

MEMO# 24703

November 11, 2010

FinCEN Proposes Regulations for Banks and Money Services Businesses to Report Cross-Border Electronic Fund Transmittals

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TO: AML COMPLIANCE WORKING GROUP No. 16-10 RE: FINCEN PROPOSES REGULATIONS FOR BANKS AND MONEY SERVICES BUSINESSES TO REPORT CROSS-BORDER ELECTRONIC FUND TRANSMITTALS

On September 30, 2010, the Financial Crimes Enforcement Network ("FinCEN") issued for comment proposed regulations ("Proposed Regulations") that would require certain banks and money services businesses to submit reports to FinCEN detailing certain cross-border electronic transmittals of funds ("CBETFs"). [\[1\]](#) FinCEN states that the proposed reporting requirement is necessary to close loopholes in the CBETF rules, which are currently exploited for money laundering, terrorist financing, and tax evasion purposes. The Proposed Regulations would allow FinCEN to collect reports in a centralized database and link that data with other financial intelligence. FinCEN is also proposing to require all banks to submit an annual report listing account numbers and U.S. taxpayer identification numbers ("TINs") of accountholders who transmitted or received a CBETF.

FinCEN issued the Proposed Regulations to meet the requirements of section 6302 of the Intelligence Reform Terrorism Prevention Act of 2004 ("IRTPA"), which directed the Secretary of the Treasury to issue regulations "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." In January 2007 FinCEN issued a report entitled Feasibility of a Cross-Border Electronic Funds Transfer Reporting System under the Bank Secrecy Act that affirmed the feasibility of the reporting system. [\[2\]](#) FinCEN then conducted a follow-on study, with the participation of the financial services industry and law enforcement, to

quantify the benefits and costs of the proposed reporting system. [3]

Comments on the Proposed Regulations are due December 29, 2010. The Institute does not intend to comment.

Proposed Reporting Requirements

The Proposed Regulations would require banks and money services businesses in the United States who act as a first-in financial institution or last-out financial institution in processing CBETFs to submit periodic reports to FinCEN. CBETFs are defined generally by FinCEN as a transmittal of funds where the transmittal order or advice is: (1) communicated through electronic means; and (2) sent or received by either a first-in or a last-out financial institution. [4] Based on the definition of a “transmittal of funds” in the Bank Secrecy Act regulations, fund transfers that are made through an automated clearinghouse, an automated teller machine, or point-of-sale system would be excluded from the Proposed Regulations.

Under the Proposed Regulations, banks that act as a first-in or last-out financial institution for CBETFs must report CBETFs of any amount and money services businesses that act as a first-in or last-out financial institution for CBETFs must report CBETFs of \$1,000 or more. A “first-in financial institution,” for purposes of incoming CBETFs, is the first bank or money transmitter in the United States that receives a transmittal order or advice for a CBETF from a foreign financial institution. A “last-out financial institution” is the last bank or money services business in the United States that sends a CBETF transmittal order or advice directly to a foreign financial institution. The information required in the reports to FinCEN would generally be the same as the information collected for funds transfers under current regulations.⁵ The CBETF reports would need to be submitted no later than five business days after issuing or receiving the CBETF transmittal and completed electronically unless this method would be unnecessarily burdensome.

FinCEN’s Proposed Regulations would also require all banks to file annual reports with FinCEN, providing a list of TINs of accountholders who transmitted or received a CBETF and the account number that was credited or debited for that transaction. These reports would be required to be filed no later than April 15th of the year following the transaction date of the CBETF.

The Proposed Regulations would exempt the following CBETFs from the reporting requirements: (1) CBETFs processed between a bank (as defined in 31 CFR 103.11(c)) and a foreign bank where there is no third-party customer to the transaction and (2) CBETFs where the transmittal order and advice are communicated solely through systems proprietary to a bank (i.e., transfers within the same bank).

Request for Comments

FinCEN is seeking comment on all aspects of the Proposed Regulations and, in particular, on the following:

- 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.
- Whether the estimated burden associated with the proposed collection of information

is accurate.

- Whether the frequency of reporting is feasible.
- What possible formats for reporting systems should be used to develop a user-friendly format to reduce the implications on money services businesses.
- What the likelihood is for alternate CBETF channels to avoid the new requirements.
- How, with respect to non-U.S. dollar denominated transactions, would institutions perform the currency exchange rate calculations and what systems may be available to facilitate compliance with this requirement.
- What the effect of requiring TIN reporting will be on the banking and money services industries.

FinCEN does not anticipate issuing final regulations until 2012, since it must first have adequate technological systems in place to accept the required reports. [5] FinCEN also expects to delay the compliance date of the final rule to provide institutions with ample time to adjust systems necessary for compliance.

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endnotes

[1] Notice of Proposed Rulemaking, Cross-Border Electronic Transmittals of Funds, 75 Fed. Reg. 189 (September 30, 2010) available at <http://edocket.access.gpo.gov/2010/pdf/2010-24417.pdf>.

[2] The study is available at http://www.fincen.gov/news_room/rp/files/cross_border.html.

[3] The study is available at http://www.fincen.gov/news_room/rp/rulings/pdf/ImplicationsAndBenefitsOfCBFTR.pdf.

[4] See 31 CFR 103.11 and 31 CFR 103.33.

[5] 12 U.S.C. §5318(n)(5)(B).