

January 24, 2013

Financial Crimes Enforcement Network
P. O. Box 39
Vienna, VA 22183

Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve
System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: FinCEN and Federal Reserve Proposal to Amend the Definitions of Transmittal of Funds and Funds Transfer, FinCEN RIN 1506-AB20, Board Docket No. OP-1445

Dear Sir or Madam:

The American Bankers Association (ABA)¹ appreciates the opportunity to comment on the joint proposal by the Financial Crimes Enforcement Network (FinCEN) and the Board of Governors of the Federal Reserve (Board)² to revise the definitions of “transmittal of funds” and “funds transfer.” These changes are intended to correct a disconnect in regulatory coverage that occurred when the Consumer Financial Protection Bureau (the Bureau) issued a separate final rule on remittances under Regulation E in late January 2012. Without the changes, international wires sent by consumers largely would be exempt from anti-money laundering requirements.

Background

Current Bank Secrecy Act/Anti-Money Laundering (BSA/AML) rules define *transmittal of funds* and *funds transfer* to exclude from coverage any transfer governed by the Electronic Funds Transfer Act of 1978 (EFTA), as implemented by the Bureau’s Regulation E. 31 CFR 1010.100(w).

Earlier this year, the Bureau adopted a rule that applies to remittance transfers and greatly expands the coverage of Regulation E, despite the urgings of ABA and others to adopt a more focused definition. Under the Bureau’s definition, virtually any electronic funds transfer which originates in the United States and which is sent by a consumer to a recipient outside the United States is covered by the new provision of Regulation E (12 CFR 1105.30).

Before this step was taken by the Bureau, exempting transfers subject to Regulation E had not been a problem. When FinCEN and the Federal Reserve initially adopted the recordkeeping and travel rules, even though the Regulation E definition of electronic funds transfer was very broad and included any transfer of funds to debit or credit a customer’s account, most wire transfers were excluded and the Regulation E coverage and the BSA/AML requirements worked in tandem.

¹ ABA represents banks of all sizes and charters and is the voice for the nation’s \$14 trillion banking industry and its two million employees. The majority of ABA’s members are banks with less than \$165 million in assets.

² The two agencies are acting together through their joint authority over wire transfer activity under the Annunzio-Wylie Anti-Money Laundering Act of 1992.

The new remittances rule changed the coverage of Regulation E in such a way that it would exclude most electronic consumer funds transfers from coverage under the BSA/AML requirements. This would clearly undermine international efforts under the Financial Action Task Force (FATF) recommendations (www.fatf-gafi.org). The proposal is designed to avoid that impact and ensure that consumer transactions continue to be covered by the BSA/AML recordkeeping and travel rule requirements as they are now.

Proposed Rule

To correct the problem, FinCEN and the Board propose amending the BSA/AML definitions of *funds transfer* and *transmittal of funds* to maintain the current scope of the definitions for the recordkeeping and travel rules. Basically, the proposal will narrow the exclusion.

Instead of excluding *any* transaction governed by the EFTA, the recordkeeping and travel rules would exclude an electronic fund transfer defined in section 903(7)³ of the EFTA. Essentially, the proposal is designed to preserve the status quo. This would narrow the focus of the AML exemption to a specific section of the EFTA instead of the entire EFTA.

Comments

ABA agrees with the changes and believes they are appropriate. Informal conversations with ABA members suggest that most planned to continue to adhere to existing recordkeeping requirements to address potential risks, but the clarity that will result from the rule change is appreciated.

Fundamentally, the changes will reflect one of the key tenets that led to the adoption of the Bank Secrecy Act in 1970: ensuring that law enforcement could easily access bank records when needed for criminal investigations while at the same time ensuring that banks and other financial institutions maintained the records. The provisions of EFTA section 903(7), which FinCEN and the Board propose to use to define which transactions are excluded from coverage,

³ ***Electronic Fund Transfer Act of 1978 Section 903(7)***: the term "electronic fund transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, and transfers initiated by telephone.

Such term does **not** include—

- (A) Any check guarantee or authorization service which does not directly result in a debit or credit to a customer's account;
- (B) any transfer of funds, other than those processed by automated clearinghouse, made by a financial institution on behalf of a consumer by means of a service that transfers funds held at either Federal Reserve banks or other depository institutions and which is not designed primarily to transfer funds on behalf of a consumer;
- (C) Any transaction the primary purpose of which is the purchase or sale of securities or commodities through a broker-dealer registered with or regulated by the Securities and Exchange Commission;
- (D) any automatic transfer from a savings account to a demand deposit account pursuant to an agreement between a consumer and a financial institution for the purpose of covering an overdraft or maintaining an agreed upon minimum balance in the consumer's demand deposit account; or
- (E) any transfer of funds which is initiated by a telephone conversation between a consumer and an officer or employee of a financial institution which is not pursuant to a prearranged plan and under which periodic or recurring transfers are not contemplated; as determined under regulations of the Bureau; 15 U.S.C. 1693a, <http://www.fdic.gov/regulations/laws/rules/6500-1350.html>

are transactions where records are otherwise available and readily accessible, and so special provisions are not needed.

To keep the final rule simple and to avoid similar problems in the future if and when Congress amends the statute or if and when the Bureau changes the rule implementing the statute, ABA suggests that FinCEN and the Board consider incorporating the actual statutory language into the regulation without cross-referencing the statute. From a compliance perspective, that would also make it easier to follow the exclusion, since all elements would be conveniently aggregated in a single location.

Thank you for the opportunity to comment. If you have any questions or need additional information, please contact the undersigned by telephone at 202-663-5029 or by e-mail at rowe@aba.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert G. Rowe, III". The signature is written in a cursive style with a horizontal flourish at the end.

Robert G. Rowe, III
Vice President & Senior Counsel