



Financial Crimes Enforcement Network Department of the Treasury

Financial Institution Survey Regarding Cross-Border Electronic Transmittals of Funds

On December 17, 2004, President Bush signed into law S. 2845, the Intelligence Reform and Terrorism Prevention Act of 2004 (Act).¹ Among other things, the Act requires 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 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.” The report must identify 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 will require reporting; outline the form, manner, and frequency of reporting; and identify the technology necessary for Financial Crimes Enforcement Network to keep, analyze, protect, and disseminate the data collected. This survey seeks input from trade groups representing members of the U.S. financial services industry on the feasibility of requiring reporting of cross-border electronic transmittals of funds, and the impact such reporting would have on the industry.

Title 31 CFR § 103.33 (e) – (g) provides 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. Although the requirements for banks and non-bank financial institutions are similar, their respective rules contain different terminology. For the purposes of this document, when terminology for banks is used, the intent is for it to apply to the broader universe of financial institutions.

Under current regulations, for each payment order that it receives, a financial institution must obtain and retain the following information on funds transfers of \$3,000 or more: (a) name and address of the originator; (b) the amount of the funds transfer; (c) the date of the request; (d) any payment instructions received from the originator with the payment order; (e) the identity of the beneficiary’s bank; (f) and as much information pertaining to the beneficiary as is received, such as name and address, account number, and any other identifying information. Intermediary and beneficiary banks receiving a payment order are required to keep an original or a copy of the payment order. An originator bank is required to verify the identity of the person placing a payment order if it is made in person and if the person is not already a customer. Similarly, if a beneficiary bank delivers the

¹ Pub. L. 108-458, 118 Stat. 3638 (2004).

proceeds to the beneficiary in person, the beneficiary bank is required to verify the identity of that person if not already a customer.

The feasibility study will examine the advisability of imposing the requirement that financial institutions report to the Financial Crimes Enforcement Network certain of the transactions of which it must currently maintain records under those regulations. The intent of this survey is to gather information from the banking and financial services industries to assist in determining the feasibility and impact of such a reporting requirement. If feasible, the Act requires the Secretary to promulgate rules imposing a reporting requirement by December 2007. An inadequate understanding of the impact could result in ineffective regulations that impose unreasonable regulatory burdens with little or no corresponding anti-money laundering benefits.

We would appreciate receiving comments on this survey on or before April 15, 2006

You may submit comments or questions about this survey by e-mail to eric.kringel@fincen.gov or by U.S. Mail to: Financial Crimes Enforcement Network, Post Office, Box 39, Vienna, VA 22183, Attn: Eric Kringel, Senior Policy Advisor. Thank you for your assistance.

Solely for purposes of clarity and in aiding respondents in your comments to the questions below, we propose the following definition:

Cross-Border Electronic Transmittal of Funds. Cross-border electronic transmittal of funds means any wire transfer in which either the originator or the beneficiary of the transfer is located in the United States and the other is located outside the United States. This term also refers to any chain of wire transfer instructions that has at least one cross-border element, and encompasses any such transfer in which an institution is involved as originator's institution, beneficiary's institution, intermediary, or correspondent, whether that institution's involvement involves direct transmission to or from a foreign institution. The definition does not include any debit transmittals, point-of-sale (POS) systems, transaction conducted through an Automated Clearing House (ACH) process, or Automated Teller Machine (ATM).

To the extent your member financial institutions can provide the following information, we would like responses to the questions outlined below. We are seeking general or aggregated information (i.e., "45% of our membership . . .") rather than specific responses about particular institutions.

Background Information

1. Please characterize the institutions your organization represents (i.e., banks, broker-dealers, currency dealers or exchangers, casinos, money services businesses, etc.).
2. How would you further describe the institutions your organization represents by the primary nature of your business (i.e., community banks, credit unions, money center banks, money transmitters, specialized business lanes, etc.).
3. What is the approximate volume of the overall funds transfer business (by total number and aggregate dollar amount) your member institutions conduct over a one-year period?
4. What is the approximate volume cross-border electronic transmittals of funds (by total number and aggregate dollar amount) your member institutions send and receive over a one-year period?

To the extent possible, please estimate the percentage of cross-border electronic transmittal of funds sent or received by your member financial institutions, in the following categories (if applicable):

- a. on behalf of their own customers,
- b. as an intermediary or correspondent for other institutions
- c. as internal settlement with their own institution's foreign affiliates or branches.

- e. as the U.S. financial institution that directly transmitted the payment order to or accepted the payment order from a financial institution located outside of the United States.
5. Do your member institutions send or receive cross-border electronic transmittal of funds in-house or through a correspondent?
- a. What systems (e.g., SWIFT, Fedwire, CHIPS, proprietary system) are used to send or receive cross-border funds transfers?
 - b. What is the proportional usage of each system if more than one system is used?
 - c. Are there instances when the system used is dictated by the nature of the transaction or customer instruction? If possible, please exclude those situations where the decision is due to the fact that the receiving financial institution does not use a particular system.

Existing Record Maintenance and Compliance Process

6. How do your member institutions maintain the funds transfer records required by 31 C.F.R. § 103.33 (i.e., message system logs or backups, wire transfer instruction database, account history files, etc.)?
- a. If the data is stored electronically, can the storage systems export such data into a spreadsheet or database file for reporting?
7. Approximately how many times in a one-year period does the government subpoena or otherwise issue a legal demand requiring your member institutions to produce cross-border wire transfer information?

NOTE: We understand that many requests seek "any and all records" pertaining to an account or subject. Where possible, please distinguish those requests from more specific requests for cross-border electronic transmittals of funds.

8. Can you estimate the approximate total cost (e.g., person-hours or other costs) to your member institutions in time and expense responding to these legal demands? If you cannot estimate the costs incurred, please describe generally the resources involved in complying with such requests.

Foreign Transactions

9. Do your member institutions or any of their branches, subsidiaries, or affiliates transmit or receive cross-border electronic transmittals of funds from a location in either Australia or Canada?

- a. If yes, please briefly describe the measures taken, including the general estimates of the costs in time and expense incurred, to ensure compliance with the cross-border funds transfer reporting requirements in those jurisdictions and the measures in place to monitor and maintain compliance.
10. If the Department of the Treasury required reports of cross-border electronic transmittals of funds involving amounts over \$3,000, what general steps would your member institutions need to take (and how burdensome would it be) to comply?
- a. Would the answer differ if the value threshold were \$10,000?
 - b. Would the answer differ if there were no value threshold?
 - c. How would these different thresholds affect the volume of the reporting from your member institutions?
 - d. How would the answer differ with the type of required reporting (e.g., electronic file upload, Web-based form)?
 - f. How would the answer differ with the timing of required reporting (e.g., real-time, end-of-day, within 30 days)?
 - e. To the extent possible, please estimate any cost increase for cross-border electronic transmittals of funds that may result.
 - g. To the extent possible, please describe any effects that reporting requirements may have on the volume or value of cross-border electronic transmittals of funds.

Potential Impact on Financial Institutions

12. If the Department of Treasury required reports of cross-border electronic transmittals of funds in a SWIFT, CHIPS or other file format specified by the Department, what steps would your member institutions need to take to extract such data from existing records to submit the information as required?
13. If the Department of Treasury required reports of cross-border electronic transmittals of funds but also provided exceptions for certain customers or types of transactions (i.e., internal settlement, identical originator and beneficiary, transfers to government entities, etc.), what exemptions would you suggest?
- a. How difficult would it be for your member institutions to build such exceptions into the business process for creating the report?
 - b. Would the costs to implement the exceptions outweigh the benefits?

14. If the Department of the Treasury required reports of cross-border electronic transmittals of funds, should the requirement be limited to certain institutions (e.g., only the originating institution, only the beneficiary's institution, only the U.S. financial institution that directly transmits the payment order to or accepts the payment order from a financial institution located outside of the United States)? Please explain the rationale for your response.
15. Can your member financial institutions' automated distinguish between domestic funds transfer and a cross-border electronic transmittal of funds?
16. Among the following definitions of "cross-border electronic transmittal of funds" what potential advantages and disadvantages do you perceive? Do you have any suggestions for such a definition or can you highlight any particular issues that should be addressed in such a definition? (NOTE: All of the following definitions would exclude check, debit transmittal, ATM, or ACH payments.)
- a. Cross-border electronic transfer of funds means any wire transfer where the originator's and beneficiary's institutions are located in different countries and one of the institutions is located in the United States. This term also refers to any chain of wire transfers that has at least one cross-border element
 - b. Cross-border electronic transfers of funds include transactions where either (1) a foreign office of a financial institution instructs a U.S. office of a financial institution to effect payment in the U.S., directly or indirectly, or (2) where U.S. office of a financial institution instructs a foreign office of a financial institution to effect a payment abroad, directly or indirectly.
 - c. Cross-border electronic transmittal of funds means the transmission — through any electronic, magnetic or optical device, telephone instrument or computer — of instructions for the transfer of funds, other than the transfer of funds within the United States. In the case of SWIFT messages, only SWIFT MT 100 and SWIFT MT 103 messages are included
 - d. Cross-border electronic transmittal of funds means an instruction for a transfer of funds that is transmitted into or out of the United States electronically or by telegraph, where the financial institution is acting on behalf of, or at the request of, another person who is not a financial institution