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August 10, 2006

FinCEN
P. O. Box 39
Vienna, VA 22183
Attention RIN 1506-AA86

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attention: Docket No. R-1258

Re: Threshold for the Requirement to Collect, Retain and Transmit Information
on Funds Transfers and Transmittals of Funds

Dear Sir or Madam:

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to comment on the review by the Financial Crimes Enforcement Network (FinCEN) and the Federal Reserve to determine whether to lower or eliminate the threshold for collecting and retaining information on funds transfers and transmittals of funds. Currently, the threshold is \$3,000, but FinCEN and the Federal Reserve are considering decreasing that amount to \$1,000 or less.

Overview of ICBA Comments

Due to regulatory risks and other burdens, most community banks only provide wire transfer services to established bank customers. While most community banks currently use identical procedures for all wires to streamline and simplify compliance, that process could change if the volume of electronic transfers increases. And, although

¹ The Independent Community Bankers of America represents the largest constituency of community banks of all sizes and charter types in the nation, and is dedicated exclusively to representing the interests of the community banking industry. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.

With nearly 5,000 members, representing more than 18,000 locations nationwide and employing over 265,000 Americans, ICBA members hold more than \$876 billion in assets \$692 billion in deposits, and more than \$589 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

ICBA does not believe that reducing the threshold to \$1,000 would cause community banks to change existing procedures, eliminating the threshold entirely could have an impact on the potential market growth for remittance services, an area that Treasury, the Federal Reserve and other agencies have been encouraging banks to pursue. The ICBA strongly recommends that FinCEN and the Federal Reserve carefully assess the costs against the potential benefits demonstrated by law enforcement before adjusting the current threshold.

Background

The Bank Secrecy Act (BSA) authorizes FinCEN and the Federal Reserve to jointly issue rules requiring banks to maintain certain records for wire transfers. In 1995, the agencies issued a rule – the recordkeeping rule – that requires banks to collect and retain information on wires of \$3,000 or more. At the same time, a companion rule – the travel rule – was issued requiring banks to include certain information with funds transfers.

Recordkeeping Rule. The recordkeeping rule requires banks to collect and retain the name and address of the sender, the amount of the wire, the execution date of the wire, any payment instructions and the identity of the recipient's bank. The bank also must retain any information it receives with the wire request about the beneficiary's name and address, account number and any other identifying information. In addition, the rule requires the bank to verify the identity of the person sending the wire if the order is made in person and the sender is not an established customer. The recipient's bank must also identify and retain information on the identity of the recipient if he or she is not an established customer.

Travel Rule. Under the travel rule, the sending bank must include the information it must collect for the recordkeeping rule in all wires that it sends, i.e., the name and address of the sender, the amount, the execution date and any payment instructions.

Joint Agency Review

The agencies are assessing the impact of reducing or eliminating the \$3,000 threshold for both the recordkeeping and travel rules. In part, the proposal was prompted by a recommendation from an international task force, the Financial Action Task Force (FATF), that countries adopt a minimum \$1,000 threshold for recordkeeping requirements for wire transfers. The agencies are examining how such a change might benefit law enforcement, with a specific request that law enforcement agencies provide empirical evidence to demonstrate the benefits from a change. At the same time, the agencies are very interested in what potential burdens a reduced threshold would impose on banks. The current threshold, originally established in 1995, was adopted to address concerns about regulatory burden. However, much has changed since then, including advances in technology that might make it easier to track the information.

ICBA Comments

Current Community Bank Procedures. An informal survey of ICBA members finds that most community banks offer wire transfer services for customers. Community banks regard this as a basic customer service.

However, few community banks offer this service for non-customers. Generally, the potential risks, additional recordkeeping and OFAC compliance requirements are deemed too burdensome to make it worthwhile to offer funds transfer services for non-customers. Community banks especially identified the customer identification requirements under section 326 of the USA PATRIOT Act as one reason for not offering this service to non-customers. Those community banks that permit non-customers to send wires only do so as an exception when they can easily verify the sender's identity and the validity of the funds being wired. Community banks that permit non-customers to wire funds report that it is a very limited percentage of their overall wire transfer business, as low as 1%.

ICBA members report that most community banks wire funds using the Federal Reserve's FedLine Advantage, although community banks also use third party service providers and correspondent banks. Generally, the customer is asked to complete and sign a wire transfer request form that includes all the information required for compliance with the recordkeeping and travel rules. The funds are then verified and an OFAC check performed. The volume of wires community banks send that are less than \$3,000 varies. For some, it is only a small percentage of their wire transfer business, but for others, it can be as much as 25% and even 60%.

Wire Records. Currently, most community banks report using a manual system to track wire transfers, although some use an image scanning system or Excel spreadsheet to track the data. The key point is that community banks primarily rely on a manual process – not automated systems or technology – to maintain wire transfer records.

Most community banks report that they use the same methods for tracking all wires, regardless whether the wire is under or over the \$3,000 threshold. One set of procedures for all wires simplifies compliance with recordkeeping requirements and staff training. Similarly, most community banks follow the same set of procedures for all wires in collecting information needed to comply with the travel rule.

Decreasing or Eliminating the Current Threshold

ICBA does not believe that community banks would change current products or services if the \$3,000 threshold for recordkeeping were reduced or eliminated. Most community banks, as noted above, already use the same procedures for all wires for ease of compliance. However, current wire transfer volume is limited for most community banks. If volumes increase, a reduced threshold might affect the fees charged or the wire services available for smaller amounts. ICBA urges the agencies to recognize that a decreased threshold eliminates the flexibility community banks currently have to treat wires under the threshold differently and would prevent any streamlining of procedures for lower dollar amount wires. If the volume of wire transfers increases, especially as the

popularity of low-dollar remittance services increases, eliminating the threshold could have a substantial impact on the ability of community banks to provide cost-effective service.

While ICBA does not currently have reason to believe reducing the current \$3,000 threshold necessarily would cause customers to gravitate to alternate methods for transferring funds, we are concerned that eliminating the threshold could make it more difficult for community banks to provide money transfer services. In many smaller communities, the options for sending wires are limited. However, where other options are readily available, including Western Union or other money transmitters, community banks report that expanded record keeping requirements of a reduced threshold and the associated compliance costs and burdens could drive customers to other providers that may not be as well supervised as banks. ICBA believes it is likely that the impact would be greatest for wires under \$1,000, especially remittance services to foreign countries.

Remittance Services. It is important to recognize that remittances serve as an important financial resource for many foreign countries and that the volume of remittances has been increasing steadily. According to a recent GAO study, over \$36 billion was remitted in 2003.² A separate study by the Federal Reserve Bank of Boston found that most remittance services involve relatively small sums, generally several hundred dollars.³ This service is an area that offers a great deal of opportunity for community banks to expand business offerings and serve new customers. For example, during an 18-month period between September 2002 and March 2004, remittance products generated approximately 400,000 new accounts for the largest banks offering remittance products.⁴ In fact, the Federal Reserve and the Central Bank of Mexico have been promoting a joint program called Directo a Mexico that allows participating United States banks to charge low fees to send money to Mexico by using the central banks as intermediaries. The GAO study found that banks currently only have a small percentage (5%) of the market and community banks have commented that current regulatory barriers, especially those imposed by the Customer Identification Program rules under the USA PATRIOT Act, present barriers to expanding service into this market. Increased burdens and costs to sending these funds through a reduced or eliminated threshold would make it even more difficult for community banks to serve this market and could drive senders to alternate mechanisms.

Perhaps more significant, sufficient barriers imposed by the federal government and banking regulators through increased recordkeeping requirements might drive these wire transfers underground. It would be far better to encourage banks to offer these services in a cost-effective manner where banking agencies regularly examine for compliance and where law enforcement has ready access to transaction records. ICBA

² GAO Report to the Committee on Banking, Housing and Urban Affairs, U. S. Senate, *International Remittances, Information on Products, Costs, and Consumer Disclosures*, November 2005.

³ *International Remittances: Information for New England Financial Institutions*, Federal Reserve Bank of Boston Discussion Paper 2005-1

⁴ OCC, *Community Developments Insights*, September 2004, page 3.

believes this is a critical factor. Based on existing information about remittance services, this is especially important for wire transfers under the \$1,000 threshold.

Benefits to Law Enforcement

The ICBA believes that it is especially important for law enforcement agencies to clearly demonstrate the benefits of a reduced threshold. Community bankers continue to identify Bank Secrecy Act compliance as one of the most burdensome and costly compliance areas. All too often, bankers comment that they feel that law enforcement agencies fail to recognize the costs associated with the data collection and reporting required by the Bank Secrecy Act. In fact, that issue was stressed by several members of Congress during a hearing on currency transaction reporting last May.⁵ It is very important FinCEN and the Federal Reserve balance the benefits that might accrue from any change in the threshold against the costs and burdens that are imposed on the financial industry – and the potential to drive transactions underground.

Conclusion

While most community banks report they use the same methods for wires above and below the current threshold, the increased burdens of a reduced or eliminated threshold could be significant if the volume of wire transfers increases in the future. Changing the threshold would eliminate flexibility and the ability of banks to manage operations. And, even though most community banks use the same procedures for all wires, ICBA does not see a demonstrable benefit to reducing or eliminating the current threshold. Therefore, it is critically important for the agencies to balance potential costs, including lost opportunity costs, against the benefits demonstrated by law enforcement.

Thank you for the opportunity to comment. If you have any questions or need additional information, please contact me by telephone at 202-659-8111 or by e-mail at robert.rowe@icba.org.

Sincerely,

Robert G. Rowe, 3rd

Robert G. Rowe, III
Regulatory Counsel

⁵ House Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit, Hearing entitled "H.R. 5341, Seasoned Customer CTR Exemption Act of 2006." Thursday, May 18, 2006.