

From: David Landsman

Subject: Interagency threshold requirements on Funds Transfers and Transmittals of Funds

From: David Landsman [mailto:david@nmta.us]
Sent: Wednesday, August 23, 2006 12:17 AM
To: 'regscomments@federalreserve.gov'
Subject: RIN 1506-AA86 Threshold for the Requirement to Collect, Retain, and Transmit Information on Funds Transfers and Transmittals of Funds

Dear Sir or Madam:

Thank you for the opportunity to comment on the subject Advance Notice of Proposed Rulemaking, the effect of which would be to lower or eliminate the threshold at which financial institutions must ask their customers to present documentary evidence of their identity, when initiating or receiving any form of money transfer.

In a separate, but similar, request for industry comment that was due May 5, 2006, FinCEN proposed requiring the reporting of cross-border transfers at various thresholds. Because many elements of that query parallel and overlap this one, the NMTA response to the previous 'Proposed Collection' is reprinted below.

Before beginning, it must be noted that it is assumed in this response, that any such rule would apply equally to all financial institutions, whether bank or non-bank. It is further assumed that banks would have to ID every conductor of every transaction of the described class, and not be allowed to assume the conductor was the owner of the account. Both in order to provide a level playing field and to close loopholes where malefactors could slip through, it is important that this parity be maintained.

Comments were invited on the incremental usefulness of the proposed collection to law enforcement. This would then be compared with the impact of threshold reduction on the various parts of the financial services industry, in terms of supplier costs, reduction in efficiency and effect on the price and type of services offered. Finally, FinCEN and the agencies asked what the effect of asking customers for ID at a lower threshold would be on consumer behavior.

To take the questions in reverse order, the answer to the last question is yes, a significant number of consumers would balk at showing their ID, ducking under whatever threshold was set, or seeking alternative means. Scientific study could perhaps discover what that percentage might be. Some of those objecting consumers would be native-born and have commonly shared privacy concerns, fearing identity theft. But most would simply be undocumented immigrants, who will go to great lengths to avoid identifying themselves. (Some among that group actually do not have documents.) This would make it all the more impossible to distinguish a nervous immigrant, from a terrorist.

As for impact on the industry, should either of these proposals materialize in any form, it would represent a potentially significant paperwork burden, which would require, by statute, a serious scientific study of the anticipated burden before any implementation could take place.

And as to the first question, the anticipated benefit to law enforcement would also have to be seriously studied. This subject is already a matter of dispute among academics. At issue is the very question: is our national anti-money laundering strategy working?

The Financial Action Task Force recommends that \$1,000 be the highest ID threshold. At first glance, it would seem reasonable that any financial institution that accepts \$1,000 in cash, should ask for ID. No doubt, some countries are successfully implementing such a threshold.

But there is no US industry consensus on this question. There are those companies who, even now, feel it is prudent to go beyond the requirements of the law, and are currently asking for ID at much lower threshold amounts. They do so at no small cost, so this is already a contentious issue, which sometimes pits best practices against competitive concerns.

On the other hand, many industry commenters hold that FinCEN got it right the first time when the current ID threshold of \$3,000 was decided upon. The trade-off, even FATF recognizes, is unavoidable: the lower the ID threshold, the more transactions will go completely underground, beyond the reach of suspicious activity reports.

In seeking to balance the incremental burden on the financial industry and the public, against the incremental benefit to law enforcement, one must ask, what exactly is the potential benefit to law enforcement and will the information actually be used? The sense one gets from reading some knowledgeable observers and official government reports, is that further information requirements would not be significantly beneficial to the nation's AML effort. The search for bad guys has been compared to looking for a needle in a haystack, and more information just means adding more hay.

It may not be just adding more hay: advances in technology may make the information truly useable and useful under many imaginable sets of circumstances. But our society has so far rejected Total Information Awareness as being unworthy of a free society, in short, un-American.

We would like to thank FinCEN and the agencies again for the opportunity to comment.

Regards,

-David

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