (if any) to your institution of receiving aggregated, industry-wide reports and analysis from FinCEN on cross-border funds transmittal trends, including reports similar to those currently provided for suspicious activity reports?

{Enter answer in paragraph form}

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8a. How satisfied is your institution with the level of outreach and communication FinCEN pursued regarding the potential cross-border electronic funds transmittal reporting rule raised in this survey?

{Enter text answer}

8b. If a potential cross-border funds transmittal reporting regulation was implemented, what types of outreach or guidance from FinCEN regarding its requirements would be most helpful to the financial services industry?

{Enter answer in paragraph form}

9. How satisfied is your institution with this survey and its ability to provide sufficient information for FinCEN to assess effectively the potential cost to the financial services industry of the potential reporting requirement?

{Enter text answer}

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Would your institution be willing to discuss the questions and issues raised in this survey in more detail with FinCEN representatives?

{Choose one}

Yes

No

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FinCEN would like to thank you for your time and participation today. Your feedback is greatly appreciated.

Please hit "Finish" to complete the survey.

## **APPENDIX B : CODES FOR Q2**

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Verbatim responses to Q2 (ii) recoded

Recoded Category	Response
<b>Communications</b>	Communication & Implementation
<b>Consulting</b>	IT consulting and installation Legal & consulting Outside Consulting
<b>Data Storage Equipment</b>	Data Center/Lines/Set up File/Data Archiving Mainframe space Storage Storage and Reporting of Data Storage/Data Center/Lines System Enhancements
<b>Hardware</b>	Communications Hardware and Transmission Equipment Equipment
<b>HR/Labor/Overtime</b>	3 employees Administrative staffing costs - reviewing and data preparation Annual administrative costs Business Operations Annual Overhead Extra man-hours to explain to customers about the new requirement Extra man-hours to extracts, review and report to FinCEN FTE's Human Resources Increase Staffing In-house resources for project management, test, deployment (50 man days x \$1100) Labor Manpower Manpower & Maintenance Manual staff cost (\$50/report) Monitoring On Site Staff Operation staff to work wire rejects Overtime Personal Cost Personnel Personnel Costs (salary & bonus) Personnel Time Personnel to run daily searches and send reports.

	Salary
	Software
	Staff
	Staff Cost
	Staff reporting
	Staff resources
	Staffing
<b>Implementation</b>	Project Implementation
	Cost to implement the appropriate transmission protocol including required security procedures/protocol, to send payment transaction (e.g. transmittals) to FINCEN BSA E-filing system.
<b>Installation</b>	Installation
<b>Installation/Testing</b>	Installation / Testing
<b>IT</b>	Information Tech
	IT Expenses
<b>Loss of revenue</b>	Lost of revenue derived from international wires
	Lost of customers' deposit due to unpleasant experience
<b>Maintenance/Support</b>	Annual Maintenance- Technical support, report management & communications expense
	Equipment Maintenance
	Hardware Maintenance and Miscellaneous
	In-house support for functionality, inquiries, enhancement, etc. (1h/day=31 man days/year x \$1100)
	IT Annual Maintenance
	IT ongoing service
	IT/Software Maintenance/Upgrades
	Maintenance
	Maintenance of the system
	Maintenance support
	Ongoing Maintenance
	Ongoing System / IT Support
	Ongoing systems maintenance
	Recurring Transmission Support Costs
	Software Licensing & Maintenance
	Software Maintenance
	System Maintenance
	System support
	Technical Support
	Upkeep/revisions to program
	Yearly hardware and software charges

<b>Monitoring</b>	Labor
	Monitoring
	Production Support, to monitor successful transmission of files daily
<b>Occupancy</b>	Occupancy
<b>Operational</b>	Data Center operational costs (to handle transmission of data to FINCEN).
	Operational
<b>Other</b>	Sundry
<b>Other - Accommodations</b>	Accommodations
<b>Other - Additional</b>	Additional Hardware
<b>Other - Audit &amp; Training</b>	Audit & Training
<b>Other - Cost of funds</b>	Cost of funds
<b>Other - Data Transmission</b>	Data Transmission
<b>Other - Database Management</b>	Database Management
<b>Other - Definition and Design</b>	Definition and Design
<b>Other - Disclosure Requirements</b>	Disclosure Requirements
<b>Other - File/Network Transmission</b>	File/Network Transmission
<b>Other - FinCEN interface</b>	FinCEN interface
<b>Other - Investigations</b>	INVESTIGATIONS
<b>Other - Licensing</b>	License fees
<b>Other - Management</b>	Management
<b>Other - Manual wire uploading</b>	Manual wire uploading into the software
<b>Other - Marketing</b>	Research for process
<b>Other - Ongoing Processing</b>	Ongoing Processing
<b>Other - Production of files, mail costs, etc.</b>	Production of files, mail costs, etc.
<b>Other - Requirements/Review/Analysis</b>	Requirements/Review/Analysis
<b>Other - Supplies</b>	Supplies
<b>Other -Review</b>	Review
<b>Other -Vendor Management</b>	Vendor Management
<b>Programming</b>	Computer Programming
	Initial Programming
	Report programming and setup
<b>Programming Support</b>	Programming Support
<b>Programming/Hardware</b>	Programming /hardware
<b>Project Design</b>	Project Design
<b>Record Keeping</b>	Record Keeping

<b>Reporting</b>	Reporting
	Reporting Modifications
<b>Research</b>	Research
	Marketing effort
<b>Software/Hardware</b>	Software/Hardware
<b>Software/Software Development</b>	Application Development
	Code Development /Testing
	Development
	Development Costs
	Development/Documentation
	IT Batch Process Development
	IT Development
	New software set up and maintenance
	Software Developer work to prepare MT 103 reports.
	Software Development
	Software Maintenance
	Software Upgrade
	Software Upgrade for Reporting
	Staffing
<b>System upgrade</b>	Automation (System)
	Data Storage Equipment
	Enhancement
	IT Enhancements
	New operating system
	System
	System Development
	System development- business requirements, technical design, programming, communications, interface & implementation \$500,000 to \$750,000
	System programming, program design, coding, testing
	System Purchase
	Systems
<b>Technology</b>	Technology
	Technology costs if information has to be formatted to send.
	Technology development costs to implement the reporting requirement. This includes changes to the Funds Transfer Monitoring System (FTMON). Technology costs include Technology Project Management costs, Business Analysts, and Developers.
	Technology Expenses to produce files

<b>Testing</b>	Coding and Testing
	Quality Assurance and User Testing Costs.
	Testing
	Testing and Quality Assurance
	Testing/Validation
	UAT
	User Acceptance Costs
	User Acceptance Test
<b>Testing/Training</b>	Testing/training
<b>Training</b>	Training

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BILLING CODE: 4810-02

**DEPARTMENT OF THE TREASURY**

**31 CFR Part 103**

**RIN 1506-AB01**

**Financial Crimes Enforcement Network; Notice of Proposed Rulemaking; Cross-Border Electronic Transmittals of Funds**

**AGENCY:** Financial Crimes Enforcement Network (FinCEN), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** FinCEN, a bureau of the Department of the Treasury (Treasury), to further its efforts against money laundering and terrorist financing, and as required by 31 U.S.C. § 5318(n), is proposing to issue regulations that would require certain banks and money transmitters to report to FinCEN transmittal orders associated with certain cross-border electronic transmittals of funds (CBETFs). FinCEN is also proposing to require an annual filing with FinCEN by all banks of a list of taxpayer identification numbers of accountholders who transmitted or received a CBETF.

**DATES:** Written comments are welcome and must be received on or before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] [See the Compliance Date heading of the Supplementary Information for further dates.]

**ADDRESSES:** Those submitting comments are encouraged to do so *via* the Internet. Comments submitted *via* the Internet may be submitted at <http://www.regulations.gov/search/index.jsp> with the caption in the body of the text, "Attention: Cross-Border Electronic Transmittals of Funds." Comments may also be submitted by written mail to: Financial Crimes Enforcement Network, Department of the

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Treasury, P.O. Box 39, Vienna, VA 22183, Attention: Cross-Border Electronic Transmittals of Funds. Please submit your comments by one method only. All comments submitted in response to this notice of proposed rulemaking will become a matter of public record, therefore, you should submit only information that will be available publicly.

Instructions: Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must obtain in advance an appointment with the Disclosure Officer by telephoning (703) 905-5034 (not a toll free call). In general, FinCEN will make all comments publicly available by posting them on <http://www.regulations.gov/search/index.jsp>.

**FOR FURTHER INFORMATION CONTACT:** The FinCEN regulatory helpline at (800) 949-2732 and select Option 3.

**SUPPLEMENTARY INFORMATION:**

**I. Statutory Provisions**

The Bank Secrecy Act (BSA) (Pub. L. 91-508, codified at 12 U.S.C. §§ 1829b and 1951-1959, and 31 U.S.C. §§ 5311-5314 and §§ 5316-5332) authorizes the Secretary of the Treasury (Secretary) to require financial institutions to keep records and file reports that the Secretary determines have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in intelligence or counterintelligence matters to protect against international terrorism. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN. The BSA was amended by the Annunzio-Wylie Anti-Money Laundering Act of 1992 (Pub. L. 102-550) (Annunzio-

Wylie). Annunzio-Wylie authorizes the Secretary and the Board of Governors of the Federal Reserve System (the Board) to jointly issue regulations requiring insured banks to maintain records of domestic funds transfers.<sup>1</sup> In addition, Annunzio-Wylie authorizes the Secretary and the Board to jointly issue regulations requiring insured banks and certain nonbank financial institutions to maintain records of international funds transfers and transmittals of funds.<sup>2</sup> Annunzio-Wylie requires the Secretary and the Board, in issuing regulations for international funds transfers and transmittals of funds, to consider the usefulness of the records in criminal, tax, or regulatory investigations or proceedings, and the effect of the regulations on the cost and efficiency of the payments system.<sup>3</sup>

The Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. 108-458) amended the BSA to require the Secretary to prescribe regulations “requiring such financial institutions as the Secretary determines to be appropriate to report to the Financial Crimes Enforcement Network certain cross-border electronic transmittals of funds, if the Secretary determines that reporting of such transmittals is reasonably necessary to conduct the efforts of the Secretary against money laundering and terrorist financing.”

## **II. Background Information**

### *A. Current Regulations Regarding Funds Transfers*

On January 3, 1995, FinCEN and the Board jointly issued a rule that requires banks and nonbank financial institutions to collect and retain information on certain funds

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<sup>1</sup> 12 U.S.C. 1829b(b)(2) (2006). Treasury has independent authority to issue regulations requiring nonbank financial institutions to maintain records of domestic transmittals of funds.

<sup>2</sup> 12 U.S.C. 1829b(b)(3) (2006).

<sup>3</sup> *Id.*



transfers and transmittals of funds (Funds Transfer Rule).<sup>4</sup> At the same time, FinCEN issued the “travel rule,” which requires banks and nonbank financial institutions to include certain information on funds transfers and transmittals of funds to other banks or nonbank financial institutions.<sup>5</sup>

The recordkeeping and travel rules provide uniform recordkeeping and transmittal requirements for financial institutions and are intended to help law enforcement and regulatory authorities detect, investigate, and prosecute money laundering and other financial crimes by preserving an information trail about persons sending and receiving funds through the funds transfer system.

Under the “travel rule,” a financial institution acting as the transmitter’s financial institution must obtain and include in the transmittal order the following information on transmittals of funds of \$3,000 or more: (a) name and, if the payment is ordered from an account, the account number of the transmitter; (b) the address of the transmitter; (c) the amount of the transmittal order; (d) the execution date of the transmittal order; (e) the identity of the recipient’s financial institution; (f) as many of the following items as are received with the transmittal order: the name and address of the recipient, the account number of the recipient, and any other specific identifier of the recipient; and (g) either the name and address or the numerical identifier of the transmitter’s financial institution. A financial institution acting as an intermediary financial institution must include in its respective transmittal order the same data points listed above, if received from the sender.<sup>6</sup>

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<sup>4</sup> 31 CFR 103.33(e) (2009) (Recordkeeping requirements for banks); 31 CFR 103.33(f) (2009) (Recordkeeping requirements for nonbank financial institutions).

<sup>5</sup> 31 CFR 103.33(g) (2009).

<sup>6</sup> 31 CFR 103.33(g)(1)-(2) (2009).

Furthermore, under the recordkeeping rule, of the information listed above, a financial institution must retain the following data points for transmittals of funds of \$3,000 or more:

- If acting as a transmitter's financial institution, either the original, microfilmed, copied, or electronic record of the information received, or the following data points: (a) the name and address of the transmitter; (b) the amount of the transmittal order; (c) the execution date of the transmittal order; (d) any payment instructions received from the transmitter with the transmittal order; (e) the identity of the recipient's financial institution; (f) as many of the following items as are received with the transmittal order: the name and address of the recipient, the account number of the recipient, and any other specific identifier of the recipient; and (g) if the transmitter's financial institution is a nonbank financial institution, any form relating to the transmittal of funds that is completed or signed by the person placing the transmittal order.<sup>7</sup>
- If acting as an intermediary financial institution, or a recipient financial institution, either the original, microfilmed, copied, or electronic record of the received transmittal order.<sup>8</sup>

The recordkeeping rule requires that the data be retrievable and available upon request to FinCEN, to law enforcement, and to regulators to whom FinCEN has delegated BSA compliance examination authority. A broad range of government agencies regularly compel under their respective authorities (*e.g.*, subpoena or warrant) financial institutions

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<sup>7</sup> 31 CFR 103.33(e)(1)(i), (f)(1)(i) (2009).

<sup>8</sup> 31 CFR 103.33(e)(1)(ii)-(iii), (f)(1)(ii)-(iii) (2009).

to provide information maintained pursuant to the recordkeeping rule, albeit in ad hoc and sometimes inconsistent and overlapping ways, depending upon the agency or investigator.

*B. FATF Special Recommendation VII*

Shortly after the attacks of September 11, 2001, the Financial Action Task Force (the FATF)<sup>9</sup> adopted several special recommendations designed to stem the financing of terrorism. Special Recommendation VII (SR VII) was developed with the objective of preventing terrorists and other criminals from having unfettered access to wire transfers for moving their funds and detecting such misuse when it occurs.<sup>10</sup>

The FATF in adopting SR VII found that, “due to the potential terrorist financing threat posed by small wire transfers, countries should aim for the ability to trace all wire transfers and should minimize thresholds taking into account the risk of driving transactions underground.” The interpretive note to Special Recommendation VII goes on to say that countries may adopt a *de minimis* standard of \$1,000, below which countries could exempt institutions from reporting or maintaining records.

*C. 9/11 Commission and Section 6302*

On November 27, 2002, President Bush signed legislation creating the National Commission on Terrorist Attacks Upon the United States (9/11 Commission) (Pub. L. 107–306), which was directed to investigate the “facts and circumstances relating to the terrorist attacks of September 11, 2001,” including those involving intelligence agencies,

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<sup>9</sup> The FATF is a 36-member inter-governmental policy-making body with the purpose of establishing international standards, and developing and promoting policies, both at national and international levels, to combat money laundering and terrorist financing. See generally <http://www.fatf-gafi.org>. The United States is a member of the FATF.

<sup>10</sup> *Revised Interpretative Note to Special Recommendation VII: Wire Transfers*, FATF (Feb. 29, 2008), <http://www.fatf-gafi.org/dataoecd/16/34/40268416.pdf>.

law enforcement agencies, diplomacy, immigration issues and border control, the flow of assets to terrorist organizations, and the role of congressional oversight and resource allocation.<sup>11</sup> To fulfill its mandate, the 9/11 Commission reviewed over 2.5 million pages of documents, conducted interviews of some 1,200 individuals in ten countries, and held 19 days of public hearings featuring testimony from 160 witnesses.

In conducting its review, the 9/11 Commission focused a significant amount of inquiry into the financial transactions undertaken by the 19 hijackers and their associates. The Commission estimated that \$400,000 - \$500,000 was used to support the execution of the attacks of September 11, 2001.<sup>12</sup> The Commission noted that the transactions were not inherently suspicious and the low volumes of the transactions would not have raised alarm at the financial institutions processing the transactions. The Commission also noted that no suspicious activity reports (SARs) were filed on these transactions prior to the attacks of September 11, 2001.<sup>13</sup> The Commission determined that the current reporting and recordkeeping requirements contained in the BSA were insufficient to detect terrorist financing because of the inability of financial institutions to use typical money laundering typologies to detect terrorist financing transactions.<sup>14</sup>

The 9/11 Commission, through its final report and the August 23, 2004 testimony of its Vice-Chairman,<sup>15</sup> noted that vigorous efforts to track terrorist financing must remain front and center in U.S. counterterrorism efforts. The Commission also found that

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<sup>11</sup> *The Final Report of the National Commission on Terrorist Attacks Upon the United States* (9/11 Commission Report) (July 22, 2004), <http://www.9-11commission.gov/report/911Report.pdf>.

<sup>12</sup> *Id.* at 169.

<sup>13</sup> *Id.* at 528 n. 116.

<sup>14</sup> See National Commission on Terrorist Attacks Upon the United States, *Terrorist Financing Staff Monograph*, 54-58 (2004).

<sup>15</sup> *9/11 Commission* at 382 (Testimony provided by Mr. Lee Hamilton, Vice-Chairman).

“terrorists have shown considerable creativity in their methods for moving money.”<sup>16</sup> Expanding upon this point in his August 23, 2004 testimony, 9/11 Commission Vice-Chairman Hamilton stated: “While we have spent significant resources examining the ways al Qaeda raised and moved money, we are under no illusions that the next attack will use similar methods. As the government has moved to close financial vulnerabilities and loopholes, al Qaeda adapts. We must continually examine our system for loopholes that al Qaeda can exploit, and close them as they are uncovered. This will require constant efforts on the part of this Committee, working with the financial industry, their regulators and the law enforcement and intelligence community.”

In response to the findings of the 9/11 Commission, Congress passed the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA),<sup>17</sup> which was signed into law on December 17, 2004, by President Bush. IRTPA encourages the sharing of information across intelligence agencies, protects the civil liberties and privacy of individuals, and provides processes through which intelligence agencies can obtain additional intelligence necessary to protect the United States and its citizens. Specifically, section 6302, codified under 31 U.S.C. § 5318(n), requires that the Secretary study the feasibility of “requiring such financial institutions as the Secretary determines to be appropriate to report to [FinCEN] certain cross-border electronic transmittals of funds, if the Secretary determines that reporting of such transmittals is reasonably necessary to conduct the efforts of the Secretary against money laundering and terrorist

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<sup>16</sup> *Id.* at 383.

<sup>17</sup> Pub. L. 108-458, 118 Stat. 3638 (2004).

financing.” The law further requires that the regulations be prescribed in final form “before the end of the 3-year period beginning on the date of enactment of the [Act].”<sup>18</sup>

Although no particular provision of IRTPA on its own would have prevented the attacks of September 11, 2001, together these provisions are designed to close the loopholes that would allow future attacks of a similar design. For example, of the \$400,000 to \$500,000 used to fund the September 11, 2001 attacks, an estimated \$130,000 was received by CBETFs sent from supporters overseas. ~~Several of those transactions were above the \$3000 reporting threshold and involved a transmitter or recipient who was either an active target of an investigation at the time the transfer was made, or could have been recognized as a person of interest under the new IRTPA intelligence sharing provisions.~~

*D. Feasibility of a Cross-Border Electronic Funds Transfer Reporting System under the Bank Secrecy Act*

Section 6302 of IRTPA requires that, prior to prescribing the contemplated regulations, the Secretary submit a report to Congress that: (a) identified the information in CBETFs that might be found in particular cases to be reasonably necessary to conduct the efforts of the Secretary to identify money laundering and terrorist financing, and outlined the criteria to be used by the Secretary to select the situations in which reporting under this subsection may be required; (b) outlined the appropriate form, manner, content, and frequency of filing of the reports that might be required under such regulations; (c) identified the technology necessary for FinCEN to receive, keep, exploit, protect the security of, and disseminate information from reports of CBETFs to law enforcement and other entities engaged in efforts against money laundering and terrorist

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<sup>18</sup> 31 U.S.C. 5318(n) (2006).

financing; and (d) discussed the information security protections required by the exercise of the Secretary's authority under such subsection. In January 2007, the Secretary submitted the feasibility report required under Section 6302 (the "Feasibility Report") to the Congress.<sup>19</sup>

FinCEN's development of the Feasibility Report included multiple approaches. An internal working group of employees drawn from all operational divisions of FinCEN coordinated efforts within the organization, managed contact with external stakeholders, hosted small workshops with law enforcement representatives, visited relevant U.S. and foreign government and private sector organizations, surveyed industry and governmental organizations, solicited input from private sector technology experts,<sup>20</sup> and researched extensively. In addition, FinCEN formed a subcommittee of the Bank Secrecy Act Advisory Group (BSAAG)<sup>21</sup> including representatives from across the spectrum of U.S. financial services industry members, and governmental agencies. The subcommittee did not author or review this report, but provided expert assistance in the identification and analysis of relevant issues, recommendations about the focus of the report, and important contacts within the U.S. financial services industry. FinCEN also drew upon the experience of the Australian Transaction Reports and Analysis Centre (AUSTRAC) and

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<sup>19</sup> Feasibility of a Cross-Border Electronic Funds Transfer Reporting System under the Bank Secrecy Act, FinCEN Report to Congress dated January 17, 2007, available at [http://www.fincen.gov/news\\_room/rp/files/cross\\_border.html](http://www.fincen.gov/news_room/rp/files/cross_border.html).

<sup>20</sup> See *Feasibility Report* App. G. FinCEN Industry Survey (Notice and Request for Comment, 71 Fed. Reg. 14289) and industry responses can be found in Appendix G of the Feasibility Report.

<sup>21</sup> The Annunzio-Wylie Anti-Money Laundering Act of 1992 required the Secretary of the Treasury to establish a Bank Secrecy Act Advisory Group (BSAAG) consisting of representatives from federal regulatory and law enforcement agencies, financial institutions, and trade groups with members subject to the requirements of the Bank Secrecy Act, 31 CFR 103 *et seq.* or Section 6050I of the Internal Revenue Code of 1986. The BSAAG is the means by which the Secretary receives advice on the operations of the Bank Secrecy Act. As chair of the BSAAG, the Director of FinCEN is responsible for ensuring that relevant issues are placed before the BSAAG for review, analysis, and discussion. Ultimately, the BSAAG will make policy recommendations to the Secretary on issues considered. BSAAG membership is open to financial institutions and trade groups.

the Financial Transactions Reports and Analysis Centre (FINTRAC), FinCEN's counterpart financial intelligence units in Australia and Canada, both of which already collect cross border funds transfer information.<sup>22</sup>

The Feasibility Report produced a general, high-level assessment of:

- What information in a funds transfer is reasonably necessary to collect to conduct efforts to identify money laundering and terrorist financing, and the situations in which reporting may be required;<sup>23</sup>
- The value of such information in fulfilling FinCEN's counter-terrorist financing and anti-money laundering missions;<sup>24</sup>
- The form that any such reporting would take and the potential costs any such reporting requirement would impose on financial institutions;<sup>25</sup>
- The feasibility of FinCEN receiving the reports and warehousing the data, and the resources (technical and human) that would be needed to implement the reporting requirement;<sup>26</sup> and,
- The concerns relating to information security and privacy issues surrounding the reports collected.<sup>27</sup>

The Feasibility Report also identified a number of issues that policy makers were required to consider at any stage of the implementation of the reporting requirement, such as whether the potential value of requiring financial institutions to report information about CBETFs outweighs the potential costs of building the technology, the costs to

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<sup>22</sup> See *Feasibility Report*, at Section 3.0 – Overview.

<sup>23</sup> See *Id.* at Section 4.0.

<sup>24</sup> See *Id.* at Section 3.0.

<sup>25</sup> See *Id.* at Section 5.0.

<sup>26</sup> See *Id.* at Section 6.0.

<sup>27</sup> See *Id.* at Section 7.0.



financial institutions of implementing compliance processes, and the social costs related to privacy and security of the information.

A significant concern for the centralization of information on CBETFs is the cost, both to U.S. financial institutions and to the government, of implementing the reporting requirement and building the technological systems to manage and support the reporting. Related to these concerns are questions about the government's ability to use such data effectively. Another concern is the potential effect that any reporting requirement could have on dollar-based payment systems such as: (1) a shift away from the U.S. dollar toward other currencies (i.e., the Euro) as the basis for international financial transactions; (2) the creation of mechanisms and facilities for clearing dollar-based transactions outside the United States; and (3) interference with the operation of the central payments systems. The United States has economic and national security interests in the continued viability and vitality of dollar-based payments and these possible outcomes must inform and guide the rulemaking process.

These issues were also pointed out by commenters in response to FinCEN's March 2006 survey<sup>28</sup> regarding the reporting of CBETFs. In its response to FinCEN's March 2006 survey, the American Bankers Association "proposes for discussion whether piloting a single channel specific reporting requirement and then evaluating what has been achieved from a law enforcement perspective for what cost from an economic and privacy basis, isn't a preferred alternative to attempting to implement a comprehensive definition-and-exception driven cross-border, cross-system regime."<sup>29</sup> The Feasibility Report concluded that there was some value to a phased implementation of a CBETF

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<sup>28</sup> 71 FR 14289 (March 21, 2006).

<sup>29</sup> *Feasibility Report*, App. G at 119.

reporting system. Building on the ABA's suggestion, the Feasibility Report proposed an incremental development and implementation process. The pre-acquisition phase of the process involved three parallel efforts: user requirement analysis; institutional cost analysis; and value analysis. All three of these efforts provided vital information required to develop detailed requirements for the proposed regulation and technological system. If the concerns noted above or any as-yet unidentified issues would impede the project or cause it to be infeasible, such incremental approach provides the opportunity to alter or halt the effort before FinCEN or the U.S. financial services industry incurs significant costs.

Based on extensive fieldwork and analysis of information and data, the Feasibility Report concluded that:

- The information that FinCEN is seeking to be reported is reasonably necessary to support the Secretary's efforts to combat money laundering and terrorist financing. Specifically, the inability to conduct proactive analysis on the information currently recorded by banks hinders law enforcement's ability to identify significant relationships to active targets.
- ~~The basic information already obtained and maintained by U.S. financial institutions pursuant to the Funds Transfer Rule, including the \$3,000 recordkeeping threshold, provides sufficient basis for meaningful data analysis.<sup>30</sup>~~

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<sup>30</sup> As discussed below, through understanding the processing of transactions by potential third-party reporters, FinCEN removed the reporting threshold for banks and adjusted the reporting threshold for money transmitters to \$1,000.

- Any threshold should apply only to discrete transactions and not to the aggregated total value of multiple transactions conducted very closely to one another in time.
- Any reporting requirement should apply only to those U.S. institutions that exchange payment instructions directly with foreign institutions. FinCEN determined that a focused approach on those institutions that act as intermediaries would restrict the reporting requirement to those institutions with the systems able to process these reports and limit the implementation costs on the industry as a whole.
- Any reporting requirement should permit institutions to report either through a format prescribed by FinCEN, through the submission of certain pre-existing payment messages that contain the required data, or through an interactive online form for institutions that submit a low volume of such reports. The filing system should accommodate automated daily filing, periodic filing via manual upload, and discrete single report filing on an as-needed basis.<sup>31</sup>
- The implementation of the reporting requirement described in section 6302 would be a staged process, requiring FinCEN to review and update the requirements as necessary.

As to the determination of what type of cross-border movements of funds to include in the first step of the staged process advocated by the Feasibility Report, the definition of “cross-border electronic transmittal of funds” lies at the heart of a successful

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<sup>31</sup> See *Feasibility Report*, at Section 1.0 – Executive Summary.

implementation of the reporting requirement. The nature of the electronic funds transfer process as it has evolved in the United States poses specific difficulties in creating a definition that at once captures all of the nuances of the payment systems and avoids needless complexity. Section 6302 contemplates a reporting requirement that is coextensive with the scope of the BSA funds transfer rule (31 CFR § 103.33).

Accordingly, for the purposes of the first step of a phased approach to the cross-border electronic transmittal of funds reporting rulemaking process (the CBETF First Stage), the Feasibility Report focused on electronic “transmittals of funds” as defined in 31 CFR § 103.11(jj), and did not address any debit card type of transmittals, point-of-sale (POS) systems, transaction conducted through an Automated Clearing House (ACH) process, or Automated Teller Machine (ATM).<sup>32</sup> Furthermore, within the current regulatory definition of “transmittals of funds,” the Feasibility Report advised concentrating for the CBETF First Stage on those transactions involving depository institutions that exchange transmittal orders through non-proprietary messaging systems, and all money transmitters, and where the U.S. institution sends or receives a transmittal order directing the transfer of funds to or from an account domiciled outside the U.S.. Refining an appropriate regulatory definition of what transactions fall within the new reporting requirement will implicate a number of concerns that were identified by the Feasibility Report and should be further addressed during future studies.

As further preparation for a study of the implications and benefits of implementing the first step of CBETF reporting, the Feasibility Report recommended the following:

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<sup>32</sup> See *Feasibility Report*, at Section 8.0 – Conclusions and Recommendations.

- Engaging with partners in the law enforcement, regulatory and intelligence communities to develop detailed user requirements to meet the most central needs of those who access BSA data.
- Engaging in a detailed discussion with representatives of the U.S. financial services industry, along with representatives of the major payment systems and members of the Canadian and Australian financial services industries. These discussions would focus on quantifying the cost the proposed requirement would impose on reporting institutions and the potential impact on the day-to-day operation of the payment systems.
- Engaging outside support to obtain and analyze a sizable sample of cross-border funds transfer data and exploring means of extracting value from the data, and identifying means to effectively and intelligently use the data to advance efforts to combat money laundering and illicit finance.

### **III. Implications and Benefits of Cross-Border Funds Transmittal Reporting**

Based on the high-level assessment and recommendations of the Feasibility Report, FinCEN conducted an in-depth Implications and Benefits Study of Cross-Border Funds Transmittal Reporting (the Implications and Benefits Study, or simply the Study)<sup>33</sup> addressing the proposed first step of implementation of CBETF reporting. Significant input into the survey of banks and MSBs that supported the Study<sup>34</sup> was provided by BSAAG. The Study was also supported by interviews with law enforcement and

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<sup>33</sup> See generally *Implications and Benefits of Cross-Border Funds Transmittal Reporting*, FinCEN Analytical Report, FinCEN (Sept. 27, 2010), [http://www.fincen.gov/news\\_room/rp/rulings/pdf/ImplicationsAndBenefitsOfCBFTR.pdf](http://www.fincen.gov/news_room/rp/rulings/pdf/ImplicationsAndBenefitsOfCBFTR.pdf) [hereinafter *Implications and Benefits Study*].

<sup>34</sup> See *Implications and Benefits Study*, at App. C.

regulatory agencies, information from foreign financial intelligence units,<sup>35</sup> and interviews and surveys of financial institutions.<sup>36</sup> The Study analyzed in detail the implications of CBETF reporting on the financial sector and the benefits to law enforcement of having access to CBETF data to determine the known or potential uses of CBETF data, the implications of reporting on the financial industry, and the technical requirements for accepting reports.

*A. The Known and Potential Uses of CBETF Data*

As illicit actors adapt to an increasingly transparent system, they must make additional and more complicated efforts to conceal their behavior and resort to slower, riskier, more expensive, and more cumbersome methods of raising and moving money. Every additional step or layer of complexity illicit actors must add to their schemes provides new opportunities for detection, and an increased risk to those who would abuse the financial system. The value of transparency is twofold – it deters those who would use the financial system for illicit activity and promotes the detection of those who do so. As governments throughout the world strive to promote transparency in the financial system, the shortage of tools for detecting schemes that rely on these modern technological payment systems creates a potential blind spot in our efforts to protect the homeland and to combat financial crime.

Traditionally, experts describe three stages of money laundering:

- Placement – introducing cash into the financial system or into legitimate commerce;

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<sup>35</sup> FinCEN continued drawing upon the experience of AUSTRAC and FINTRAC, FinCEN's counterpart financial intelligence units in Australia and Canada, both of which already collect cross border funds transfer information. The extensive and detailed information contributed to this effort by AUSTRAC and FINTRAC is contained in Appendix B (Financial Intelligence Unit Letters of Support) to the Study.

<sup>36</sup> See Implications and Benefits Study, at Section 1.0 – Executive Summary.

- Layering – separating the money from its criminal origins by passing it through several financial transactions;
- Integration – aggregating the funds with legitimately obtained money or providing a plausible explanation for its ownership.

The BSA reporting regime deals well with the placement stage. Some financial institutions file Currency Transaction Reports (CTRs) when a person conducts certain types of large currency transactions, others file Forms 8300 for large amounts of cash or monetary instruments received in a trade or business, and travelers entering the U.S. with more than \$10,000 in currency must complete Currency and Monetary Instrument Reports (CMIRs). However, while these three reports address placement, due to their focus on currency-based transactions, they do not provide insights into the rapidly developing electronic aspects of financial transactions. These reports identify the physical movement of currency into and within the U.S. financial system. Electronic funds transfers, by contrast, represent an entirely different mode for the movement of money.

The SAR provides some insight into the layering and integration stages by casting a light on transactions of any amount and type that financial institutions suspect are related to illicit activity or that are suspicious in that they do not appear to fit a known pattern of legitimate business activity. FinCEN has found that electronic funds transfers feature prominently in the layering stage of money laundering activity, which is not addressed in any of the reports currently filed if the transactions do not raise suspicions within the financial institution. Complex electronic funds transfer schemes can

deliberately obscure the audit trail and disguise the source and the destination of funds involved in money laundering and illicit finance.<sup>37</sup>

In addition to addressing money laundering, the BSA requires reporting that has a high degree of usefulness in tax proceedings, and provides the Secretary with additional tools to prevent tax evasion. Although some models of tax evasion do follow the placement, layering, and integration models of money laundering, many do not because the proceeds are not illicit until after the money has been transferred overseas. The information proposed to be reported in this rulemaking will assist the government in preventing tax evasion and reducing the tax gap.

A reporting requirement would create a centralized database of this very basic CBETF information in a single format and link it with other highly relevant financial intelligence. Furthermore, this very basic information about such transfers provides both a source of information that can provide new leads standing alone and can potentially enhance the use and utility of current BSA data collected by FinCEN when combined with those other data sources. Currently, the government has no ability on a national scale to systematically and proactively target money laundering, terrorist financing, tax evasion, and other financial crimes that are being conducted through wire transfers. By creating a reporting structure, the government will be able to query the data by geography and transaction value, uncovering linkages such as many people sending money to one person outside the United States or vice versa. These types of linkages play a critical role in the ability of the government to bring cases that it is not able to in today's reporting environment. Among the ways in which FinCEN and its partners can exploit this data are individual searches for known subjects, data matching with other sources of lead

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<sup>37</sup> See *Feasibility Report*, at Section 3.0 – Overview.



information, and link analysis with other financial, law enforcement, and intelligence reporting.<sup>38</sup>

The study team worked with law enforcement and regulatory agencies to identify how CBETF data would be usable for those identified purposes to demonstrate the “reasonable necessity” of collecting CBETF data. The results of that analysis are summarized in the Implications and Benefits Study as follows:

- Section 4.2, Business Use Case Process, describes the study team’s approach to developing the business use cases which illustrate potential uses of the data.
- Section 4.3, Categories of Analysis, explains how the use cases were categorized (e.g., reactive, proactive).
- Section 4.4, Domestic Business Use Case Summary, summarizes the use cases that the study team developed.
- Section 4.5, Use of CBETF Data by International Financial Intelligence Units (FIUs), summarizes the use of CBETF data by FinCEN’s counterpart FIUs in foreign countries.
- Section 4.6, Data Usability, Quality, and Prototyping, presents the results of the study team’s analysis to validate the usability of the data with CBETF data samples provided by the financial industry.<sup>39</sup>

From its interviews with law enforcement and regulatory agencies, the study team developed primary impact areas, also known as “business use cases,” and identified 24

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<sup>38</sup> See *Feasibility Report*, at Section 4.0 - Data Reasonably Necessary to Identify Illicit Finance, and also Appendix F (Potential Analytical Value of Cross-Border Funds Transfer Report).

<sup>39</sup> See *Implications and Benefits Study*, at Section 4.0 – Benefits to Law Enforcement and Regulatory Agencies.

scenarios in which thirteen different federal and state law enforcement and regulatory agencies, in addition to FinCEN, would benefit from access to CBETF data based upon their investigative mission, current use of BSA data, or existing utilization of CBETF data obtained from financial institutions in the primary impact areas of terrorist financing, money laundering, tax evasion, human and drug smuggling, and regulatory oversight.<sup>40</sup> The results of this work demonstrate how access to CBETF data would greatly improve both the efficiency of these agencies' current investigations and their ability to identify new investigative targets as well as be highly valuable in the U.S. Government's efforts to counter these associated crimes. The following examples are illustrative of the representative business use cases that were developed:

- To support the FBI's efforts in tracking and freezing terrorist assets, the FBI's Terrorism Financing Operations Section (TFOS) analysts conduct sophisticated analysis, cross-referencing multiple disparate data sources, to identify financial transactions indicative of terrorist financing. The availability of CBETF data would significantly improve the efficiency of FBI analysts investigating targets suspected of engaging in terrorist financing by tracing the flow of proceeds to entities associated with terrorist organizations. Such analysis would play a critical role in the ability of the FBI to detect, disrupt, and dismantle terrorist financial support networks.
- The Internal Revenue Service's Abusive Tax Scheme Program, Offshore Compliance Initiatives Group, conducts sophisticated analysis to

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<sup>40</sup> See *Implications and Benefits Study*, at Section 1.0 – Executive Summary.

proactively identify taxpayers using offshore accounts and entities to evade U.S. income tax. The availability of CBETF data would significantly enhance the group's ability to identify potential evasion by identified taxpayers through the analysis of funds transmittals from the United States to offshore accounts.

- United States Immigration and Customs Enforcement (ICE) is establishing Trade Transparency Units (TTUs) with critical partner jurisdictions worldwide, in its effort to identify and eliminate customs fraud and trade-based money laundering. These TTUs have enhanced international cooperative investigative efforts to combat activities designed to exploit vulnerabilities in the U.S. financial and trade systems. As formal international financial systems become more highly regulated and transparent, criminal entities have resorted to alternative means of laundering illicit proceeds. Fraudulent practices in international commerce allow criminals to launder illicit funds while avoiding taxes, tariffs, and customs duties. To enhance combating this threat, ICE TTUs would conduct proactive analysis of CBETF data in conjunction with existing U. S. and foreign trade data to detect money laundering cases involving the international movement of over- or under-valued goods.

Using FinCEN's authority under the recordkeeping rule, FinCEN received a limited sample of CBETF data from several large financial institutions.<sup>41</sup> Based on the business use cases, the study group performed an analysis of the sample data. This analysis yielded several findings:

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<sup>41</sup> See 31 CFR 103.33(e) (2009) (Office of Management and Budget (OMB) Control Number 1505-0063).

- ~~CBETF data fields, under current recordkeeping requirements, are sufficient to conduct the type of analyses illustrated in the business use cases, although additional fields could add value.~~
- Upon implementation, CBETF data would immediately be available to conduct the type of analyses illustrated in the business use cases.
- Having CBETF data for transactions under \$3,000 would significantly benefit the type of analysis illustrated in the business use cases.
- The quality of the data in the sample was found to be acceptable to conduct the type of analyses illustrated in the business use cases.

A comparison of a three month limited sample of CBETF data to FinCEN cases revealed a substantial number of instances where CBETF transactions were matched with existing cases and/or pointed to additional investigative leads.<sup>42</sup> Based on the findings from the Study, FinCEN has determined that the collection of CBETF data would be “reasonably necessary” as set forth in Section 6302. This determination is based on the value FinCEN believes this information will have in our efforts to stem money laundering, tax evasion, and terrorist financing. FinCEN believes that a reporting requirement provides a significant advantage to the government’s efforts in these areas over the current recordkeeping requirement at a reasonable cost. These advantages are based on the central premise that proactive targeting is more effective with access to a larger dataset.

FinCEN’s determination that a reporting requirement is reasonably necessary also rests on the tenet that the government has greater access to information than any

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<sup>42</sup> See *Implications and Benefits Study*, at Section 1.0 – Executive Summary.

individual institution. For example, if a bank or money transmitter has a customer who routinely transfers funds to a foreign country in amounts that, considered alone, would not appear significant, this activity may never be reviewed. By instituting a reporting requirement, the government will be able to observe whether this customer is conducting similar transactions at many other institutions and, if so, can see that the person may be avoiding detection by spreading their transactions across many market participants. Additionally, the government has access to more information than banks and money transmitters. While the government cannot provide the private sector access to trade and tax databases, for example, matching information in these databases with cross-border wire records will further prosecutions in these areas, potentially leading to recouping revenue that may otherwise go uncollected. Lastly, the government will always have access to classified information that cannot be shared with the private sector, and the ability to run queries based on this information could have a significant impact on mapping a criminal or terrorist support network.

*B. Implications of CBETF Reporting to the Financial Industry*

To solicit input from the financial industry on the effects of a potential CBETF reporting requirement, FinCEN contracted with an experienced survey contractor to gather qualitative information and quantitative data from sectors of the industry that could be affected by the reporting requirement.<sup>43</sup> On behalf of FinCEN, the contractor distributed the CBETF survey to 247 depository institutions and 32 money transmitters that conduct CBETF transactions on behalf of their own customers or that act as a correspondent bank for other financial institutions. Acting on the recommendations of the Feasibility Report:

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<sup>43</sup> See *Implications and Benefits Study*, App. C. at 28 (OMB Control Number 1505-0191).

- “Depository institutions” were defined as depository institution members of the Society of Worldwide Interbank Financial Telecommunications (SWIFT) user group located or doing business in the United States, including offices or agents of non-U.S. chartered depository institutions.
- “Money transmitters” were defined as non-bank financial institutions that were registered with FinCEN as a money transmitter on November 10, 2007 and reported at least 20 branch locations in the United States.<sup>44</sup>

Out of the group of financial institutions surveyed, 81 provided responses to FinCEN on the implications and benefits of a potential CBETF reporting requirement based upon the transactions currently subject to FinCEN’s recordkeeping requirement, both at the \$3,000 and zero threshold. Key findings from the survey of financial industry entities include the following:

- Respondents expected an increase in the cost of complying with the new reporting requirement as compared to costs under the current process of complying with subpoenas or other legal demands under current recordkeeping requirements.
- Respondents suggested many alternative reporting methods and implementation approaches to reduce the potential costs of a reporting requirement, such as reporting CBETF data weekly or monthly, having FinCEN obtain CBETF information directly from a financial industry entity that currently services the majority of depository institutions’ international funds transmittals such as SWIFT or some other centralized

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<sup>44</sup> See *Implications and Benefits Study*, at Section 5.0 – Implications to the Financial Industry.

repository, either expanding or further limiting which CBETF transactions would need to be reported, or accepting the data in the existing format used by financial institutions.

- Respondents consider customer privacy a significant concern.
- Respondents noted that the security and uses of CBETF data are also a significant concern for financial institutions, especially the perceived ease of accessibility of the data to law enforcement.
- Respondents felt that outreach and guidance both before and after the implementation of a reporting requirement would be critical to its effective implementation; this would include providing clear and specific regulations, detailed technical requirements, published guidance and frequently asked questions, sufficient implementation time, and coordinated testing opportunities.<sup>45</sup>

Survey respondents were given an opportunity to provide additional input on several topics related to a potential CBETF reporting requirement. The study team identified several areas of importance to financial institutions. One of the most significant suggestions received from respondents was to have FinCEN obtain CBETF information directly from SWIFT or some other centralized repository.<sup>46</sup>

Based on financial industry survey responses and interviews with financial institutions and law enforcement agencies, the study team developed the following two potential operating models, documented the uses and usability of the data, developed a rough order of magnitude (ROM) cost for each model, and documented how to apply

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<sup>45</sup> See *Implications and Benefits Study*, at Section 1.0 – Executive Summary.

<sup>46</sup> See *Implications and Benefits Study*, at Section 5.0 – Implications to the Financial Industry.

FinCEN's Information Technology (IT) Modernization Program security and privacy capabilities to CBETF data:

- Standard Reporting Model: Each individual financial industry entity implements its own reporting system and reports CBETF information to FinCEN.
- Hybrid Reporting Model: SWIFT reports CBETF information to FinCEN at the direction of its financial institution members. Large Money Services Businesses (MSBs) will report to FinCEN on their own behalf and small/medium MSBs will use FinCEN-provided e-Filing data entry capabilities rather than implementing their own solutions.<sup>47</sup>

In both of the potential operating models, the study team sought to reduce the effort of financial institutions and increase investigative efficiency of law enforcement by:

- Reducing the number and scope of investigative subpoenas and requests for clarifying information sent from law enforcement agencies to financial institutions.
- Reducing financial institution and law enforcement agency human resources required to execute business processes.
- Increasing the use of technology to automate and standardize the transfer of data between financial institutions, FinCEN, and law enforcement agencies.

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<sup>47</sup> See *Implications and Benefits Study*, at Section 1.0 – Executive Summary.



- Employing consistent security and privacy controls between the financial institutions, FinCEN, and law enforcement agencies.
- Reducing the number of overlapping requests and increasing the use of data obtained from financial institutions.

Based on the results of their ROM cost analysis, the study team developed the following conclusions:

- The Hybrid Reporting Model significantly reduces the cost of a potential reporting requirement for depository institutions because the depository institutions would only incur annual reporting charges from SWIFT.
- The Hybrid Reporting Model significantly reduces the cost of a potential reporting requirement to MSBs, in aggregate, because the one-time and recurring annual costs of small/medium size MSBs using FinCEN's e-Filing data entry capabilities would be significantly less than the one-time and recurring annual costs of implementing/operating individual solutions. The costs to large MSBs would be the same under both models.
- The Hybrid Reporting Model slightly increases the costs of supporting a potential reporting requirement for FinCEN because of the higher implementation and maintenance/operation costs for the interface to SWIFT and the e-Filing CBETF data entry capabilities for small/medium size MSBs.
- Under both the Standard and Hybrid Reporting Models the cost to law enforcement agencies is the same.<sup>48</sup>

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<sup>48</sup> See *Implications and Benefits Study*, at Section 1.0 – Executive Summary.

Additionally, FinCEN estimates that fewer than 300 banks and fewer than 800 money transmitters will qualify as reporting financial institutions under the proposal to report individual CBETFs. For a full discussion of the anticipated financial implications associated with this proposal, see sections V through VII below.

#### **IV. Proposed CBETF Reporting Requirements**

Based on extensive fieldwork and analysis of information and data provided by the Feasibility Report and the Implications and Benefits Study, FinCEN determined that:

- The basic information already obtained and maintained by U.S. financial institutions pursuant to the Funds Transfer Rule is sufficient to support the Secretary's efforts against money laundering and terrorist financing. Any thresholds should apply only to discrete transactions and not to the aggregated total value of multiple transactions conducted very closely to one another in time.<sup>49</sup>
- Any reporting requirement should apply only to those U.S. institutions that exchange payment instructions directly with foreign institutions. FinCEN determined that a focused approach on those institutions that act as intermediaries as well as originating banks and beneficiary banks would restrict the reporting requirement to those institutions with the systems able to process these reports and limit the implementation costs on the industry as a whole.
- Any reporting requirement should permit institutions to report either through a format prescribed by FinCEN, through the submission of certain

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<sup>49</sup> As discussed below, through understanding the processing of transactions by potential third-party reporters, FinCEN removed the reporting threshold for banks and adjusted the reporting threshold for money transmitters to \$1,000.

pre-existing payment messages that contain the required data, or through an interactive online form for institutions that submit a low volume of such reports. The filing system should accommodate automated daily filing, periodic filing via manual upload, and discrete single report filing on an as-needed basis.<sup>50</sup>

- The implementation of the reporting requirement described in section 6302 would be a staged process, requiring FinCEN to review and update the requirements as necessary.
  - The information that FinCEN is seeking to be reported is reasonably necessary to support the Secretary's efforts to combat money laundering and terrorist financing. Specifically, the inability to conduct proactive analysis on the information currently recorded by banks hinders law enforcement's ability to identify significant relationships to active targets.
- A. *General Scope of Proposed Cross-Border Electronic Transmittal of Funds Report*

Based on the result of these efforts, and paying close attention to the above referenced concerns, FinCEN has developed the proposed rule as the initial implementation of the IRTPA. From information gathered during this stage, FinCEN will determine the need for future reporting requirements, and will formulate an improved development plan that incorporates future milestones and permits pilot testing of different aspects of the evolving reporting system. This incremental development approach will enable FinCEN to build the system in manageable stages and to test the system's functionality at each stage before moving on to the next.

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<sup>50</sup> See *Feasibility Report*, at Section 1.0 – Executive Summary.

For the CBETF First Stage, FinCEN proposes:

- To limit the scope of the subject transactions to those defined as “transmittals of funds” under the current regulation (31 CFR § 103.11(jj)).
- To further reduce the scope of the reporting requirement to those transactions involving (a) depository institutions that exchange transmittal orders through non-proprietary messaging systems, and (b) all money transmitters; and where the U.S. institution sends or receives a transmittal order directing the transfer of funds to or from an account domiciled outside the United States, FinCEN is proposing only to require reporting by those two types of financial institutions, because they carry out the great majority of CBETFs. FinCEN is proposing to require banks and money transmitters to report these transfers on a first in/last out basis. Hence, an institution will be required to report transfers to FinCEN only if it is the last U.S. institution to process a transaction prior to the transaction crossing the border or if it is the first U.S. institution to process the transaction received from a foreign financial institution.
- Finally, to adopt the Hybrid Reporting Model, which would provide for (i) some third-party “centralized repository” (such as SWIFT)<sup>51</sup> to report CBFT information to FinCEN at the direction of its financial institution members; (ii) large MSBs to report to FinCEN on their own behalf; and (iii) small/medium MSBs to employ FinCEN-provided e-Filing data entry capabilities, rather than implementing their own solutions.<sup>52</sup>

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<sup>51</sup> See *Implications and Benefits Study*, at Section 5.0 – Implications to the Financial Industry.

<sup>52</sup> See *Implications and Benefits Study*, at Section 1.0 – Executive Summary.

In proposing a reporting requirement, FinCEN is striving to create the most efficient reporting regime that still achieves the overarching goal of providing the information that is necessary to law enforcement. In addition, FinCEN is trying to avoid requiring large changes to the business systems of the funds transmittal industry in order to implement this reporting regime. As such, FinCEN is proposing that banks report on all CBETFs and that money transmitters report on all CBETFs at or above \$1,000. During FinCEN's studies of the proposed reporting entities, FinCEN determined that banks, by and large, keep records for funds transfers regardless of dollar value. FinCEN was aware that, with respect to recordkeeping, many banks would prefer to not have to segregate transactions at certain thresholds due to increased costs.<sup>53</sup> Hence, if required to report on funds transfers, many institutions will find reporting on all transactions less costly than reporting only those transactions that exceed a certain dollar threshold. The segregation or sorting of funds transfers by value, including for transfers denominated in non-U.S. dollar currencies, could require significant changes to the information technology systems of some banks and third-party carriers, at considerable additional costs.

Additionally, transmittal orders carried by third parties are generally encrypted to protect the information therein. FinCEN was advised by industry members and financial regulators that some third-party carriers might be unable to identify the amounts of the encrypted transmittal orders sent through their system without the active intervention of both the sending and receiving financial institution, thereby increasing the cost of the

<sup>53</sup> See Ltr. from Krista J. Shonk, Reg. Counsel, America's Community Bankers, to FinCEN, *Re: Threshold for the Requirement to Collect, Retain, and Transmit Information on Funds Transfers and Transmittals of Funds 3* (Aug. 21, 2006).  
[http://www.fincen.gov/statutes\\_regs/frn/comment\\_letters/71fr35564\\_35567\\_rin1506\\_aa86/americas\\_community\\_bank.pdf](http://www.fincen.gov/statutes_regs/frn/comment_letters/71fr35564_35567_rin1506_aa86/americas_community_bank.pdf) [hereinafter America's Community Banker's Ltr.].

third-party reporting option. Having no transaction threshold would allow third parties to report without adjusting encryption methods to provide them with access to transmittal amounts. Beyond operational difficulties, requiring only those transactions that are above a certain threshold would open financial institutions up to liability under the Right to Financial Privacy Act. If an institution or its designated third-party sent a transaction that was under the threshold, such filing would not be protected from the exclusion in the Right to Financial Privacy Act regarding information required to be reported by the federal government, subjecting the institution to liability. By requiring the reporting of all transactions, FinCEN is protecting institutions from this potential liability.<sup>54</sup>

For money transmitters the threshold issue must be treated differently because money transmitters have different business models than banks. Money transmitters do not typically establish long-term account relationships with their customers and therefore they do not have a business need to keep detailed records of all transactions, especially small electronic transfers. Money transmitters do, however, currently keep records of transfers to comply with the various recordkeeping requirements of FinCEN and other applicable authorities in the jurisdictions where they operate. Money transmitters that operate in more than one jurisdiction must comply with the recordkeeping requirements of all such jurisdictions. Because of this, many money transmitters have adopted global recordkeeping requirements and keep records at the lowest regulatory threshold required regardless of jurisdiction, thus assuring them of compliance in all applicable jurisdictions.

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<sup>54</sup> See 12 U.S.C. § 1829b(b)(3)(C) (2009) (Any information reported to Treasury or the Board in accordance with section 1829b(b)(3)(C) falls within an exception to the Right to Financial Privacy Act, 12 U.S.C. § 3401et seq (2009)). See 12 U.S.C. § 3413(d) (excepting disclosures pursuant to Federal law or rule). Moreover, the Right to Financial Privacy Act does not apply to money transmitters. See 12 U.S.C. § 3401(1) (2009) (defining a "financial institution" for purposes of the Act's coverage to include banks and other depository institutions).

Because many jurisdictions have adopted the \$1,000 threshold suggested in SRVII, a large portion of the money transmitter industry, by volume of transactions, is already keeping records at the \$1,000 level but is not keeping detailed records of transactions falling below that amount.

*B. What to Include in the Cross-Border Electronic Transmittal of Funds Report*

As a by-product of globally accepted standards, there already is a large degree of standardization in the formats of transmittal orders currently being used by banks. This standardization has been driven by global commercial incentives to allow straight-through processing for funds transfers, i.e., electronic processing without the need for re-keying or manual intervention. FinCEN intends to take advantage of this standardization, to the greatest degree possible, and to accept direct filings of copies of these transmittal orders in the form they are already being processed by institutions.

The Implications and Benefits Study found that there is significant benefit in providing flexibility to the financial industry in how they would be able to comply with any proposed reporting requirement. For example, a large volume of the transmittal orders exchanged between foreign and U.S. banks as part of incoming or outgoing transmittals of funds are sent through a third party, that provides a secure, standardized electronic format for financial messaging between financial institutions, such as SWIFT. For this proposed rule, FinCEN is focusing on messaging systems, rather than financial settlement systems; therefore, the instructions exchanged between financial institutions through these third parties must be settled between the parties by other means (for example, using correspondent accounts or sending payments through a primary industry funds transfer system in the currency of denomination of the transmission of funds). By

definition, FinCEN is not collecting information regarding funds transfers governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. 95-630, 92 Stat. 3728, 15 U.S.C. § 1693, *et seq.*), or any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system.

FinCEN proposes to require certain banks to submit copies of certain standard format transmittal orders directly to FinCEN. Banks covered by this option will be required to submit to FinCEN a copy of each full transmittal order. Because a significant portion of the transmittal orders are currently being carried by third parties, this proposed rule would clarify that while the reporting obligation and accountability for compliance rest with the bank, third-party reporting of these transmittal orders at the express direction of a bank would be acceptable to FinCEN. Some financial institutions suggested this option to FinCEN in the course of the interviews and survey conducted as part of FinCEN's Feasibility Report and Implications and Benefits Study.<sup>55</sup> For example, a substantial number of transmittals required to be reported by the proposed rule are processed by SWIFT through standardized formats. FinCEN anticipates that many first-in/last-out institutions will comply with their filing obligations through third-party carriers, like SWIFT, with significant cost savings compared to in-house reporting.

If a bank is not able to submit (or cause to be submitted) copies of these standard format transmittal orders, FinCEN will accept submissions of just the required information in alternative formats to be prescribed by FinCEN. FinCEN proposes to

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<sup>55</sup> See *Feasibility Report* – Section 5, n. 21. See also *Implications and Benefits Study* – Section 3.



require institutions utilizing this alternative reporting format to submit only the following information, if available,<sup>56</sup> about all CBETFs:

- i) Unique transaction identifier number;
- ii) either the name and address or the unique identifier of the transmitter's financial institution;
- iii) name and address of the transmitter;
- iv) the account number of the transmitter (if applicable);
- v) the amount and currency of the funds transfer;
- vi) the execution date of the funds transfer;
- vii) the identity of the recipient's financial institution;
- viii) the name and address of the recipient;
- ix) the account number of the recipient; and
- x) any other specific identifiers of the recipient or transaction.<sup>57</sup>

Certain money transmitters will be required to report on all transmittals of funds that are at or above the previously mentioned threshold of \$1,000. Additionally, for reportable transactions of \$3,000 or more, FinCEN is proposing that money transmitters include the U.S. taxpayer identification number of the transmitter or recipient (as applicable), or if none, the alien identification number or passport number and country of

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<sup>56</sup>As discussed in Section II.A above (Background Information - Current Regulations Regarding Funds Transfers), the regulatory obligation of financial institutions in general to obtain and retransmit certain data points of transmittals of funds depends on the role they play in the transmittal chain, and on the amount of the transaction. Therefore, FinCEN acknowledges that some of the reportable fields of CBETFs collected through either method (submitting copies of the actual standard format transmittal orders or utilizing an alternative reporting format) might be empty or contain incomplete data.

<sup>57</sup> FinCEN has consulted with the staff of the Board and has determined that the reporting requirements under this section will exceed the requirements under section 21 of the Federal Deposit Insurance Act and the regulations promulgated thereunder. Further, FinCEN has determined that the reporting of this information is reasonably necessary to conduct our efforts to identify cross-border money laundering and terrorist financing.

issuance in their reports. As discussed below, FinCEN has determined that this information is reasonably necessary to assist in the investigation and prosecution of financial crimes including tax evasion. FinCEN will accept submissions from these money transmitters of the required information in formats that are prescribed by FinCEN. FinCEN proposes to require the following information, if available,<sup>58</sup> in these submissions:

- i) Unique transaction identifier number;
- ii) either the name and address or the unique identifier of the transmitter's financial institution;
- iii) name and address of the transmitter;
- iv) the account number of the transmitter (if applicable);
- v) the amount and currency of the transmittal of funds;
- vi) the execution date of the transmittal of funds;
- vii) the identity of the recipient's financial institution;
- viii) for transactions over \$3,000, the U.S. taxpayer identification number of the transmitter or recipient (as applicable), or if none, the alien identification number or passport number and country of issuance;
- ix) the name and address of the recipient;
- x) the account number of the recipient; and
- xi) any other specific identifiers of the recipient or transaction.

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<sup>58</sup> As discussed in Section II.A above (Background Information - Current Regulations Regarding Funds Transfers), the regulatory obligation of financial institutions in general to obtain and retransmit certain data points of transmittals of funds depends on the role they play in the transmittal chain, and on the amount of the transaction. Therefore, FinCEN acknowledges that some of the reportable fields of CBETFs collected through either method (submitting copies of the actual standard format transmittal orders or utilizing an alternative reporting format) might be empty or contain incomplete data.

C. *Filing methodology and frequency of Cross-Border Electronic Transmittal of Funds Reports*

FinCEN proposes to require reporting financial institutions to submit the copies of certain standard format transmittal orders or the required data elements through an electronic filing system to be developed and implemented by FinCEN, which shall allow submissions filed either discretely on a transaction-by-transaction basis, or by batching transactions in a format approved by FinCEN. FinCEN believes that electronic filing is the most efficient and effective manner for both the government and the institutions and will result in not only cost savings on both sides of the submission but will also significantly reduce the chances for data corruption during data entry. In special cases, where hardship can be demonstrated, FinCEN is proposing to allow the Director of FinCEN to authorize a reporting financial institution to report in a different manner if the financial institution demonstrates that (a) the form of the required report is unnecessarily burdensome on the institution as prescribed; (b) a report in a different form will provide all the information FinCEN deems necessary; and (c) submission of the information in a different manner will not unduly hinder FinCEN's effective administration of the BSA. Third-party reporters (entities engaged by reporting financial institutions to provide reporting services) will be required to report electronically in a format approved by FinCEN.

FinCEN is considering whether to develop an internet-based form that could be filed electronically through a secure internet connection by institutions that have a limited quantity of reportable transactions and do not wish to invest in information technology changes required to file in a more automated fashion, such as batching. By doing this, FinCEN believes that it can provide an effective method for smaller institutions to

continue to process a limited number of funds transmittals for their customers while not being required to invest significantly in additional technology.

FinCEN intends to accept transmittal orders currently being carried by SWIFT. FinCEN intends to accept message traffic from other similarly situated entities as well. Given the types of transactions FinCEN is currently proposing to collect, and the current limited number of messaging systems in the marketplace, FinCEN anticipates banks will be able to comply with these regulations through submissions of copies of the transmittal orders currently being carried on SWIFT's messaging format for person-to-person transmittals of funds (MT-103s at the time of the Implications and Benefits Study, but now additionally including 202-COVs).

The Feasibility Report and the Implications and Benefits Study analyzed CBETFs from the point of view of serial payments, where all the information sent to the beneficiary banks goes through the various intermediaries. While these reports were being produced, the financial industry started concentrating on the vulnerabilities of other cross-border transmittal mechanisms, namely, cover payments.<sup>59</sup> Cover payments are generally used by a foreign bank to facilitate funds transfers on behalf of a customer to a recipient in another country and typically involve both (a) a transaction in a currency other than that of the country where the transmitter's or recipient's bank is domiciled, and (b) the transmitter's and recipient's banks not having a relationship with each other that allows them to settle with each other directly. In this circumstance, the originator's bank may directly instruct the beneficiary's bank to effect the payment and advise that transmission of funds to "cover" the interbank obligation created by the payment order

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<sup>59</sup> See *i.e.*, The Wolfsberg Group, Clearing House Statement on Payment Message Standards: [www.wolfsberg-principles.com/pdf/WGNYCH\\_Statement\\_on\\_Payment\\_Message\\_Standards\\_April-19-2007.pdf](http://www.wolfsberg-principles.com/pdf/WGNYCH_Statement_on_Payment_Message_Standards_April-19-2007.pdf).

has been arranged through a separate channel (the “cover intermediary bank”).<sup>60</sup> This cover payment mechanism, where the cover intermediary banks do not necessarily see all the information sent to the beneficiary bank, is distinct from the direct sequential chain of payments envisaged in the FATF Special Recommendation VII on wire transfers.<sup>61</sup>

As a result of an industry initiative, SWIFT developed a change in its message standards, allowing the covering payment (which used to be sent through a MT 202 message which generally provided no information about originator and beneficiary) to include full information about the other parties to the transaction. The new message standard (MT 202-COV) was implemented as of November 2009. On December 17, 2009, the U.S. federal banking supervisors, in consultation with the Office of Foreign Assets Control (OFAC) and FinCEN, issued interagency guidance to clarify the supervisory perspective on certain key issues involving cover payments.<sup>62</sup> The guidance covers the obligations of U.S. originators of cover payments, the responsibilities of U.S. cover intermediary banks for screening messages for blank key fields and sanctioned entities, and for suspicious activity monitoring, and the supervisory approach to the foreign correspondent banking monitoring obligations of U.S. banks. SWIFT MT 202-COV messages are specifically covered by this proposed rulemaking.

In determining reporting frequency, FinCEN is striving to reach the appropriate balance between providing timely information to law enforcement and limiting the cost of compliance to the institutions. Other nations’ financial intelligence units have been

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<sup>60</sup> See Basel Committee on Banking Supervision, “Due diligence and transparency regarding cover payment messages related to cross-border wire transfers,” May 2009.

<sup>61</sup> *Revised Interpretative Note to Special Recommendation VII: Wire Transfers*, FATF (Feb. 29, 2008), <http://www.fatf-gafi.org/dataoecd/16/34/40268416.pdf>.

<sup>62</sup> Interagency Joint Notice – “Transparency and Compliance for U.S. Banking Organizations Conducting Cross-Border Funds Transfers,” available at [www.occ.treas.gov/ftp/bulletin/2009-36a.pdf](http://www.occ.treas.gov/ftp/bulletin/2009-36a.pdf).

able to intercept ongoing criminal activity, such as illegal drug dealings, through the use of daily submissions of CBETF information. At the same time, FinCEN recognizes that requiring institutions to report daily could, in some cases, increase costs as compared to a less frequent reporting period. For this reason, FinCEN is proposing that institutions be required to report on covered transmittals of funds within five business days following the day when the reporting financial institution issued or received the respective transmittal order. This five-business-day interval was discussed with financial institutions and law enforcement during the review of the Implications and Benefits Study. Institutions will be permitted to report more frequently if desired.

*D. Annual Reports Proposed*

In addition to the CBETF reporting proposal, FinCEN is proposing, as a separate but related requirement, an annual report by banks of the account number and account holder's U.S. tax identification number (TIN) of all accounts used to originate or receive CBETFs subject to reporting under Section 6302 of the IRTPA. The purpose of this proposal is to enhance the usefulness of the funds transfer data to better detect, investigate, and prosecute money laundering and terrorist financing to the extent such crimes also may involve tax evasion. The extent to which offshore bank accounts are used to evade U.S. income tax is considerable and well-documented.<sup>63</sup> The Administration, as part of a comprehensive effort to reduce the use of offshore accounts

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<sup>63</sup> See generally Staff of Sen. Subcomm. on Investigations of the Comm. on Homeland Sec. and Govtl. Affairs, 110<sup>th</sup> Cong., *Tax Haven Banks and U.S. Tax Compliance*, (Sen. Subcomm. Print 2008); See generally Staff of Sen. Subcomm. on Investigations of the Comm. on Homeland Sec. and Govtl. Affairs, 109<sup>th</sup> Cong., *Tax Haven Abuses: The Enablers, the Tools and Secrecy*, (Sen. Subcomm. Print 2006).

and entities to evade U.S. tax, has also proposed the collection of certain information regarding certain international transfers of funds.<sup>64</sup>

FinCEN is considering a methodology for this second reporting requirement that would require banks to submit an annual filing with FinCEN (the TIN annual report) that provides the account number and accountholder's U.S. TIN of all accounts used to originate or receive one or more CBETFs in the previous calendar year. This annual reporting requirement would apply to all banks that maintained any customer account that was debited or credited to originate or receive a CBETF subject to reporting under this section, for any amount, during the previous calendar year. FinCEN would then endeavor to have that information matched with CBETF data received throughout the year and made available for the investigation and prosecution of tax evasion and other purposes consistent with the BSA.

*E. Exemptions*

Although myriad systems are available to U.S. financial institutions to process electronic funds transfers, cross-border funds transfers tend to flow through a small number of channels as they enter and leave the United States (i.e., Fedwire, CHIPS and SWIFT). As institutions pass payment orders along through correspondents en route to their destination, those institutions' systems convert the orders from the many available formats to one of only a few. At some point in the cross-border payment chain a single U.S. financial institution must communicate directly with a foreign financial institution.

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<sup>64</sup> "General Explanations of the Administrations Fiscal Year 2011 Revenue Proposals, Miscellaneous Tax Policy Document, at 63 (Treasury, Feb. 2010) <http://www.ustreas.gov/offices/tax-policy/library/greenbk10.pdf>.

On the other hand, financial institutions may use standardized or proprietary or internal systems to handle all or part of an electronic funds transfer (i.e., between branches of the same institution). Proprietary systems pose a special challenge to designing a reporting system because of the wide range of potential message formats, communications protocols, and data structures involved. The primary challenge that arises in this context is that a reporting requirement would require that the U.S.-based institution implement processes for identifying and extracting cross-border funds transfer information from its proprietary communications systems. The implementing regulation must take into account this kind of permutation in order to ensure that FinCEN collects CBETFs that follow this pattern.

For banks, FinCEN is proposing to require reporting of all funds transfers that are effected through transmittal orders that are standardized across the banking industry. For this proposed reporting requirement, FinCEN intends to exempt from both reporting requirements funds transfers that are conducted entirely through, and messaged entirely through, systems that are proprietary to banks.<sup>65</sup>

This exemption would not apply to money transmitters because their business model for transmitting funds relies almost solely upon proprietary systems. Additionally, there is no industry-wide adoption of a standardized transmittal order format as exists in the banking industry. The largest MSBs generally maintain centralized communications systems and database records of customer transactions that provide an obvious source for

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<sup>65</sup> These proprietary systems include those developed by banks, or those off-the-shelf systems acquired and adopted or adapted by banks, or by the corporate structure the bank belongs to, to receive payment instructions from their customers (including those financial institutions that maintain correspondent accounts at such banks).



the CBETF information collection.<sup>66</sup> FinCEN is also proposing to exempt from both reporting requirements CBETFs where both the transmitter and the recipient are a bank, i.e., there is no third-party customer to the transaction. There is a lower risk of money laundering and terrorist financing associated with these transactions.

*F. Recordkeeping Rule Issues*

Changes to the regulations implementing Section 21 of the Federal Deposit Insurance Act for banks (31 CFR § 103.33 (e) and (f) (the Funds Transfer Rule) and 31 CFR § 103.33 (g) (the Travel Rule)), would require a joint determination of the Board of Governors of the Federal Reserve System and the Secretary of the Treasury as to the necessity of such a change. Section 6302 provides that information required to be reported under that section shall not exceed the information already required to be retained by financial institutions pursuant to the Funds Transfer Rule and the Travel Rule unless:

i) The Board and the Secretary jointly determine that particular items of information are not currently required to be retained under those law and regulations; and ii) The Secretary determines, after consultation with the Board, that the reporting of such additional information is reasonably necessary to conduct the efforts of the Secretary to identify money laundering and terrorist financing.

At this time, FinCEN and the Board are not proposing any amendments to the recordkeeping rule affecting banks. Also, FinCEN is not proposing any amendments to the recordkeeping rules affecting nonbank financial institutions. FinCEN understands that institutions collect and maintain a wide range of business records and customer and

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<sup>66</sup> See *Feasibility Report*, at Section 5.0 - Form, Manner, and Content of Reporting, and at App. D. See *Id.* App. G, at 134-135.

transaction-related information for business reasons unrelated to regulatory compliance. Additionally, FinCEN acknowledges that this proposed regulation would result in a requirement for institutions to report certain transactions where they are not currently required to keep records or verify customer identification.<sup>67</sup>

*G. Compliance Date*

Section 6302 of the IRTPA requires the Secretary to certify that the information technology systems are in place to accept reports from the regulated industry prior to prescribing regulations requiring institutions to report on transmittals of funds. Because of the statutory language, FinCEN is unable to issue a final rule with a delayed effective date prior to having adequate technological systems in place. FinCEN does not anticipate these systems being in place before 2011. Hence, FinCEN does not anticipate issuing a final rule until after January 1, 2012. FinCEN anticipates delaying the compliance date of the final rule to provide institutions with ample time to adjust necessary systems for compliance.

*H. Technical Requirements*

The development of information technology systems capable of receiving, storing, analyzing, and disseminating an estimated 750 million records a year is a daunting task. FinCEN will implement federated data warehouse architecture to receive, keep, exploit, protect the security of, and disseminate information submitted under the proposed reporting requirement. FinCEN will implement a separate path for the

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<sup>67</sup> As discussed in Section II.A above (Background Information - Current Regulations Regarding Funds Transfers), the regulatory obligation of financial institutions in general to obtain and retransmit certain data points of transmittals of funds depends on the role they play in the transmittal chain, and on the amount of the transaction. Therefore, FinCEN acknowledges that some of the reportable fields of CBETFs collected through either method (submitting copies of the actual standard format transmittal orders or utilizing an alternative reporting format) might be empty or contain incomplete data.

processing, enhancement, and storage of report information and would provide a single point of entry for users to submit queries to all BSA data systems, including CBETF information, in a way that is invisible to the user. A full description of the proposed architecture, procedural paths, and points of entry is contained in Appendices H (Technical Alternatives Analysis), J (Preliminary Work Breakdown Schedule), and L (Project Management and Information Technology Processes) to the Feasibility Report.

*I. Protection of Private Personal Financial Information*

While the benefits of centralizing BSA data have been substantial, these developments pose significant risks to the critical operations of the government and the security of the data contained in these systems. BSA data is highly sensitive data containing details about the financial activity of private persons. Without proper safeguards, this data could be at risk of inadvertent or deliberate disclosure or misuse and FinCEN's mission could be undermined. These risks generally fall into two closely related categories, the privacy of the personal information contained in government systems, and the risk of system compromise or misuse.

FinCEN will apply existing policies and procedures that comply with all applicable legal requirements, industry and government best practices, and the Department of the Treasury's Information Technology Security Program Directive to every phase of the design and implementation of any system built to accommodate reporting of CBETF data. FinCEN also will impose strict limits on the use and re-dissemination of the data it provides to its law enforcement, regulatory, and foreign counterparts and strictly monitor those persons and organizations to which it grants access to the data. CBETF data will be technologically protected and secure and would

only be available to FinCEN and the law enforcement and regulatory agencies authorized by law to access it. Compliance with these three requirement types will be subject to certification, and Section 6302 will not permit FinCEN to finalize this proposed rulemaking until such certification is issued and found acceptable.<sup>68</sup>

A number of Federal laws directly control the collection and use of data by government agencies with the aim of protecting the privacy of individual persons – namely, the Right to Financial Privacy Act,<sup>69</sup> the Privacy Act,<sup>70</sup> the Federal Information Security Management Act,<sup>71</sup> and the Bank Secrecy Act itself.<sup>72</sup> Lastly, the E-Government Act of 2002<sup>73</sup> provides a further protection for personal information in government data systems, by requiring that agencies conduct “privacy impact assessments” prior to procuring or developing such systems.<sup>74</sup>

FinCEN has developed policies and procedures for compliance with these requirements in accordance with the Department of the Treasury’s Information Technology Security Program Directive. Compliance with these government-wide and department-wide standards ensures that FinCEN designs and operates its information systems in accordance with government best practices for the maintenance and dissemination of sensitive data. In developing a system for the collection, storage, analysis, and sharing of CBETF reports, FinCEN will incorporate compliance with these standards into every phase of the design and implementation of the system. FinCEN has

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<sup>68</sup> 31 U.S.C. § 5318(n)(5)(B).

<sup>69</sup> 12 U.S.C. § 3401et seq (2009).

<sup>70</sup> 5 U.S.C. § 552a (2009).

<sup>71</sup> Federal Information Security Management Act of 2002, Title III, E-Government Act of 2002, Pub.L.No. 107-347, Dec. 17, 2002.

<sup>72</sup> The routine uses for Bank Secrecy Act data are set forth at 70 FR 45756, 45760 (August 8, 2005) (Bank Secrecy Act Reports System—Treasury/FinCEN .003).

<sup>73</sup> E-Government Act of 2002, Pub.L.No. 107-347, section 208, (Dec. 17, 2002).

<sup>74</sup> Office of Management and Budget, Memorandum M-03-22, Guidance for Implementing the Privacy Provisions of the E-Government Act of 2002 (Washington, D.C., Sept. 26, 2003).

more than twenty years of experience in handling sensitive financial information about persons through the reporting it currently receives from financial institutions in the United States. FinCEN imposes strict limits on the use and re-dissemination of the data it provides to its law enforcement, regulatory, and foreign counterparts and strictly monitors those persons and organizations to which it grants access to the data.<sup>75</sup>

#### **V. Section-By-Section Analysis**

The proposed rule (a) would implement section 6302 of the IRTPA by requiring certain banks and money transmitters (“first-in/last-out” financial institutions) to file periodic reports with respect to certain CBETFs (mostly defined as reportable on the basis of method of transmission and monetary threshold), and (b) would require all banks to file an annual report with the account number and accountholder’s U.S. tax identification number of accounts involved in certain CBETFs.

The rule describes the types of transmittal orders and advices of transmittal orders that should be subject to report, the information that should be reported, and the timeframe for the filing of the reports.

##### *General (§ 103.14(a))*

FinCEN proposes to add 31 CFR § 103.14(a). That new paragraph would add a requirement that reporting financial institutions (as defined in this section) file reports with FinCEN with respect to CBETFs that meet the conditions in the rule and subject to the exemptions therein. The conditions that make a transaction reportable are the means of communication of the related transmittal order (or the advice of the transmittal order, when applicable), and, in the case of the CBETF periodic report, the position of the

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<sup>75</sup> For a detailed discussion of the collection of the information contained in the proposed rule, see *Feasibility Report* at Section 7.0 - Information Security Protection.

financial institution making or receiving the communication in the transmittal chain, and the amount of the transmittal of funds involved.

*Definitions (§ 103.14(b))*

Most of the terms utilized in this section have the meanings previously set forth in Part 103 of Chapter I of Title 31.<sup>76</sup> Some of these terms, and all the terms defined specifically for this section, merit additional comment.

*Account.* Account is defined in 103.90(c). This definition covers “a formal banking or business relationship established to provide regular services, dealings, and other financial transactions ...,” and includes the ongoing contractual relationships between some providers of money transmitting services and their customers. If (1) at the moment of opening an account for a person (or shortly thereafter), the financial institution has obtained and maintains on file the person’s name and address, as well as TIN (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance; and (2) the financial institution provides financial services to such person relying on that information, then that person would constitute an “established customer” of the financial institution as defined in 103.11(1).

*Cross-Border Electronic Transmittal of Funds.* The definition of “cross-border electronic transmittal of funds” lies at the heart of a successful implementation of the reporting requirement. The nature of the electronic funds transfer process as it has evolved in the United States poses specific difficulties in creating a definition that at once captures all of the nuances of the payment systems and avoids needless complexity. Section 6302 contemplates a reporting requirement that is coextensive with the scope of

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<sup>76</sup> See 31 CFR 103.11 (2009).

the BSA funds transfer rule (31 CFR § 103.33). Accordingly, for the purposes of the first stage of a phased approach to the cross-border electronic transmittal of funds reporting rulemaking process, the Feasibility Report focused on electronic “transmittals of funds” as defined in 31 CFR § 103.11, and did not address any debit card type of transmittals, point-of-sale (POS) systems, transaction conducted through an Automated Clearing House (ACH) process, or Automated Teller Machine (ATM).<sup>77</sup> Furthermore, within the current regulatory definition of “transmittals of funds,” the Feasibility Report concentrated for the first step in the staged implementation of Section 6302 of the IRTPA on those transactions involving depository institutions that exchange transmittal orders through non-proprietary messaging systems, and all money transmitters, and where the U.S. institution sends or receives a transmittal order directing the transfer of funds to or from an account domiciled outside the U.S. Refining an appropriate regulatory definition of what transactions fall within the new reporting requirement will implicate a number of concerns that were identified by the Feasibility Report and should be further addressed during future studies.

In consideration of these determinations, FinCEN proposes to define a CBETF generally as “[a] transmittal of funds where either the transmittal order or the advice is: (i) communicated through electronic means; and (ii) sent or received by either a first-in or a last-out financial institution.”

The definition as provided concentrates on the evidence of the payment (as opposed to the actual payment itself), represented by a transmittal order (the combination of an instruction to pay and an authorization to debit an account or a confirmation of how the reimbursement for the payment is being disbursed) or an advice of a transmittal order

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<sup>77</sup> See *Feasibility Report*, at Section 8.0 – Conclusions and Recommendations.

(the notification that a credit to an account has been made, in relation to a CBETF).

These messages have to be exchanged by electronic means between a foreign financial institution and either a first-in financial institution (for incoming CBETFs) or a last-out financial institution (for outgoing CBETFs).

The definition does not intend to capture either (1) notifications of a debit to the account maintained by the foreign financial institution at the first-in financial institution, effected to cover the CBETF; (2) a retransmission of a transmittal order for the sole purpose of adding authentication; or (3) notifications to the third party that originates or is the beneficiary of the transmittal of funds. In certain business systems currently in use, the notification to a foreign financial institution of the credit to its correspondent account, processed in connection with a CBETF, is used by the foreign financial institution as the operative instrument for the payment to the beneficiary; this type of advice, which is used in lieu of the more traditional transmittal order, is among the types of additional electronic communication that the regulation seeks to capture.

Additionally, the regulation will require the reporting of transmittal orders where the actual payment of the order does not occur for any reason. FinCEN acknowledges that this will result in the reporting of transactions where settlement never occurred, populating the database with unsettled transmittal orders. However, because the settlement could be cancelled after the reporting of the transmittal order to FinCEN, if FinCEN did not require the reporting of this message the financial institution would be subject to liability under the Right to Financial Privacy Act. Thus, to protect financial institutions and limit the costs of reporting, FinCEN will review whether there are classes



of transactions where settlement did not occur for which it would be practicable and appropriate for FinCEN to arrange to exclude from the database.<sup>78</sup>

*Electronic means* are those means that utilize technology that has electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.<sup>79</sup>

*First-in financial institution.* For purposes of this section, in an incoming CBETF, FinCEN defines a first-in financial institution as any bank or money transmitter that receives a transmittal order or the advice of a transmittal order from a foreign financial institution. FinCEN views the bank or money transmitter in an incoming CBETF that received the transmittal order or the advice of the transmittal order directly from the foreign financial institution and maintains such foreign financial institution's correspondent account, as having more consistently complete information about the transaction than other U.S. financial institutions that may be involved in the same transmittal of funds.<sup>80</sup>

*Last-out financial institution.* For purposes of this section, in an outgoing CBETF, FinCEN defines a last-out financial institution as any bank or money transmitter that sends the transmittal order or the advice of the transmittal order to a foreign financial institution. The last-out financial institution will have more consistently complete

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<sup>78</sup> See *Feasibility Report*, at Section 5.0 – Form, Manner, and Content of Reporting. The ABA suggests, “regardless of the nature of any imagined reporting requirement, the financial services industry’s responsibility should extend only to the simple transmittal of raw data, with FinCEN assuming full responsibility for the refinement and distillation of the data into a format useful to law enforcement agencies.” While FinCEN believes that accommodation of every possible format is unreasonable, the approach proposed in the text recognizes the potential cost and strikes a balance aimed at accommodating the widest possible variation in reporting formats.

<sup>79</sup> 15 U.S.C. § 7006(2) (2006).

<sup>80</sup> The quantity and quality of the information that is transmitted along the payment chain, either embedded in the payment itself or contained in a separate message, tends to degrade as such information is communicated among the links of the chain; the details contained in optional fields may be lost, abridged, or transcribed with errors from transmittal order to transmittal order along the chain.

information about the transaction than other U.S. financial institutions that may be involved in the same transmittal of funds.<sup>81</sup>

*Reporting Financial Institution.* For purposes of this section, FinCEN defines a reporting financial institution as any bank (reporting bank) or money transmitter (reporting money transmitter) acting as a first-in or last-out financial institution.

Whether a “first in” or “last out” institution, because of the size and nature of institutions that serve in correspondent roles for CBETFs, these banks are more likely to be connected with and use centralized message systems (SWIFT, Fedwire, CHIPS) and their standardized message formats. These standardized formats increase the ability of these institutions to handle the transactions with little manual intervention. In addition, these larger banks may often automatically “map over” messages from one system’s format to another (e.g., from SWIFT to Fedwire; from SWIFT to CHIPS). Accordingly, many would have systems in place to perform much of the data extraction necessary to create the reports required.

In other words, the obligation to report should fall upon those U.S. institutions that transmit an electronic funds transfer instruction directly to a non-U.S. financial institution or conversely, those that receive such instructions directly from a non-U.S. financial institution. This approach aims to capture a funds transfer instruction at the point at which it crosses the U.S. border. The advantages of the approach are that it

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<sup>81</sup>See the *Feasibility Report* at 12-14. If more than one U.S. financial institution took part in the transmittal of funds, the last-out financial institution’s records should identify the transmitter, the transmitter’s financial institution, and other information about the transaction (e.g., recipient, recipient’s financial institution, information exchange, additional financial institutions involved and their roles, date, amount, etc.). Similarly, the U.S. bank’s records may provide a more complete picture of the entities involved in the overall chain of the transaction. Investigators and analysts could then determine where to turn for further information on the transaction and customer. In addition, the customer identification (to the extent it is included in the original message) and other transaction detail information should remain intact and available throughout this correspondent stage and therefore remain available in the instructions handled by the last-out financial institution.

focuses the reporting requirement upon larger institutions that are most familiar with international funds transfers, have the technological systems in place to facilitate such transfers, and are in the best economic position to implement compliance systems and processes.<sup>82</sup>

*Reporting Threshold.* Reporting banks would be required to file periodic CBETF reports on transactions of any amount (zero threshold), while reporting money transmitters would be required to file periodic CBETF reports on transactions for amounts equal to or greater than \$1,000, or its equivalent in any other currency. In the case of transactions denominated in foreign currency, the exchange rate that is applied should be that exchange rate that was provided to the customer at the time of the transaction.

*Filing procedures (§103.14(c)).*

This section describes what reporting banks and reporting money transmitters would be required to report under the CBETF report proposal, in what format they must report the information, how often they must report it, and explicitly recognizes the possibility of reporting via a third party although responsibility for compliance with the reporting obligations would remain with the reporting financial institution.

To accommodate these requirements, FinCEN had to adopt a limited number of standard forms for CBETF reporting. These standards had to accommodate automated

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<sup>82</sup> In its response to FinCEN's March 2006 industry survey, the American Bankers Association offered that "An unscientific poll of bankers visiting ABA's compliance web page revealed that only 1 in 4 respondents identified themselves as conducting "last out, first in" cross-border transfers." The ABA also noted "for some [banks] it required less IT logic to be built into the reporting system." Significantly, the ABA opined ". . . a "last out, first in" reporting obligation would suffice to capture the cross border transfer of funds and whatever information is attached to that transmittal. Although this method shifts much of the reporting cost to a smaller number of generally larger banks, many of the[m] possess sufficient capacity to perform the reporting with greater efficiency than would be the case if the obligation rested with all originating or beneficiary's institutions."

filing of large collections of CBETF reports, manual uploading of mid-sized collections of CBETF reports, and discrete filing by small volume CBETF service providers. In addition, the standards had to assimilate the variations between the different CBETF message systems from which the reporting institutions would extract the data. Finally, the standards had to be such that reporting institutions could convert the source data from their systems into the required format with a minimum of manual intervention or system modifications.<sup>83</sup> The proposed regulation will permit institutions to comply with this requirement through the submission of customized reports that comply with a format prescribed by FinCEN or through the submission of certain pre-existing formats (e.g., CHIPS or SWIFT messages) that contain the required data elements. The pre-existing forms deemed acceptable by FinCEN would serve as proxies for formally prepared reports.

Reporting financial institutions would be required to report on CBETF at or above their respective thresholds (no threshold for banks and a \$1,000 threshold for money transmitters) by submitting a copy of the respective transmittal order or advice of the transmittal order, provided that the transmittal order or advice format has been approved for direct submission by FinCEN. If the reporting financial institution is unable to submit a copy of the respective, approved transmittal order or advice, then the reporting financial institution may discharge its reporting obligation by submitting the following information, if available, in a form specified by FinCEN:

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<sup>83</sup> See *Feasibility Report*, at Section 5.0 – Form, Manner, and Content of Reporting. The ABA suggests, “regardless of the nature of any imagined reporting requirement, the financial services industry’s responsibility should extend only to the simple transmittal of raw data, with FinCEN assuming full responsibility for the refinement and distillation of the data into a format useful to law enforcement agencies.” While FinCEN believes that accommodation of every possible format is unreasonable, the approach proposed in the text recognizes the potential cost and strikes a balance aimed at accommodating the widest possible variation in reporting formats.

- i) Unique transaction identifier number;
- ii) either the name and address or the unique identifier of the transmitter's financial institution;
- iii) name and address of the transmitter;
- iv) the account number of the transmitter (if applicable);
- v) the amount and currency of the transmittal of funds;
- vi) the execution date of the transmittal of funds;
- vii) the identity of the recipient's financial institution;
- viii) the name and address of the recipient;
- ix) the account number of the recipient;
- x) any other specific identifiers of the recipient or transaction; and
- xi) for transactions of \$3,000 or more conducted through a money transmitter, the U.S. taxpayer identification number of the transmitter or recipient (as applicable) or, if none, the alien identification number or passport number and country of issuance.

The data points requested coincide with the combined recordkeeping requirements imposed on financial institutions by the recordkeeping rule<sup>84</sup> and the travel rule,<sup>85</sup> with the addition of the unique transaction identifier number, if such an identifier exists. The addition of the identifier is an operational necessity for FinCEN, for two major reasons: (1) given the very large amount of transactions processed on a daily basis by reporting financial institutions involving the same amounts, transmitters, recipients, and intermediary financial institutions, the unique identifier number may be the only

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<sup>84</sup> See 31 CFR 103.33(e), (f) (2009).

<sup>85</sup> See 31 CFR 103.33(g) (2009).

effective and efficient way for FinCEN and law enforcement to distinguish one particular transaction from others, which will become particularly useful in facilitating any follow-up communications with reporting financial institutions, and (2) given that a certain degree of duplication on the reporting is considered unavoidable, the unique transaction identifier is the most effective and efficient tool to allow deconfliction of several reports involving the same CBETF by FinCEN without requiring institutions to expend resources segregating reports relating to the same transaction.

This section requires the reporting financial institution to file reports with FinCEN no later than five business days after issuing or receiving the transmittal notice or its advice.

FinCEN understands that an institution required to file reports under section 103.14 may prefer to designate a third party to file those reports. As long as the reports are filed in the manner required by section 103.14, FinCEN will allow such a designation. However, it is important to emphasize that it is the responsibility of the reporting financial institution to comply with the reporting obligation, and the reporting financial institution is ultimately liable for any failures by the designated third party to file a report as required by the proposed rule.

*Nature and form of reports (§ 103.14(d)).*

All CBETF reports shall consist of electronic submissions filed either discretely on a transaction-by-transaction basis or by batching transactions in a format approved by FinCEN. FinCEN may authorize a designated reporting financial institution to report in a different manner if the financial institution demonstrates to FinCEN (1) that the form of the required report is unnecessarily onerous on the institution as prescribed; (2) that a

report in a different form will provide all the information FinCEN deems necessary; and (3) that submission of the information in a different manner will not unduly hinder the effective administration of this part.

*Additional Annual Reports (§ 103.14(e)).*

On an annual basis, all banks must submit to FinCEN a report that provides the following information: the account number that was credited or debited to originate or receive a CBETF, and the U.S. taxpayer identification number of the respective accountholder. This report shall be submitted to FinCEN no later than April 15 of the year following the transaction date of the CBETF.

FinCEN shall endeavor to link the periodic information submitted in the CBETF reports with the information provided in the TIN annual reports, matching transactions on the basis of common key data items contained in both reports: the U.S. transmitter's or receiver's account number. FinCEN's ability to combine both sets of information will depend on the quality and integrity of the common key data items.

*Exemptions (§ 103.14(f)).*

At this time, FinCEN proposes that the following CBETFs be exempted from reporting requirements: (1) CBETFs where either the transmitter is a bank as defined in 31 CFR 103.11(c), and the recipient is a foreign (not within the United States) bank, or, the transmitter is a foreign bank and the recipient is a bank, and, in each case, there is no third-party customer to the transaction; or (2) the transmittal order and advice of the transmittal order are communicated solely through systems proprietary to a bank.

**VI. Proposed Location in Chapter X**

As discussed in a previous Federal Register Notice, 73 FR 66414, Nov. 7, 2008, FinCEN is separately proposing to remove Part 103 of Chapter I of Title 31, Code of Federal Regulations, and add Parts 1000 to 1099 (Chapter X). If the notice of proposed rulemaking for Chapter X is finalized, the changes in the present proposed rule would be reorganized according to the proposed Chapter X. The planned reorganization will have no substantive effect on the regulatory changes herein. The regulatory changes of this specific rulemaking would be renumbered according to the proposed Chapter X as follows:

Section 103.14 would be moved to § 1010.380.

#### **VII. Executive Order 12866**

This proposed rule is a significant regulatory action, although not economically significant, and has been reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12866 (EO 12866).

#### **VIII. Unfunded Mandates Act of 1995 Statement**

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), Public Law 104-4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202 and has concluded that on



balance the proposals in the Notice of Proposed Rulemaking provide the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

## **IX. Regulatory Flexibility Act**

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to “prepare and make available for public comment an initial regulatory flexibility analysis” that will “describe the impact of the proposed rule on small entities.” (5 U.S.C. § 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

### Reporting of Cross-Border Electronic Transmittals of Funds:

*Estimate of the number of small entities to whom the proposed rule will apply:*

The reporting requirement proposed pursuant to the IRTPA, requires certain banks and money transmitters to report to FinCEN information associated with individual CBETFs on a periodic basis.

For purposes of the RFA, both banks and credit unions are considered small entities if they have less than \$175 million in assets.<sup>86</sup> Of the estimated 8,000 banks, 80% have less than \$175 million in assets and are considered small entities.<sup>87</sup> Of the estimated 7,000 credit unions, 90% have less than \$175 million in assets.<sup>88</sup> FinCEN estimates that this rule will impact 300 banks and credit unions. Of these 300 banks and

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<sup>86</sup> *Table of Small Business Size Standards Matched to North American Industry Classification System Codes*, Small Business Administration Size Standards 28 (SBA Aug. 22, 2008) [hereinafter *SBA Size Standards*].

<sup>87</sup> Federal Deposit Insurance Corporation, *Bank Find*, [http://www2.fdic.gov/idasp/main\\_bankfind.asp](http://www2.fdic.gov/idasp/main_bankfind.asp); select Size or Performance: Total Assets, type Equal or less than \$: “175000”, select Find [hereinafter *FDIC Bank Find*].

<sup>88</sup> National Credit Union Administration, *Credit Union Data*, <http://webapps.ncua.gov/customquery/>; select Search Fields: Total Assets, select Operator: Less than or equal to, type Field Values: “175000000”, select Go [hereinafter *NCUA Data*].

credit unions, FinCEN estimates that no more than 190 are small entities.<sup>89</sup> While all banks<sup>90</sup> can maintain customer accounts that are used to originate or receive CBETFs, not all banks are equipped to complete a CBETF on their own: for example, in the case of an outgoing CBETF the actual transaction may have to be channeled from small/medium banks to large, internationally active banks with whom they maintain correspondent banking relationships (last-out banks), and from these to a foreign bank. As part of the ordinary process of a transaction (and, in the case of outgoing CBETFs for amounts of \$3,000 or higher, also because of BSA/AML regulatory requirements),<sup>91</sup> these larger first-in/last-out banks receive from the typically smaller originating bank all the data points FinCEN has deemed necessary to request. Therefore, FinCEN estimates that this reporting requirement will only impact 1.5% of all small banks and credit unions because, as stated above, these smaller institutions rely on large banks to process CBETFs.

For the purposes of the RFA, a money transmitter is considered small if it has less than seven million in gross receipts annually. Of the estimated 19,000 money transmitters, FinCEN estimates 95% have less than seven million in gross receipts

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<sup>89</sup> See *Implications and Benefits Study*, App. C, 6 figs. 1-2. FinCEN was able to determine that 110 institutions that would be impacted by the proposed rule had assets over \$1 billion. FinCEN also determined that 8 institutions that would be impacted by the proposed rule had assets less than \$175 million. FinCEN was unable to determine an asset size for the estimated 182 additional institutions that would be impacted by the proposed rule. For purposes of estimating the population impacted by the rule for purposes of the RFA analysis, FinCEN includes these additional institutions in the estimate of small entities.

<sup>90</sup> See 31 CFR 103.11(c) (2009) (The definition of “bank” under the BSA regulations includes commercial banks and trusts, private banks, savings and loan associations, credit unions, U.S. agencies and branches of foreign banks, etc).

<sup>91</sup> 31 CFR 103.33(e) (2009) (Recordkeeping requirements for banks); 31 CFR 103.33(f) (2009) (Recordkeeping requirements for nonbank financial institutions).

annually.<sup>92</sup> Generally, small money transmitters do not have the infrastructure and international network necessary to process CBETFs resulting in a relatively small percentage of the total population that act as first-in or last-out institutions. Therefore, FinCEN estimates, the proposed rule will impact an estimated 4% of these small money transmitters. Therefore, FinCEN has determined that neither a substantial number of small banks nor money transmitters will be significantly impacted by the proposal.

*Description of the projected reporting and recordkeeping requirements of the proposed rule:*

During a week that a bank processes at least one CBETF as a first-in or last-out institution, the bank must report to FinCEN up to 10 data items for each CBETF processed. These data items are necessary for the proper messaging and settlement of a CBETF, and also correspond to data banks are obligated to obtain, retain, and retransmit for transactions at or above \$3,000. During a week that a money transmitter conducts a CBETF as a first-in or last-out institution, a money transmitter will be required to report up to 10 data items per transaction at or above \$1,000 and an additional 11<sup>th</sup> data point for transactions at or above \$3,000. The information money transmitters will be required to report is information that they already obtain either in the ordinary course of business or to comply with other regulatory obligations.

For RFA analysis, and relying on its specific studies, FinCEN has determined that this requirement would impose a significant impact on these first-in and last-out institutions. However, as discussed above, this significant impact would be limited to a minimal number of small entities that conduct fewer CBETFs. In the year 2006, FinCEN

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<sup>92</sup> See FinCEN MSB Registration List (2/10/2010), [http://www.fincen.gov/financial\\_institutions/msb/msbstateselector.html](http://www.fincen.gov/financial_institutions/msb/msbstateselector.html) (Sort list by entities that engage in money transmission and remove repeat registrations).

estimates that each large bank (as defined above) conducted 2 million reportable transactions on average. FinCEN estimates that small banks (also as defined above) conducted only eight thousand reportable transactions on average.<sup>93</sup>

The specific studies revealed that the individual average estimated cost of implementing the CBETF periodic report would consist of \$94,000 per year for large banks, and \$11,900 for small banks.<sup>94</sup> In the case of money transmitters, the same cost would be split into a set-up and an annual ongoing portion: \$250,000 set-up cost and \$52,000 annual costs for large money transmitters, and no set-up cost and \$20,000 annual costs for small money transmitters.<sup>95</sup>

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<sup>93</sup> *Implications and Benefits Study*, App. C, 11 fig. 13. The number of annual reportable transactions per large bank (as defined under the RFA) covered a wide range, with few very large institutions processing tens of millions of reportable transactions, and a large number of relatively smaller institutions processing reportable transactions in the tens of thousands or fewer. The average of 2 million transactions per large bank compensates both extremes of this wide range.

<sup>94</sup> *Implications and Benefits Study* at 45 tbl. 6-1. As indicated in table 6-1, the annual cost for medium sized banks (92 institutions) is \$20,100 and the annual cost for small banks (150 institutions) is \$6,800. For purposes of the Regulatory Flexibility Act analysis, FinCEN is considering both medium and small banks to be small banks. Therefore, the weighted average annual effect on these institutions is \$11,900. These figures, which assume use of the hybrid model (*supra* III. Sec. B.), were based on separate, but limited follow-up information received from industry and not the numbers pertaining to cost estimates received from industry through FinCEN's CFI survey per se. The hybrid model was conceived based on some of the general survey responses, but was not a targeted matter of inquiry with respect to costs in the CFI survey (*supra* III. Sec. B.). Given the evolution of services available to the financial sector within the context of third-party centralized messaging systems since then, FinCEN, as emphasized *infra* (X. Request for Comments), is soliciting comment from industry on the current validity of these cost estimates.

<sup>95</sup> *Id.* The cost estimates in table 6-1 were derived in consideration of a \$3,000 reporting threshold. The proposed rule anticipates a \$1,000 reporting threshold for money transmitters and no reporting threshold for banks. This change will affect the cost estimate for small money transmitters because FinCEN anticipates that such transmitters will comply through discrete transaction-by-transaction reporting. FinCEN anticipates that the change in threshold will increase the number of reports and consequently increase the average annual effect on small money transmitters from \$395 to \$20,000. Alternatively, because FinCEN anticipates that banks and large money transmitters will utilize automated reporting systems, a change in the threshold does not change the estimated annual costs. See America's Community Banker's Ltr. *supra* n. 53; see *Implications and Benefits Study* at 45 tbl. 6-1 (one-time implementation cost of developing automated reporting systems is estimated at \$250,000). Furthermore, several new reporting services have evolved or been made more widely available by third-party centralized messaging systems such as SWIFT, since the research period of the *Implications and Benefits Study*, which could reduce the annual reporting cost of banks significantly below the figures calculated in the Study.

Although the impact of the proposal will, for purposes of the RFA, be significant, the proposal will not impact a substantial number of institutions. Additionally, the impact on small institutions will be much less than the impact on larger institutions.

Reporting of Taxpayer Identification Numbers of Accountholders:

*Estimate of the number of small entities to whom the proposed rule will apply:*

The second reporting requirement contained within this proposal would require all banks to report the account number and TIN information of accountholders that transmitted or received a CBETF required to be reported under this section. For purposes of the RFA, both banks and credit unions are considered small entities if they have less than \$175 million in assets.<sup>96</sup> Of the estimated 8,000 banks, 80% have less than \$175 million in assets and are considered small entities.<sup>97</sup> Of the estimated 7,000 credit unions, 90% have less than \$175 million in assets.<sup>98</sup> Banks and credit unions that would not be considered first-in/last-out institutions may still be required to report under this second proposal. This is because they may have one or more customers that transmitted or received a CBETF during the year. Therefore FinCEN estimates that this rule will impact all banks and credit unions.

*Description of the projected reporting and recordkeeping requirements of the proposed rule:*

The second reporting requirement contained within this proposal would require all banks to report on an annual basis the account number and TIN information of

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<sup>96</sup> *Table of Small Business Size Standards Matched to North American Industry Classification System Codes*, Small Business Administration Size Standards 28 (SBA Aug. 22, 2008) [hereinafter *SBA Size Standards*].

<sup>97</sup> Federal Deposit Insurance Corporation, *Bank Find*, [http://www2.fdic.gov/idas/main\\_bankfind.asp](http://www2.fdic.gov/idas/main_bankfind.asp); select Size or Performance: Total Assets, type Equal or less than \$: "175000", select Find [hereinafter *FDIC Bank Find*].

<sup>98</sup> National Credit Union Administration, *Credit Union Data*, <http://webapps.ncua.gov/customquery/>; select Search Fields: Total Assets, select Operator: Less than or equal to, type Field Values: "175000000", select Go [hereinafter *NCUA Data*].

accountholders that transmitted or received a CBETF required to be reported under this section. The economic impact of this proposal will not be significant. The information required to be reported is information that banks are already required to record as part of their customer identification procedures.<sup>99</sup>

FinCEN understands that banks will be able to leverage from automated systems already designed to address current regulatory requirements, make relatively inexpensive internal modifications to existing queries that extract information from their customer information and transactional databases, and produce a summary annual report when a customer account shows evidence of CBETF activity during the year. The cost of the TIN annual reporting is based on the burden (measured in hours) of running these queries and producing and formatting the report (at clerical level), and spot-checking the report prior to transmission (at supervisory level).

FinCEN has determined that existing regulatory reports of a similar nature involve an annual burden of 1 hour. Therefore, FinCEN estimates that the impact on a small bank to produce this report would be \$24.47 annually<sup>100</sup> with a collective impact on small banks of \$7,000. As such, FinCEN does not believe the impact of generating such report is significant.

Certification:

When viewed as a whole, FinCEN does not anticipate the proposals contained in this rulemaking will have a significant impact on a substantial number of small businesses. Accordingly, FinCEN certifies that this rule will not have a significant economic impact on a substantial number of small entities.

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<sup>99</sup> See 31 CFR § 103.121 (2009).

<sup>100</sup> See Bureau of Labor Statistics, *Occupational Employment and Wages, May 2006*, <http://www.bls.gov/oes/2006/may/oes131041.htm>.

FinCEN is seeking comments on this determination.

**X. Paperwork Reduction Act**

The collection of information contained in this proposed rule is being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and an individual is not required to respond to, a collection of information unless it displays a valid OMB control number. Comments on the information collection should be sent to the Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, D.C. 20503, or by the Internet to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) with a copy to the Financial Crimes Enforcement Network by mail or as part of the comments through the Internet. Comments are welcome and must be received by [INSERT DATE THAT IS 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

*Cross-border Electronic Transmittals of Funds Report (the "CBETF periodic report")*

Description of Affected Financial Institutions: Banks as defined in 31 CFR 103.11(c) and money transmitters as defined in 31 CFR 103.11(uu)(5).

Estimate Number of Affected Financial Institutions: 1,000 (300 banks<sup>101</sup> and 700 money transmitters operating as principals).<sup>102</sup>

Estimated Average Annual Burden Hours Per Affected Financial Institution:

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<sup>101</sup> See 31 CFR 103.11(c) (2009) (For purposes of the BSA, the term "bank" includes credit unions).

<sup>102</sup> *Implications and Benefits Study* at ii.

On a weekly basis, first-in and last-out institutions will be required to submit a report containing information on all CBETFs conducted during the week. Each institution will be required to submit a maximum of 52 reports per year. For a large institution, FinCEN estimates that on the average each weekly report will contain information on 40,000 CBETFs.<sup>103</sup> For a small institution, FinCEN estimates that each weekly report will contain information on 115 CBETFs. Despite the number of CBETFs contained in each report, FinCEN estimates that the average burden associated with verifying and filing the report is one hour for each weekly report. FinCEN is not considering the time necessary to gather the information required for the report because the gathering of this information is usual and customary in processing these transactions. For banks, this information is included in the message that is transmitted between institutions and only needs to be retransmitted to FinCEN in the same messaging format as was originally sent.

For money transmitters, FinCEN understands that to be active in the highly competitive cross-border remittances market, and to comply with current BSA/AML monitoring requirements involving their own activity and the activity of their agents, all money transmitters covered by the proposed reporting requirement must already possess a degree of automation that will allow them to generate the CBETF periodic report with minimal manual intervention. Manual intervention at operator level will consist of running the queries on the transaction and customer information databases, and inserting a single FinCEN Uniform Resource Locator (URL) in the computer-generated report;

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<sup>103</sup> *Implications and Benefits Study*, App. C, 11 fig. 13. The number of annual reportable transactions per large bank (as defined under the RFA) covered a wide range, with few very large institutions processing tens of millions of reportable transactions, and a large number of relatively smaller institutions processing reportable transactions in the tens of thousands or fewer. The average of 2 million transactions per large bank compensates both extremes of this wide range.



manual intervention at supervisor level will consist of spot-checking the generated report prior to transmitting it to FinCEN. While the number of weekly CBETFs per individual money transmitter (large or small) might vary, the actual number of weekly CBETFs is not considered a burden-determinant factor: having an operator execute and address an automated weekly report would require substantially the same time regardless of the number of transactions. The time required by manual intervention at the supervisory level for quality assurance will be affected by the number of weekly transactions; however, the sample size required for spot-checking at an industry-standard confidence level will not have to be increased in direct proportion to the number of reported transactions. Furthermore, those money transmitters that process the largest portion of CBETFs subject to reporting are also those that currently possess enough technological resources to automate not only the generation of the report, but the spot-checking function as well.

Estimated Average Total Number of CBETF Periodic Reports per Annum:

52,000 (52 weekly reports submitted by 1,000 reporting institutions).

Estimated Total Annual Burden: 52,000 hours (52,000 reports at 1 hour per report).

The total number of reports to be filed per calendar year (or, in the case of banks, the number of times a year SWIFT retransmits their CBETF activity to FinCEN) is a function of the mandated periodicity of the reports. The proposal reflects the obligation to file a weekly report (an average of 52 reports per reporting institution per calendar year). Total number of weekly reports to be filed by all reporting banks is 15,600 a year;

total number of weekly reports to be filed by all reporting money transmitters is 36,400 a year.

*Annual Tax Identification Number Report (the "TIN annual report")*

Description of Affected Financial Institutions: Banks as defined in 31 CFR 103.11(c).

Estimate Number of Affected Financial Institutions: 15,000 banks.

Estimated Average Total Number of TIN annual reports per Annum: 15,000 (1 annual report submitted by 15,000 reporting institutions).

Estimated Total Annual Burden: 15,000 hours (15,000 reports at 1 hour per report).

Under the TIN annual reporting portion of this proposed rule, FinCEN estimates that the number of affected banks would increase to a maximum of 15,000.<sup>104</sup> FinCEN stipulates that the banks covered by the proposed TIN annual report requirement already possess the degree of automation required to search their transaction and customer information databases and generate the report with minimum manual intervention: the same bank population is currently subject to other regulatory reporting requirements, such as annual reporting on the IRS series of 1099 forms that require substantially similar data processing capacity. The estimated average burden is one hour per reporting bank per year. Therefore, the average total annual burden hours would increase to 15,000.

*Request for Comments Regarding the Paperwork Reduction Act Analysis*

FinCEN is seeking comments on these estimates. Comments are specifically requested concerning:

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<sup>104</sup> Federal Deposit Insurance Corporation, *Bank Find*, [http://www2.fdic.gov/idasp/main\\_bankfind.asp](http://www2.fdic.gov/idasp/main_bankfind.asp); *select Find*; *Credit Union Directory 2009*, NCUA Credit Union Directory 190-192 (NCUA, 2009).

- Whether the proposed collection of information is necessary for the proper performance of the functions of FinCEN, including whether the information will have practical utility;
- The accuracy of the estimated burden associated with the proposed collection of information;
- How the quality, utility, and clarity of the information to be collected may be enhanced; and,
- How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology.

#### **XI. Request for Comments**

FinCEN invites comments on any and all aspects of the proposal to require select financial institutions to report to FinCEN transmittal orders associated with certain CBETFs. If you are commenting on behalf of a bank, please indicate in your response whether you are a small institution (less than \$175 million in assets). If you are commenting on behalf of an MSB, please indicate in your response whether you are a small MSB (gross receipts are below \$7 million annually).<sup>105</sup>

FinCEN specifically invites comment on requests above, as well as the following:

*Third-party Carriers:* In the proposed rule, banks will be able to report by either submitting the complete copy of the transmittal order that it sends or receives or by submitting the ten data points listed in 103.14(c) of the proposed regulation. FinCEN

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<sup>105</sup> Please note that the inclusion of this information is not a condition of FinCEN's full consideration of your comment. However, this data will help FinCEN allocate the comment among the population of large and small business entities, and produce a better evaluation of the impact of the proposed rule in accordance with the Regulatory Flexibility Act.

anticipates that banks, which provide complete copies of the CBETF transmittal orders, will fulfill this obligation by using third-party carriers of the transmittal orders to submit the copy on behalf of the bank. Alternatively, for banks that submit the ten data points requested in 103.14(c) of the proposed regulation, FinCEN anticipates providing an internet-based form to report the information. FinCEN requests comments on alternative formats for reporting the proposed information that FinCEN should consider in developing systems to accept CBETF reporting. Additionally, FinCEN requests comments on third-party carriers, other than SWIFT, that could make such reports on behalf of the bank. Although FinCEN is focusing on messaging systems, FinCEN welcomes comments from the public regarding possible payment or settlement systems that could provide the information requested under the proposed rule.

*Message Standards:* If institutions that would be covered by this rule believe that there is a significant portion of their funds transfers that would be required to be reported under this proposed rule that would not be covered by reporting the identified standardized person-to-person transmittal orders (MT 103 and MT 202-COV), FinCEN encourages comments in this area.

*Bank Proprietary Systems:* FinCEN requests comment on the utility of reporting CBETFs that are processed solely through bank proprietary systems and on the potential costs of supplying such reports. At this time, FinCEN is not proposing to collect information on CBETFs that are processed through bank proprietary systems. FinCEN acknowledges that these systems are used in a limited context and that within these contexts there is a higher degree of transparency. When commenting, please note if you have information contrary to these acknowledgements.

*Duplicate Messages:* FinCEN is requiring submissions of copies of transmittal orders or advices with the intention of collecting the evidence that a transmittal of funds has occurred or will occur. FinCEN is asking for advices in order to capture situations where a proprietary system may be used in order to execute the transmittal order but where a third-party system is used in addition to sending an advice to facilitate straight-through processing. It is not FinCEN's intention to collect duplicate records in the rare cases where a transmittal order and an advice are both covered under this proposed regulation. As such, FinCEN is seeking comments on situations where the regulations as proposed might result in duplicate reporting and, if so, whether institutions view this duplication as something that they believe is less costly to simply report (with FinCEN reconciling the two reports) or whether they believe that it would be of value to exempt duplicate filings, with suggestions as to how to avoid such duplication.

*Frequency of Reports:* FinCEN requests comments on the frequency that reports are required to be provided including the feasibility of requiring daily reporting. FinCEN is aware that other countries require daily reporting with significant benefits accruing to law enforcement from the access to near real-time information. FinCEN is interested in receiving information from financial institutions about the impacts that this would have on their operations. In determining the costs of compliance with this proposal, FinCEN has relied on feedback from banks stating that the reporting requirements of the proposal can be fulfilled by copying FinCEN on a SWIFT message. Thus, FinCEN anticipates that the costs of compliance for banks would not be significantly increased if these messages are sent to FinCEN daily as opposed to batch-sent to FinCEN weekly. If your

institution (including any money transmitter) has information suggesting otherwise, please include that information within your comment.

*Effects of the Rule on Customer Privacy:* FinCEN has included an extensive discussion of its proposal for ensuring the security of the information in this NPRM.<sup>106</sup> In addition, it is also seeking comments regarding the impact of this information collection on customer privacy and on the ability of banks and MSBs to continue to fulfill their obligations to preserve their customer's privacy while implementing the provisions of this rule.

*Effects of FinCEN's Proposed Reporting Requirements:* To establish an efficient reporting system that not only meets the goal of providing information that is needed by law enforcement but does not require significant changes in the business and payment systems of banks and MSBs, FinCEN is proposing that first-in/last-out banks report all CBETFs and that first-in/last-out money transmitters report all CBETFs at or above \$1,000. FinCEN discussed its estimates of the implications of the proposed rule in its Regulatory Flexibility Analysis<sup>107</sup> and its discussion of the Implications and Benefits Study.<sup>108</sup> Considering these discussions and the reporting requirements defined by FinCEN in the NPRM, FinCEN is seeking comments from banks and MSBs on the costs and impact of these broad parameters on the funds transfer operations and systems of the banks and MSBs affected by this rule.

*Migration to other CBETF Channels:* FinCEN would like to solicit comments from institutions regarding specific instances where they believe that, as a result of such a reporting requirement, financial institutions or their customers may move to execute

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<sup>106</sup> *Supra* IV. Sec. I Protection of Private Personal Financial Information.

<sup>107</sup> *Supra* IX. Regulatory Flexibility Act.

<sup>108</sup> *Supra* III. Sec. B. Implications of CBETF Reporting of the Financial Industry.

CBETFs by some other means that would not be subject to the proposed reporting requirement, including informal value transfer mechanisms or non-U.S. based payment mechanisms (please provide details).

*Effect of the Rule on Remittances:* FinCEN requests comments on the effect any such reporting is likely to have on retail consumers of cross-border remittances, including how any such reporting may change the relationship between the remittance consumer and the money transmitter and how such reporting may produce cost or price effects likely to be passed on to such consumers. Please be specific in identifying any such monetary effects, as well as any non-monetary effects caused by such a proposed rule, if adopted.

*Reporting Channels:* In the proposed rule, FinCEN requires reporting from money transmitters for transactions of \$1,000 or more. FinCEN anticipates that large money transmitters will implement automated systems to provide the information requested in 103.14(c) of the proposed regulation. FinCEN requests comments on possible formats for this reporting to assist FinCEN in developing a user-friendly format to reduce the implications on money transmitters. FinCEN understands that smaller institutions might benefit from submitting reports on an internet-based form provided by FinCEN. For those institutions with a lower volume of CBETF transactions, FinCEN believes that use of the internet-based form would allow cost savings versus self-implemented automated reporting systems and requests comments from the industry on this proposal.

*Foreign-Exchange Conversions:* In the proposed rule, FinCEN requires reporting from money transmitters for transactions of \$1,000 or more or the equivalent in other

currencies. FinCEN would like to solicit comments on how, with respect to non-U.S. dollar denominated transactions, institutions would perform the currency exchange rate calculations in practice and what systems or approaches may be available to facilitate compliance with this requirement.

*Effect of TIN Reporting on the Banking Industry:* FinCEN requests comments on how the annual TIN reporting requirement will impact the banking industry and how the industry will comply with this requirement, including how reportable accounts would be identified for reporting under this methodology. FinCEN understands that banks will be able to leverage from automated systems already designed to address current regulatory requirements, and make relatively inexpensive internal modifications to existing queries that extract information from their customer information and transactional databases, and produce a summary annual report when a customer account shows evidence of CBETF activity during the year. These automated systems are used to comply with other regulatory requirements including the filing of the IRS series of Form 1099. If you have information suggesting that banks are unable to leverage off of these systems, please include that information within your comment.

*Effect of TIN Reporting on the Money Transmitter Industry:* FinCEN is interested in soliciting comments from the money transmitter industry regarding the additional requirement of providing the TIN of the transmitter or recipient for transactions of \$3,000 or more. As stipulated above, in order to be active in the highly competitive cross-border remittances market, and to comply with current BSA monitoring requirements involving their own activity and the activity of their agents, all money transmitters covered by the proposed periodic reporting requirement must already possess a degree of automation



that will allow them to generate the CBETF periodic report with minimal manual intervention. If you have information suggesting that money transmitters that process CBETFs are unable to rely on automated systems coupled with minimal manual transaction testing, please include that information in your comment.

*TIN Reporting Threshold for the Money Transmitter Industry:* Lastly, FinCEN solicits comments on whether the money transmitters required to report under these proposals would prefer to consolidate the reporting thresholds (\$1,000 for CBETF reports and the \$3,000 level for including the taxpayer identification number in the report) into a single \$1,000 threshold for both reporting the transaction and reporting the taxpayer identification number (meaning that a TIN would be required with every CBETF reported).

#### **List of Subjects in 31 CFR Part 103**

Administrative practice and procedure, Banks, Banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

#### **Authority and Issuance**

For the reasons set forth in the preamble, part 103 of title 31 of the Code of Federal Regulations is proposed to be amended as follows:

#### **PART 103 – FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FINANCIAL TRANSACTIONS**

1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314, 5316-5332; title III, secs. 311, 312, 313, 314, 319, 326, 352, Pub. L. 107-56, 115 Stat. 307.

2. Add new § 103.14, to read as follows:

**§ 103.14 Reporting Relating to Cross-Border Electronic Transmittal of Funds.**

(a) *Periodic Reports.* Each reporting financial institution shall file periodic reports with FinCEN with respect to any cross-border electronic transmittal of funds, denominated in any currency, for an amount equal to or exceeding the applicable reporting threshold, to the extent and in the manner required by this section.

(b) *Definitions— In general.* For purposes of this section, the following terms shall have the meanings set forth below:

- (1) *Account* shall have the meaning set forth in 31 CFR § 103.90(c).
- (2) *Bank* shall have the meaning set forth in 31 CFR § 103.11(c).
- (3) *Money transmitter* shall have the meaning set forth in 31 CFR § 103.11(uu)(5).
- (4) *Recipient* shall have the meaning set forth in 31 CFR § 103.11(cc).
- (5) *Transmittor* shall have the meaning set forth in 31 CFR § 103.11(ll).
- (6) *Transmittal order* shall have the meaning set forth in 31 CFR § 103.11(kk).
- (7) *Transmittal of funds* shall have the meaning set forth in 31 CFR § 103.11 (jj).
- (8) *Electronic means.* Means that utilize technology that has electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (9) *Financial institution* shall have the meaning set forth in 31 CFR § 103.11(n).
- (10) *Foreign financial institution* shall have the meaning set forth in 31 CFR § 103.175(h).
- (11) *First-in financial institution.* The first financial institution with respect to a transmittal of funds that receives a transmittal order or advice from a foreign financial institution.

(12) *Last-out financial institution.* The last financial institution with respect to a transmittal of funds that sends a transmittal order or advice to a foreign financial institution.

(13) *Cross-border electronic transmittal of funds.* A transmittal of funds where either the transmittal order or the advice is:

- (i) Communicated by electronic means; and
- (ii) Sent or received by either a first-in or last-out financial institution.

(14) *Reporting financial institution.* Any bank ('reporting bank') or money transmitter ('reporting money transmitter') acting as a first-in or last-out financial institution.

(15) *Reporting threshold.* For reporting banks, the reporting threshold is zero. For reporting money transmitters, the reporting thresholds for the periodic cross-border electronic transmittal of funds is \$1,000 or more, or the equivalent in other currencies.

(c) *Filing procedures—(1) What to file.* Reporting financial institutions shall discharge their reporting obligations with respect to cross-border electronic transmittals of funds required by paragraph (a) of this section by submitting a copy of the respective transmittal order or advice, provided that the transmittal order or advice is in a standardized format that has been approved for direct submission by FinCEN. If the reporting financial institution is unable to submit a copy of the respective transmittal order or advice in an approved format, then the reporting financial institution may discharge its reporting obligation by submitting the following information, if available, in a form specified by FinCEN:

- (i) Unique transaction identifier number;

(ii) Either the name and address or the unique identifier of the transmitter's financial institution;

(iii) Name and address of the transmitter;

(iv) The account number of the transmitter (if applicable);

(v) The amount and currency of the transmittal of funds;

(vi) The execution date of the transmittal of funds;

(vii) The identity of the recipient's financial institution;

(viii) The name and address of the recipient;

(ix) The account number of the recipient (if applicable);

(x) Any other specific identifiers of the recipient or transaction, and

(xi) For transactions of \$3,000 or more, reporting money transmitters shall also include the U.S. taxpayer identification number of the transmitter or recipient (as applicable) or, if none, the alien identification number or passport number and country of issuance.

(2) *Where to file.* A report required by paragraph (a) of this section shall be filed with FinCEN, unless otherwise specified.

(3) *When to file.* A report required by paragraph (a) of this section shall be filed by the reporting financial institution within five business days following the day when the reporting financial institution sent or received the transmittal order.

(4) *Designated third-party filers.* A reporting financial institution may designate a third party to file a report required under this section utilizing procedures prescribed by FinCEN.

(d) *Nature and form of reports.* All reports required by paragraph (a) of this section shall consist of electronic submissions filed in a format approved by FinCEN either discretely, on a transaction-by-transaction basis, or by batching transactions. FinCEN may authorize a designated reporting financial institution to report in a non-electronic manner if the financial institution demonstrates to FinCEN that the form of the required report is unnecessarily onerous on the institution as prescribed; that a report in a different form will provide the information FinCEN deems necessary; and that submission of the information in a different manner will not unduly hinder the effective administration of this part.

(e) *Annual Reports.* On an annual basis, all banks must submit to FinCEN a report that provides the following information: the number of the account that was credited or debited to originate or receive a cross-border electronic transmittal of funds, and the U.S. taxpayer identification number of the respective accountholder. This report shall be submitted to FinCEN no later than April 15 of the year following the transaction date of the cross-border electronic transmittal of funds. The report shall be in a form and manner to be determined by FinCEN.

(f) *Exemptions.* The following cross-border electronic transmittals of funds are not subject to the reporting requirements of paragraphs (a) and (e) of this section:

- (1) Cross-border electronic transmittals of funds where either the transmitter is a bank and the recipient is a foreign bank, or the transmitter is a foreign bank and the recipient is a bank and, in each case, there is no third-party customer to the transaction; or
- (2) The transmittal order and advice of the transmittal order are communicated solely through systems proprietary to a bank.

\_\_\_\_\_  
James H. Freis, Jr.  
Director  
Financial Crimes Enforcement Network

Dated: \_\_\_\_\_

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## Draft - Internal Use Only

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Draft Proposal for FinCEN and FINTRAC interactions during September 2010

**Purpose:** FinCEN is seeking to engage with FINTRAC to collect their best practices, analytical and technology lessons, etc. to prepare for FinCEN's **Cross Border (CB)** data collection; processing; fusion; and analytic exploitation.

**People:** [REDACTED] OOD/ALD (team lead); [REDACTED] RPP/ORR; and [REDACTED] IPD/OGL. [REDACTED] IPD/OGL, is the regional specialist facilitating the FINTRAC relationship and will assist. b6

**Background:** The timetable for when FinCEN receives the CB data is still being determined. However, FinCEN must concurrently design, procure and test the technology networks; data warehousing; fusion; analytical; and dissemination capabilities. Further, key skill sets must be identified and acquired or trained, roles need to be defined, and operational readiness tests are necessary to ensure mission success.

Specific to FinCEN's analytical component, this requires considerable planning and foresight to determine "what we want to do with the data" other than simple name checks against another data source. While the framework has been laid through the [REDACTED] and other components as b7E part of the current technology modernization effort, additional strategic planning and design, from the analytical methodology perspective, must occur to successfully exploit the data.

**Proposal:** Therefore, FinCEN proposes to interact initially with FINTRAC, and then potentially with AUSTRAC, both of which collect data similar to CB data. To utilize FY 10 funding, an initial 2-3 day interaction with FINTRAC is being requested during 20-30 September 2010. Should the initial FINTRAC interaction be successful, possible FY 11 interactions with AUSTRAC will be evaluated. Site visits are critical to understand their operating environments.

**Desired Interactions:** The following is a preliminary list of possible people or skill sets of interest:

- Analysts conducting large scale data analyses on similar data
- Technology support staff supporting data warehouse design
- Thought leaders or change agents who craft/have crafted systemic methodologies
- Knowledge management experts responsible for tagging data, creating typologies, etc.

Additionally, it is unknown when FINTRAC transitioned to the current data source and analytical state. Depending on how recent the transition was, interviews with the change agents may be beneficial.

**Desired Takeaways:** The following, besides the typical lessons learned, is a list of potential takeaways:

- Identify risks, as well as transfer or mitigation strategies, success criteria and performance measures, and key opportunities or exploitation strategies
- Discuss future needs and operational initiatives
- To reduce future costs, establish relationships so ongoing dialogue can happen virtually

**Next Steps:** Since this interaction was informally discussed during a recent Information Technology Summit, formally pose a visit request to FINTRAC for 20-30 Sept 2010. Then, work internally, as well as with FINTRAC, to further define scope, agenda, deliverables, success criteria, and travel logistics.

**Authorizations:** The following key decision makers have verbally approved scoping this effort, and upon approving said scope, conducting this project: [REDACTED] ALD; [REDACTED] ORR; [REDACTED] OGL. b6

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Draft - Internal Use Only

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## Intelligence Reform and Terrorism Prevention Act of 2004:

- **A gap:** In conducting its review, the **9/11 Commission** focused a significant amount of inquiry into the financial transactions undertaken by the 19 hijackers and their associates. The Commission estimated that **\$400,000 - \$500,000** was used to support the execution of the attacks of September 11, 2001. The Commission noted that the **transactions were not inherently suspicious** and the low volumes of the transactions would not have raised alarm at the financial institutions processing the transactions. The Commission also noted that no suspicious activity reports (SARs) were filed on these transactions prior to the attacks of September 11, 2001. The Commission determined that the **current reporting and recordkeeping requirements contained in the BSA were insufficient to detect terrorist financing because of the inability of financial institutions to use typical money laundering typologies to detect terrorist financing transactions.**
- In response to possible gaps in tracking movement of Terrorist Financing Congress passed the Intelligence Reform and Terrorism Prevention Act of 2004 [amended BSA] and a desire to increase transparency
- **Feasibility:** Section 6302, codified under 31 U.S.C. § 5318(n), requires that the Secretary
  - **study the feasibility of “requiring such financial institutions as the Secretary determines to be appropriate to report to [FinCEN] certain cross-border electronic transmittals of funds,**
  - if the Secretary determines that reporting of such transmittals is reasonably necessary to conduct the efforts of the Secretary against money laundering and terrorist financing.” FinCEN conducted a study (“Feasibility Study”)
- FinCEN surveyed the relevant industries, some Broad Conclusions:
  - The information sought is useful to LE (source information allows for greater targeting) and to Secretary’s AML/CFT efforts
  - FinCEN would take an **incremental development and implementation process**
  - This stage should only focus on institutions that exchange payment instructions directly with foreign institutions (FI/LO) – “did not



address any debit card type of transmittals, point-of-sale (POS) systems, transaction conducted through an Automated Clearing House (ACH) process, or Automated Teller Machine (ATM).”

- o Should be flexible in reporting options

**Regulatory Process:**

- In the final stages of clearing an NPRM, which will then be published in the Federal Register for public comment.

**NPRM Specifics:**

- **Definition:** FinCEN proposes to define a CBETF generally as “[a] transmittal of funds where either the transmittal order or the advice is: (i) communicated through electronic means; and (ii) sent or received by either a first-in or a last-out financial institution.”
- **Industries:**
  1. Banks: 300
  2. Money Transmitters: 700
- **Reporting Obligation:**
  1. *Electronic Transfer of Funds:* FIs must submit (or cause to be submitted) a report to FinCEN no later than 5 days from issuing or receiving transmittal notice or its advice
  2. *Annual report of TIN by Banks:* The TIN from any account from which or into which a cross-border transfer of funds occurred
  3. *Exemptions:* Banks using proprietary systems (limited use and high transparency); Bank-to-Bank (i.e., no third party customer involved) because it’s lower risk
- **Thresholds:**
  1. **Banks:** \$0 – FinCEN determined that banks generally keep records without consideration of thresholds; additionally risk liability under other statutes (Right to Financial Privacy Act) if run afoul of thresholds when reporting a transfer

2. **Money Transmitters:** \$1,000; \$3, 000 will require addition of TIN information.

• **Format:**

1. **Hybrid Reporting Model:**

▪ **Banks:**

- 1. SWIFT reports CBETF information to FinCEN at the direction of its financial institution members.
- 2. Separate submission of 10 data points that conform to existing recordkeeping obligation using internet-based form

▪ **Money Transmitters:** Large Money Services Businesses (MSBs) will report to FinCEN on their own behalf and Small/medium will use FinCEN provided e-Filing data entry capabilities rather than implementing their own solutions.

▪ **Hardship:** May report in a non-electronic manner if FI can show that it is burdensome and that provides FinCEN the necessary data and is not an administrative hindrance

• **Yearly Costs:**

- 1. Large Banks: \$94,000
- 2. Small Banks: \$11,900
- 3. Large Money Transmitters: \$52,000
- 4. Small Money Transmitters: \$20,000

• **Estimated Numbers of Reports:**

- 1. **CBETF:** 52,000 reports/year
- 2. **Annual Bank TIN Report:** 15,000 (15,000 banks and CUs must file)

For a large institution, FinCEN estimates that on the average each weekly report will contain information on 25,000 CBETFs.<sup>1</sup> For a small institution, FinCEN estimates that each weekly report will contain information on 115 CBETFs.

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<sup>1</sup> *Implications and Benefits Study*, app. D, 11 fig. 13. The number of annual reportable transactions per large bank (as defined under the RFA) covered a wide range, with few very large institutions processing tens of millions of reportable transactions, and a large number of relatively smaller institutions processing reportable transactions in the tens of thousands or fewer. The average of 2 million transactions per large bank compensates both extremes of this wide range.

Draft Proposal for FinCEN and FINTRAC interactions during September 2010

**Purpose:** FinCEN is seeking to engage with FINTRAC to collect their best practices, analytical and technology lessons, etc. to prepare for FinCEN's **Cross Border (CB)** data collection; processing; fusion; and analytic exploitation.

**FinCEN Team:** [redacted] (team lead), background in high-speed high-volume targeting applications; [redacted] background in strategic analysis for regulatory applications; and [redacted] background in international relations and analysis for the Pacific region. [redacted] is the regional specialist facilitating the FINTRAC relationship and will assist with logistical efforts.

b6

**FINTRAC Team:** TBD

**Background:** The timetable for when FinCEN receives the CB data is still being determined. However, FinCEN must concurrently design, procure and test the technology networks; data warehousing; fusion; analytical; and dissemination capabilities. Further, key skill sets must be identified, roles need to be defined, and operational readiness tests are necessary to ensure mission success.

Specific to FinCEN's analytical component, this requires considerable planning and foresight to determine how best to automate targeting and screening applications; fuse CB data with other data; construct predictive analytic packages, etc. While the framework has been laid through a recent [redacted] and other components as part of the current technology modernization effort, additional strategic planning and design, from the analytical methodology perspective, must occur to successfully exploit the data.

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**Proposal:** Therefore, FinCEN proposes to interact initially with FINTRAC, and then with AUSTRAC, both of which collect data similar to CB data. Site visits are critical to understand operating environments, however, to accommodate future budget considerations an emphasis will be placed on using the initial site visit to enable future engagements to be held virtually.

**Desired Interactions:** The following is a preliminary list of possible people or skill sets of interest:

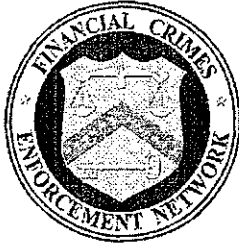
- Analysts conducting large scale data analyses on similar data, or staff supporting modeling and simulation or automated processes (e.g. rules, pattern recognition, anomaly detection methods)
- Technology support staff supporting data warehouse design
- Thought leaders or change agents who craft/have crafted systemic methodologies
- Knowledge management experts responsible for tagging data, creating typologies, etc.

Additionally, it is unknown when FINTRAC transitioned to the current data source and analytical state. Depending on how recent the transition was, interviews with the change agents may be beneficial.

**Desired Takeaways:** The following, besides the typical lessons learned, is a list of potential takeaways:

- Identify risks, as well as transfer or mitigation strategies, success criteria and performance measures, and key opportunities or exploitation strategies
- Discuss future needs and operational initiatives
- To reduce future costs, establish relationships so ongoing dialogue can happen virtually

**Next Steps:** Identify potential dates convenient to FINTRAC. Then, work with FINTRAC to further define scope, agenda, deliverables, success criteria, and travel logistics.



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## Department of the Treasury Financial Crimes Enforcement Network

### Fact Sheet: Notice of Proposed Rulemaking: Cross-Border Electronic Transmittal of Funds

- The proposed rule applies to those financial institutions in the United States that are either the first U.S. financial institution to receive an incoming reportable cross-border electronic transmittal of funds (CBETF), or the last U.S. financial institution to process an outgoing CBETF.
  - Regarding *banks*, there is no threshold on the amount of a CBETF that must be reported to FinCEN, meaning that all CBETFs must be reported. It is believed that the imposition of a threshold on *banks* would actually increase the cost of compliance by requiring segregation of transactions.
  - Regarding *money transmitters*, CBETFs of \$1,000 or more must be reported to FinCEN. It is believed that this is an appropriate threshold for *money transmitters* as the industry, in large part, already observes this threshold and collects this information.
  - To fulfill reporting requirements, financial institutions can submit to FinCEN a copy of the funds transmittal order. This process is expected to require little additional effort by the financial institution to report data that it currently maintains.
  - It is anticipated that depository institutions will be able to comply with this rule by submitting copies of the Society for World Interbank Financial Telecommunication (SWIFT) MT-103 and MT202-COV messages associated with the CBETFs to FinCEN.
  - The draft rule allows for third party reporting. As the major carrier of international transmittal orders, the SWIFT is the most likely provider of third-party reporting services to banks.
  - All reporting shall be completed electronically unless an institution can demonstrate that this would be unnecessarily onerous. FinCEN will provide for discrete internet-based electronic reporting for institutions that require such a service portal; it is expected that this service will be utilized by small- and medium-sized money transmitters.
  - FinCEN proposes to exempt reporting of transfers processed directly between U.S. and foreign banks that do not involve third-party customers, as well as bank transfers processed solely through proprietary systems (e.g. bank transfers processed between branches of a single bank).
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**Michanczyk, Amanda**

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**From:** [REDACTED]  
**Sent:** Thursday, September 30, 2010 5:43 PM  
**To:** [REDACTED]

During 23-24 September, FinCEN visited FINTRAC in Ottawa, Canada, for trilateral discussions with AUSTRAC. The purpose of the meeting was to engage with AUSTRAC and FINTRAC to collect their best practices, analytical and technology lessons, etc. to prepare for FinCEN's Cross Border (CB) data collection; processing; fusion; and analytic exploitation.

Onsite FinCEN representatives included [REDACTED] OOD/ALD (team lead); [REDACTED] RPP/ORR; and [REDACTED] IPD/OGL. [REDACTED] TSSD/OPD, teleconferenced in for the technology meetings. Additionally, [REDACTED] IPD/OGL, is the regional specialist facilitating the FINTRAC relationship and assisted with logistics. The engagement was first approved by the Assistant Directors, then by the Associate Directors before review at the Deputy Director level.

FINTRAC representatives, among others, included [REDACTED] Compliance; and [REDACTED] AUSTRAC was represented by [REDACTED]