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H.R. 5341, THE SEASONED CUSTOMER CTR EXEMPTION ACT OF 2006

HEARING

BEFORE THE

SUBCOMMITTEE ON
FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

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H.R. 5341, THE SEASONED CUSTOMER CTR EXEMPTION ACT OF 2006

Thursday, May 18, 2006

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
AND CONSUMER CREDIT,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2:10 p.m., in room 2128, Rayburn House Office Building, Hon. Spencer Bachus [chairman of the subcommittee] presiding.

Present: Representatives Bachus, Kelly, Ryun, Biggert, Tiberi, Feeney, Hensarling, Garrett, Neugebauer, McHenry, Maloney, Sherman, Moore, Hinojosa, Clay, Israel, McCarthy, Matheson, and Green.

Also present: Ms. Wasserman-Schultz of Florida.

Chairman BACHUS. Today the Subcommittee on Financial Institutions and Consumer Credit meets to consider H.R. 5341, the Seasoned Customer CTR Exemption Act of 2006, which I filed with the ranking member, Mr. Frank, and 16 other members of the committee, both Republicans and Democrats.

It is identical to a provision in H.R. 3505, which passed the House on a vote of 415 to 2. The intention of the legislation is to reduce the number of CTR's on seasoned customers. Seasoned customers are individuals who operate a well-established business and make routine deposits of large amounts.

That provision was not included in the Senate reg relief bill. Mr. Hensarling, I see, is here today, and he was the primary sponsor, along with Mr. Moore, of the reg relief bill. The Senate, it's my understanding, removed the CTR provision upon the request of FinCEN. FINCEN actually testified specifically before this committee on two occasions about the need for the provision, the credibility of the provision, and the fact that the provision would not impede law enforcement, but would actually be of value to law enforcement.

So, today's hearing, as much as anything, is simply to go back—because I think we all agree that GAO, back in 1994, studied this issue at the request of the Senate. Now, the Senate has requested another GAO report, basically asking the same thing that it asked in 1994, which was answered by GAO in testimony before the committees. In response to an almost identical question posed in the GAO report requested by the FBI and FinCEN through the Senate, that question was answered. And the answer was—reading directly from the GAO report—"The CTR's filed on routine deposits by well-

established businesses could and should be reduced. They impose cost on the government and the Nation's banking industry, and are unlikely to identify potential money laundering or other currency violations."

The same question, which was answered by GAO in 1994, has now been asked again. And part of the hearing today is to determine why we have had all these hearings, and why we have had one answer, why all of a sudden, some may say another answer may be appropriate today. I'm not saying that it's not. But we want to know what's changed in the past—not only in the past few months, but from all the other testimony that we have taken in the past.

I do know that FinCEN—and this is quite disturbing to me—Mr. Werner, you are going to testify before the committee today, but a month ago—at least in an interview, and I hope you were misquoted—you said that, "The banking industry needs to prove that these CTR reports are not a burden on them." Yet FinCEN has testified before these committees that it is an unnecessary burden in the past.

We have all sorts of government reports concluding that these reports are a burden. The U.S. Money Laundering Threat Assessment determined that they were an unnecessary burden on the financial industry. FinCEN, their own conservative estimate was that the cost of 25 minutes per report for filing and record keeping—per report, we're talking about 15 million reports, 25 minutes a report—5.5 million staff hours if we take your estimate as to the amount of time consumed. A cost approaching $200 million, just on reports on seasoned businesses such as Wal-Mart, Macy's, Cracker Barrel, and on and on.

And on a positive note, I believe your testimony that you submitted, unlike maybe what was said a month ago, I think—and I never hold people to what I read in the paper, because I'm often misquoted, and often taken out of context—but according to your testimony today—and I want to compliment you on your written testimony—is that these can and should be reduced, and that this legislation is a step in the right direction.

What I am hearing is that you are acknowledging that—and correct me if I'm wrong in your opening statement—but that you absolutely agree that we could reduce these reports by 30 or 40 percent. They are an unnecessary burden on the industry and many of them are of absolutely no value to law enforcement, and finally, that you believe this legislation is—I think, as you described it—a step in the right direction.

I do want to close by pointing out that the Secretary of the Treasury, according to the legislation sponsored by them that passed this Congress in 1994, required the Secretary of Treasury to submit an annual report to Congress for 5 years running about their attempts to reduce the overall number of currency transactions, and that the Secretary of Treasury, in this Act, is tasked with the job of reviewing, on an annual basis, and submitting suggestions for reducing the number of CTR's.

So, I would be very interested, and I think FinCEN was tasked with that—to find out whether you all are, in fact—and I think Mr. Fox was doing this when he worked with this committee, and we

fashioned this legislation, sat down and all agreed on it, is to how we can go forward with that.

So, with that, Mr. Moore, do you have an opening statement? Thank you.

Mr. MOORE. Thank you, Mr. Chairman. Welcome to the witnesses, and I look forward to your testimony. I would like to thank my good friend, Chairman Bachus here, for convening today's hearing and for introducing H.R. 5341, the Seasoned Customer CTR Exemption Act, of which I am an original co-sponsor.

The Financial Services Committee has a strong record of bipartisanship, and I am glad that it is extended to this proceeding and this bill, as well. H.R. 5341 has 21 bipartisan co-sponsors from all different—all ends of the political spectrum. And I think I can speak for the bill's co-sponsors when I say that we all want to protect our country from money launderers, from terrorists, and from anyone else who wants to do harm to our country.

As a former district attorney for 12 years, I certainly understand and appreciate the value of information that could aid in an investigation and eventually lead to prosecution. At the same time, I believe there is a way to strike a reasonable balance between ensuring our country's safety, and providing our financial institutions with a sensible regulatory framework in which to work. Waging a strong war on terror and providing reg relief to our financial institutions are not incompatible goals.

As the agency charged with administering the Bank Secrecy Act, FinCEN received over 12 million CTR's from financial institutions in 2005, according to my information. I think Chairman Bachus covered this, so I'm going to skip part of my statement and—he covered this in his opening statement, so I will just skip some of the information and move right on to say that the banking industry estimates that the industry paid just under $200 million in wages for the staff time that it took last year alone to file CTR's.

Nine years ago, in 1997, FinCEN promulgated new rules establishing categories of entities that are eligible for exemptions from CTR filings. But the process by which an exemption is granted to a financial institution is confusing and difficult to comply with, and consequently, many financial institutions end up filing unnecessary CTR's that strain resources.

I look forward to hearing Director Werner's testimony today on the exemption process, in particular. And finally, I would note that under H.R. 5341, even when financial institutions receive an exemption from filing a CTR, if a particular transaction either above or below the $10,000 CTR trigger does not seem like a normal transaction to the bank, that institution is still required to file a suspicious activity report. Thank you, and I look forward to your testimony.

Chairman BACHUS. Mr. Ryun? Mr. Feeney? Mr. Hensarling?

Mr. HENSARLING. Thank you, Mr. Chairman. I want to thank you again for holding this hearing, although I must admit that I am a little disturbed that we have to be here in the first place. There are other things that I wish I could have been doing this afternoon.

I am disturbed because I thought this was a matter that had already been settled. I thought that when we negotiated the financial services regulatory relief bill, I thought FinCEN was at the table.

I thought ICE was at the table. I thought the FBI was at the table. I thought we negotiated something that, although perhaps no one was particularly enthused about, that it was something that was a balance that met the cost benefit test, and everyone could live with. And I think I'm waking up to the fact that either I was incorrect, or people are walking away from the negotiation.

I mean, clearly, I didn't put everything in the legislation that I would have liked to have seen. Left to my own devices, we would have indexed CTR's to inflation. There are a lot of other things I would have done, but I thought I was sitting down with people and trying to negotiate a reasonable settlement here.

Certainly we need not go back and re-cover the ground about the burden that BSA imposes on our banking industry, particularly our community banks. Clearly, some of that is necessary. But the question is, what is the proper balance? It is a question of balance.

There is no doubt that, clearly, we need to do everything that is reasonable to ferret out money laundering, and terrorist financing. Clearly, they are among our Nation's greatest priorities. But we have to remember that these costs that are imposed upon our financial services industry are ultimately borne by the customers. And it's borne by the customers in having less credit and more expensive credit. That means fewer people can go and send their children to college. Fewer people can buy their first homes. Fewer small businesses are capitalized. Fewer jobs are created.

And so, it again is a question of balance. I believe that the House, in a vote of 415 to 2, decided that the seasoned customer exemption struck that proper balance, which was a very, very strong affirmation by this body, that particularly when you juxtapose the CTR requirements against what's going on in SAR's with know-your-customer, that maybe we're not quite meeting the cost benefit test, and that maybe we're not quite meeting with the 14 million-some-odd SAR's that all of these reports have a high degree of usefulness in the prosecution of criminal activity.

I have an open mind. It is not an empty mind, but it's an open mind. So I look forward to hearing from the law enforcement community in figuring out what has changed since the last time we met. So I do look forward to hearing that. But again, the seasoned customer exemption strikes me as a very, very reasonable approach to this situation that strikes the proper balance, frankly, between our physical security and our fiscal security. And with that, Mr. Chairman, I yield back.

Chairman BACHUS. Thank you. Mr. McHenry?

Mr. MCHENRY. Thank you, Mr. Chairman. I just want to commend you for taking the leadership on this issue. I think it's important that we strike the proper balance of both safety and national security, along with what is necessary and proper for the private sector.

And I want to echo what Jeb Hensarling, my colleague from Texas, said in this regard, that is our role in this committee to make sure that both protection in the market place is available for the customers, the consumers, those institutions that have to provide the data, as well as providing law enforcement with the means to ensure the safety of the American people.

And so, to that end, I think this is a proper step in that role, and I look forward to an eventful hearing. Thank you, Chairman Bachus, for your leadership on this important issue, as well.

Chairman BACHUS. Thank you, Mr. McHenry. And Mr. Garrett, do you have an opening statement?

Mr. GARRETT. Yes. Thank you, Mr. Chairman. And again, also I applaud the chairman for holding this hearing on this important topic. I also appreciate the members of this panel for their work in keeping this country safe through your efforts.

I do share Mr. Hensarling's comments about the concern about revisiting this issue. For that reason, perhaps we do need to revisit and once again point out the need for addressing the topic.

And so, for the members of the second panel, I will say right now I appreciate right now their anticipated testimony as pointing out the complexity and also the burden of the current situation.

You know, I think most people in the room know, as it goes back to the 1970's, when we realized the complex nature of financial products and the way the criminals were using finances in our banking industry, that this Congress realized that we needed to pass the BSA to try to reign in the criminal element, how they use our banks. But that was 36 years ago, and a lot has changed in all our lives—I was this big 36 years ago—but a lot has changed in the financial markets and elsewhere.

So, why do we revisit today? Back then, of course, it was dealing with a fixed number in an original threshold of $10,000 and $10,000 isn't what it was worth back in the 1970's. The criminal element, obviously, has changed their focus. They have changed their methodologies, they have changed their practices. And so we need to revisit it, and once again look to see whether we need to change things, as well, for the reason that we don't want people to be inundated or drowned in paperwork.

For that reason, earlier this week I drafted a letter and sent it out to the Secretaries of Treasury and of Homeland Security, and to the Attorney General, asking if they could provide, with some specific questions and answers, the numbers regarding how the data is collected, and how specifically it is used, how it is kept, and also what we may hear today, exactly just how useful it is.

At the end of the day, I think everyone on this panel from both sides of the aisle have the same objective in mind, and that is to gather data that is useful for deterring the criminal element, but not in a way that is going to be a tremendous burden or a regulatory burden, nor—on financial institutions—nor should it be cause of a significant privacy interest invasion, as well.

We all have the same interests in mind in that regard, and so once again I look forward to your testimony, and likewise look forward to the testimony of the next panel, as well. And I yield back, Mr. Chairman.

Chairman BACHUS. Thank you. Mr. Sherman?

Mr. SHERMAN. I think it makes sense for banks to be able to exempt some of their well-known customers from the reporting requirements, and it probably makes more sense for bank regulators to specify, through regulation, exactly how that process will work, rather than a system now that we have in statute, which makes it less than flexible, hard to amend, and at the same time, seems

to lack the kind of workability that we would like to see in this area.

So, I look forward to trying to make our system of banking and dealing with cash transactions work better, while at the same time achieving all of the security objectives we are trying to achieve.

Chairman BACHUS. Thank you. Mr. Neugebauer?

Mr. NEUGEBAUER. Well, thank you, Mr. Chairman. And I appreciate you bringing this issue back up, because like my friend from Texas, Mr. Hensarling, I am a little surprised that we have to be here today.

You know, I was in the banking business in the middle—the early 1980's. And one of the things that—I know that things have changed since then. But unfortunately, some things haven't changed. And the fact that we are still dealing with a $10,000 limit nearly 30 years later, and secondly, at a time when we have such tremendous technology available to us, you know, I think we need to have policy in this country that fosters and encourages us to use that technology today, and to identify those transactions that are suspicious, yet use the common sense approach that we have bankers and banking, and people in the financial services business all over this country that have knowledge of their customers, and they know the types of businesses they're in and the types of transactions they're in, and to rely on their ability and the technology that we have available to us today to be able to make common sense choices.

Our national security is of utmost importance to every member of this panel. But we also understand that we can't put unreasonable burden on our businesses to do our law enforcement. Yet what we want to foster is a partnership with law enforcement, using common sense and the technology that we have today to focus on the information that may be most meaningful, and not to judge a financial institution's cooperativeness by the numbers of reports they file.

And quite honestly, I have had bankers tell me—community bankers—that they have been written up because they just didn't have enough of those. Well, the fact is that maybe their customer base was such that they didn't have a lot of cash transactions. Or, in many cases, they knew the customer. And so I think we need to get away from this quantitative thing and look at the qualitative ways that we can monitor transactions in our country.

And so I appreciate the chairman bringing this back up. And I thank you for the time, and I appreciate these witnesses coming today.

Chairman BACHUS. Are there other members who wish to make an opening statement?

[No response]

Chairman BACHUS. If not, I would like to welcome our first panel, made up of Mr. Robert Werner, Director of the Financial Crimes Enforcement Network, U.S. Department of the Treasury; Mr. Michael Morehart, Chief, Terrorist Financing Operations for the FBI and U.S. Department of Justice; and Mr. Kevin DelliColli, Deputy Assistant Director, Financial and Trade Investigations, Office of Investigations, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security.

And at this time, we will hear your opening statements. Mr. Werner?

STATEMENT OF ROBERT W. WERNER, DIRECTOR, FINANCIAL CRIMES ENFORCEMENT NETWORK, U.S. DEPARTMENT OF THE TREASURY

Mr. WERNER. Chairman Bachus and distinguished members of the subcommittee, I appreciate the opportunity to appear before you today to discuss H.R. 5341, the Seasoned Customer CTR Exemption Act of 2006.

Balancing the regulatory burdens imposed upon the financial services industry under the Bank Secrecy Act, while at the same time ensuring an unimpeded flow of useful information to law enforcement officials, is an ongoing challenge that requires the attention of law makers and regulators alike.

As the recently appointed Director of the Financial Crimes Enforcement Network, which is responsible for administering the BSA, I take this issue seriously, and I look forward to working with the members of this subcommittee in our ongoing fight against illicit financial activity.

I am happy to be here today with my law enforcement colleagues. Both of these agencies work tirelessly to keep our country safe from terrorist activity, and I am gratified that, in part, they accomplish their missions by utilizing financial information provided to FinCEN under the Bank Secrecy Act.

Our partnership with these law enforcement agencies allows for the seamless flow and effective utilization of this critical information in our united fight against terrorist financing and money laundering. The BSA's recordkeeping and reporting requirements provide transparency in the financial system, and help create a financial trail that law enforcement and other agencies can use to track criminals, their activities, and their assets.

Relevant to this hearing is the fact that reporting by financial institutions of CTR's has been a foundation of the Bank Secrecy Act since its inception. In fact, prior to 1996, when regulations issued by FinCEN and the Federal banking agencies required banks to file SAR's, CTR's were the primary BSA tool used by law enforcement to identify activity indicative of money laundering. Those SAR's have been required to be filed by a growing number of financial institution industries since 1996. These reports have augmented our ability to stem the flow of illicit financial transactions by providing different but often complementary types of data to CTR filings.

Despite the efforts of FinCEN and industry groups to encourage use of the CTR exemption system that exists today, financial institutions have remained hesitant to do so. H.R. 5341, like section 701 of H.R. 3505, which passed the House of Representatives in March, is an attempt to address this concern by reducing CTR reporting requirements for seasoned customers.

My predecessor offered technical assistance to this committee on the CTR exemption language contained in H.R. 3505. Although we support the intent of this provision, which is to reduce unnecessary CTR filings, as well as the effort and expertise behind the assistance we provided, as we all recognize, it is imperative that we

avoid undermining law enforcement's efforts to combat terrorist financing and money laundering.

As such, we must be very attentive to reasonable concerns raised by law enforcement regarding the potential loss of the investigative value of CTR data presently collected. The ability of law enforcement to utilize BSA data has been improving at a rapid pace, in light of advances in technology and analytic practices. This has led to a concern on their part that we will end up losing data that, once excluded, we will be unable to assess the value of through subsequent data mining.

Given the concern expressed by our law enforcement partners, we believe it would be prudent to permit further study of the issue before making any changes to the current exemption system. Such a study provides both the financial services industry and law enforcement an opportunity to define clearly, through an empirical study, those areas that represent either a compliance burden or the potential loss of benefit from useful data.

Through such a cost benefit analysis, we may be able to highlight opportunities for the regulators, law enforcement, and the regulated community to achieve a balanced and workable alternative to the current regulatory regime.

In conclusion, Mr. Chairman, we stand ready to assist you in reducing the number of CTR's that provide little or no value for law enforcement purposes. Like H.R. 3505, we believe that H.R. 5341 is a step in the right direction, but we share responsibility with you and law enforcement in considering any potential loss of BSA data law enforcement considers important to their investigations.

Thank you for the opportunity to appear before you today. I look forward to any questions you have regarding my testimony.

[The prepared statement of Mr. Werner can be found on page 107 of the appendix.]

Chairman BACHUS. Thank you.

Mr. Morehart?

STATEMENT OF MICHAEL F.A. MOREHART, CHIEF, TERRORIST FINANCING OPERATIONS SECTION, FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE

Mr. MOREHART. Thank you, Mr. Chairman, and distinguished members of the subcommittee. On behalf of the FBI, I am honored to appear before you today to discuss the FBI's efforts to disrupt and dismantle national and international money laundering operations, and the operational impact of the successful utilization of information obtained from the financial sector.

Chief among the investigative responsibilities of the FBI is the mission to proactively neutralize threats to the economic and national security of the United States. Whether motivated by criminal greed or radical ideology, the activity underlying both criminal and counterterrorism investigations is best prevented by access to financial information by law enforcement and the intelligence community.

In the criminal greed model, the FBI utilizes a two-step approach to deprive the criminal of the proceeds of his or her crime. The first step involves aggressively investigating the underlying criminal activity, which establishes the specified unlawful activity require-

ment of the Federal money laundering statutes, and the second step involves following the money to identify the financial infrastructures used to launder the proceeds of criminal activity.

In the counterterrorism model, the keystone of the FBI strategy is countering the manner in which terror networks recruit, train, plan, and effect operations, each of which requires a measure of financial support. The FBI established the terrorist financing operations section—or, as we call it, TFOS—of the counterterrorism division on the premise that the required financial support of terrorism inherently includes the generation, movement, and expenditure of resources which are oftentimes identifiable and traceable through records created and maintained by financial institutions.

The analysis of financial records provides law enforcement and the intelligence community real opportunities to proactively identify criminal enterprises and terrorist networks. And more importantly, to disrupt their nefarious designs.

Money laundering has a significant impact on the global economy. The International Monetary Fund estimates that money laundering could account for 2- to 5 percent of the world's gross domestic product. In some countries, people avoid formal banking systems in favor of informal transfer systems such as hawalas, or trade-based money laundering schemes, such as the Colombian black market peso exchange.

There are several more formalized venues that criminals use to launder the proceeds of their crime or crimes, the most common of which is the United States banking system, followed by cash-intensive businesses like gas stations and convenience stores, offshore banking, shell companies, bulk cash smuggling operations, and casinos.

Money service businesses, such as money transmitters and issuers of money orders or stored value cards serve an important and useful role in our society, but are also particularly vulnerable to money laundering activities.

The FBI currently has over 1,200 pending cases involving some aspect of money laundering, with proceeds drawn from a variety of traditional criminal activities, as well as terrorism-related activities. By first addressing the underlying criminal activity and then following the money, the FBI has made significant inroads into the financial infrastructure of domestic and international criminal and terrorist organizations, thereby depriving the criminal element of illegal profits from their schemes.

In recent years, the international community has become more aware of the economic and political dangers of money laundering, and has formed alliances on several fronts to share information and conduct joint investigations. Members of the Egmont Group, a consortium of financial intelligence units, of which the United States is a member, can access a secure Web site developed by FinCEN, the United States' FIU, to share vital information on money laundering between participating countries in a further demonstration of international cooperation, the international recommendations and the nine anti-terrorist financing recommendations of the Financial Action Task Force, otherwise known as FATF.

Access to financial information significantly enhances the ability of law enforcement and members of the intelligence community to thwart terrorist activity. The lack of complete transparency in the financial regulatory system is a weakness on which money launderers and financiers of terrorism rely to reap the proceeds of their crimes and to finance terrorist attacks. Limited access to financial records inhibits law enforcement's ability to identify the financial activities of terrorist networks.

Efforts to detect terrorist activity through financial analysis are further complicated by the fact that the funding of terrorism may differ from traditional money laundering because funds used to support terrorism are sometimes legitimately acquired—for example, charitable contributions and the proceeds of legitimate businesses. Overcoming these challenges so we can prevent acts of terror has increased the importance of cooperation with our partner law enforcement agencies, the intelligence community, and the private financial and charitable sectors. Records created and maintained by financial institutions pursuant to the Bank Secrecy Act are of considerable value to these critical efforts.

As I previously testified before this subcommittee, the FBI enjoys a cooperative and productive relationship with FinCEN, the broker of BSA information. FBI cooperation with FinCEN has broadened our access to BSA information, which in turn has allowed us to analyze this data in ways that were not previously possible.

When BSA data is combined with the sum of information collected by the law enforcement and intelligence communities, investigators are better able to "connect the dots," and thus are better able to identify the means employed to transfer a currency or move value.

Sometimes the investigative significance of BSA data—a filing, if you will—cannot be appreciated until the BSA data is compared to predicated law enforcement or intelligence information that may not be in the public record. Such critical information can be biographical or descriptive information, the identification of previously unknown associates and/or co-conspirators, and in certain instances, the location of a subject in time and place.

The value of BSA data to our anti-money laundering and counterterrorism efforts cannot be overstated. The importance of access to that information has already proven invaluable on both the micro or individual case level, as well as the macro or strategic level.

BSA data has proven its great utility in counterterrorism matters. And any contemplated change to the underlying reporting and recordkeeping requirements of the BSA should be measured very carefully and very, very carefully considered before such action is taken. Either increasing the transaction amount at which currency transaction reports would be generated—currently at the $10,000 level—or abolishing the reporting requirement all together, or changing the seasoned customer exemption for that matter, would deprive law enforcement of a valuable investigative tool.

Recent macro-level analysis of the impact of BSA data provided by FinCEN to the FBI reinforces the investigative significance of that data. Some of the examples are as follows.

For the years 2000 through 2005, 38.6 percent of all CTR's filed reported transactions in the amounts between $10,000 and $14,999. For the same time period, 18.5 percent of all the CTR's filed reported transactions in amounts between $15,000 and $19,999. 10.8 percent of all CTR's filed during that same time period were for amounts between $20,000 and $24,999. 6.2 percent of those CTR's were for transactions between $25,000 and $29,999, and so forth.

Less than 2 percent of all the CTR's filed in that period involved transactions of $100,000 or more.

Chairman BACHUS. Mr. Morehart, if you could, wrap up and then we—

Mr. MOREHART. Yes, sir.

Chairman BACHUS. Thank you.

Mr. MOREHART. I am almost done, sir. To determine the operational impact of BSA data relative to the FBI investigations, a sample of the FBI's records for the years 2000 through 2005 were matched by the exact name and date of birth, or by exact social security number to almost 13,000 CTR's reported in that same time period.

This statistical example, when extrapolated to the universal CTR's, concludes that an excess of 3.1 million CTR's were pertinent to FBI investigations during that time period. And Mr. Chairman, in deference to your request, sir, I will not go into the statistics, but it is in the written record.

The CTR reporting threshold is set by regulations, and has been fixed at $10,000 for more than 25 years, as was mentioned here earlier. In that time, technology associated with the movement of money has advanced significantly. The movement of funds through electronic means has now become the standard. It should be noted that CTR's are not required for the electronic movement of funds. The practical effect on law enforcement activities of an increase to the CTR threshold reporting amount would be to severely limit or even preclude law enforcement access to financial data associated with cash transactions that are not otherwise documented.

In other words, the filing of CTR's at the current reporting threshold ensures a degree of transparency in the financial system that would not otherwise be available.

My attention now turns to the important issue of the so-called seasoned customer CTR exemption.

Chairman BACHUS. Mr. Morehart?

Mr. MOREHART. Yes, sir?

Chairman BACHUS. Actually, they are 5-minute opening statements, and you have gone 10 minutes.

Mr. MOREHART. I apologize.

Chairman BACHUS. If there is any way you could just wrap up—

Mr. MOREHART. Yes, sir. I will do my very best.

Chairman BACHUS. And I know this is valuable information, so I do want to give you some leeway.

Mr. MOREHART. Thank you, sir. If I can, Mr. Chairman, I have got about one page left, if I may go through that. My attention now turns to the important issue of the so-called seasoned customer exemption.

As you are aware, the BSA allows financial institutions to seek CTR filing exemptions pursuant to the designated persons exemption protocol. However, certain types of businesses considered most susceptible to abuse, such as money service businesses, are ineligible for such exemptions. We are not opposed to such exemptions for long-term, well-established, and documented customers, as has been previously stated during this hearing.

While the SAR is an extremely valuable tool, the suggestion that a SAR requirement could effectively substitute for the CTR misunderstands the differences between the requirements for the two documents.

In contrast, CTR's are only available on select matters where a bank official has made the subjective—and I emphasize subjective—determination that a particular transaction or activity is suspicious.

And in closing, sir, any decision to change the working of the current CTR customer exemption should be undertaken with great care. This is particularly so because of the steadily increasing ability in the Bureau to use these data points to meaningfully track national security threats and criminal activity. Though information on the evolution of this capability is not appropriate for public discussion, we would be happy to provide information on a non-public hearing, and have done so for some of the members of your staff already.

In conclusion, BSA data is invaluable to both our counterterrorism efforts and our more traditional criminal investigations. Our experience shows that terrorism activities are relatively inexpensive to carry out, and that the majorities of CTR's of value to law enforcement and intelligence communities are typically those that are prepared at or near the current reporting requirements.

To dramatically alter the transaction reporting requirements without careful, independent study would be devastating, and would be a significant setback to the investigative intelligence efforts relative to both the global war on terrorism and traditional criminal activities. Thank you for your forbearance, Mr. Chairman.

[The prepared statement of Mr. Morehart can be found on page 78 of the appendix.]

Chairman BACHUS. Let's see, Mr. DelliColli?

Thank you.

STATEMENT OF KEVIN A. DELLICOLLI, DEPUTY ASSISTANT DIRECTOR, FINANCIAL AND TRADE INVESTIGATIONS, OFFICE OF INVESTIGATIONS, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. DELLICOLLI. Chairman Bachus and distinguished members of this subcommittee, my name is Kevin DelliColli, and I am the Deputy Assistant Director for Financial and Trade Investigations at U.S. Immigration and Customs Enforcement, or ICE. I appreciate the opportunity to share with you today how ICE is applying its financial investigative authorities to track criminal enterprises that violate our Nation's borders and homeland security.

ICE is the largest investigative component within DHS. Working overseas, along our borders, and throughout the interior, ICE

agents are demonstrating that our unified customs and immigration authorities constitute a powerful tool for combating international money laundering and trans-national crimes.

During Fiscal Year 2005, ICE investigations led to the seizure of nearly $1 billion of currency and assets and the arrest of over 23,000 individuals. As highlighted in the U.S. money laundering threat assessment, ICE is addressing bulk cash smuggling, unlicensed and illegal use of money service businesses, trade-based money laundering, abuse of U.S. financial systems by politically exposed persons, the use of stored value cards, and other schemes.

Because of ICE's expertise in customs matters, our special agents are highly effective at combating trade fraud and trade-based money laundering.

Trade can be used to transfer proceeds in a variety of ways, including: over-valuing the cost of imported goods to disguise illegal proceeds as legitimate payment for those goods; converting proceeds into merchandise, which is then exported and sold for local currency. Even hawalas use trade transactions as a way to balance their accounts.

To detect and combat trade-based money laundering, ICE established a trade transparency unit, or TTU. The ICE TTU initiates and supports investigations related to trade-based money laundering. The ICE TTU analyzes trade data to identify anomalies indicative of money laundering and trade fraud.

In addition, ICE found that the TTU analytical software is very effective at analyzing BSA data, Bank Secrecy Act data, either to enhance the analysis of the trade data, or just the BSA data alone. ICE is just beginning to exploit and realize the potential of this expanded capability.

The TTU, though, is just one area ICE is utilizing BSA data. ICE has a long history of analyzing and utilizing BSA data in criminal investigations. ICE's use of CTR data is a valuable analytical tool for detecting illegal activity, developing case leads, and furthering investigations.

The so-called "placement" of funds into the financial system is the most vulnerable stage of the money laundering process for criminal organizations.

Generally, individuals and businesses conducting legitimate transactions have no reason to structure deposits or withdrawals to avoid the current $10,000 threshold for the filing of a CTR. The CTR requirement leads criminals to deliberately structure deposits into the financial system in order to avoid the reporting requirement in the hopes of evading suspicion and detection.

Because criminals must structure their illicit proceeds, they are forced to make multiple financial transactions to place the illicit proceeds into financial institutions. This forces the criminal organization to expend additional time and effort, and provides law enforcement with indicators used to detect the illegal activity. In an effort to circumvent the CTR reporting requirement, international criminal organizations have employed numerous peripheral employees to structure transactions for them.

U.S. law enforcement has learned to exploit the inherent weakness created by this process. As it provides law enforcement with a greater number of targets for interdiction efforts, undercover op-

portunities, and confidential source development, it also causes criminals to engage in other, more costly and time consuming methods, such as bulk cash smuggling and trade-based schemes to move their proceeds.

In the course of our investigations, CTR's are used to establish links between persons and businesses to identify co-conspirators, potential witnesses, and to reveal patterns of illegal activity. CTR information has been utilized to meet the probable cause requirement necessary to obtain search and arrest warrants. CTR's link individuals and businesses to financial institutions, and provide this information so the investigator can utilize the information for subpoenas.

Most importantly, as mentioned above, the CTR requirement causes violators to deliberately structure deposits or otherwise behave in a manner that arouses suspicion.

To illustrate how important CTR's are to ICE, ICE special agents queried CTR records over 454,000 times in just Fiscal Year 2005. ICE has many examples of investigations that were initiated, enhanced, or perfected because of access to the Bank Secrecy Act repertoire of documents, including CTR's.

ICE will continue to aggressively apply our authorities to combating international money laundering and the methods and means used to move illegal proceeds across our borders.

This concludes my remarks, and I thank the subcommittee and its distinguished members for their continued support of ICE's investigative endeavors. I would be pleased to answer your questions.

[The prepared statement of Mr. DelliColli can be found on page 53 of the appendix.]

Chairman BACHUS. Thank you. Mr. Werner, the conclusion of your statement says, "We stand ready to assist you in reducing the number of CTR's that provide little or no value for law enforcement purposes."

Do you agree that there are a large percentage, whether it's 15, 20, 25 percent of CTR, which are of no value to law enforcement?

Mr. WERNER. Mr. Chairman, I don't know what the percentage is, but I would agree that, in light of the fact that the existing exemptions are not being taken advantage of by financial institutions, there are CTR's being filed that are of little value to law enforcement.

Chairman BACHUS. Do you realize that—as, I think, Mr. Moore and Mr. Sherman both said, and several members on this side—that those exemptions, while well meaning, seem to be so complex that financial institutions have advised you that it's hard to implement that? Do you understand that there are problems with the—

Mr. WERNER. I do understand that, Mr. Chairman. There are different kinds of exemptions available under the existing scheme. And for example, the fact that banks continue to file CTR's on—you mentioned a host of companies—like the Wal-Marts of the world is a little mystifying to me, because those are under a phase one exemption, which are clearly articulated, as a publicly-traded company, would be exempt. And the phase two exemptions tend to be more complicated, in terms of administering them.

But it appears that many banks find it easier just to file automatically all SAR's en masse, rather than even to take advantage of the phase one exemptions.

Chairman BACHUS. That being the case, you all are being flooded with 15 million of these CTR's, is that right?

Mr. WERNER. We receive—

Chairman BACHUS. Let me say this. You say you share responsibility with law enforcement in considering any potential loss of BSA data law enforcement considers important to their investigations.

Now, in your testimony—and I'm going to direct you to page five—you say that H.R. 5341, like section 701 of 3505, is an attempt to address this concern by reducing CTR reporting requirements for seasoned customers. And then you acknowledge that your predecessor worked with the committee to offer technical assistance.

In fact, he did sit down and we worked out exact language. You're aware of that, are you not? And he testified in favor of the provision.

Mr. WERNER. Yes, sir.

Chairman BACHUS. Okay. And then it says this, and this is what I want to focus on. And Mr. Morehart has talked about terrorist financing, and countering terrorism, and it says, "Although we support the intent of this provision, as well as the effort and expertise behind the assistance we have provided, we recognize it is imperative that we avoid undermining law enforcement efforts to combat terrorist financing." Okay?

"As such, we must be very attentive to reasonable concerns raised by law enforcement regarding the potential loss to investigative value." Okay, we're talking about terrorist financing in your statement here.

Mr. WERNER. Although my oral statement broadened that, sir, to say terrorist financing and money laundering.

Chairman BACHUS. Okay. But, you know, a lot of what—even Mr. Morehart, you talked about counterterrorism, you talked about terrorist financing. That's what you focused on, not just these other activities. And that's a lot of what you all have, at least publicly, talked about, how to undermine those efforts.

But let's just focus on terrorist financing—because this is what your written statement says—for a minute. It says, "In that regard, law enforcement has significant concerns with the proposed language of this provision that would permit the exemption of certain businesses that are presently ineligible for CTR filing exemption under the current system," and then you list four: car dealerships; attorneys; physicians; and accountants.

Now, is it law enforcement's experience that we have car dealerships or accountants or physicians that are aiding terrorists, that you've caught some with the—

Mr. MOREHART. Is that being addressed to me, Mr. Chairman?

Chairman BACHUS. And we're talking about that make deposits in the ordinary course of business of large cash transactions, yes.

Mr. MOREHART. Well, sir, I will say this. I can't specifically say terrorism related, nor would I want to do it in this open forum, but we could discuss that, or perhaps it could be the subject of a QFR.

But I will say this, Mr. Chairman, it has been the FBI's experience that those types of entities, particularly those that are currently listed as not available for DEP exemption under current BSA regulations, are frequently utilized by criminals, whether wittingly or unwittingly, to launder money.

Chairman BACHUS. Okay.

Mr. MOREHART. If I may say this, sir, terrorist financing oftentimes fails to include a very important aspect. The financial aspect of cases does not necessarily mean the funding of terrorism.

There were, in my testimony, three different steps that I characterize—and forgive me, I cannot remember the page, but basically we're talking about the origination, which would be the funding or financing aspect, and the movement and storage of funds.

Chairman BACHUS. Well, yes. I noticed here you said—you talked about transfer of funds to foreign bank accounts.

Mr. MOREHART. I—

Chairman BACHUS. That's part of what you're talking about?

Mr. MOREHART. Yes, sir. Part of what I am talking about—

Chairman BACHUS. You identify one of the most common destinations for international fund transfers as Mexico.

Mr. MOREHART. I don't know. Is that in my testimony, sir?

Chairman BACHUS. Yes, on page two, the bottom line. It indicates the most common destination of international fund transfers are Mexico, Switzerland, and Colombia.

Mr. MOREHART. Yes, sir?

Chairman BACHUS. Do you find that these money transfers to Mexico are terrorist-related? Have you found any instances of that?

Mr. MOREHART. Well, sir, again, I would prefer not to discuss those types of issues in public forum, and I would—

Chairman BACHUS. I'm just saying, wouldn't most of that be immigrants wanting to remit money home?

Mr. MOREHART. I can't answer that question, sir. I am sure that there is some of that.

Chairman BACHUS. Well, you actually say 73 percent of money service business filings involve money laundering or structuring.

Mr. MOREHART. That's what statistics show, sir.

Chairman BACHUS. What?

Mr. MOREHART. That's what our statistics show, yes, sir.

Chairman BACHUS. So, 73 percent of the money ordering businesses, you believe, are money laundering activities?

Mr. MOREHART. Yes, sir.

Chairman BACHUS. And so, Mexico is the primary—I mean one of the primary—points that that money has been sent back to?

Mr. MOREHART. Yes, sir.

Chairman BACHUS. And you believe that's money laundering?

Mr. MOREHART. I believe it is, yes, sir. And I would also add—

Chairman BACHUS. Do you think any small fraction might be the 12 million illegal immigrants and probably 20 million legal immigrants who are sending money back home?

Mr. MOREHART. Well, sir, again, I cannot answer that question. I would suspect, yes, logically speaking, that might be the case.

Chairman BACHUS. Sure. Okay, thank you.

Mr. MOREHART. Yes, sir.

Chairman BACHUS. Mrs. McCarthy?

Mrs. MCCARTHY. Thank you, Mr. Chairman. I guess the only question I have—and I've read the testimony, and I can certainly understand your concern—but when we were writing up—when the committee was considering this regulatory relief, we didn't hear any objections from anyone when we were going through all this.

So, is this something new that came up after the relief, you know, was going through, when we were having the committee hearings in the past?

Mr. MOREHART. Yes, ma'am. I can say, from the FBI's standpoint, I testified before this committee—I guess it was about a year ago—with the then-Director, Mr. Fox. And the FBI's position on this data has remained the same, at least since that time, when I testified, in terms of the value of BSA data.

Mr. DELLICOLLI. May I answer as well?

Mrs. MCCARTHY. Absolutely.

Mr. DELLICOLLI. This is the first opportunity that ICE has to testify before this subcommittee on this matter. However, we have, you know, met with subcommittee staffers and expressed some concerns that we had with the seasoned customer exemption back in the summer of 2005.

Mrs. MCCARTHY. Thank you. No further questions, sir.

Chairman BACHUS. Mr. Feeney?

Mr. FEENEY. Mr. Chairman, actually I have another meeting, but I really am perplexed. I mean, when we asked questions about why this overzealous, overburdensome regulation has been constantly imposed by—we thought we had a compromise last year. We are told that, because of sensitive information, we can't get the answer.

And it really is disturbing that the automatic assumption is that every businessman that has more than $10,000 worth of deposits to make must somehow be subject to, you know, Federal oversight every day, 10 times a day, if that's when he or she makes their deposits. And I just find it insufficient, in terms of trying to meet with this effort.

And if somebody is trying to support the President on the Patriot Act, indicating that we felt like the FISA courts and secret courts were available, that there wasn't any surveillance on domestic activities—and, of course, now we find out that may not be accurate—and we're constantly told that the reason that we can't get information to do appropriate oversight, to protect the privacy of Americans in legitimate business activity, is because there is secret stuff that, if we knew, we would be totally supportive.

And even your supporters are becoming frustrated that that's not sufficient. The trust-me argument, "We know better, and we can't tell you why," only goes so far. And if we can't find a way for people who have had business relationships for a long-standing period of time, that have legitimate reasons why they may be making a deposit of more than $10,000, without having 3 or 5 different agencies of the Federal Government involved in every single transaction, then it comes time to rethink the question of all of what we're doing with respect to privacy.

It's just incredibly frustrating, and this is one Congressman who has been as sympathetic and supportive as possible, because we do live in a day and age when the threats are here and they're real. But by gosh, if every shadow is a threat, and every businessman

making a deposit of $10,000 and everybody making phone calls is a threat, then I live in a different country, one I don't recognize from pre-9/11.

And fundamentally, I think that you guys need to be cooperative when you get a chance. And maybe individually you're trying to, and when you try to do it collectively it doesn't work, but it's very, very frustrating.

And I don't really have any questions, other than to say that at some point we may—without the benefit of all this secret stuff that you know—we may simply instruct you what to do. If you can't work with us, we're going to work without you. Mr. Chairman, I yield back.

Mrs. MCCARTHY. Would the gentleman yield before he yields back?

Mr. FEENEY. I will yield to the gentlelady.

Mrs. MCCARTHY. I can't remember which testimony I read, but actually in one of the testimonies they said that they would meet with us privately in our office, or work with staff to give us some of that information.

Mr. FEENEY. Well, I appreciate that. But here is the problem with that. At that point, you're put in the box. Once you get secure information—and it may be appropriate for us to have it—but once you get that secure information, then it becomes very difficult for you to articulate the reasons why you're making decisions.

And to the extent that people can cooperate with us, and we can come to compromises—and a lot of these discussions were—had behind closed doors, perhaps where they should have occurred, and then we come back and find out that what we expected and intended was deliberately unraveled, or that there has been foot-dragging, then we have that Catch-22: go behind closed doors, and whether you agree or disagree with the conclusions, you're precluded from coming out and explaining why you do or don't—I would never leak information.

And I have, up to this point, been very trusting on a host of issues—I serve on the Judiciary Committee—and want to continue to be trusting. But the deliberate foot-dragging—at least it appears to be deliberate foot-dragging—is perhaps changing my confidence and increasing the frustration level. Mr. Chairman, having reclaimed my time, I yield back.

Chairman BACHUS. Thank you. So, Mr. Hensarling?

Mr. HENSARLING. Well, Mr. Chairman, I am very tempted to yield my 5 minutes to Mr. Feeney.

[Laughter]

Mr. HENSARLING. But knowing that he has yielded back, I will go ahead and use my 5 minutes.

First, gentlemen, notwithstanding what you have heard from many of us, I do want to thank you for what you do. I want to thank you for your service to your country. I know that my four-year-old daughter and two-and-a-half-year-old son go to sleep in a safer Dallas, Texas, USA due to your efforts. And so, I want to thank you for that.

But again, I want to go back to a question of balance. And I want to go to a question, really, of cost. I am sure there is a lot I can learn about law enforcement. I have a brother who is a Federal

prosecutor; I learn a little bit from him. I do know a little something about economics.

And let me ask this question. One, how much do your organizations pay to the financial services industry for their filings under BSA? Mr. Werner?

Mr. WERNER. We don't pay for those filings.

Mr. HENSARLING. The other gentlemen?

Mr. MOREHART. I'm not aware that we pay for them, sir. We get them—

Mr. HENSARLING. Well, that was my impression, as well. We have testimony that the banking industry is paying somewhere in the neighborhood of $200 million, give or take, just for their CTR filings. If I did the math correctly—I think I got this information from the Congressional Research Service—that for $200 million, you could hire another 1,000 special agents for the FBI.

You are receiving a lot of information that you don't pay for. Things that I don't pay for I have an unlimited demand for. Things I pay for, well, all of the sudden my demand becomes a little bit more limited. I'm kind of curious at just how valuable this information is to you, on top of the SAR's, on top of the know-your-customer.

So, if you had a choice of continuing what many view as a fair amount of redundancy in CTR reporting, Mr. Morehart, would you rather have that information or would you rather furlough 1,000 agents?

Mr. MOREHART. Sir, that is a conundrum I hope that I am never actually faced with. That would be a difficult one.

I will say this, sir, if I might. We understand that, from everything I have heard, that it does place a burden on the industry, in terms of the filing requirements. As I have testified before, most recently before the Senate Banking Committee about a month ago, we stand ready—although we're not a regulatory entity—to try to help in any way we can to reduce the burden on the financial services industry. Because, quite candidly, it makes our job more difficult.

The more data that is there, the more it populates, and the more fuzzy the field becomes, if you will. So we stand ready at any time to try to assist with that. As I previously testified, there is data that is provided to us that is of very little use. And as the chairman spoke earlier, we're talking about CTR's associated with Wal-Marts, with various well-known companies and well-established customers.

The concern we have, however, is this: Not that we oppose any logical change to the regulations or the legislation, but that it be done in a very careful and measured way, which we would be more than happy to participate in and help in any way we can—

Mr. HENSARLING. If I could, let me come at it a different way.

Mr. MOREHART. Yes, sir.

Mr. HENSARLING. As far as the opportunity cost for your organization, let's look at another—$200 million is coming out of our economy, principally in—I think mainly in terms of our community banks.

We have had testimony in this committee before that it takes roughly $25,000 to capitalize a small business. The average small

business employs 10 people. I don't recall whose testimony it was, but there was something there about protecting the economic security of Americans. If I did the math right, 425,000 to launch a small business, 10 employees, $200 million is roughly 80,000 jobs, 80,000 people who might have a paycheck, versus having a welfare check.

Now, again, if the information is highly useful in prosecution, maybe it's worth that. Maybe it's worth the 80,000 jobs. But Mr. Werner, is it worth that much?

Mr. WERNER. When you try and quantify the exact value of every piece of data we get, I think it's difficult for all of us to assess that and make those kinds of judgements. What we can tell you is that through over 30 years of collecting Bank Secrecy Act data, we know that we have had an enormous amount of value.

My two law enforcement colleagues have spoken to some specifics, in terms of deterring certain kinds of financial activity, all the way to detecting very serious criminal activity. And to date, we have a lot of anecdotal evidence of that.

My whole view here is that there is clearly a burden on the industry. And, clearly, there is a benefit from the data. We ought to try and get that cost-benefit analysis correct, we ought to try and really hone in on it in a truly empirical study.

And based on what I have seen in my 2 months as Director of FinCEN, I haven't seen a study that has really done that, to date. So it's very difficult to answer your question when we haven't really dug into the data in an empirical way to allow us to do that cost benefit analysis.

On both sides of the equation, we have a lot of anecdotal issues. The question isn't whether there is burden. The question is whether there is an unreasonable burden. The question isn't whether there is benefit. The question is whether the benefit justifies the cost to the industry. And those are the kinds of issues I would be very interested in obtaining a more comprehensive understanding.

Mr. HENSARLING. I see I am out of time, but you do have the burden of convincing 415 of us that it does meet that burden test. With that, Mr. Chairman, I yield back.

Chairman BACHUS. Mr. Garrett?

Mr. GARRETT. Thank you again, Mr. Chairman. And again, I thank the panel. Just a couple of questions.

But first, I just want to follow off of a line of questioning that the chairman had raised. And the point that you raised, Mr. Chairman, with regard to testimony on page two, Mr. Morehart, maybe I am reading more into that one paragraph than I should be. But if I am, then can you clarify for me?

When the chairman elicited the information with regard to your paragraph or sentence which says, "A recent review of SAR's filed with financial—with FinCEN, indicated that approximately 73 percent of money services involved money laundering or structuring."

Just sitting here and hearing your testimony, that sounds like an astonishing number, even if it's off by 10 percent. Now, first question is that's talking about money services, as opposed to banks, correct?

Mr. MOREHART. Yes, sir.

Mr. GARRETT. Okay. So, looking just now at money services, again, not being law enforcement, it sounds like an astounding number and it sounds like an area that should rise to the level of huge interest from your part, bringing it to our attention not just as a footnote, but as a major point prior to this, saying—and this seems to be an area that we should be investigating even further, from a Congressional point of view, as to what these money services agencies are doing if three-quarters of all—not all transactions, but all of the SAR's transactions going through are involving money laundering. Any comment?

Mr. MOREHART. Well, it is an area of concern for us, Congressman. I'm not sure exactly where you're going, or what response you're attempting to seek from me, but it is an area of concern.

And I don't want to suggest that we're not doing anything. Quite to the contrary. Actually, money service businesses are required to file with FinCEN, as any financial institution is. And we are working jointly together on projects to address that issue.

Mr. GARRETT. Do you—

Mr. MOREHART. Yes, sir?

Mr. GARRETT. Well, I guess where I was going, contrary to where I was coming into this meeting today, was saying whether we need less regulation—but on this area, if three-quarters of all of them are money laundering, is there something more we should be doing in that area—but how does that number compare to the rest of the financial marketplace? Do you have a number that you can give us?

Mr. MOREHART. No, sir. I don't have that number off the top of my head. We could try to get that to you.

Mr. GARRETT. Okay. I think that would be a relevant number that I would be interested to hearing about.

Also, in your testimony on page six, I guess—this was your footnote, and I know you weren't able to dig into all this during your testimony—you were talking about doing the investigation, and it said 3.1 million CTR's directly impacted FBI investigations. What does that exactly mean, that 3.1 million dealt with an investigation?

Mr. MOREHART. Sure—

Mr. GARRETT. Would that mean without that information, that those investigations would be significantly encumbered, or that just because in any investigation there is a whole collection of data that you get, and each one of them has something to do with it, but is it significantly, actually, to the outcome of the investigation?

Mr. MOREHART. Yes, sir. Let me try to explain. That 3.1 million is a statistical extrapolation of a smaller sample, first of all.

Mr. GARRETT. Sure.

Mr. MOREHART. So, what that means is—let me try to explain it this way. We are working very diligently with FinCEN to try to provide the answers to the questions that you have, in terms of how useful that data is.

To date, we have been able to do that, I believe, strategically. And what I mean by that is we have been able to give you these types of statistical samplings. For example, the terrorism watch list. We ran all those names against BSA data, including CTR's, and we came up with some 83,000 or 84,000—please don't quote me on that exactly; it's off the top of my head.

But let me provide one quick example, and then I will explain further what I mean. Of those 83,000 hits, if you will, against CTR's associated with the terrorism watch list that now can be exploited for further information, if the seasoned customer exemption, as suggested under 5341 is applied, and those entities were given that exemption, we would lose 82,000 of those documents.

Now, having said that, we have not fully vetted each of those documents, so I can't tell you exactly what value they would be. But I will say this. Not every single document is going to result in an arrest, either for a traditional crime or for terrorist activity. However, the way we view this data is much different than the lay person might view it. We view it as a dot. That dot may bridge to pieces of information that we would not have been able to connect before.

For example, we may not have been able to make the connection between two individuals that was critical to identifying a terrorist cell, for example, or two individuals that are involved in some type of narcotic money laundering activity.

Mr. GARRETT. Well, I appreciate that, and my time is growing short. And my last portion of the question is this. Do you not have the ability, just through your normal investigatory powers, your subpoena powers, whether or not a crime has occurred, you still have the ability for subpoena powers, just on the contemplation that there is a crime out there, to obtain the necessary information in any one of these investigations to connect all the dots, even if you didn't have the CTR's that were providing the information?

In cases where there is less than the $10,000 threshold, doesn't that authority in the Justice Department already exist, and allow you the ability to get that information?

Mr. MOREHART. It exists, sir, but it does not allow us to get the information that we might not otherwise be aware of. And what I mean by that, sir, is if we know the name of a target, we can see their records. If we don't, we can't. And the CTR offers us an objective method to identify potential targets.

That is, somebody who is involved in money laundering or suspicious activity that pops up on a CTR may not pop up on a SAR, because it's a subjective measure. They—we wouldn't know to subpoena that individual's records, or whatever. So, no, sir. The answer is no.

Mr. GARRETT. I see my time is up. Thank you very much.

Mr. MOREHART. Yes, sir.

Chairman BACHUS. Mrs. Biggert?

Mrs. BIGGERT. Thank you, Mr. Chairman. Mr. Morehart, of the CTR's that have been used in criminal prosecutions, how many were filed on business transactions and how many on individuals?

Mr. MOREHART. Ma'am, we have not kept metrics on exactly how they were filed, or what types. As I mentioned just a moment ago, much of the information we have now—we have only recently, as Mr. Werner suggested, developed the investigative data warehouse, which I testified to before, and which I'm sure you have seen in other testimony and perhaps in the media. That is an IT capability that allows us to exploit this information like never before. We have only been using that for a little over a year.

We have metrics at a strategic level, and quite candidly, we are struggling at the moment to try to develop and acquire that type of information at a tactical or case level, so that we can provide it to you, so that you will understand how valuable the data is. So I apologize.

Mrs. BIGGERT. Yes.

Mr. MOREHART. I do not have that information available, and it's not likely I can get it quickly. But we are working on it.

Mrs. BIGGERT. Yes.

Mr. MOREHART. And as a matter of fact, Mr. Werner's staff and my staff are actually forming what we call a BSA working group, and we are using that group for a number of purposes.

One is to try to identify how to collect those metrics, so that we can show you, in a more definitive way, how valuable the data is. Another way we're using that is to identify methods and ways and ideas on how to exploit that data in order to protect our national security, much like the comparison I mentioned between the terrorism watch list individuals and the BSA data.

Mrs. BIGGERT. Well, I am glad that you're working on that, because I think that this committee probably believes that the routine business transactions are not as relevant for the law enforcement as transactions from individuals. But we can't really make that final decision until we have the data to—

Mr. MOREHART. And with all due respect, ma'am, I would say, based upon my anecdotal knowledge of ongoing investigations, I would have to disagree with that.

Mrs. BIGGERT. Okay. So Mr. Werner—and maybe you can't answer these questions, either—but how many CTR's did FinCEN receive in 2005? Is that—

Mr. WERNER. I came—

Mrs. BIGGERT. Is it 12 million?

Mr. WERNER. I actually came prepared to answer that for you. In 2005, we received 14,210,333 CTR's—

Mrs. BIGGERT. Okay, thank you. Then how many of those CTR's were filed on reoccurring customer transactions?

Mr. WERNER. That data I do not have.

Mrs. BIGGERT. Okay. Well, wouldn't it be valuable to know how many—

Mr. WERNER. It would be valuable, which, Congresswoman, is why I think, really, to have a comprehensive study that permits us time to go into that kind of data mining would be of terrific use to all of us.

Mrs. BIGGERT. Okay, thank you. Then, Mr. DelliColli, in your testimony you state that every dollar of criminal proceeds seized is one dollar—one less dollar that criminals can use to—in their business. And I realize this, and how—and understand how difficult your job is with defending our country, and thank you for your efforts.

But I want to turn the statement around, and point out that every dollar spent on complying with filing CTR's is one less dollar that banks can use to lend to people and the businesses of this country, and in effect, hurt the economy.

And in addition, I think it doesn't help our businesses compete in the global marketplace. So I would ask you to look at the entire

picture and ask how we can solve this problem as it specifically pertains to the burdensome and costly filing of CTR's.

Mr. DELLICOLLI. My response to that would be that, you know, an ounce of prevention is worth a pound of cure. And I believe the discussion here today is to try to figure out how many ounces of prevention do we need to find the right cure.

With respect to, you know, the burden and the cost that the law enforcement efforts have on drug trafficking organizations—and money launderers and criminals in general—you know, part of the strategy is to raise the cost of doing business for the drug trafficking organizations.

The efforts that the U.S. anti-money laundering efforts undertake contribute greatly to that, raising the cost. I mean, these other methods that I referred to, the cost of structuring transactions in the U.S. financial institutions puts a great cost on drug trafficking organizations. To the extent that they actually sell their money at a great discount to peso brokers in Colombia, just to walk away from that difficulty.

So that, obviously, raises their cost. The cost of drugs may increase as a result of their cost, their profits being reduced. If drugs were much cheaper coming into this country, there may be more costs associated with health costs, and things of that nature. I'm not a sociologist or health professional. But I think you have to look at the whole situation.

Mrs. BIGGERT. Do other countries have similar CTR requirements?

Mr. DELLICOLLI. Other countries do have similar reporting requirements, mainly because the United States leads the way. And I would yield that question to, you know, Mr. Werner, with FinCEN. But Treasury actually leads the U.S. delegation on the financial action task force, actually does try to find standards.

And you know, if we don't have standards, you can rest assured that the rest of the world is not going to have those standards as well.

Mrs. BIGGERT. Mr. Werner, would you like to comment on that?

Mr. WERNER. Yes, I would. Thank you very much. We do push the standards for cash transactions. Not just CTR's, but also what are called CMIRs, which are the export and import of cash into and out of the country. And we are part of the Egmont Group, and a leader of the Egmont Group, in which financial intelligence units of countries around the world mine that data and share it with each other. So it's of great value to us, in that sense.

Mrs. BIGGERT. Thank you. I yield back.

Chairman BACHUS. Thank you. I would like unanimous consent for Ms. McCarthy to ask a follow-up question.

Mrs. MCCARTHY. Thank you, Mr. Chairman. Just a couple of things that I need to clarify. And I also want to thank you for your work.

And I happen to agree with you. Holistically, when you look at what you're spending and what hopefully we save on healthcare costs, whether it's drugs or anything else, I happen to think makes—and I also believe that the work that you're doing, taking away money from those that might be terrorists that want to do our country harm, or even drugs—and I know we've been doing a

better job on getting the drug money, and I hope we're doing a good job getting the money not going to the Taliban, or whoever it's going to.

The clarification—and I was thinking about this when the chairman asked the question—you indicate that 73 percent of money services' business filings involve money laundering or structuring. But the truth of the matter is—and I think this is where the chairman was supposed to go—we're not looking at the little guy that's here in this country, because most of them—you only look at those deposits that are over $10,000. Am I correct on that?

So we're actually not looking at someone who is sending a little bit of money to home to support their family back home or anything else like that.

Mr. MOREHART. Yes, ma'am. That would be accurate.

Mrs. MCCARTHY. Okay. And the only other thing I thought of, Mr. Chairman, as this debate was going on—and it is a burden to the banks, and I understand that—maybe somewhere down the way we can have a discussion on giving them some sort of tax credit or something, because they're doing their part.

That's enough for our committee or whatever, but that is a thought, because I think the work that you're doing is important. We need to support it. And if we can help the banks not have that financial burden on them, then we should be doing that. That should be our part of the government. Thank you. Thank you for your answers.

Chairman BACHUS. Thank you. Let me address one final question to you gentlemen. It deals with what banks and financial institutions, credit unions, are having to do right now. And I just want to make sure you all are aware of the requirements that you have imposed on them over the past 10 or 15 years.

One is the customer identification program. Now, Mr. Werner and Mr. Morehart, are you all familiar with that program?

Mr. WERNER. Yes, sir.

Chairman BACHUS. What's your understanding of the requirements in a customer identification program? What does the Federal Government require the banks to do when someone opens an account?

Mr. WERNER. The customer identification program is laid out in section 326 of the Patriot Act. There are some very clear requirements and others are risk-based. I haven't come with a text of that document with me, so I would be reluctant to try and do it from memory, sir.

Chairman BACHUS. They are required to gather quite a bit of information on that customer.

Mr. WERNER. They are depending, again, on the nature of the business and the customer, but yes.

Chairman BACHUS. Well, I think every customer.

Mr. WERNER. That's correct.

Chairman BACHUS. And that information is available to you.

Mr. WERNER. Well, the institutions keep it on file.

Chairman BACHUS. Sure. It is available to you. Then there is the customer due diligence process. Are you all familiar with that, the basic requirements?

[No response]

Chairman BACHUS. They are supposed to check out their customers, find out whether they have a legitimate business.

Mr. WERNER. That would be part of any standard—

Chairman BACHUS. You have imposed that on the banks, haven't you? I say the Federal Government has.

Mr. WERNER. That is correct.

Chairman BACHUS. Then you have this FFIEC BSA AML examination manual, which—imposes on our financial institutions additional controls, policies, and procedures to be implemented in order to actively uncover and track suspicious activity among their customers.

Mr. WERNER. Well, sir, that manual was produced at the request of the financial institutions so they would have guidance to—

Chairman BACHUS. Sure, sure. But they have agreed to do all that.

Mr. WERNER. That's correct.

Chairman BACHUS. And as a result of that, from—suspicious activity filings have increased from 52,000 in 1996—that and other requirements you put on them—have increased from 52,000 in 1996 to 689,000 in 2004, and they projected—I think the figures for 2005 will be over 1 million times that a financial institution has said, "This is outside the regular course of business," or, "This breaks a pattern," or, you know, "This is suspicious to us. This isn't what we consider normal." A million times they file that information that you have available to you.

Mr. WERNER. My statistics are that in—if you are discussing suspicious activity reports, there were over 600,000 in Fiscal Year 2005, over 800,000 in Fiscal Year—excuse me, in 2004; over 800,000 in Fiscal Year 2005, and then I wouldn't be surprised if we reached the million mark in the current fiscal year.

Chairman BACHUS. Then the USA Patriot Act imposes some new requirements on banks and credit unions to gather additional information that they didn't have to do before from their customers when their account is open. I mean, these are brand new requirements.

Mr. WERNER. Many of the requirements you have mentioned previously are part of the Patriot Act requirements.

Chairman BACHUS. There are some additional requirements.

Mr. WERNER. The entire AML program is more extensive than just customer identification and due diligence, yes.

Chairman BACHUS. Now you've got all that, and then what we have here in our legislation is if we have a well-established business that is incorporated by the laws of the United States, or a State, or a sole proprietorship that is licensed to do business in the United States, it's registered and eligible to do business, and it maintains a deposit account with a bank for at least 12 months, and during that period of time engages or uses the account with multiple currency transactions of $10,000 or more, that after the end of that one-year period, you are advised.

You are advised about the customer, you are advised of certain information which you have asked to be collected about the customer—the type of business they are engaged in, their identity, their social security number, their residence, their citizenship, you know, all these things you're given.

And the fact that they have made multiple transactions in a normal course of business, for example, every Friday? Or, "This is the pattern they have engaged in in the last month" or the last year.

And then the bank certifies to you that they believe—and they continue to say if they see any suspicious activity, or if these transactions change, or the pattern of these transactions, that you will be advised, or anything suspicious goes on with that account, you will be told. Do you have all of that?

But all this information is submitted. And simply what they ask you to do is just to prove this as a legitimate, well-established business that has a need, a necessary—a necessity, a demonstrated necessity, to deposit $10,000 or more in regular intervals as a regular part of their business. And you're given that information.

Going forward, why would you have to receive notice every time these well-established businesses licensed to do business, which the bank has certified that they have done their due diligence, they have identified this customer, they have supplied you all this information, why would you—and what reason does law enforcement have to have access, to go in any time you wanted to, and see every single deposit that that well-established business engaged in?

In what regard does this have anything to do with counterterrorism or terrorist activities?

And let me say this. Let's just suppose that what you've said here in your testimony is that you believe that car dealerships, attorneys, physicians, accountants, convenience stores—and there are about six other different types of businesses—anyone that sells or anyone that operates—I think you said buses or—there are about 10 other categories that you would still like the right to, every time they make a deposit of $10,000 or more, you want to know about it.

You can turn down the bank's request to certify them as a seasoned customer. You can say, "We have a question about this." You can—what—why does the Federal Government, our national government—when, you know, 20 years ago they had none of these rights, why do they need to know what every account in this country, every time he deposits $10,000, why do they need to know that?

And if you suspect him, you can take action, you can say, "I suspect this person, I want to know that"—if you're investigating him, as Mr. Garrett said, you can go in and request this information. But isn't this a tremendous—and you talk—you describe all this as data mining. Is that the word? And losing data, and data mining.

You are basically mining information from every business, every sole proprietorship in this country that, in a regular course of business, well-established, deposits money every day or every week of, considerable sums.

Do you see why we, some of the members of this committee, could consider this as somewhat of a loss of privacy that the American people are concerned about, and that's not necessary?

Do you believe that law enforcement has an overwhelming right to know every time an American citizen makes a deposit of $10,000 or more? If you have been advised that they are a legitimate business, they have been identified to you, the purpose of that business, they have a license to do business, they are incorporated under the

laws of a State, and they deposit money on a daily or weekly basis in the regular course of business, of $10,000 or more, why do you need to know the details of each and every transaction, as opposed to their right of some privacy? There are some legitimate rights that American citizens should have not to supply all of this information to the government?

The IRS itself in 1994 testified before this committee that there was absolutely no legitimate purpose for—"IRS estimates that 30 or 40 percent of CTR's filed are reports of routine deposits by well-established retail businesses, and that these CTR costs on the government and the nation's banking industry impose costs on the government and the nation's banking industry." What they didn't say is a tremendous loss of privacy that we have actually agreed to.

This Congress, they have agreed to all this stuff. They have agreed that every time somebody walks in a bank and tries to establish an account, that we tell the FBI all about it.

Then the FinCEN comes before our committee and testifies that, in fact, there is no legitimate need for this, other than—I understand, Mr. Morehart, you're the FBI. I suppose that you would come before this Congress and say, "It would help us if you would give us every bit of information on every American out there. You give us everything they do, everywhere they go, every time they make a call, every time they walk in a bank."

It would be of help to you. We could put a wire on everybody. But would that be right? Do you understand why we have legitimate concerns about the level of surveillance. I am a little disturbed that you've walked in and said car dealerships, accountants, doctors, physicians, that, these people—and part of it is in the name of counterterrorism.

And I just don't believe that American citizens here, licensed to do business here, and do business in the regular course of business, and are of such—and their business is so well-established that they, on a weekly basis, they deposit $10,000 or more, that somehow the Federal Government is here making a case that we need to know each and every time, going forward, each and every time they make a $10,000 deposit.

Mr. MOREHART. Mr. Chairman—could I address that, Mr. Chairman?

Chairman BACHUS. Sure.

Mr. MOREHART. I do understand your concerns, sir. And I do think they are relevant concerns. I will say I jotted down myself a couple of notes while listening to you speak. And if you don't mind, I will address them.

Chairman BACHUS. Sure, sure.

Mr. MOREHART. I think they may answer some of your questions.

First and foremost, let me say that, again, I want to reiterate we recognize it's a burden. There is data that is included in the BSA data, particularly the CTR's, that we do not need. We will be the first to admit that. The Wal-Marts, as you say, the Cracker Barrels, you name it. And we would be more than happy—

Chairman BACHUS. Even the guy who has had a pharmacy in town for 20 years—

Mr. MOREHART. Absolutely, sir.

Chairman BACHUS.—or the guy that's operated a restaurant for 15 years.

Mr. MOREHART. Absolutely, sir.

Chairman BACHUS. Because, you know, I am also troubled, to a certain extent, that you say if it's a publicly listed company and it trades, they're legit, but if it's a small businessman, you know, that—

Mr. MOREHART. Yes, sir. But may I add, too, that there are those companies out there that we do know are involved in nefarious activity, that we do know are funding terrorists, and those are the ones we're looking—

Chairman BACHUS. Sure. And I suggest with those companies, that if they don't sell you on the fact they're a legitimate industry, turn this request down.

And also, if you think they are engaged in suspicious activity, revoke their exemption.

Mr. MOREHART. My—

Chairman BACHUS. Or, if you are investigating them, go interview them. Or, if you need to, ask for a subpoena—you can get a subpoena prior to indictment—to subpoena their records. Or you could probably—I think you could even go to the bank and ask for their records, can't you?

Mr. MOREHART. Well—

Chairman BACHUS. In fact, you do that, on a—

Mr. MOREHART. You can, under the Right to Financial Privacy—

Chairman BACHUS. Sure—

Mr. MOREHART.—certain data, but not the records without a—

Chairman BACHUS. Well, it's kind of funny that you say you can't go into a bank and ask for this information, because it violates financial privacy, but you're gathering it every day. You see what I'm talking about?

Mr. MOREHART. No, sir. It's actually different data.

Chairman BACHUS. It's what?

Mr. MOREHART. It's different data, sir.

Chairman BACHUS. Okay, all right.

Mr. MOREHART. Yes.

Chairman BACHUS. I stand corrected. And go ahead, I interrupted you.

Mr. MOREHART. No, sir, not at all. No problems. I just wanted to make clear that there are a couple of reasons we need that data. It is not oftentimes immediately obvious whether you have someone who is involved in the various activities.

Again, I re-emphasize, we don't want all data. And quite candidly, sir, with all due respect, I wouldn't want to put a wire on everybody, and I wouldn't want everybody's data, because I don't have the manpower or the—

Chairman BACHUS. I will say I understand that.

Mr. MOREHART. Yes, sir. It does act as a deterrent, though. Please understand—

Chairman BACHUS. Oh, absolutely. Let me tell you something. I understand that. I understand that if the banks just mail you a copy of everybody's bank account transactions every month, there would be a deterrent.

Mr. MOREHART. Yes, sir.

Chairman BACHUS. I acknowledge that.

Mr. MOREHART. And please understand, 30 years ago we didn't have electronics funds transfer to the extent that we do today, thereby making cash transactions even that much more unusual. And when you're talking about cash transactions—businesses sometimes do have those, and there are legitimate reasons to do them.

However, the majority of us use either our debit card, checks, or some form of transaction that does not require a CTR filing. That's why a lot of those documents are of interest to us. And we use them—again, I emphasize—not only for tactical issues, for cases—that is, for example, to put the bad guy in jail, that piece of evidence will do that.

More often than not, we use it for intelligence purposes. It's important for us to know what part of the United States, for example, is heavy with CTR filings. That may be either a traditional criminal hub that you would want us to identify, for example, with narcotics issues, or it may be a hub of some type of terrorist funding activity, or money movement.

Chairman BACHUS. Well, I wouldn't think that with the terrorist activity—I can't imagine that any well-established business that has been certified to use well-established incorporated—you know, and you have been told that they do file—you know, you've been told that, for a year, they have filed numerous cash transactions. If you suspect them, then you know that information. You know, you already have that.

But if it's narcotics, and trying to determine regions of the country, I can just tell you that narcotics are a problem everywhere. And I just almost think that—

Mr. MOREHART. Sir, could I give you an example?

Chairman BACHUS. Yes, yes.

Mr. MOREHART. Let me give you an example. I won't go into great detail, because of the classification issues, and I apologize for that, I have no control over that.

However, I will say that there are those businesses out there that are involved in this type of activity. And I could go, let's say, let's speculate and say I went and got a national security letter or a subpoena, and I got those bank account records. What would I lose in terms of CTR value if CTR's weren't filed?

Let me give you an example. If a CTR is filed and the money is brought in by an individual that is not associated with the account—i.e. he is an employee of the account holder, but not associated with the account—does the subpoena document tell me that?

Chairman BACHUS. No, but a suspicious transaction report—

Mr. MOREHART. Yes, sir?

Chairman BACHUS.—in a case like that, they're required to file a—

Mr. MOREHART. Not necessarily, sir. And that's—

Chairman BACHUS. If it's not in the ordinary course of business—

Mr. MOREHART. No, sir. It's not. For example, if you look at the CTR filing document, it basically says did someone else come in and make this deposit to this person's account, and they're required to collect that data. That individual may or may not be the subject

of a suspicious activity report, depending upon who negotiates the transaction.

They may see this individual do this every single day for a year, and have developed a relationship, and therefore, it's not unusual. And I can tell you, from my 10 years as a street agent working white collar cases, that happened all the time, that they would develop a relationship, and the next thing you know, an individual would take the bank for some money, they would be gone, and they would go, "Gosh, Fred was a nice guy."

So, sir, there are those instances where that does happen. And without that CTR, we have lost valuable data where we might—and again I emphasize, and perhaps—I don't want to seem too dramatic—but you might identify a cell member through that CTR that you would then not know about.

Chairman BACHUS. We already have a process, CTR exemption process, where you could deal with it in that way.

Mr. MOREHART. And again, sir, we're more than willing to work together to try to address that issue. I know Mr.—

Chairman BACHUS. Sure, and I understand you are. Can you understand the frustration of our financial institutions?

Mr. MOREHART. Yes, sir.

Chairman BACHUS. Thank you.

Mr. WERNER. Sir, if I might address the existing CTR process, because you did question the distinction between a publicly traded company versus a non-publicly traded company.

And I think it's important to recognize that the reason we provided an exemption in the existing rules for publicly traded companies is because a publicly traded company is subject to certain disclosure requirements, and has a level of transparency that a non-publicly traded company may not. And so, I think that goes to your point of—

Chairman BACHUS. Yes, but I think that's because the Federal Government says, "If you're going to publicly trade, and if you're going to operate, then you should reveal certain things. If you're an individual, you have an absolute right not to reveal that."

Mr. WERNER. I recognize that, sir, but the transparency is what allows you to understand the nature of the business and have assurances—

Chairman BACHUS. Sure. All I—

Mr. WERNER.—that it's legitimate.

Chairman BACHUS. I'm not going to argue with the fact that we can be so transparent that everything we do, as I say—that we supply law enforcement all that information. And obviously, it's going to be of assistance, so I appreciate your testimony today, and I look forward to working with you. Mr. Hinojosa has a question.

Mr. HINOJOSA. Thank you, Mr. Chairman. And I want to thank the panelists for coming to visit with us this afternoon, and talk to us, and explain to us some of the things that are happening out there in the world of business.

H.R. 5341 makes it easier for financial institutions to exempt certain customers, as the chairman was pointing out. I gather that some of you are concerned that the bill might allow exemptions for certain types of customers of financial institutions.

I want to stress that the bill gives broad authority to the Treasury Secretary to prescribe regulations to define a "seasoned customer?" Is it your position that the bill, as currently drafted, would not permit the Secretary to continue to make ineligible certain types of high-risk customers such as services, businesses, car dealerships, law practices, accountancies, and others? If so, explain your interpretation.

Mr. WERNER. My concern, sir, with the bill is that law enforcement has looked at the exemption as drafted, and is worried that, given their current capacities to mine data, that they are evolving in ways that they feel we ought to study this issue further to make sure we get it right.

And their point is once we lose the data, it's very difficult to assess the need for it, because you don't know what you don't know.

With respect to the Secretary's ability, my reading of that provision was that the Secretary could reject a request for an exemption, or revoke an exemption. And again, it puts us in a very difficult position. Because, as Mr. Morehart has said, you don't—and this is the problem that the banks, the financial institutions, have as well—you don't always know there is something suspicious about a customer. They have established a pattern of conduct in the course of doing business which becomes regularized.

And you have—looking at it from just a pure objective standard without any other relational information, you may not realize that there is something wrong there. And I think that's what—and law enforcement can speak to this point, but I think that's what they're afraid of losing, is data that they—either the Treasury Department or the financial institutions do not realize can provide investigative value.

But because of the data they have, and the way they can hit this information against their data, they can make use of that, and make that assessment.

Mr. MOREHART. Yes, sir. Thank you. I would agree with everything that Director Werner said. I would also add this, too, is that in terms of the entities, if you will, the business types that are currently excluded from the exemption process, many of those there is a good reason for that.

Some of those businesses—for example, car dealerships, and perhaps Mr. DelliColli can talk more about this from the narcotics standpoint—are historically known to be utilized, whether wittingly or unwittingly, for the movement of money, whether it's money laundering or otherwise for those purposes. And that's why we asked, I guess a long time ago, that those be included in there for that purpose.

I would be concerned that if we just wiped the slate clean and started over again, that provides an opportunity where we have to again go through and prove up once again why those entities should not be subject to those exclusions.

I will also point out, as I mentioned to the chairman, that it is unusual in this day and time to move great deals of cash, unless you're in a cash-intensive business. Car dealerships are not in a cash-intensive business. It is unusual to carry $20,000 or $30,000 or $40,000 in to buy a car with cash, for example. It is unusual to carry cash to your accountant to pay him or her for their services,

or an attorney, for that matter. That is an unusual—and I would characterize as a suspicious—activity, in and of itself.

Granted, there are those entities that are involved in the movement of actual cash, and that's why the exemption process, as I understand it, was originally created. I would suggest that perhaps, as Director Werner suggested, we take a look at this; we do a study. The FBI is willing to try to identify whatever data we can to assist to make the process easier, to make sure that we have identified the right entities for exclusion.

But I would strongly urge that caution ought to be applied in simply wiping the slate clean before there is a comprehensive study to see if we can adapt, adjust, and assist the financial services sector in reducing their burden, while at the same time satisfying our need for information, not only to address traditional criminal activity, but to ensure our nation's security from terrorists, or would-be terrorists. Thank you, sir.

Mr. HINOJOSA. I will come back to you with another question. But, I want to ask Mr. Werner if the bill gives the Secretary of the Treasury a great deal of discretion? Yes or no?

Mr. WERNER. I'm not sure how to answer that, because it does permit exemptions to be made. But again, they have to be made on a reasonable basis. And if you don't have the information to do that, I wouldn't expect a lot of exemptions.

Chairman BACHUS. Would the gentleman from Texas yield?

Mr. HINOJOSA. Yes, I will.

Chairman BACHUS. Now, Mr. Werner, I don't mean to correct you, but the legislation creates absolutely no new exemptions.

Mr. WERNER. I don't think I said it created any new exemptions.

Chairman BACHUS. Okay, I—

Mr. WERNER. What I said is it does permit the Secretary to make exemptions, and—

Chairman BACHUS. Well, it doesn't require him to do any of that. But what it does do is streamline the existing process for exemptions. These are exemptions that already are in the law.

And it only focuses on known customers who have a legitimate business purpose for depositing large amounts of money, which—

Mr. WERNER. Well, I think as drafted, the exemptions would be broader in who is exempted than is currently exempted under the two phases of the—

Chairman BACHUS. Oh, the people. But the exemptions, we're not creating any new exemptions.

Mr. WERNER. I agree with that.

Chairman BACHUS. Mr. Morehart, you said we're wiping the slate clean. We're not creating—we're not going in and saying we're going to exempt these—we're going to exempt them from the filing requirements.

Mr. MOREHART. Well, sir, the way I understand it, current—

Chairman BACHUS. And we're not—in the suspicious transaction reports—

Mr. MOREHART. Well, sir, what I was getting ready to say was that there are a number of entities that cannot be provided a customer exemption, and that's what I was trying to—

Chairman BACHUS. Okay.

Mr. MOREHART.—answer the gentleman's question about before.

Chairman BACHUS. Sure, and I—

Mr. MOREHART. What this legislation does, H.R. 5341, is it basically says you can be afforded that exemption. What I am saying is—if I may—is that I think we ought to be very cautious in doing that, because there are those entities where, in and of itself, it's suspicious to carry cash into—

Chairman BACHUS. I guess what I am saying is that you used the example of a car dealership, a guy walking in a car dealership, and he pays $40,000 for a car. Okay?

But the CTR that's filed doesn't list that some guy walked in and bought a car for $40,000. You're not going to get any information about that transaction in a CTR. What you're going to get in a CTR is that Bruebaker Buick deposited $160,000 last week, and $180,000 this week, and $240,000 the week after.

And you would have to then go out to Bruebaker Buick and say, "Hey, guys, you've been depositing $200,000. It jumped up to $240,000 this time. Give me a list of your"—it's of no value in determining—

Mr. MOREHART. Well, it—

Chairman BACHUS.—identity, or identifying an individual who pays $40,000 for an automobile.

Mr. WERNER. Well, I think where it could be of value is where you see cash transactions coming out of a dealership over time that create a pattern, and then you have got a case—

Chairman BACHUS. You break the pattern—the banks, through your own instruction books, are legally obligated to try to report that if it's suspicious, or if it's a change in their normal practice.

Mr. WERNER. That's true. But maybe you don't break the pattern, but some other lead, investigative lead, pops up a name which, when the law enforcement puts it into a consolidated data—

Chairman BACHUS. Yes. The name on there is just the business, correct?

Mr. WERNER. But it may be the business that's involved in the illicit activity. And that's what is so significant. And when a business is involved in illicit activity, particularly if there is large cash transactions, you may have other documents that supplement it, such as an 8300. So there is a long trail that you can follow, once you get into a—once you understand—

Chairman BACHUS. If they're depositing more and more cash, it may mean their business is increasing.

Mr. WERNER. That's the difference between CTR's and SAR's. CTR's are just objective data points that are filed, whether you know that it's suspicious or not. And it may turn out it is suspicious and you didn't know it. And that's why I think it's dangerous to equate a suspicious activity report with a CTR.

Chairman BACHUS. Okay. Let me just say one more time our legislation streamlines an existing process for exemptions. It creates no new exemptions. Mr. Morehart, I'm just saying, I don't want to mislead you.

A guy walks in, pays $40,000 for a car at a dealership here in Maryland. You know, you're not getting a report from the bank that says, "Bill Smith bought a $40,000 car and he paid cash,".

Mr. Hinojosa? I can understand what you are saying there.

Mr. HINOJOSA. Thank you, Mr. Chairman. I think that this is all very interesting, and I am pleased to be able to hear some of the explanations that you all have given.

But prior to my coming to the meeting, there was in your testimony, Mr. Morehart, something about a 73 percent of filings by the MSB's, which in no way means that, from your standpoint, that the $35 billion to $40 billion sent from the United States to Latin America in remittances by hard working people is money laundering, is it?

Mr. MOREHART. Well, I—the one clarification that—I am glad you asked the question, sir, because that question was brought up before—is that that 73 percent relates only to the SAR's that were filed, not to all the money that was moved by money service businesses.

Mr. HINOJOSA. So the 73 percent is just the SAR's that were filed?

Mr. MOREHART. Correct.

Mr. HINOJOSA. That's more realistic.

Mr. MOREHART. Yes, sir.

Mr. HINOJOSA. Because here in the last 3 to 4 years, remittances have become a big part of not only the big banks, but small community banks and credit unions. And with the Treasury allowing the banks to decide whether to accept matricula consular identification card to be used as identification, we have seen more and more of those remittances sent through our mainstream financial institutions, rather than from some of the organizations—I'm not going to name them by name—that were traditionally used to send remittances to their families.

So, I am pleased that you have given that explanation, because that was worrying me, that there was something happening of which I just was not aware. I appreciate that explanation. Mr. Chairman, I'm going to yield back my time.

Mr. HENSARLING. [presiding] Thank you. At this time, gentlemen, we thank you very much for your testimony, and the consumption of much of your time. At this time, we would ask that our second panel be seated.

And with some housekeeping here, I ask for unanimous consent to submit the following written statement into the record, a letter of support for H.R. 5341 from the National Association of Federal Credit Unions from Mr. B. Dan Berger, senior vice president of government affairs; a letter of support for H.R. 5341 from the Financial Services Roundtable, from the Honorable Steve Bartlett, president and CEO; the March 1994 GAO report titled, "Money Laundering: the Volume of Currency Transaction Reports Filed Can and Should be Reduced"; and opening statement from the Hon. Debbie Wasserman-Schultz, a member of the full committee, but not of our subcommittee.

Mr. HENSARLING. At this time, we will begin our second panel. I have personally had the opportunity to read the testimony and apparently, as the last Republican in the room, I will now have the honor of hearing the testimony, as well.

We would like to welcome to the committee Mr. Weller Meyer, chairman and president and CEO, Acacia Federal Savings Bank, representing American Community Bankers. Welcome, sir.

Mr. Robert Rowe, regulatory counsel, Independent Community Bankers of America. Welcome to you, sir.

And now, I would like to yield time to Mr. Israel for our last introduction.

Mr. ISRAEL. Thank you very much for your courtesy, Mr. Chairman. I have the good fortune of introducing to the committee Mr. Brad Rock. I had the opportunity to visit with Mr. Rock several months ago in his office, and learn first-hand of the regulations involved in the Bank Secrecy Act.

He pulled out a file cabinet drawer for me, and showed me just reams and reams and reams of paperwork. And I told him I hadn't seen that much paperwork since I visited my doctor's office and saw the medical records that they have to keep under the HIPAA regulations.

Mr. Rock knows about this issue from practical experience, but also from his position of leadership. He is the 2005/2006 ABA vice chairman and chairman. He is president and CEO of the Bank of Smithtown and Smithtown Bank Corp., in Smithtown, New York. He is a former chairman of the ABA Government Relations Council, and has testified in Congress numerous times for the ABA on the subject of regulatory reform. And he is the former president of the Independent Bankers Association of New York State.

So, we are very proud of his leadership, and very proud to be able to benefit from his expertise today. And I thank the chairman for the courtesy.

Mr. HENSARLING. Thank you. And at this time, Mr. Meyer, you are recognized for 5 minutes.

STATEMENT OF F. WELLER MEYER, CHAIRMAN, PRESIDENT & CEO, ACACIA FEDERAL SAVINGS BANK, ON BEHALF OF AMERICA'S COMMUNITY BANKERS

Mr. MEYER. Chairman Hensarling and members of the committee, I am Weller Meyer, chairman, president, and CEO of Acacia Federal Savings Bank in Falls Church, Virginia. I am here this afternoon representing America's Community Bankers, whose board I chair.

I want to thank Chairman Bachus for calling this hearing. Mr. Chairman, we appreciate your leadership and the leadership of the committee members, Ranking Member Frank, Congressman Renzi, Congresswoman Maloney, and others, in crafting H.R. 5341.

Community Bankers fully support the goals of the anti-money laundering laws, and we are prepared to do our part to fight crime and terrorism. However, the CTR reporting regime is broken. H.R. 5341 is an important step towards balancing the burdens and benefits of CTR reporting.

The Seasoned Customer CTR Exemption Act of 2006 would reduce costs and regulatory burdens on financial institutions, and it would ensure that the government receives highly useful information to help law enforcement prosecute and prevent financial crime.

H.R. 5341 would provide streamlined criteria for exempting established business customers from CTR reporting. Depository institutions that exempt business customers would be required to file a one-time notice for each exempted customer. This approach would

be simpler and less burdensome than the exemption requirements under the current regulatory regime.

H.R. 5341 would also advance the Bank Secrecy Act's goal of collecting reports and records that have a high degree of usefulness for law enforcement. We do not believe that the repeated reporting of routine transactions of reputable businesses has a high degree of usefulness in prosecuting financial crime.

If H.R. 5341 is adopted, financial institutions would still be required to screen the transactions of exempted customers for signs of illicit activity. Institutions would still be required to conduct customer due diligence, monitor customer account activity, and report suspicious transactions, and they would still be required to search customer databases for the names of known or suspected money launderers or terrorists.

We support law enforcement's efforts to develop improved data mining capabilities. But the promise of future improved data mining techniques does not justify waiting to improve a CTR database. Waiting ignores the Congressional mandate in the Money Laundering Suppression Act of 1994, that requires the number of CTR filings to be reduced by 30 percent. And waiting ignores the real-world burdens of CTR filings on community banks.

The banking industry has worked with FinCEN, the banking regulators, and law enforcement agencies to meet the Congressional mandate to reduce CTR filings, and to improve the quality of the CTR database. But frankly, we reached a stalemate in 2004. The time has come for Congress to intervene. We call on Congress to adopt H.R. 5341.

In addition to enacting the Seasoned Customer CTR Exemption Act of 2006, we believe that it is also time for Congress to increase that dollar value that triggers a CTR filing, at least with respect to business customers. The current $10,000 threshold was established in 1970. When adjusted for inflation, $10,000 in 1970 is equivalent to more than $52,000 today.

This important reform will help those institutions that do not use the CTR exemptions, and further improve the usefulness of the CTR database.

The cumulative burden of BSA and other regulatory requirements has very real opportunity costs. For example, the fees that a community bank must spend for software that monitors cash transactions is money that cannot be spent to hire multiple tellers, a new loan officer to reach out to community small businesses, or to develop and market new products.

What may seem like insignificant costs to law enforcement have real business implication for community banks and their communities.

Thank you for inviting ACB to testify on the importance of improving the CTR system so that it collects only information that is highly useful to law enforcement. ACB believes that H.R. 5341 would provide important regulatory relief to community banks by providing a simpler alternative to the current CTR exemption provisions. I am happy to answer any questions that you may have.

[The prepared statement of Mr. Meyer can be found on page 70 of the appendix.]

Mr. HENSARLING. Now, Mr. Rowe, you are recognized for 5 minutes.

STATEMENT OF ROBERT ROWE, REGULATORY COUNSEL, INDEPENDENT COMMUNITY BANKERS OF AMERICA

Mr. ROWE. Mr. Chairman and members of the Committee, my name is Robert Rowe, and I serve as regulatory counsel for the Independent Community Bankers of America. I have held that position since April 1995, but I have worked on Bank Secrecy Act compliance for over 15 years, and for more than 7 years have been an active member of the Treasury Department's Bank Secrecy Act advisory group.

During that time, I have played an active role in discussions on how to improve the currency transaction reporting process, and have served on a Bank Secrecy Act advisory group subcommittee on the issue.

On behalf of ICBA's more than 5,000 member banks, I want to express our appreciation for the opportunity to testify on legislation to reduce the regulatory burden of filing currency transaction reports. We commend Chairman Bachus, Representative Frank, and the many other members of the committee for introducing H.R. 5341, the Seasoned Customer CTR Exemption Act of 2006, which is based on section 701 of H.R. 3505.

We look forward to working closely with Chairman Bachus and this committee to find solutions to reducing the BSA compliance burden, while still meeting the needs of law enforcement. We hope today's hearing will improve the chances for this provision to become law.

The Nation's community banks are committed to supporting the Federal Government's efforts to prevent money laundering, terrorist financing, and other fraudulent activities. However, bankers across the country continue to identify the Bank Secrecy Act as the most burdensome area of compliance. ICBA believes that it is critical that resources be focused where the risks are greatest.

ICBA fully supports the committee's efforts to address this regulatory burden through the Seasoned Customer CTR Exemption Act of 2006. ICBA has long believed that it is important to develop a simple and easily applied exemption process that can eliminate currency transaction reports that have little value for law enforcement. We therefore support the provisions of H.R. 5341 that would allow banks to exempt seasoned customers from CTR's without being required to renew the exemption annually.

Eliminating unnecessary reporting would result in substantial savings to our banks, and increase the time our employees can spend on customers' financial needs. It would also make law enforcement analysis of the data much more efficient by eliminating unnecessary data.

The bill would require Treasury to implement the provisions of the statutory definition of a qualified customer. ICBA strongly encourages that Treasury be given sufficient authority to make this definition flexible and easily applied, for example, by allowing certain customers to be exempt, even though they have not had accounts for 12 months.

ICBA will gladly work with Treasury and law enforcement to develop a rule that is workable and that properly balances the costs against the benefits. Many financial institutions report that the cost of using the current exemptions outweighs any associated benefits. As a result, many institutions find it is much simpler and less risky to file a CTR on every cash transaction over $10,000. Our members report that this approach is more practical and cost effective than using the current exemption process.

Using the existing BSA exemption not only consumes a community bank's limited resources in time and money, it also increases the burden on the bank's existing compliance program by requiring that the bank develop policies and procedures for exempting customers, train personnel on the procedures, and establish audit programs to monitor compliance with the exemption process.

For example, if a community bank establishes an exemption for a customer under current rules, it must document the decision and annually file an exemption with the government. It then must ensure that it has up-to-date exemption lists available for all branch personnel, and that all branch personnel are properly trained in which customers are exempt, and when those exemptions can be used, since not all transactions for an exempt customer may be exempt.

With turnover of tellers and other branch staff, it is often much simpler, less complicated, and certainly less confusing to simply file the currency report. All that the bank staff has to remember is that currency in or currency out over $10,000 requires a report. Plain, simple, and easily applied. Unfortunately, it also means many routine transactions are reported.

Anecdotal evidence and comments from financial institutions of all sizes support the notion that avoiding the current exemption process is significantly less burdensome in terms of cost and compliance management. Barring a significant change in the CTR filing process or the exemption regulations, many institutions will continue to file on all transactions that exceed the $10,000 threshold. This defeats the purpose of creating a reporting system that allows law enforcement and the Federal Government to properly focus resources.

ICBA believes this bill is an important step towards eliminating unnecessary reports and appreciates this committee's commitment to moving legislation that would reduce the regulatory burden on community banks by creating the seasoned customer exemption to the CTR requirement.

Thank you. I will be happy to answer any questions.

[The prepared statement of Mr. Rowe can be found on page 99 of the appendix.]

Mr. HENSARLING. Thank you, Mr. Rowe.

Now, Mr. Rock, you are recognized for 5 minutes.

STATEMENT OF BRADLEY E. ROCK, CHAIRMAN OF THE BOARD AND PRESIDENT & CEO, BANK OF SMITHTOWN, REPRESENTING THE AMERICAN BANKERS ASSOCIATION

Mr. ROCK. Thank you, Mr. Chairman. When establishing the BSA regulatory regime, Congress sought to require reports when they have, in the words of the Act itself, "a high degree of useful-

ness." The current CTR requirements have long departed from this standard of usefulness, and in fact, serve more to distract and impede efforts against crooks and terrorists than to help identify and stop them.

The original CTR requirements were enacted more than 35 years ago in 1970. Subsequently enacted requirements for suspicious activity reporting, rigorous customer identification programs, mandates to match government lists to bank accounts, and the availability of focused and detailed information under section 314(a) of the Patriot Act, leave little value to be added by collecting millions of CTR's on legitimate routine business activity.

In 1994, Congress tried to address this problem by enacting an exemption process for some CTR reporting. Nonetheless, since that exemption process was passed, the number of CTR's has grown from approximately 11 million in 1994 to more than 14 million today.

Unfortunately, the compliance technicalities for banker use of the exemption and renewal processes, and examiner second-guessing of banker use of the exemptions, have severely discouraged most banks from seeking exemptions for any of their customers.

The exemptions go largely unused. Bankers do not want to be put in the position of being asked what they are trying to hide by filing for exemptions, nor do banks want to be threatened with penalties and regulatory criticism by examiner second-guessing.

In my bank, during the past year, we filed 2,766 CTR's. Most of these CTR's were filed for ordinary transactions by an ice cream parlor, a clam bar, a restaurant, and a high-volume Amoco dealer, all of whom have done business with us for many, many years. My tellers spent more than 460 hours in the branches, preparing the CTR forms, and one person in our main office spent more than 1,000 hours checking the forms for accuracy, checking them against computer print-outs, and filing the forms with the appropriate government office.

Having watched this process for years, and being thoroughly familiar with the businesses that are the subject of these filings, I can tell you with firm assurance that all of this time and paper did absolutely nothing to further advance our collective efforts to thwart money laundering and terrorism.

We have passed the time for studying what to do. The time has come to take effective action to make the system better. Accordingly, we support H.R. 5341, which recognizes that the best way to improve the utility of cash transaction reporting is to eliminate the valueless reports being filed on legitimate transactions by law-abiding American business people.

This improvement can be achieved by establishing a seasoned customer exemption for business entities, including sole proprietorships that, I might add, was endorsed by FinCEN last year in testimony before Congress, and now embodied in H.R. 5341.

The clear standards, as proposed in the bill, would avoid the compliance barbs that have made the previous exemption effort ineffective. As H.R. 5341 makes clear, all customers would continue to be subject to suspicious activity monitoring and reporting. SAR's provide precise account and related transaction information, as well as narrative detail not available in CTR's.

In addition, by using the 314(a) inquiry process, law enforcement will be able to locate transaction data and other relevant information on a broad range of accounts of suspects. This more targeted approach is working, and producing tangible results today.

I thank you, Mr. Chairman, and your colleagues, for your commitment to improving the BSA system. And I assure you that ABA and its member banks share that commitment. We are all striving to make the system work best to protect the security of our banking system from abuse by money launderers and terrorists, and to safeguard the confidence that our customers have that the integrity of their legitimate business conduct is respected. Thank you.

[The prepared statement of Mr. Rock can be found on page 87 of the appendix.]

Mr. TIBERI. [presiding] Thank you to all three of you. Mr. Rock, let me ask you a question. Mr. Rock, the banks worry about using the exemption system today because of concerns that their decisions to seek an exemption are going to be impacting their customers, and maybe will be second-guessed by examiners. Some would say that this is not a true concern, a legitimate concern.

Tell me why you think it might be a legitimate concern from a banker's point—

Mr. ROCK. Well, that's not supposition, Mr. Chairman. When the exemption process was enacted in 1994, in the first round of exams that followed in the year or two after that exemption process was enacted, it was widely discussed among bankers that examiners came in and said, "What are you trying to hide by filing for exemptions for these customers?"

Not only that, you have to look at the exemption process closely—and nobody wants to be put in that position, by the way, because we want to play our role; that's important to us. But the other thing is, is that if you look at the exemption process itself, it has an annual renewal process, and it has a biannual renewal process in which certifications have to be made.

If you read through the footnotes for those certifications, they carefully define the word "frequently." And what examiners do is they come in and they question and second-guess the amount of due diligence that you have done in the renewal process, and then threaten penalties if you don't live up to that unspecified amount of due diligence in following the annual and the biannual renewal system.

So, the risks and the difficulty far exceed the amount of time and effort for just filing the form in the first place.

Mr. TIBERI. Thank you, Mr. Rock. Mr. Meyer, I understand that many community banks do not use the CTR exemption. Can you explain to us why that is the case?

Mr. MEYER. There are a variety of reasons. I think many banks want to train their employees to one single standard, because it's a lot easier. We were having a discussion earlier today about how difficult it is, particularly when you're using part-time employees, to train to different standards. So, from a training perspective, it's just a lot easier for an institution to train to a simple standard that says, "This is the way you do it," and to not make any exemptions.

I think the issue regarding the regulatory second-guessing is the stories are more than anecdotal. They are real stories. I think ev-

erybody has acknowledged in recent years that the landscape has changed. There have been discussions within the regulatory agencies, on a joint basis, to try to get out to the industry to indicate to them that the second-guessing does not continue. However, that has not been proven to be true in fact.

So, I think there are a variety of reasons that cause people to say, "Let's take the path of least resistance. Why utilize an exemption when it's going to potential expose us to second-guessing and criticism by the regulatory agencies?"

Mr. TIBERI. For the record, for the Committee record, can you tell us, or estimate to us, what it would cost one of your average members, community banks, to implement a CTR filing system? How much cost, how much staff time?

Mr. MEYER. I am sorry that I don't have that data available to me.

Mr. TIBERI. Is it something you think would be easy to get ahold of, just for the record?

Mr. MEYER. If I might, I would like to sort of lean back and get some—

Mr. TIBERI. Go right ahead. You may lean.

Mr. MEYER. I missed an opportunity.

Mr. TIBERI. We all do.

Mr. MEYER. One of the costs—and I neglected to talk about this—and I can give you a real example with my own institution, when we looked into the cost of automating the software that would be necessary—buying the software that would be necessary—to perform this analysis on an automated basis, we were given a quote of $120,000 plus an annual $10,000 fee. And that has nothing to do with the cost of our employees actually performing the work, the review process, the recordation, sending the documentation off to the appropriate agencies.

So, if you're looking at a global sense, that gives you some magnitude for just one institution. And we do not—we, in our institution, made the decision not to. We're not a very retail-oriented business, so we made the decision that with the staff, it would be less expensive for us to utilize staff, and if necessary, to add on additional staff, as opposed to taking on the burden of that initial outlay plus the ongoing expense associated with it.

Mr. ROCK. Mr. Chairman, if I could add to the explanation—

Mr. TIBERI. You may.

Mr. ROCK.—of my friend, Mr. Meyer, and the software that he is talking about, that $120,000, is just the cost of the software that gets appended to the existing infrastructure for teller transactions. And many community banks across the country cannot afford the kind of massive infrastructure at the teller station that larger banks can afford in order to append that additional software to it.

I mean, keep in mind that 3,300 banks in the country have fewer than 25 employees. So they don't even have the infrastructure to append that software to, let alone the $120,000 cost and the other costs that Mr. Meyer has referred to.

Mr. TIBERI. How big is your bank, your personal bank—

Mr. ROCK. $950 million. And we use computer print-outs of two kinds. We have a computer program that prints out everything over $10,000, and we have one that aggregates all transactions by

one customer in amounts of more than $10,000. And we have a person who sits and reviews the reports every single day, those computer print-outs, against the CTR's that were prepared by the teller. And that takes her—her name is Mrs. Ragusa, and it takes her about two-and-a-half hours a day, because in preparation for this testimony I checked with her every day last week to see how long it took her to do that work.

So, that's about two-and-a-half hours a day, just on that review process. So that's more than 1,000 hours a year on the review process, and that's in addition to the cost of the computer programs.

Mr. TIBERI. Ohio is a good banking State, if you're interested in expanding, by the way.

Mr. Rowe, I saw you shaking your head. I'm over my time. If you could, just briefly comment.

Mr. ROWE. Just very quickly, one of the things I would like to add is that the software packages that these gentlemen are talking about, while the costs are coming down, there is an infrastructure that is needed to be there. These systems are off-the-shelf systems that are designed merely to catch and aggregate currency transactions.

The exemption process doesn't even enter into these costs. To try and add that on would geometrically increase the cost of these software packages. And for many community banks, it's just completely out of the realm of believability.

Mr. TIBERI. Thank you. My friend from Texas, Mr. Hinojosa.

Mr. HINOJOSA. Thank you, Mr. Chairman. I have enjoyed listening to all three of the presenters. I want to clarify that this bill addresses currency transaction reports, and not suspicious activity reports. Am I correct on that?

Mr. ROCK. Yes. Yes, sir.

Mr. HINOJOSA. And the bill further provides Treasury with the flexibility and authority it needs to define "seasoned customers," isn't that correct?

Mr. ROCK. Yes, sir.

Mr. HINOJOSA. Your responses reaffirm why I agreed to become an original cosponsor, along with the bill's author and original sponsors, Spencer Bachus and Barney Frank. After listening to your experiences and those of the small community banks of less than $1 billion, I really don't have a question, Mr. Chairman. I want to just say that after hearing all three of our panelists, I am convinced that H.R. 5341 is a good, justifiable bill, that should be reported favorably to the House and passed. Community banks and other financial institutions need to be given the considerations that you all have asked for.

So, Mr. Chairman, I am not going to ask them any questions. I think that they have done a good job, and that the record will reflect why we are going to be supporting this bill.

Chairman BACHUS. I thank you, Mr. Hinojosa. And gentlemen, I did read your testimony last night, because I was locked out of my house.

[Laughter]

Chairman BACHUS. And I spent the night on my couch, so I couldn't sleep. So I read every bit of it. And it was—it's very good testimony. It will help us in continuing to document this case.

I know you are as frustrated as we are, in that we sat down with FinCEN and worked out a very reasonable approach that all parties agreed was a good, common-sense solution, and at some point, for whatever reason, it came off the tracks.

And I think more—if for no other reason that law enforcement always wants more information. They're just—they're going to always want to know as much as they can know. But I think there has to be a limit to, you know, to what you're required to do, and the cost of what you're required to do, and particularly when it's information that is of really—of marginal use, or could be obtained, you know, in a more effective way.

So, if you will continue to make your case before other Members of Congress, your associations, I know it's frustrating. In 1994, GAO took a look at this very issue and said that the widespread use of these on well-established businesses was of no value. It just simply served as an expense to both government and to your institutions, and actually made the job of combating money laundering more complicated than it should be. And we proposed a solution, and worked with law enforcement in fashioning, which passed this body with two dissenting votes.

And I believe that maybe separating this out and sending it over to the Senate, I think the Senate—I really have heard no disagreement from any senator to this legislation. I would—I am not sure, you know, how carefully it was considered. But they will have to deal with the policies of this.

So, I have been handed a note that says, "Wrap it up," because I'm supposed to be in the Senate in about 10 minutes, meeting on a different subject matter. I very much appreciate your testimony. And if you have suggestions for us and certain of your associations were very—all of you were very valuable, but we worked with you in fashioning this, and then talking to law enforcement. Any suggestions you have got for us will be appreciated, in addition to your testimony today. So thank you very much.

Some members may have additional questions for this panel, which they may submit to writing, or to the former panel. So, without objection, the hearing record will remain open for 30 days for members to submit written questions to these witnesses, and the first panel witnesses, to place their responses in the record. This hearing is adjourned.

[Whereupon, at 4:35 p.m., the subcommittee hearing was adjourned.]

A P P E N D I X

May 18, 2006

Opening Statement

Chairman Michael G. Oxley

Committee on Financial Services

Subcommittee on Financial Institutions and Consumer Credit
H.R. 5341, the Seasoned Customer CTR Exemption Act of 2006
May 18, 2006

Thank you Chairman Bachus. I want to salute you for your leadership on this very important issue.

Five years ago, when this committee drafted the anti-money laundering title of the USA PATRIOT Act, we told the financial services industry two things. We said we were going to ask them to step up to the plate and do work no one else could do in the war on terror -- help fight terrorist financing. We also said we knew that work would be arduous and that we are committed to reducing other burdens wherever possible. This Committee, on a bipartisan basis, has kept that commitment, passing broad regulatory relief bills in that Congress and the two succeeding ones.

I am happy to say that while I don't want to jinx anything, it looks like the other body will finally act on a similar bill, but I am disappointed to note their bill contains none of the sections in our H.R. 3505 that sought to reduce unnecessary burdens of complying with Bank Secrecy Act requirements.

H.R. 5341 is essentially identical to the first of those sections, seeking to improve the process by which banks may receive an exemption from the filing of reports on large cash transactions by customers they know well. This provision makes sense to many.

Therefore, I want to make two points. First of all, I do not want to deprive law enforcement of <u>any</u> useful information. Second, I don't want to ask banks to do anything in the way of compliance on this subject that isn't necessary. I think that the bill we are considering meets both of those tests.

I understand that there are different opinions on this matter. We have heard testimony on the language before us in this Committee previously, from law enforcement and others, and the legislation has passed both this Committee and the House with overwhelming votes. I look forward to the testimony of both panels and I yield back the balance of my time.

OPENING STATEMENT OF CHAIRMAN SPENCER BACHUS

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

Legislative Hearing on H.R. 5341, the "Seasoned Customer CTR Exemption Act"

May 18, 2006

Good morning. The Subcommittee will come to order. This morning the Subcommittee will hear testimony on a legislative proposal, the "Seasoned Customer CTR Exemption Act" that I introduced with Ranking Member Frank and other distinguished members of our Committee.

This legislation stems from provisions that were included in H.R. 3505, the "Financial Services Regulatory Relief Act," authored by Representatives Jeb Hensarling and Dennis Moore. This legislation passed the House in March by a vote of 415-2. Unfortunately to date the Senate has been reluctant to include provisions dealing with currency transaction reports, or CTRs, in companion regulatory relief legislation they are considering.

H.R. 5341 is a common sense piece of legislation which seeks to reduce regulatory burden caused by the Bank Secrecy Act. Specifically, the legislation requires the regulators to promulgate new regulations and streamline the process by which financial

institutions may be exempted from filing CTRs for "seasoned customers." CTR's are required to be filed for transactions of $10,000 and above. This filing is required even in the case of "seasoned customers" who are longtime bank customers that routinely deal in large volumes of cash, such as a local grocery store chain, but whose business dealings are well-enough understood by the institution to rule out the possibility of money laundering or the financing of terror. The current process which a financial institution can exempt "seasoned customers" is overly burdensome. Furthermore, a bank is still obligated to file a Suspicious Activity Report even in the case of businesses for which an institution has received an exemption from filing a CTR, if a particular transaction, does not seem like a normal transaction to the bank, it still is obligated to file.

I look forward to hearing from our witnesses today and their thoughts on the legislation. On the first panel we welcome, Mr. Robert Werner, Director of the Financial Crimes Enforcement Network (FinCEN) at the Department of the Treasury. Mr. Michael Morehart, Chief of the Terrorist Financing Operations Section at the Federal Bureau of Investigation (FBI). And Mr. Kevin Delli-Colli, Deputy Assistant Director of the Financial and Trade Investigations at the Department of Homeland Security.

On our second panel we welcome, Mr. F. Weller Meyer, Chairman, President and CEO of Acacia Federal Savings Bank,

based in Virginia, on behalf of America's Community Bankers (ACB). Mr. Meyer is the current Chairman of ACB. Mr. Robert Rowe, Regulatory Counsel with the Independent Community Bankers Association (ICBA). And Mr. Brad Rock, Chairman, President and CEO of Bank of Smithtown based in New York on behalf of the American Bankers Association (ABA). Mr. Rock is also the ABA Vice Chairman.

We are here today because we need to learn more about this issue from the law enforcement community and those institutions which are impacted by the process. I would like to take this opportunity to again welcome our witnesses. I look forward to hearing from each of you and thank you for taking time from your schedules to join us. I would also like to again thank my colleagues for their interest in this important matter.

I am now pleased to recognize the Ranking Member, Mr. Sanders, for any opening statement that he would like to make.

OPENING REMARKS OF THE HONORABLE RUBEN HINOJOSA
COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
"H.R. 5341, SEASONED CUSTOMER CTR EXEMPTION ACT OF 2006"
MAY 18, 2006

Chairman Bachus and Ranking Member Sanders,

I want to express my sincere appreciation for you holding this timely hearing today on such an important subject. I am an original cosponsor of the bill we are here to discuss today.

I believe that H.R. 5341 balances the needs of law enforcement with the need for additional regulatory relief for institutions with seasoned customers.

I do not believe that this legislation will hamper our government's efforts to prevent money laundering, terrorist financing and other fraudulent activities.

On the contrary, I think that the bill will enable the government to focus its attention where the risks are greatest while enabling employees of financial institutions to focus their attention on customers' financial needs instead of burdensome, unnecessary Currency Transaction Reports.

For these reasons and more, I joined you, Chairman Bachus, and my good friend Ranking Member Frank as an original cosponsor of the "Seasoned Customer CTR Exemption Act of 2006."

I look forward to receiving the testimony of today's two panels of witnesses.

Mr. Chairman, I yield back the remainder of my time.

U.S. Immigration and Customs Enforcement

STATEMENT

OF

KEVIN DELLICOLLI

DEPUTY ASSISTANT DIRECTOR
FINANCIAL & TRADE INVESTIGATIONS DIVISION

OFFICE OF INVESTIGATIONS

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
DEPARTMENT OF HOMELAND SECURITY

BEFORE THE

FINANCIAL INSTITUTIONS AND CONSUMER CREDIT SUBCOMMITTEE
COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES

REGARDING

"SEASONED CUSTOMER CTR EXEMPTION ACT OF 2006"

MAY 18, 2006, 2 PM
WASHINGTON, D.C.

2128 RAYBURN HOUSE OFFICE BUILDING

INTRODUCTION

Chairman Bachus, Ranking Member Sanders and distinguished Members of the Subcommittee on Financial Institutions and Consumer Credit, my name is Kevin DelliColli and I am the Deputy Assistant Director for Financial and Trade Investigations within the Office of Investigations, U.S. Immigration and Customs Enforcement (ICE). I appreciate the opportunity to share with you today how ICE is applying its financial investigative authorities and capabilities to identify, dismantle and disrupt criminal enterprises that threaten our Nation's borders and homeland security.

THE ICE MISSION

Among the Department of Homeland Security law enforcement agencies, ICE has the most expansive investigative authorities and the largest number of investigators. ICE's mission is to protect the American people by combating terrorists and other criminals who seek to cross our borders and threaten us here at home. The men and women of ICE accomplish this by investigating and enforcing the nation's immigration and customs laws. Working overseas, along the nation's borders and throughout the nation's interior, ICE agents and officers are demonstrating that our unified immigration and customs authorities constitute a powerful tool for identifying, disrupting and dismantling criminal organizations that violate our Nation's borders. During fiscal year 2005, ICE investigations led to the seizure of nearly $1 billion in currency and assets from the criminals who exploit our borders. Every dollar of criminal proceeds seized is one less dollar criminals can use to fuel their businesses.

By leveraging the full potential of our immigration and customs laws, ICE makes it harder for potential terrorists and transnational criminal groups to move themselves, their supporters or their weapons across the Nation's borders through traditional human, drug, contraband or financial smuggling networks, routes and methods.

LEVERAGING AUTHORITIES

ICE has powerful tools for investigating the broad array of financial crimes that have a nexus to our borders. Since its creation in March 2003, ICE has capitalized upon its unified customs and immigration authorities to combat border, public safety, homeland and national security violations that fall within our broad jurisdiction.

One of the most significant outcomes to arise from combining these law enforcement authorities at ICE has been the aggressive application of financial investigative methods to disrupt and dismantle criminal organizations involved in immigration and human smuggling violations. By leveraging these authorities, ICE is now identifying, dismantling and seizing the profits of criminal organizations that once thrived and generated extensive wealth from violating immigration laws. Corrupt foreign nationals, who violated the trust of their countrymen and plundered their country's financial assets, once fled to the U.S. and applied for political asylum and were beyond the reach of immigration officials. Now, as Politically Exposed Persons under ICE jurisdiction,

Special Agents arrest them for their financial crimes and seize their assets for return to the governments they victimized.[1]

Our Special Agents in the field are demonstrating that financial investigations are a very powerful tool in our efforts to combat the multi-billion dollar business of human smuggling and trafficking both at the border and throughout the nation's interior. We are now able to go "up-stream" against these smuggling and trafficking conspiracies and take down their leadership and seize their assets.

BATTLING THE BUSINESS OF BORDER CRIMES

ICE Special Agents operate with the understanding that the criminal activities we see are, at their core, criminal business enterprises. The criminal conspiracies to smuggle drugs, people and contraband across the border in both directions are sustained by earning and then moving the money raised by the criminal activity. For example, it is estimated that the cross-border human smuggling from Mexico into the United States nets hundreds of millions of dollars for criminal gangs -- and the drug trade, billions.

The related crimes that we see, including money laundering, murder, manslaughter, extortion, hostage taking and robberies, are some of the methods employed by criminals to maximize profit through violent means, while sustaining and growing their criminal

[1] The ICE-led Foreign Public Corruption Task Force was established at the SAC Miami to address foreign public corruption and related money laundering through U.S. financial institutions, and other investments. A primary goal of the task force is to raise awareness within ICE field offices to foreign corruption, and deliver training to foreign governments in identifying public corruption and related proceeds laundered

enterprises. Most of these activities are predicated -- at some stage -- upon the illegal movement of people, goods or money across the Nation's borders. This understanding of the criminal business model drives the ICE strategy of penetrating the financial architecture that supports continued criminal activity. ICE investigations identify cash flow routes, assets and holdings, and the means by which organizations seek to move the proceeds of their illegal activity. In so doing, ICE strikes at the heart of the criminal organization by targeting the financial infrastructure that permits criminal enterprises to flourish.

U.S. MONEY LAUNDERING THREAT ASSESSMENT

Under the leadership of the Department of the Treasury, the 2005 U.S. Money Laundering Threat Assessment (MLTA) constitutes the Federal interagency collaborative effort to identify vulnerabilities and methods employed by transnational criminal organizations to move and store their illegal funds. ICE was pleased to participate in the interagency working group, and provide information and insights relevant to the MLTA. We are proud of our contributions to this important and useful document, and are fully engaged in collaborating on the upcoming National Money Laundering Strategy.

THE ICE ASSESSMENT

As the financial, regulatory and law enforcement communities continue to tighten the enforcement of Anti-Money Laundering (AML) laws and regulations, criminal organizations are increasingly forced to resort to bulk cash smuggling, trade based money

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through U.S. financial institutions. The PEP Task Force has already delivered extensive training in Central

laundering, and other schemes to move their illicit proceeds across our borders in both directions. With nearly 23,000 arrests across more than 24,000 cases in fiscal year 2005, ICE Office of Investigations has a substantial universe of information and opportunity to extract both tactical and strategic information on transnational crime and its financial infrastructure. The ICE Cornerstone initiative takes a *systemic,* rather than case-by-case, approach to the investigation of cross-border financial and trade crime. Through Cornerstone, ICE partners with the private sector, law enforcement and the regulatory community to identify and eliminate vulnerabilities within the U.S. financial and trade systems that could be exploited by terrorists and criminal organizations. ICE is educating the private sector on red flag indicators of suspect criminal behavior indicative of these illicit schemes, and taking proactive steps to close vulnerabilities once identified.[2] ICE also focuses on the alternative financing mechanisms that terrorist and other criminal organizations use to earn, move, and store funds.

Since July 2003, ICE Special Agents have given over 2,000 presentations to over 40,000 business leaders, government officials and law enforcement officers, worldwide, generating over 200 investigations directly attributable to Cornerstone outreach and education.

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and South America, and is conducting approximately 30 investigations.

[2] The ICE-led El Dorado Task Force in New York identified a significant vulnerability in money laundering conducted via independently owned ATMs in and around the Greater New York area. This vulnerability was briefed to the NY State Banking authorities, the industry supplying the machines and

BULK CASH SMUGGLING

A number of the money laundering trends we have observed have developed in response to the robust anti-money laundering programs instituted by the U.S. financial industry in response to Federal legislation and regulation. As the opportunity to exploit our traditional domestic financial institutions diminishes, criminal organizations are turning to non-traditional and riskier methods to gather and move their proceeds, such as bulk cash smuggling. The ability of criminal business enterprises to advance their business model rests directly upon their ability to take possession of the money they have earned through their criminal activities.

The smuggling of bulk currency out of the United States has become a preferred method of moving illicit proceeds across our borders, forcing criminal organizations to devise methods for avoiding detection during the movement of this bulk cash across our borders. In response to this trend, Congress criminalized the act of smuggling large amounts of cash into or out of the U.S. in the USA PATRIOT Act. Specifically, Title 31 U.S.C. 5332 – Bulk Cash Smuggling - makes it a crime to smuggle or attempt to smuggle over $10,000 in currency or monetary instruments into or out of the United States, with the specific intent to evade the U.S. currency-reporting requirements codified at 31 U.S.C. 5316. ICE Special Agents have used the Bulk Cash Smuggling statute with great effect, arresting over 330 individuals for Bulk Cash Smuggling violations. In addition to these arrests, ICE and U.S. Customs and Border Protection (CBP) have worked together to seize over $160 million in funds involved in these bulk cash smuggling violations.

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other stakeholders. NY State Banking Authorities introduced state legislation to regulate the independently

Whenever possible, these cases are developed into larger conspiracy cases to reach the highest levels of the smuggling organizations.

ICE's enforcement of the Bulk Cash Smuggling law does not end at our Nation's borders. In August 2005, ICE partnered with CBP and the State Department to initiate a joint training program for our Mexican counterparts on the methods used to smuggle bulk currency. As a direct result of this hands-on training, our Mexican counterparts seized over $30 million in cash and negotiable instruments in violation of the Mexican currency-reporting laws, during pulse and surge operations conducted over a 9-month period. The day after this highly successful joint operation, known as Operation Firewall, was launched in August 2005, the single largest bulk cash seizure in Mexico of $7.8 million dollars was realized. ICE has worked with our Mexican counterparts to tie these seizures to larger investigations conducted in Mexico, the United States, and other South American countries. In March 2006, building on the proven success of this initiative in Mexico, pulse and surge operations commenced again, resulting in two seizures totaling over $7 million dollars within the first few days of the operation. The State Department continues to fund these international efforts and we are grateful for its support.

MONEY SERVICES BUSINESSES

In addition to our efforts to combat bulk cash smuggling, ICE works aggressively to identify and investigate other financial methods that criminals use to move their illicit funds out of the United States — such as the use of unlicensed money services businesses

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owned ATM industry.

(MSB). These unlicensed businesses operate outside of the traditional banking system and governmental oversight, and have been long recognized by law enforcement as vulnerable for exploitation by terrorists and other criminals. The enhancements in Title 18 U.S.C. 1960, Prohibition of Unlicensed Money Transmitting Business, enacted through the USA PATRIOT Act, provided ICE with the authority to investigate unlicensed money remitters.

While many MSBs provide a legitimate service to their customers, those acting illegally evade federal reporting and record-keeping requirements. In an effort to address this vulnerability and force more transparency within the MSB industry, ICE is aggressively investigating illegal MSBs and has implemented an MSB/Informal Value Transfer System (IVTS) initiative built upon a three-tiered strategy of identification, compliance, and prosecution. The goal is to identify as many unlicensed MSBs as possible, investigate and prosecute any MSB that is linked to an ongoing ICE criminal investigation or meets federal prosecution guidelines for violation of 18 USC 1960, and work with the IRS and the Financial Crimes Enforcement Network (FinCEN) to educate and bring into compliance those unlicensed MSBs not within prosecutorial guidelines of the initiative. Since the start of our MSB initiative in January 2006, ICE has identified over 80 suspected unlicensed MSBs and opened 55 formal investigations.

ICE's unified immigration and customs investigative authorities and capabilities give our Special Agents the ability to identify and close the homeland security vulnerabilities generated by and related to unlicensed MSBs money laundering activities.

Specifically, ICE is leveraging information it generates during immigration-related enforcement activities to identify and investigate unlicensed MSBs used by undocumented individuals to move money around the world. Investigations of individuals engaged in benefit fraud, the manufacture and sale of false immigration documents, human smuggling and trafficking activities, narcotics trafficking, or other transnational crimes have a significant potential to uncover unlicensed MSBs. Since the passage of the PATRIOT Act, ICE investigations of unlicensed money- services businesses have resulted in over 171 arrests and the seizure of over $25 million in currency.

TRADE-BASED MONEY LAUNDERING

Because of ICE's experience and continuing expertise in customs matters, our Special Agents are highly effective in investigating and combating trade and trade-based money laundering. Criminal enterprises have long misused international trade mechanisms to avoid taxes, tariffs, and customs duties. Alternative remittance systems, such as *hawalas*, have also long utilized trade to balance payments between *hawaladars*. As both the formal international financial system and money services businesses become increasingly regulated, scrutinized, and transparent, criminal money launderers and potentially terrorist financiers are more likely to use fraudulent trade-based practices in international commerce to launder, earn, move, and integrate funds and assets.

Trade-based money laundering is defined as: the use of trade to legitimize, conceal, transfer, and convert large quantities of illicit cash into less conspicuous assets or

commodities. In turn, the tangible assets or value are transferred worldwide in an effort to avoid financial transparency laws and regulations. The ICE Trade Transparency Unit (TTU) identifies anomalies related to cross-border trade that present indications of international trade-based money laundering. The TTU generates, initiates and supports investigations and prosecutions related to trade-based money laundering, the illegal movement of criminal proceeds across international borders, alternative money remittance systems, and other financial crimes. By sharing trade data with foreign governments, ICE and participating governments are able to see both sides, import and export, of commodities entering or leaving their countries. This truly makes trade transparent and will assist in the identification and investigation of international money launderers and money laundering organizations. Other benefits of trade transparency include: assisting developing nations in the potential identification of smuggling routes or public corruption, and reduction of smuggling that feeds the Black Market Peso Exchange laundering system.

The Data Analysis and Research for Trade Transparency System (DARTTS) is a proprietary ICE system that helps our Special Agents analyze foreign and domestic trade data and Bank Secrecy Act information. ICE Special Agents employ DARTTS to identify discrepancies in trade and financial data that may indicate money laundering, customs fraud and other transnational crimes. The ICE Trade Transparency Unit (TTU) develops investigative leads from analysis through DARTTS and facilitates the dissemination of investigative referrals to field entities.

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ICE launched the first TTU in Colombia to share information, better assess risks, and conduct intelligence-based investigations. Using State Department funding from Plan Colombia, ICE provided support to Colombian authorities and initiated trade based data exchanges. Under this program, U.S. investigative leads are vetted by the TTU and disseminated to ICE SAC offices for investigation. Colombian leads are disseminated to our Columbian counterparts for investigation. Recently, ICE with funding from the State Department, provided 215 computers and other equipment to Colombia's Customs Service to increase trade transparency and combat trade-based money laundering, drug trafficking, contraband smuggling, tax evasion and other crimes between Colombia and the United States.

Using the joint resources of ICE and Colombian TTUs, ICE implemented a Black Market Peso Exchange (BMPE) initiative, involving the analysis of companies and/or subject(s) involved in BMPE schemes. This initiative allows U.S. and Colombian authorities to exchange information and data for ultimate criminal or civil action, to target Colombian peso brokers, U.S. exporters, Colombian importers and financial accounts facilitating BMPE activity.

As part of U.S. efforts in the Tri-border area (TBA) of Paraguay, Brazil and Argentina, ICE is working with the U.S. Departments of State and Treasury and the governments of Argentina, Brazil and Paraguay to establish TTUs in those three countries. These initiatives are at various stages of development.

DIGITAL MONEY LAUNDERING

While the majority of border-related money laundering continues to take the form of conventional methods, such as bulk cash smuggling, money services business and trade related activities, the rapid pace of technology is continuing to open a new horizon of opportunity for money launderers in the form of digital money laundering.

Internet payment services such as PayPal, BidPay, e-gold and E-Dinar represent new methods to transfer funds globally. For example in 2004, PayPal executed 339.9 million payments totaling $18.9 billion in value. These significant and growing mechanisms to transfer funds and value globally in an instant provide new capabilities for those engaged in money laundering.

Often these kinds of services and transactions routinely cross several international jurisdictions. Some do not require customers to establish their identities. Some accept cash in order to open accounts. And some Internet payment conveyances keep few or no records. Others with substantial record keeping may reside safely beyond the reach of U.S. law enforcement. Merely determining which country has jurisdiction over these services can often present severe challenges to law enforcement. The proliferation of these services, in combination with pre-paid value cards that can be used to withdraw cash from ATMs worldwide, poses very significant opportunities for the illicit movement of money and value outside the boundaries of current regulatory regimes.

These emergent systems and technologies represent a significant challenge to our ability to force transparency into the movement of money and bearer instruments across our borders, and are not addressed by the currency and monetary instrument reporting requirements as presently structured.

ICE USE OF BANK SECRECY ACT DATA

Law enforcement uses the entire array of Bank Secrecy Act documents in a variety of ways. ICE has a long history of collecting, analyzing and utilizing Bank Secrecy Act data in criminal investigations. ICE's use of Currency Transaction Report (CTRs) data is a valuable analytic tool for detecting illegal activity, developing leads and furthering investigations.

The so-called "placement" of funds into the financial system is the most vulnerable stage of the money laundering process for criminal organizations. Generally, individuals and businesses conducting legitimate transactions have no reason to structure deposits or withdrawals to avoid the current $10,000 threshold for the filing of a CTR. The CTR requirement leads criminals to deliberately structure deposits into the banking system in order to avoid the reporting requirement in the hopes of avoiding suspicion and detection. Because criminals must structure their illicit proceeds, they are forced to make multiple financial transactions to place the illicit proceeds into financial institutions. This forces the criminal organization to expend additional time and effort, and it provides law enforcement with indicators used to detect illegal activity.

In an effort to circumvent the CTR requirement, international criminal organizations have employed numerous "peripheral employees" to "smurf" their illicit proceeds into financial institutions. U.S. law enforcement has learned to exploit the inherent weaknesses created by this process, as it provides law enforcement with a greater number of targets for interdiction efforts, undercover opportunities, and confidential source development.

In the course of our investigations, CTRs are used to establish links between persons and businesses, to identify co-conspirators, potential witnesses, and to reveal patterns of illegal activity. CTR information has been utilized to meet the probable cause requirement necessary to obtain search and/or arrest warrants. CTRs link individuals and businesses to financial institutions and provide this information so the investigator can utilize the information for subpoenas. CTRs can also provide critical information relating to asset identification. Most importantly, as mentioned above, the CTR requirement causes violators to deliberately structure deposits into the banking system, which is a significant red-flag indicator of criminal activity. To illustrate how important CTRs are to ICE investigations, ICE Special Agents queried CTR records over 454,000 times just in fiscal year 2005. ICE has many examples of investigations that were initiated, enhanced or perfected because of access to the Bank Secrecy Act repertoire of documents.

CONCLUSION

All forms of illegal movement of money and other financial instruments across our borders, and through our financial institutions, along with the generation of illegal proceeds from crimes that violate our customs and immigration laws constitute threats to the federal revenue, our economy, our allies, and our national security.

While financial crimes themselves are a direct threat, they also sustain and support the illicit activities of terrorists or other criminals. By aggressively enforcing our federal laws against money laundering, particularly those related to transnational crimes, ICE Special Agents are working to close existing vulnerabilities in our border and homeland security.

Although the majority of cross border-related money laundering we see today is by known methods, this illegal business is evolving in dangerous ways. Specifically, the advance of "digital currency" offers potential violators a new horizon of opportunities for money laundering. ICE Cybersmuggling Center is working with other agencies to address this emerging threat. This technology is evolving faster than the regulatory infrastructure can keep pace.

While ICE is a new agency, with newly unified immigration and customs authorities, many of our Special Agents continue to build upon their deep experience with financial investigations and immigration enforcement. We are aggressively applying our financial investigative authorities and capabilities across the full ICE portfolio, in order to identify

and close vulnerabilities in our border and homeland security. At the same time, we are bringing to bear the best of our former agencies' expertise, cultures, and techniques, while building a new federal law enforcement agency that is greater and more effective than the sum of its parts. In case after case, ICE Special Agents are putting into practice the powerful advantages that flow from our unified authorities, and are putting them to great use on behalf of the American people. The net result is a greater contribution to the Nation's border security, which is a critical element of national security.

My colleagues at ICE are grateful for the chance to serve the American people and, on their behalf, I thank this subcommittee, it's distinguished members and Congress for the continued support of ICE investigative endeavors.

I would be pleased to answer your questions.

Testimony of

America's Community Bankers

on

"H.R. 5341, Seasoned Customer CTR Exemption Act of 2006"

before the

Subcommittee on Financial Institutions
and Consumer Credit

of the

Financial Services Committee

of the

United States House of Representatives

on

May 18, 2006

F. Weller Meyer
Chairman, President & CEO
Acacia Federal Savings Bank
Falls Church, Virginia

and

Chairman, Board of Directors
America's Community Bankers
Washington, DC

Chairman Bachus, Ranking Member Sanders, and Members of the Committee, I am F. Weller Meyer, Chairman, President and CEO of Acacia Federal Savings Bank, Falls Church, Virginia. Acacia Federal Savings Bank has more than $1.3 billion in assets. Acacia Federal is a member of the UNIFI Group of companies, which are a diversified group of insurance and financial services businesses.

I am here this afternoon representing America's Community Bankers (ACB). I am the Chairman of ACB's Board of Directors. I want to thank Chairman Bachus for calling this hearing. Mr. Chairman, we appreciate your leadership and the leadership of Committee Ranking Member Frank, Congressman Renzi, Congresswoman Maloney, and others in crafting H.R. 5341, the Seasoned Customer CTR Exemption Act of 2006. We support this legislation, which addresses the outdated and burdensome currency transaction reporting (CTR) requirements that the Bank Secrecy Act (BSA) imposes on community banks.

Community bankers fully support the goals of the anti-money laundering laws, and we are prepared to do our part to fight crime and terrorism. ACB members are committed to ensuring our nation's physical security and the integrity of our financial system. However, we believe the existing statutory and regulatory regime is broken and needs to be repaired. There are three key problems with the current CTR laws.

First, the CTR database is littered with unhelpful CTRs. Financial institutions have filed over 12 million CTRs each year since 1995.[1] According to FinCEN data, over eighty percent of CTRs

[1] FinCEN Report to Congress, *Use of Currency Transaction Reports* (October 2002).

are filed on business customers. Many CTRs are repeatedly filed on the routine business transactions of exemptible entities. This is because the existing CTR exemption scheme is cumbersome and difficult to implement.

Community banks have been reluctant to use the exemption system because:

- It is not cost effective for small institutions that do not file many CTRs.
- They fear regulatory action in the event that an exemption is used incorrectly.
- They lack the time to conduct the research necessary to determine whether a customer is eligible for an exemption.
- It is easier to automate the process and file a CTR on every transaction that triggers a reporting requirement.

As a result, FinCEN and some law enforcement officials report that excess CTRs make it difficult to efficiently search the CTR database to investigate possible cases of money laundering or terrorist finance.

Second, CTR filing imposes a substantial regulatory burden on community banks. This is particularly true for community banks that do not process enough CTRs each year to justify spending tens of thousands of dollars on software that automates the cash transaction monitoring and CTR filing process. As a result, these institutions must manually monitor and file CTRs.

The third, and most fundamental, problem is that existing CTR laws have departed from the BSA's stated mission of collecting reports and records that "have a high degree of usefulness"

for the prosecution and investigation of criminal activity, money laundering, counter-intelligence, and international terrorism.

Need For Legislation

In 2003, FinCEN's Bank Secrecy Act Advisory Group (BSAAG) formed the CTR Reduction Subcommittee to develop recommendations for reducing the number of CTRs filed that are of little value to law enforcement. The subcommittee was composed of banking regulators, trade associations, law enforcement and FinCEN staff. The subcommittee met throughout 2004, but was not able to develop consensus recommendations for achieving measurable reductions in currency transaction reporting. This stalemate is unfortunate. The costs of BSA compliance have only continued to rise since that time. Financial institutions are devoting record portions of their budgets to purchasing BSA monitoring software and hiring additional employees to ensure BSA compliance. Furthermore, community banks are concerned that law enforcement does not review or use much of the information that depository institutions report to the federal government regarding customers' financial transactions.

Because CTR filers and CTR users have been unable to develop a consensus recommendation to FinCEN, we believe that the time has come for Congress to intervene. We call on Congress to adopt H.R. 5341. This important legislation would amend CTR reporting requirements in a way that reduces cost and regulatory burden on financial institutions while ensuring that the government receives highly useful information that helps law enforcement safeguard the United States financial system from abuses of financial crime.

The Seasoned Customer CTR Exemption Act of 2006

The Seasoned Customer CTR Exemption Act of 2006 would make important improvements to the current exemption system by relieving financial institutions from filing CTRs on the routine cash transactions of certain entities, provided that certain requirements are met. We believe that H.R. 5341 would more appropriately balance the cost and benefit of the Bank Secrecy Act's CTR reporting requirements. We also believe that this legislation will help reduce the number of unhelpful CTRs that financial institutions file each year. We are hopeful that more community banks will use the seasoned customer exemption set forth in this legislation than use the current exemption scheme.

H.R. 5341 would simplify the criteria for exempting customers from CTR reporting and would require a depository institution that exempts a seasoned business customer to file a one-time notice of designation of exemption for each customer that the institution exempts from CTR reporting. This approach would be simpler and less burdensome than the exemption criteria and biennial renewal requirements under the current regulatory regime.

In addition to providing meaningful regulatory relief for depository institutions, H.R. 5341 would advance the BSA's goal of collecting reports and records that have a "high degree of usefulness" for law enforcement. We do not believe that repeated CTR filings on cash transactions that are routine for particular business customers have a "high degree of usefulness" in prosecuting financial crime.

If H.R. 5341 is adopted, the transactions of exempted customers will still be screened for illicit activity. Institutions will still be required to conduct customer due diligence and monitor customer account activity and report suspicious transactions. Furthermore, law enforcement will continue to have at its disposal a variety of tools that were created by our nation's anti-terrorism laws. Institutions will still be required to search their customer databases for the names of known or suspected money launderers and terrorists. Law enforcement will also be able to use the subpoena process to obtain a suspect's bank records.

For the past several years, law enforcement has been working to develop improved data mining capabilities and new analytical tools to better use CTR data. It may be tempting for Congress to not take any further action on H.R. 5341 in the hopes that law enforcement is able to materially improve data retrieval and analysis. However, the wait and see approach ignores the compliance and economic burdens shouldered by community banks. It ignores the requirement that anti-money laundering reports provide "highly useful" information. It ignores the Money Laundering Suppression Act of 1994, which requires the number of CTR filings to be reduced by thirty percent. It also ignores the real-world realities of CTR filing. In the absence of meaningful regulatory relief, depository institutions will continue to file CTRs on every cash transaction of $10,000 or more. While this approach will further bog down the investigation process, it is simpler and often more cost efficient than using the current exemption system.

CTR Filing Threshold

While we strongly support the provisions of the Seasoned Customer CTR Exemption Act of 2006, we are concerned that some community banks might continue to file CTRs on all cash

transactions of $10,000 or more in spite of the new exemptions that would be available. Furthermore, some institutions will continue to file CTRs on cash transactions of less than $10,000 to avoid being criticized by bank examiners for inadequate efforts to report cash deposits that are structured to evade CTR reporting. Therefore, the BSA should be further amended to provide additional regulatory relief. We specifically recommend that Congress increase the dollar value that triggers CTR filing.

The current $10,000 threshold was established in 1970. When adjusted for inflation, $10,000 in 1970 is equivalent to more than $52,000 today. We understand that when the regulations were first implemented, there was very little activity over the $10,000 threshold. Today, however, such transactions are routine, particularly for cash intensive businesses. Raising the threshold does not mean that institutions will be relieved from monitoring account activity for suspicious transactions below the CTR reporting requirement. Increasing the threshold would enable financial institutions to alert law enforcement about activity that is truly suspicious or indicative of money laundering, as opposed to bogging down the data mining process by filing reports on common transactions.

Based upon data that FinCEN provided to the Bank Secrecy Act Advisory Group's ("BSAAG") CTR Subcommittee, increasing the reporting threshold to $20,000 would decrease CTR filings by 57 percent and increasing the threshold to $30,000 would decrease filings by 74 percent. The impact of raising the dollar value is even more astonishing for community banks. An informal survey of ACB members conducted in June 2004 indicates that increasing the dollar amount to $20,000 would reduce community bank CTR filings by approximately 80 percent. Even with the

dramatic change in the value of $10,000 over the past thirty years, ACB acknowledges that a $10,000 cash transaction is still a substantial amount of cash for an individual customer to deposit or withdraw from an institution. However, businesses of all sizes routinely conduct cash transactions over $10,000.

Conclusion

Community banks understand the importance of preventing and identifying crime and abuse. Yet, the cumulative burden placed on community banks has very real opportunity costs. Increasingly, financial institutions believe that the federal government has little regard for the amount of time, personnel, and monetary resources that BSA compliance drains from an institution's ability to serve its community. The monthly fee that a community bank can spend for software that monitors cash transactions is money that an institution could have spent to hire multiple tellers, hire a new loan officer to reach out to the community's small businesses, or develop and market a new product. What may seem like insignificant costs to law enforcement have very real business implications for community banks and their communities.

I wish to again express ACB's appreciation for your invitation to testify on the importance of improving the CTR system to collect only information that is highly useful to law enforcement. ACB reiterates its support for H.R. 5341. We believe that this legislation will provide important regulatory relief to community banks by providing a simpler alternative to the current CTR exemption provisions.

Testimony of Michael Morehart
Terrorist Financing Operations Section Chief
Counterterrorism Division
Federal Bureau of Investigation
Before the Committee on Financial Services
Subcommittee on Financial Institutions and Consumer Credit
May 18, 2006

Good afternoon Mr. Chairman and distinguished members of the Subcommittee. On behalf of the Federal Bureau of Investigation, I am honored to appear before you today to discuss the FBI's efforts to disrupt and dismantle national and international money laundering operations and the operational impact of the successful utilization of information obtained from the financial sector.

Introduction

Chief among the investigative responsibilities of the FBI is the mission to proactively neutralize threats to the economic and national security of the United States of America. Whether motivated by criminal greed or a radical ideology, the activity underlying both criminal and counterterrorism investigations is best prevented by access to financial information by law enforcement and the intelligence community.

In the "criminal greed" model, the FBI utilizes a two-step approach to deprive the criminal of the proceeds of his crime. The first step involves aggressively investigating the underlying criminal activity, which establishes the specified unlawful activity requirement of the federal money laundering statutes, and the second step involves following the money to identify the financial infrastructures used to launder proceeds of criminal activity. In the counterterrorism model, the keystone of the FBI's strategy against terrorism is countering the manner in which terror networks recruit, train, plan and effect operations, each of which requires a measure of financial support. The FBI established the Terrorist Financing Operations Section (TFOS) of the Counterterrorism Division on the premise that the required

financial support of terrorism inherently includes the generation, movement and expenditure of resources, which are oftentimes identifiable and traceable through records created and maintained by financial institutions.

The analysis of financial records provides law enforcement and the intelligence community real opportunities to proactively identify criminal enterprises and terrorist networks and disrupt their nefarious designs.

Traditional Criminal Money Laundering Investigations

Money laundering has a significant impact on the global economy and can contribute to political and social instability, especially in developing countries or those historically associated with the drug trade. The International Monetary Fund estimates that money laundering could account for two to five percent of the world's gross domestic product. In some countries, people eschew formal banking systems in favor of Informal Value Transfer systems such as hawalas or trade-based money laundering schemes such as the Colombian Black Market Peso Exchange, which the Drug Enforcement Administration estimates is responsible for transferring $5 billion in drug proceeds per year from the United States to Colombia. Hawalas are centuries-old remittance systems located primarily in ethnic communities and based on trust. In countries where modern financial services are unavailable or unreliable, hawalas fill the void for immigrants wanting to remit money home to family members, and unfortunately, for the criminal element to launder the proceeds of illegal activity.

There are several more formalized venues that criminals use to launder the proceeds of their crimes, the most common of which is the United States banking system, followed by cash intensive businesses like gas stations and convenience stores, offshore banking, shell companies, bulk cash smuggling operations, and casinos. Money services businesses such as money transmitters and issuers of money orders or stored value cards serve an important and useful role in our society, but are also particularly vulnerable to money laundering activities. A recent review of Suspicious Activity Reports filed with the Financial Crimes Enforcement Network (FinCEN) indicated that approximately 73 percent of money services business filings involved money laundering or structuring.

The transfer of funds to foreign bank accounts continues to present a major problem for law enforcement. Statistical analysis indicates that the most common destinations for international fund transfers are Mexico,

Switzerland, and Colombia. As electronic banking becomes more common, traditional fraud detection measures become less effective, as customers open accounts, transfer funds, and layer their transactions via the Internet or telephone with little regulatory oversight. The farther removed an individual or business entity is from a traditional bank, the more difficult it is to verify the customer's identity. With the relatively new problem of "nesting" through correspondent bank accounts, a whole array of unknown individuals suddenly have access to the U.S. banking system through a single correspondent account. Nesting occurs when a foreign bank uses the U.S. correspondent account of another foreign bank to accommodate its customers. A foreign bank can conduct dollar-denominated transactions and move funds into and out of the United States by simply paying a wire processing fee to a U.S. bank. This eliminates the need for the foreign bank to maintain a branch in the United States. For example, a foreign bank could open a correspondent account at a U.S. bank and then invite other foreign banks to use that correspondent account. The second-tier banks then solicit individual customers, all of whom get signatory authority over the single U.S. correspondent account.

The FBI currently has over 1,200 pending cases involving some aspect of money laundering, with proceeds drawn from criminal activities including organized crime, drug trafficking, fraud against the government, securities fraud, health care fraud, mortgage fraud, and domestic and international terrorism. By first addressing the underlying criminal activity and then following the money, the FBI has made significant inroads into the financial infrastructure of domestic and international criminal and terrorist organizations, thereby depriving the criminal element of illegal profits from their schemes.

In recent years the international community has become more aware of the economic and political dangers of money laundering and has formed alliances on several fronts to share information and conduct joint investigations. Members of the Egmont Group, a consortium of Financial Intelligence Units (FIU) of which the United States is a member, can access a secure website developed by FinCEN (the United States' FIU) to share vital information on money laundering between participating countries. In a further demonstration of international cooperation, the international community [over 150 nations] has endorsed the 40 anti-money laundering recommendations and the nine anti-terrorist financing recommendations of the Financial Action Task Force (FATF). As it relates to international

money laundering enforcement, the FBI is an active participant in the United States' delegation to the FATF. Since its creation, the FATF has spearheaded the effort to adopt and implement measures designed to counter the use of the financial system by criminals. It issued a slate of 40 recommendations in 1990, which were revised in 1996 and again in 2003, to ensure that the approach they create remains current and relevant to the evolving threat of money laundering. The FATF's 40 recommendations on money laundering and nine recommendations on terrorist financing together set out the framework for anti-money laundering and counter terrorist financing efforts and are of universal application. All member countries have their implementation of the forty recommendations monitored through a two-pronged approach: an annual self-assessment exercise and a more detailed quadrennial mutual evaluation process. The FBI participated in the recent FATF mutual evaluation of the United States' compliance with the 40 anti-money laundering and the nine counterterrorist financing recommendations.

Terrorism Investigations

Access to financial information significantly enhances the ability of law enforcement and members of the intelligence community to thwart terrorist activity. The lack of complete transparency in the financial regulatory system is a weakness on which money launderers and financiers of terrorism rely to reap the proceeds of their crimes and to finance terrorist attacks. Limited access to financial records inhibits law enforcement's ability to identify the financial activities of terror networks. Efforts to detect terrorist activity through financial analysis are further complicated by the fact that the funding of terrorism may differ from traditional money laundering because funds used to support terrorism are sometimes legitimately acquired, *e.g.*, charitable contributions and the proceeds of legitimate business. Overcoming these challenges so we can prevent acts of terror has increased the importance of cooperation with our partner law enforcement agencies, the intelligence community, and the private financial and charitable sectors.

Records created and maintained by financial institutions pursuant to the Bank Secrecy Act (BSA) are of considerable value to these critical efforts. As I have previously testified, the FBI enjoys a cooperative and productive relationship with FinCEN, the broker of BSA information. FBI cooperation with FinCEN has broadened our access to BSA information

which, in turn, has allowed us to analyze this data in ways not previously possible. When BSA data is combined with the sum of information collected by the law enforcement and the intelligence communities, investigators are better able to "connect the dots" and, thus, are better able to identify the means employed to transfer currency or move value. The result of this collaborative relationship and access to financial intelligence is a significant improvement in the efficiency of our investigation of terrorist financing matters.

The ability to quickly and securely access and compare BSA data to classified intelligence and law enforcement information is critical. Sometimes the investigative significance of a BSA filing cannot be appreciated until the items included on the document are compared against predicated law enforcement or intelligence information that may not be of public record. Such critical information can be biographical or descriptive information, the identification of previously unknown associates and co-conspirators, and, in certain instances, the location of a subject in time and place. Abundant examples exist of activities noted in BSA reports which have added value to counterterrorism investigations, oftentimes in ways that could not have been predicted from the reports alone. BSA data allows for a more complete identification of the respective subjects such as personal information, non-terrorism related criminal activity, previously unknown businesses and personal associations, travel patterns, communication methods, resource procurement, and Internet service providers.

The value of BSA data to our anti-money laundering and counterterrorism efforts cannot be overstated; the importance of access to that information has already proven invaluable on the micro, or individual case level, as well as on the macro, or strategic level. BSA data has proven its great utility in counterterrorism matters, and any contemplated change to the underlying reporting and recordkeeping requirements of the BSA should be measured and carefully considered before such action is taken. Either increasing the transaction amount at which a Currency Transaction Report (CTR) would be generated (currently at over $10,000) or abolishing the reporting requirement altogether, would deprive law enforcement of a valuable investigative tool.

Recent macro level analysis of the impact of BSA data provided by FinCEN to the FBI reinforces the investigative significance of the BSA data as follows:

- For the years 2000 through 2005, 38.6% of all the CTRs filed reported transactions in amounts between $10,000 and $14,999;
- For the same time period, 18.5% of all the CTRs filed reported transactions in amounts between $15,000 and $19,999;
- 10.8% of all CTRs filed during the time period were on transactions of amounts between $20,000 and $24,999;
- 6.2% of all CTRs filed during the same period involved transactions between $25,000 and $29,999;
- 4.7% of all CTRs filed in the same period involved transactions of amounts between $30,000 and $34,999;
- 19% of the CTRs filed in that periods involved transactions of amounts between $35,000 and $100,000; and
- Less than 2% of all CTRs filed in that period involved transactions of $100,000 or more.

To determine the operational impact of BSA data relative to FBI investigations, a sample of FBI records for the years 2000 through 2005 were matched by exact name and date of birth or by exact Social Security Number to almost 13,000 CTRs reported in the same time period.[1] This statistical sample, when extrapolated to the universe of CTRs, concludes that in excess of 3.1 million CTRs were pertinent to FBI investigations during that time period. The breakdown of the sampled CTRs deemed relevant to FBI investigations reveals:

[1] Based on the random sampling of FBI investigative records from the whole of FBI investigative records for the years 2000 through 2005, it is statistically attestable that a comparison of each investigative record to all CTRs for the years 2000 through 2005 would demonstrate that more than 3.1 million CTRs directly impact FBI investigations with an error rate of less than one percent, plus or minus. This number is conservative as the matching process used exact name and date of birth or exact social security number and not the host of other identifiers available to investigators, such as telephone numbers or addresses.

- 29.2% of the CTRs reported transactions in amounts between $10,000 and $14,999;
- 20.2% reported transactions in amounts between $15,000 and $19,999;
- 10.2% reported transactions in amounts between $20,000 and $24,999;
- 6.2% reported transactions in amounts between $25,000 and $29,999;
- 6.0% reported transactions in amounts between $30,000 and $34,999;
- 28% reported transactions in amounts between $35,000 and $100,000;
- Less than 1% reported transactions in amounts over $100,000; and
- 72% of the reported CTRs deemed pertinent to FBI investigations were in amounts less than $35,000.

The CTR reporting threshold is set by regulation and has been fixed at $10,000 for more than 25 years. In that time, technology associated with the movement of money has advanced significantly. The movement of funds through electronic means has now become the standard. It should be noted that CTRs are not required for the electronic movement of funds. The practical effect on law enforcement activities of an increase to the CTR threshold reporting amount would be to severely limit or even preclude law enforcement access to financial data associated with cash transactions that are not otherwise documented. In other words, the filing of CTRs, at the current reporting threshold, ensures a degree of transparency in the financial system that would not otherwise be available.

My attention now turns to the important issue of the so-called "seasoned customer" CTR exemption. As you are aware, the BSA allows financial institutions to seek CTR filing exemptions pursuant to the

"Designated Exempt Persons" (DEP) protocol. However, certain types of businesses considered most susceptible to abuse, such as money service businesses, are ineligible for the DEP exemptions. We are opposed to any such exemptions for these currently ineligible entities. We would also caution against the use of a specified time period as the only requirement for exemption under the DEP.

While the Suspicious Activity Report (SAR) is an extremely valuable tool, the suggestion that a SAR requirement could effectively substitute for the intelligence gleaned from a CTR misunderstands the differences between the requirements and the manner in which they complement each other. CTRs are objective reports that document an event in time, providing such information as the identity of the transactor, the bank name, account number, account owner, and dollar amount. Additionally, these reports are available for at least a ten year period, and investigators and analysts have the ability to directly query these reports when necessary.

In contrast, SARs are only available on select matters where a bank official has made the subjective determination that a particular transaction or activity is suspicious. Although the banks are doing an outstanding job on reporting suspicious activity, SARs are not a substitute for the objective transaction reporting provided by CTRs. The 314(a) process, designed to promote cooperation among financial institutions, regulatory authorities, and law enforcement authorities, can only be used on the most significant terrorism and money laundering investigations, and only after all other financial leads have been exhausted, which include reviewing CTRs. The banks are only required to review accounts maintained by the named subject during the preceding 12 months and transactions conducted within the last 6 months, in sharp contrast to the ten years of data provided by the CTRs. Moreover, all three tools, complementary and collectively, are of tremendous value.

Any decision to change the working of the current CTR customer exemptions should be undertaken with great care, so as not to deprive our law enforcement and intelligence personnel of highly valuable data points. This is particularly so because of the steadily increasing ability of the Bureau to use these data points to meaningfully track national security threats and criminal activity. Though information on the evolution of this capability is not appropriate for public discussion, we are happy to provide nonpublic briefings on it and have done so already for some members of your staffs.

The Bureau and the Administration are committed to continuing to work with this Subcommittee and the Congress to ascertain whether certain categories of CTRs can be eliminated without harm to our investigative capabilities and, if so, to find effective methods to stop the filing of those, and only those, CTRs. But we should not eliminate the filing of any category of CTRs absent study of the utility of that category. Simply put, our adversaries are patient and will wait years, if necessary, to accomplish their mission.

Conclusion

In conclusion, BSA data is invaluable to both our counterterrorism efforts and our more traditional criminal investigations. Our experience shows that terrorism activities are relatively inexpensive to carry out and that the majority of CTRs of value to the law enforcement and intelligence communities are typically those that are prepared at or near the current reporting requirements. To dramatically alter currency transaction reporting requirements -- without careful, independent study -- could be devastating and a significant setback to investigative and intelligence efforts relative to both the global war on terrorism and traditional criminal activities.

Testimony of

Bradley E. Rock

On Behalf of the

AMERICAN **BANKERS** ASSOCIATION

Before the

Committee on Financial Services

Subcommittee on Financial Institutions and Consumer Credit

United States House of Representatives

May 18, 2006

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Chairman Bacchus and members of the Committee, my name is Bradley Rock. I am Chairman, President, and CEO of Bank of Smithtown, a $950 million community bank located in Smithtown, New York, founded in 1910. I am also the Vice Chairman of the American Bankers Association (ABA). ABA, on behalf of the more than two million men and women who work in the nation's banks, brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership – which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks – makes ABA the largest banking trade association in the country.

I have been honored to testify before this committee on prior occasions to present the views of the ABA on the need to eliminate unnecessary, redundant, or inefficient regulatory burdens that increase costs for banks, reduce the amount of credit available to our communities and fail to make meaningful contributions to the welfare of our citizens. Among the largest of regulatory burdens is the regime of surveillance and reporting on the financial activity of our customers that has been

imposed on banks under the Bank Secrecy Act and subsequent anti-money laundering statutes and regulations. I therefore welcome the opportunity to appear again before you—this time to address the particular issues of regulatory cost versus policy benefit that attend the current state of currency transaction reporting (CTRs)—and to advocate for your consideration an overdue option to reform the system for the mutual advantage of bankers, law enforcement and the American public we all serve.

We support a simplified, meaningful seasoned business customer exemption. We commend you, Mr. Chairman, and the members of this Committee for adopting that straightforward approach as part of H.R. 3505, the Financial Services Regulatory Relief Act, adopted by the House of Representatives on March 8, 2006, by a vote of 415-2. We congratulate you on continuing to pursue this sensible and timely reform in the legislation being considered today, Seasoned Customer CTR Exemption Act of 2006, H.R. 5341.

From the Bank Secrecy Act passed a generation ago to Title III of the USA PATRIOT Act adopted in the wake of the heinous terrorist attacks of September 11, 2001, legislation has united bankers and the government in the battle to combat abuse of our financial system by those who would pervert it to commit criminal offenses, to launder the proceeds of illegal conduct or, more recently, to support the means and ends of terrorism. The ABA and its members share the policy goals of Congress in passing these laws. However, increasingly complex or redundant compliance requirements render these laws far less effective than they might be otherwise.

When establishing the BSA regulatory regime, Congress sought to require reports or records when they have, in the Act's very words, "a high degree of usefulness" for the prosecution and investigation of criminal activity, money laundering, counter-intelligence and international terrorism. Unfortunately, in the focus on systems, programs, and procedures, the standard of "high degree of

usefulness" seems to have been neglected. The result has been more reports and paper, with declining usefulness. ABA and its members strongly believe that the current CTR requirements have long departed from this standard of utility and in large measure serve more to distract and impede efforts against crooks and terrorists than to help to expose and stop them.

In my testimony, I would like to make three key points:

- Congress has already recognized that the original currency transaction reporting obligations imposed on banks have become unduly burdensome, generate voluminous data on legitimate routine business transactions adding little to law enforcement's efforts at meaningful analysis, and therefore need to be refocused to restore the reports to a level of value more closely approximating "a high degree of usefulness."
- Previously-enacted relief to reduce reporting to a more useful volume has been unsuccessful. While Congress wisely recognized that banks don't need to collect, and the government does not need to receive and process volumes of records on legitimate business activity by well-known customers, the reform has not been successful in practice because procedures to exercise it are cumbersome and carry significant procedural and supervisory risks.
- Evolution of the BSA reporting regime has further reduced the purpose and value of currency transaction reporting. Requirements for rigorous customer identification programs, suspicious activity reporting, and the availability of focused and detailed information under section 314(a) of the PATRIOT Act leave little value to be added by collecting millions of CTRs on legitimate routine business activity.

Congress Endorses and Law Enforcement Recognizes the Need to Reduce Reporting on Legitimate Business Activity

In 1994, Congress included in the Money Laundering Suppression Act a statutory exemption system for currency transaction reporting. The new two-phase system was intended to address concerns that the number of CTRs being filed for routine business activity adversely affected law enforcement's ability to use the data. As the GAO's testimony in March 1994 stated, "CTRs that report normal business transactions are of no value to law enforcement and regulatory agencies in detecting money laundering activity." Expectations at the time anticipated that a revised exemption process would result in a reduction of CTR filings in the range of 30%. Unfortunately, we should all be disturbed that time has witnessed the number of CTRs overall grow from slightly more than 11 million in 1994, when the two-phase exemption process was passed, to the latest estimate of over 13 million annually, with no signs of abating.

Using FinCEN's conservative estimate of around 25 minutes per report for filing and record-keeping, the banking industry as a whole devoted around 5½ million staff hours of work to handling CTRs in 2005. Our review of ABA members indicates that three-quarters of the filings were for business customers who had been with the bank for over a year. That means that the industry spent around four million staff hours last year filing notices on well-established customers! A similar story can surely be told by the government agencies that receive and process these reports.

In my bank, during the past year, we filed 2,766 CTRs, and we do not have any public companies as customers. In fact, most of these CTRs were filed for ordinary transactions by an ice cream parlor, a clam bar, a restaurant and a high-volume Amoco dealer, all of whom have done business with us for many, many years. My tellers spent more than 460 hours in the branches preparing the CTR forms, and one person in our main office spent more than 1,000 hours checking

the forms for accuracy, checking them against computer printouts, and filing the forms with the appropriate government office. Having watched this process for years, and being thoroughly familiar with the businesses that are the subject of these filings, I can tell you with firm assurance that all of this time and paper did absolutely nothing to advance our collective efforts to thwart money laundering and terrorism.

This trend is only likely to accelerate and demand more and more staff to report on more and more harmless transactions, further burying the real needles of money laundering under an exponentially growing mound of the hay of legitimate business transactions mindlessly recorded at great expense and increasing opportunity cost. Surely neither business nor the government can afford this wasted effort.

We have passed the time of studying what to do—GAO did that in 1994 and concluded then, as we all would now, that unnecessary reporting is taking place. It is about time to take effective action to make the system better. We must find a way to realize the policy objective of focusing on reporting with "a high degree of usefulness", and to successfully exempt reports on the financial transactions of law-abiding American businesses.

The Current Exemption Process is Irretrievably Mired in Red Tape

ABA worked cooperatively with FinCEN and the federal banking regulators to encourage institutions to make better use of statutory exemptions when they were changed in the late 1990's. Our Association did extensive outreach to our members, and while some institutions adjusted their CTR filing policies and utilized the two-tier exemption process, the general response was lukewarm at best.

Unfortunately, the compliance technicalities for, and examiner second-guessing of, banker use of the exemption and the renewal processes have discouraged many institutions from utilizing the discretionary exemptions. The current Phase II exemptions make distinctions among types of cash intensive businesses or exemptible accounts and require statutorily mandated annual reviews plus resubmission obligations. These specifications generate difficulties in determining whether a customer is eligible for exemption, produce fear of regulatory retribution for misapplying criteria and incur costly additional due diligence. ABA has even received reports from members that examiners have threatened penalties and other formal criticisms for simple late filing of biennial renewal forms, a regulatory climate that shouts, "Warning" more than it does "Welcome." There should be little wonder then that banks are reluctant to try swimming in these waters.

We have heard it suggested that bankers do not use the exemption process because they have computerized systems that make filing CTRs a snap. I am here to tell you that the snap you hear is the floor boards in my file room straining under the load of my required five years worth of retained CTRs and related BSA compliance records. First, let me note for the record that not all banks can afford computerized CTR filing systems. Second, adopting technological efficiency in the cause of compliance may have value as a cost control effort, but it is no virtue when it only expedites filing useless data about legitimate business activity. Indeed, the suggestion to automate demonstrates a recognition that the vast majority of these reports are repetitive and routine and therefore likely to be of small value in combating money laundering.

A reporting regime that presents us with the choice of suffering the gauntlet of exemption qualification paperwork and concomitant auditor or examiner second-guessing <u>or</u> instead filing numerous useless CTRs, is not sound public policy. That is why tinkering with the current exemption process will not make an appreciable dent in the overwhelming number of CTRs filed each year. As FinCEN conceded in its Report to Congress in October 2002, recommendations for

improving the exemption process regulatorily are at best incremental. Instead, we must start anew with an updated Congressional mandate that clears away the convoluted structure of the present exemption process and substitutes a direct and simplified standard.

Newer Tools Allow Us to Eliminate CTR Filings for Seasoned Customers

The current cash transaction reporting program has been rendered virtually obsolete by several developments: enhanced customer identification programs, more robust suspicious activity reporting, and the use of the more focused and intensive 314(a) inquiry/response process.

In light of these developments, to continue to require CTR filings for business customers whose identity has been verified under a bank's Customer Identification Program (CIP) and tested under a period of experience with the bank and that remain subject to risk-based suspicious activity reporting is an inefficient use of limited resources by bankers and law enforcement. In the field, it diverts scarce examiner resources, focusing on compliance with ***technical*** reporting standards rather than carefully evaluating bank programs for detecting transactions that possess a likelihood of involving money laundering and terrorist financing.

Exempt Seasoned Customers from CTRs

Accordingly, **we support H.R. 5341, embodying the recognition that the best way to improve the utility of cash transaction reporting is to eliminate the valueless reports being filed on legitimate transactions by law-abiding American businessmen and businesswomen.** This improvement can be achieved by establishing a seasoned customer exemption for business entities, including sole proprietorships, as endorsed by FinCEN last year in testimony before Congress and now embodied in H.R. 5341. (ABA proposed a similar concept in its response of May

4, 2005 to the banking agencies' request for comment for burden reduction suggestions under the Economic Growth and Regulatory Paperwork Reduction Act.[1])

The exemption, as proposed in the bill and supported by ABA, is comprised of three elements: Existence as an authorized business, maintenance of a deposit account at a depository institution for 12 months, and use of the account to engage in multiple reportable currency transactions. The simplicity of this standard avoids the unnecessary compliance barbs that have previously snagged past efforts to make effective use of prior exemption systems. This straightforward definition is essential for the exemption to work and to reduce filing reports on routine business activity.

It is important to remember that cash transaction data will not be lost, but rather will continue to reside in the bank account records. It will, therefore, be available to law enforcement whenever sought in connection with a targeted inquiry from government enforcement entities. In particular, by using the USA PATRIOT Act 314(a) inquiry process, law enforcement will be able to locate transaction data and other relevant information on a broad range of accounts of suspects. That more targeted approach is working and producing tangible results today.

As FinCEN reported on April 25, the 314(a) process has been used by fifteen federal agencies from November 2002 to April 2006 covering over 500 significant money laundering or terrorist financing cases identifying more than 4,000 subjects of interest. The 314(a) process has yielded the identification of 1,932 new accounts, leading to 1196 Grand Jury Subpoenas, producing 90 indictments, 79 arrests and 10 convictions. Although the process has been in place less than four years and many money laundering or terrorist financing cases take several years to develop before

[1] http://www.aba.com/NR/rdonlyres/365382A4-2EC6-4B41-93A6-28BFAD2779FB/39308/EGRPRAMay2005.pdf

they are actually prosecuted, the indictments, arrests and convictions are impressive. To put it mildly, there are no comparable measures of success for cases initiated through CTRs.

It has been suggested that the 314(a) process is flawed because it "can only be used on the most significant terrorism and money laundering investigations." However, ABA believes that requirement is one of its great strengths because it better matches the benefit of the information collected with the burden imposed on the banks. At least now when banks are called on every two weeks under 314(a) to search for and report all accounts maintained by a subject of interest, they are doing so for an investigation that is considered a significant terrorism or money laundering matter—not a fishing expedition.

As H.R. 5341 makes clear, all seasoned business customers would continue to be subject to suspicious activity monitoring and reporting. SARs provide precise account and related transaction information as well as extensive narrative detail not available in CTRs. This reporting enables law enforcement to focus resources on conduct or activities where there is a greater likelihood of genuine risk and where investigative resources can be used more productively. In addition, the SAR procedures permit law enforcement to obtain the bank's entire supporting investigative file upon request, without needing a subpoena.

As FinCEN reported in 2002, SARs have replaced CTRs as the primary tool for identifying suspicious activity. CTRs are now used to locate financial activity of already identified subjects of interest—the same purpose for which 314(a) inquiries are made. Although there have been examples cited by law enforcement of the continued use of CTRs, they do not specifically rebut the wisdom of a seasoned customer exemption. Talk about "connecting the dots" amounts to nothing more than anecdotal illustrations of how spotty the utility of CTRs on American businesses has

become. They do not demonstrate that CTRs on seasoned customers meet the statutory requirement of "a high degree of usefulness."

After all, CTRs on non-seasoned entities would still be filed, reporting the movement of cash that does not go through an established business account relationship. In addition, law enforcement will have all the identifying information in the seasoned customer designation wherever and whenever that business has seasoned status. In other words, law enforcement will continue to have access to information on where subjects of interest are conducting their financial affairs.

As former FinCEN Director William Fox stated in a September 2005 testimony on the seasoned customer proposal before this Subcommittee, "We believe this language addresses many of the issues with our current exemption regime that were causing it not to have its intended effect. Due to its complexity and the burden involved in exempting customers, financial institutions were not taking advantage of the exemption regime. This proposal seeks to streamline the exemption process by focusing on a one-time notice to [FinCEN] of an exemption and focusing on the customer's relationship with the bank as the grounds for such exemption. We believe that these changes will make the exemptions more effective while still ensuring that currency transaction reporting information critical to identifying criminal financial activity is made available to law enforcement." ABA joins in those sentiments and strongly supports the Seasoned Customer CTR Exemption Act, H.R. 5341 that seeks to follow through on former Director Fox's endorsement.

Conclusion

Eliminating CTR filings for seasoned customers would have the following benefits:

- The vast majority of the over 13 million CTRs filed annually would stop, saving the time, money, and labor expended by businesses to fill out forms, and consumed by law enforcement to process them.
- There would be an improvement in the quality of SARs, eliminating those that are filed today in connection with innocent, idiosyncratic deposit activity. Banks would be able to focus their energies on detecting genuinely suspicious currency transactions, regardless of artificial thresholds.
- We would make an enormous stride forward in focusing our anti-money laundering efforts – by both law enforcement and the banking industry – on the real crooks and terrorists with far greater likelihood of detecting and stopping their activities.

I thank the Chairman and his colleagues for their commitment to improving the BSA system and assure you that ABA and its members share that commitment. We are all striving to make the system work best, to protect the security of our banking system from abuse by money launderers and terrorists, and to safeguard the confidence that our customers have that the integrity of their legitimate business conduct is respected.

Testimony
of
Mr. Robert Rowe
Regulatory Counsel
Independent Community Bankers of America

On behalf of

Independent Community Bankers of America
Washington, DC

"Legislative Hearing on H.R. 5341, Seasoned Customer CTR Exemption Act of 2006"

United States House of Representatives

Committee on Financial Services
Subcommittee on Financial Institutions
and Consumer Credit

May 18, 2006

Mr. Chairman, Ranking Member Frank and members of the committee, my name is Robert Rowe and I serve as Regulatory Counsel for the Independent Community Bankers of America. I've held that position since April 1995, but I've worked on matters under the Bank Secrecy Act (BSA) since 1991. For over seven years, I've served as an active member of the Treasury Department's Bank Secrecy Act Advisory Group. Before becoming an active member of the BSAAG, I provided staff support for our banker representative. As a member of the Bank Secrecy Act Advisory Group, I've played an active role on a number of subcommittees, including currently co-chairing a subcommittee on cross-border wire transfers and serving as a member of a subcommittee reviewing the suspicious activity reporting process and another subcommittee on the *SAR Activity Review*. In 2005, I was awarded FinCEN's Director's Medal for Exceptional Service for supporting FinCEN's mission to combat money laundering and terrorist financing. During that time, I've also played an active role in discussions on how to improve the currency transaction reporting (CTR) process and have served on a Bank Secrecy Act Advisory Group subcommittee on the issue.

On behalf of ICBA's more than 5000 member banks, I want to express our appreciation for the opportunity to testify on legislation to reduce the regulatory burden of filing currency transaction reports. We applaud this committee and the House for passing H.R. 3505, a comprehensive financial regulatory relief bill. Unfortunately, the Senate counterpart to this bill does not include provisions from H.R. 3505 that would reduce some of the burdens faced by community banks in complying with the Bank Secrecy Act.

We commend Chairman Bachus, Representative Frank and the many other members of the committee for introducing H.R. 5341, the "Seasoned Customer CTR Exemption Act of 2006," which is based on section 701 of H.R. 3505. We look forward to working closely with Chairman Bachus and this committee to find solutions to reducing the BSA compliance burden while still meeting the needs of law enforcement. We hope today's hearing will improve the chances for this provision to become law.

Community Banks are an Essential Part of the Economy

Before turning specifically to BSA burden relief, I would like briefly explain why regulatory burden relief is so important to community banks and our customers. Community banks' survival depends on the economic vitality of our communities just as the economic vitality of our communities depends on the local community banks. Community bankers provide tremendous leadership which is critical to local economic development and community revitalization.

Community banks are particularly attuned to the needs of small businesses, our nation's engine for job creation. They are the leading suppliers of credit to small businesses and account for a disproportionate share of total lending to small business. Banks with less than $1 billion in assets hold only 13 percent of bank industry assets. However, they are responsible for 37 percent of bank loans small business loans and 64 percent of bank loans to farms.

Community Banks Need Regulatory Relief

ICBA supports a bank regulatory system that fosters the safety and soundness of our nation's banking system. However, statutory and regulatory changes continually increase the cumulative regulatory burden for community banks. In recent years, community banks have been saddled with the privacy rules of the Gramm-Leach-Bliley Act, the customer identification rules and anti-money laundering/anti-terrorist financing provisions of the USA Patriot Act, and the accounting, auditing and corporate governance reforms of the Sarbanes-Oxley Act.

This disproportionate impact of the ever-mounting regulatory burden is significantly affecting community banks.[1] Since 1992, the market share of community banks with less than $1 billion in assets has dropped from approximately 20 percent of overall banking assets to 13 percent. During the same period, the market share of large banks with over $25 billion in assets grew from approximately 50 percent to 70 percent. While the industry as a whole has reported record profits in recent years, that profitability is not shared by smaller banks. And, there is growing evidence that compliance places a disproportionate cost on community banks. Therefore, this regulatory burden is affecting the viability of local community banks – and affecting the amount of funds these institutions have to reinvest in their local communities through loans and other activities.

For example, an analysis of banking trends conducted by two economists at the Federal Reserve Bank of Dallas concluded that the competitive position and future viability of small banks is questionable. The authors suggest that the regulatory environment has evolved to the point of placing small banks at an artificial disadvantage to the detriment of their primary customers: small business, consumers and the agricultural community.

Larger banks may have hundreds or thousands of employees to handle the many complications of regulatory demands. However, a community bank with $100 million in assets typically has just 30 fulltime employees while a $200 million bank may have about 60 employees in total. If the bank is faced with a new regulation, it must train one or more current employees to take on added responsibilities. This burden not only places more responsibility on the employee, but also distracts them from their primary duty of serving customers. Unlike larger institutions, the typical community bank cannot merely hire a new employee and pass the costs on to its customers.

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[1] Gunther and Moore, "Small Banks' Competitors Loom Large," *Southwest Economy*, Federal Reserve Bank of Dallas, Jan./Feb. 2004.

The Burden of Bank Secrecy Act Compliance

The nation's community banks are committed to supporting the federal government's efforts to prevent money laundering, terrorist financing and other fraudulent activities. However, **ICBA also believes that it is critical that resources be focused where the risks are greatest. Over the years, there has been a tendency to require reports that have little value for law enforcement. These reports merely clog the system and obscure truly suspicious activities.** Moreover, all this data places additional demands on the federal government to properly process and analyze the information – and to ensure that it is properly secured. Committees in each house of Congress are currently focusing on data security, and it is critical that the federal government ensure that sensitive BSA data is properly protected.

Bankers across the country continue to identify the Bank Secrecy Act as the most burdensome area of compliance. ICBA appreciates the efforts by Congress to bring greater focus to the many reports required under the Bank Secrecy Act. We look forward to continuing to work with Congress, the Treasury and the banking agencies to achieve an effective compliance regime that directs resources to banks, regulators and law enforcement agencies where it can be of the most benefit.

Seasoned Customer Exemption Act

ICBA fully supports the committee's efforts to address this regulatory burden through the Seasoned Customer CTR Exemption Act of 2006.

As the bill properly notes, "the completion of and filing of currency transaction reports....poses a compliance burden on the industry." Unfortunately, despite these efforts and compliance burdens, the bill also notes that not all the reports are "relevant to the detection, deterrence, or investigation of financial crimes, including money laundering and the financing of terrorism."

ICBA has long believed that it is important to develop a simple and easily applied exemption process that can eliminate currency transaction reports that have little value for law enforcement. Therefore, ICBA supports the provisions of H.R. 5341 that would allow banks to exempt seasoned customers from CTRs without being required to renew the exemption annually. Past efforts to increase the use of the current exemption process have not succeeded, despite years of efforts by interested parties, including industry representatives, regulators and law enforcement. ICBA supports this committee's efforts and H. R. 5341 because they have the potential to eliminate many unnecessary reports that are costly to produce but that offer little or no use for law enforcement. Eliminating unnecessary reporting would result in substantial savings to our banks and increase the time our employees can spend on customers' financial needs. **They would also make law enforcement investigation more efficient by eliminating unnecessary data.**

The bill offers a definition of which customers would be eligible for this new "seasoned customer" exemption. One of the provisions would require that a customer maintain a deposit account with the bank for at least 12 months. ICBA recommends that the Treasury Department be given some flexibility to shorten this timeframe in appropriate circumstances, as determined by Treasury in consultation with other interested parties, including law enforcement and industry representatives.

Ultimately, though, for this provision to succeed, Treasury will have to develop an exemption process for qualified customers that can be simply and easily applied – in other words, a system that truly works. ICBA looks forward to working with Treasury and other interested parties to develop such a regulation.

Costs and Burdens Associated with the Current Exemption Process

Many financial institutions report that the cost of using the current exemptions outweighs any associated benefits. As a result, many institutions find it is much simpler and less risky to file a CTR on every cash transaction over $10,000. Our members report that this approach is more practical and cost effective than using the exemption process.

Compliance Responsibility. Using the existing BSA exemption not only consumes a community bank's limited resources in time and money, it also increases the burden on the bank's existing compliance program by requiring the bank to develop policies and procedures for exempting customers, train personnel on the procedures, be prepared to educate customers on the exemption process, and establish audit programs to monitor compliance with the exemption process.

For example, **if a community bank establishes an exemption for a customer under current rules, it must document the decision and annually file an exemption with the government. It then must ensure that it has up-to-date exemption lists available for all branch personnel and that all branch personnel are properly trained in which customers are exempt – and when those exemptions can be used since not all transactions for an exempt customer may be exempt.**

With turnover of tellers and other branch staff, **it is often much simpler, less complicated and certainly less confusing to simply file the currency report. All that the bank staff has to remember is that currency in or currency out over $10,000 requires a report.** Plain, simple and easily applied. Unfortunately, it also means many routine transactions are reported.

Another advantage to avoiding the current exemption process is that the bank does not run the risk of error for mistakenly exempting a transaction, does not have to have the process audited, and does not invite regulator scrutiny of the process. In other words, the costs for the current process and the risks associated with using it have caused most bankers – especially community bankers – to conclude that it simply isn't worth it.

Resource Allocation. **For many institutions, particularly community banks, implementing exemptions under the current rules is not cost effective.** Many community banks lack the time or resources to study the exemption requirements and how they would apply to specific customers. Under the current system, it is not only a matter of exempting a customer, but the regulatory burden continues since **the bank must continue to monitor exempted accounts and must certify that a customer continues to meet the regulation's exemption criteria.** This is especially true for community banks that file a small number of CTRs. For these institutions, simply filing on all cash transactions over $10,000 is a more efficient means of allocating precious compliance resources. **Instituting simpler procedures could make the process more cost effective and reduce the risk of compliance violations.**

Automation. Many institutions that file CTRs on every transaction above the $10,000 threshold have elected to automate the reporting process. **Automated filing systems maximize efficiency by reducing the time that institution staff must devote to the filing process. Some automated systems automatically generate a CTR for transactions above the $10,000 threshold. Other systems flag transactions for further review by staff. Moreover, since banks must aggregate transactions in order to properly report currency transactions, automated systems facilitate compliance with the aggregation requirements.**

However, it is much more difficult to automate the CTR process if the bank attempts to include exemptions since it requires customization of software systems. Unfortunately, the demands on bank technology systems is rapidly increasing, not just for new demands of BSA compliance, but also the FACT Act's provisions, data security demands, fraud detection and new payment systems technologies. As a result, it is not hard to see why many community banks have concluded it is not cost effective to expend limited resources automating a process fraught with regulatory risk for little benefit.

Increased Threshold for CTRs Would Reduce Burden

Fundamentally, **ICBA believes that a simple increase in the dollar threshold for CTRs would be easier to apply.** The dollar threshold has not been changed since the Bank Secrecy Act was adopted more than thirty-five years ago. **However, we recognize that law enforcement agencies are concerned that such a change might eliminate valuable information for detecting and prosecuting criminal activities**, especially as they begin to develop new databases and new technologies that can take use the information diligently supplied by the nation's banks.

ICBA's goal is to find a way to eliminate reports of routine transactions that are costly and burdensome to produce but that provide little use for law enforcement. ICBA has actively participated in many discussions on this issue over a number of years through our role on Treasury's Bank Secrecy Act Advisory Group and we will continue to pursue a solution through that venue. However, we also believe that **Congressional action will send a strong signal to regulatory agencies and law enforcement that a solution is needed. Community bankers often comment that law enforcement seems to have a tendency to shift costs and burdens to the banking industry. Because it is the industry – and not law enforcement – that bears the costs, community banks believe there is a tendency to disregard the substantial costs of compliance created by the demands for information. It is vitally important that the costs be assessed against the overall benefits. ICBA believes today's hearings helps bring useful focus to that need for balance.**

Increased Communication Between Government and Banks

ICBA believes it would be helpful to community banks' efforts against money laundering and terrorist financing if they received better information from law enforcement about what activities to watch for. Under section 314 of the USA Patriot Act, Congress adopted a provision in part designed to encourage law enforcement to enhance communication with financial institutions to improve the banking sector's focus on those transactions that present the greatest risk of money laundering or terrorist financing. Through Treasury's Financial Crimes Enforcement Network's *SAR Activity Review,* law enforcement has been steadily – if slowly - increasing the information it provides banks. ICBA encourages Congress to continue to take steps to ensure that this information is provided by law enforcement agencies. An open dialogue between law enforcement and the industry would help community banks focus efforts where they are the most effective.

Other Key Provisions in H.R. 3505 Would Help Relieve Burden

The tremendous weight of over regulation is rapidly driving the consolidation of the industry to the disadvantage of our communities and customers. Therefore, ICBA also strongly recommends that the House seek to include additional provisions from H.R. 3505 in the final regulatory relief legislation. In particular, we hope that it will include the following sections:

- **Privacy notice exemption** (section 617). Exempts a bank from the annual privacy notice requirement if the bank does not share customer information other than as permitted by one of the statutory exceptions, does not share information with affiliates under the Fair Credit Reporting Act, and has not changed its policies.

- **Short-form call reports** (section 608). Permits highly-rated, well-capitalized banks with assets of $1 billion or less to file a short form quarterly Call Report in two of the four quarters of each year.

- **Small-BHC policy statement** (section 616). Requires the Federal Reserve to revise the Small Bank Holding Company Policy Statement on Assessment of Financial and Managerial Factors so that the policy applies to Bank Holding Companies with consolidated assets of less than $1 billion and that are not engaged in any non-banking activities involving significant leverage and do not have a significant amount of outstanding debt.

These provisions were based on sections of Rep. Jim Ryun's Communities First Act (H.R. 2061), which is sponsored by 81 members of the House. CFA was introduced in the Senate as S. 1568 and has five sponsors. These simple steps will go a long way to helping to reduce the regulatory burden that is slowly strangling the nation's community banks.

Conclusion

Specific data is not available that compares the cost of filing CTRs on all transactions above $10,000 to the cost of using the exemptions. However, anecdotal evidence and comments from financial institutions of all sizes support the notion that avoiding the current exemption process is significantly less burdensome in terms of cost and compliance management. **Barring a significant change in the CTR filing process or the exemption regulations, many institutions will continue to file reports on all transactions that exceed the $10,000 threshold as a simple means of complying.**

ICBA believes this bill is an important step in that direction and appreciates this committee's commitment to moving legislation that would reduce the regulatory burden on community banks by clarifying the seasoned customer exemption to the CTR requirement. ICBA looks forward to continuing to work with you in this regard. Thank you.

STATEMENT OF DIRECTOR ROBERT W. WERNER
FINANCIAL CRIMES ENFORCEMENT NETWORK
UNITED STATES DEPARTMENT OF THE TREASURY

BEFORE THE
HOUSE FINANCIAL SERVICES SUBSOMMITTEE ON FINANCIAL INSTITUTIONS
AND
CONSUMER CREDIT

MAY 18, 2006

Chairman Bachus, Ranking Member Sanders and distinguished members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss H.R. 5341, the "Seasoned Customer CTR Exemption Act of 2006." Balancing the regulatory burdens imposed upon the financial services industry under the Bank Secrecy Act (BSA), while at the same time, ensuring an unimpeded flow of useful information to law enforcement officials is an ongoing challenge that requires the attention of lawmakers and regulators alike. As the recently appointed Director of the Financial Crimes Enforcement Network (FinCEN), which is responsible for administering the BSA, I take this issue seriously and look forward to working with the members of this Subcommittee in our ongoing fight against illicit financial activity.

I am happy to be here today with Michael Morehart, who is Chief of the Terrorist Financing Operations Section in the Counterterrorism Division of the Federal Bureau of Investigations (FBI), and Kevin Delli-Colli, Deputy Assistant Director for the Financial and Trade Investigations Division at the Immigration and Customs Enforcement (ICE) Department of Homeland Security. Both of these agencies work tirelessly to keep our country safe from terrorist activity, and I am gratified that, in part, they accomplish their missions by utilizing financial information provided to FinCEN under the BSA. Our partnership with these law enforcement agencies allows for the seamless flow and effective utilization of this critical information in our united fight against terrorist financing and money laundering.

As the administrator of the BSA, it is important for FinCEN to work hard to assess and reassess the proper balance between the filing burdens imposed upon financial institutions and the needs of the law enforcement, intelligence and

regulatory communities for the data reported under the BSA. Moreover, as you know, the BSA's anti-money laundering program requirements help financial institutions protect themselves, and thus the U.S. financial system, from abuse by criminals and terrorists. Effective anti-money laundering and counter-terrorist financing programs assist financial institutions both to identify and mitigate the risks inherent in their operations. The BSA's record keeping and reporting requirements provide transparency in the financial system and help create a financial trail that law enforcement and other agencies can use to track criminals, their activities, and their assets.

Twelve types of reports are required under the Bank Secrecy Act. The reports filed most often are:

- **Currency Transaction Reports (CTRs)**, which are filed in connection with deposits, withdrawals, and exchanges of currency exceeding $10,000.

- **Suspicious Activity Reports (SARs)**, which describe suspicious financial transactions of a particular dollar threshold and relevant to a possible violation of law or regulation. These reports are especially valuable to law enforcement and intelligence agencies because they reflect activity considered problematic or unusual by financial institutions, casinos, money services businesses, and the securities industry. SARs contain sensitive information and, consequently, may be disclosed and disseminated only under strict guidelines.

The number of Bank Secrecy Act reports filed in Fiscal Year 2005 was more than 5 percent higher than the number filed the previous year, rising from nearly 15 million in Fiscal Year 2004 to approximately 15.8 million in Fiscal Year 2005. Increases in the number of SARs and CTRs accounted for most of the rise during this period.

- The number of SARs increased by about 32 percent, from 663,655 to 878,021; and

- The total number of CTRs grew by nearly 6 percent, from 13.7 million to 14.2 million.

Relevant to this hearing is the fact that reporting by financial institutions of CTRs has been the foundation of the Bank Secrecy Act since its inception. In fact, prior to 1996 when regulations issued by FinCEN and the Federal Banking Agencies required banks to file SARs, CTRs were the primary BSA tool used by law enforcement to identify activity indicative of money laundering. Although SARs have been required to be filed by a growing number of financial institution

industries since 1996, these reports have augmented our ability to stem the flow of illicit financial transactions by providing different, but often complementary, types of data to CTR filings.

It is important to note that SARs and CTRs should not be viewed as duplicative filings by financial institutions. Each provides their own set of value and intelligence that may initiate or assist in an investigation. However, the perception that every BSA filing should eventually lead to a prosecution is simply unrealistic. In addition to their investigative value, SARs and CTRs deter money-laundering activities. We have seen examples of this when criminals structure their deposits in our financial system to avoid filing requirements. Structured transactions designed to hide the movement of illicit funds force criminals to exert more time and energy while providing law enforcement additional information when tracing a pattern of activity. Finally, this data contributes to threat assessments, vulnerability studies and other more strategic analytic products that contribute significantly to our fight against illicit finance.

Prior to the implementation of SAR requirements, analysts and law enforcement personnel using CTRs as a tool to find indicia of suspicious activity were required to review individual CTRs. Therefore, the number of useful CTRs being filed for routine business activity raised concern about law enforcement's ability to effectively use the database. It was this concern, along with the time and cost associated with each filing, which led to enactment of the Money Laundering Suppression Act of 1994, which amended the BSA by establishing a statutory exemption system for currency transaction reporting.

The statute established two classes or "Phases" of exemptions. Under the Phase I exemption, Treasury has by regulation allowed financial institutions to exempt from CTR reporting requirements, transactions between depository institutions and the following specified categories of customers: (1) a bank; (2) a government agency (of the US, any state, or any political subdivision) or government instrumentality; or (3) a publicly traded business or certain subsidiaries of publicly traded businesses. A business that is not an "exempt person" under Phase I, because it does not meet the definition of a "listed business," still may be an "exempt person" as defined in Phase II of the exemption under two circumstances: (1) as a "non-listed business" or (2) as a "payroll customer."

In order to qualify as a Phase II customer, the entity must: (1) have maintained a transaction account at the exempting bank for at least 12 months; (2) frequently engaged in transactions in currency with the bank in excess of $10,000 (FinCEN interprets frequently as eight times in one year); and (3) be incorporated

or organized under the laws of the United States or a State, or be registered as and be eligible to do business within the United States or a State.

It should be noted that, under the present Phase II exemption, certain businesses are ineligible to be treated as an exempt non-listed business. These include businesses that: (1) serve as financial institutions or agents for financial institutions of any type; (2) purchase or sell to customers motor vehicles of any kind, vessels, aircraft, farm equipment or mobile homes; (3) practice law, accountancy, or medicine; (4) auction goods; (5) charter or operate ships, buses, or aircraft; (6) are pawn brokerages; (7) engage in gaming of any kind (other than licensed betting at race tracks); (8) are investment advisory services or investment banking services; (9) engage in real estate brokerage; (10) engage in title insurance and real estate closings; (11) engage in trade union activities; and (11) engage in any other activity that may, from time to time, be specified by FinCEN

In determining whether to exempt a customer under either Phase, a bank must document the basis for its decision and maintain such documents for five years. After a bank has decided to exempt a customer, the bank must file a Designation of Exempt Person form. For Phase I customers, the form has to be filed only once (though the bank must annually review the customer's status). For Phase II customers, the form must be re-filed every two years as part of a biennial renewal process. (As with Phase I customers, the bank must also annually review the status of Phase II customers.)

Despite the efforts of FinCEN and industry groups to encourage use of the revised CTR exemption system, financial institutions have remained hesitant to do so. Over time, many financial institutions have told us that they do not utilize this exemption process because of its complexity or the fear of misapplying the rules. In an October 2002, report prepared by FinCEN for Congress on the use of CTRs, some frequently cited reasons for not using the exemption system were:

- The fear of regulatory action if an exemption turns out to be wrong;
- Difficulty in determining whether a customer is eligible for exemption;
- The additional costs associated with due diligence;
- Lack of staff time to review CTRs for possible exemptions; and
- The transactions requiring CTR filings are too infrequent.

In an attempt to address these concerns, FinCEN took significant steps toward ensuring more effective and uniform application of the BSA. We worked with Federal and state banking agencies to negotiate and implement information sharing agreements that give us more comprehensive data and feedback on BSA compliance. We also worked with regulatory agencies to promote more uniform examination procedures for compliance with the BSA, faster and more consistent

compliance activities, and joint action in cases of egregious violations of the law. Nonetheless, it is clear that the current exemption system continues to be under-utilized.

H.R. 5341, like Section 701 of H.R. 3505, which passed the House of Representatives in March, is an attempt to address this concern by reducing CTR reporting requirements for seasoned customers – cash deposits by the local Wal-Mart store would be a typical example. In the fall of 2005, my predecessor offered technical assistance to this Committee on the CTR exemption language contained in H.R. 3505. Although we support the intent of this provision, as well as the effort and expertise behind the assistance we provided, as we all recognize, it is imperative that we avoid undermining law enforcement's efforts to combat terrorist financing. As such, we must be very attentive to reasonable concerns raised by law enforcement regarding the potential loss of the investigative value of CTR data presently collected.

In that regard, it is my understanding that law enforcement has significant concerns with the proposed language of this provision that would permit the exemption of certain businesses that are presently ineligible for CTR filing exemption under the current system *(i.e .car dealerships, attorneys, physicians, accountants)*. The ability of law enforcement to utilize BSA data has been improving at a rapid pace in light of advances in technology and analytic practices. This has led to a concern on their part that we will end up losing data that, once excluded, we will be unable to assess the value of through subsequent data mining. Given the concern expressed by our law enforcement partners, we believe it would be prudent to permit further study of the issue before making any changes to the current exemption system.

Such a study provides both the financial services industry and law enforcement an opportunity to define clearly, through an empirical study, those areas that represent either a compliance burden or the potential loss of benefit from useful data. Through such a cost-benefit analysis, we may be able to highlight opportunities for the regulators, law enforcement and the regulated community to achieve a balanced and workable alternative to the current regulatory regime.

In conclusion, Mr. Chairman, we stand ready to assist you in reducing the number of CTRs that provide little or no value for law enforcement purposes. Like H.R. 3505, we believe H.R. 5341 is a step in the right direction, but share a responsibility with you and law enforcement in considering any potential loss of BSA data law enforcement considers important to their investigations. Thank you for the opportunity to appear before you today. I look forward to any questions you have regarding my testimony.

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B. Dan Berger
Senior Vice President
Government Affairs

May 17, 2006

The Honorable Spencer Bachus
Chairman
House Financial Services Committee
Subcommittee on Financial Institutions and Consumer Credit
US House of Representatives
Washington, DC 20515

Dear Chairman Bachus:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only national trade association exclusively representing the interests of our nation's federal credit unions, I am writing to express our support for H.R. 5341, the "Seasoned Customer CTR Exemption Act of 2006" in conjunction with your Subcommittee's hearing on this legislation.

First and foremost, NAFCU is pleased to report to the Subcommittee that credit unions take their role on the financial services frontline of fighting crime and terrorism very seriously.

NAFCU supports this legislation because we believe that seasoned customers (members) do not constitute a large Bank Secrecy Act (BSA) risk for financial institutions. This legislation would help ease a regulatory burden on credit unions by reducing the number of currency transaction reports (CTRs) that a credit union must file by exempting seasoned customers (members). By the point someone qualifies for a "seasoned" customer (member) status, they've passed through the Customer Identification Program and Customer Due Diligence process, and the credit union has had a good amount of time - likely 12 months - to review his or her (or its) transactions. CTRs would have to be filed during the non-exempt period, until the customer (member) qualifies. Even after that point, financial institutions would still be under a requirement to file a Suspicious Activity Report (SAR) whenever any transaction deemed to be suspicious under BSA regulations.

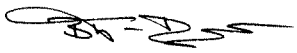
To address the concerns of law enforcement that this would somehow hurt their ability to fight terrorism and crime, we would reiterate the findings of the legislation. Since introduction of the FFIEC BSA/AML Examination Manual (June 2005), credit unions, along with other financial institutions, have implemented additional controls, policies and procedures to uncover and track

suspicious activity. In addition, credit unions across the country are implementing detailed due diligence programs that will allow them to anticipate the transactions of their members, which will in turn allow them to uncover suspicious activity that falls outside of the normal transaction pattern of their members. Furthermore, new requirements from the USA Patriot Act require credit unions to gather additional information from their members when an account is opened. With this in mind, we believe that a slight reduction in the number of CTRs will not hurt law enforcement, given that all of these other controls remain in place. Simply because a member is a seasoned customer will not lessen the duty of a credit union to file a SAR if the activity is suspicious.

As small, not-for-profit cooperative institutions, credit unions have limited resources to devote to BSA-related issues. These resources are best utilized some place else other than repetitive and sometimes fruitless CTR filings. Even though lowering the CTR burden should not heighten expectations in the area of SAR filings, it would greatly benefit financial institutions without hampering law enforcement's fight against money laundering and terrorism. It is with this in mind that we urge the Subcommittee to support this important legislation.

I want to thank you for the opportunity to share this information with you and the members of the Subcommittee on Financial Institutions and Consumer Credit. If I or the staff at NAFCU may provide you with any further information or be of assistance in any way, please do not hesitate to contact me or our Director of Legislative Affairs Brad Thaler at (703) 522-4770, ext. 204.

Sincerely,



B. Dan Berger
Senior Vice President
Government Affairs

cc: The Honorable Bernie Sanders
Members of the Financial Institutions Subcommittee

United States General Accounting Office

GAO

Testimony

Before the Committee on Banking, Housing and Urban Affairs
United States Senate

For Release on Delivery
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MONEY LAUNDERING

The Volume of Currency Transaction Reports Filed Can and Should Be Reduced

Statement of Henry R. Wray, Director, Administration of Justice Issues, General Government Division

059283/151058

GAO/T-GGD-94-113

MONEY LAUNDERING: THE VOLUME OF CURRENCY TRANSACTION REPORTS FILED CAN AND SHOULD BE REDUCED

SUMMARY OF STATEMENT OF HENRY R. WRAY
DIRECTOR, ADMINISTRATION OF JUSTICE ISSUES
U.S. GENERAL ACCOUNTING OFFICE

The Bank Secrecy Act is a major weapon in the government's efforts to combat money laundering. The act's implementing regulations require banks and other financial institutions to file a Currency Transaction Report (CTR) for each transaction that involves $10,000 or more in currency. The number of CTRs filed annually has steadily increased in recent years. As of April 1993 almost 50 million CTRs had been filed. The total could exceed 92 million in another 3 years.

The Senate Committee on Banking, Housing and Urban Affairs asked GAO to assess the government's use of CTRs in relation to a bill, S. 1664, which includes provisions designed to reduce the filing of CTRs on routine business transactions that lack law enforcement value.

The Internal Revenue Service estimates that between 30 and 40 percent of the CTRs filed are reports of routine deposits by large, well-established retail businesses. These CTRs impose costs on the government and the nation's banking industry, but they are unlikely to identify potential money laundering or other currency violations.

GAO's analysis of CTR filings confirms that the volume of CTRs could be substantially reduced without jeopardizing law enforcement needs. In fact, GAO's work indicates that the large volume of CTRs in the database makes analysis difficult, expensive, and time-consuming. Therefore, eliminating routine CTRs should not only reduce government and industry costs, but also enhance the usefulness of the database by enabling it to better focus on those CTRs that are relevant for law enforcement purposes.

Treasury Department regulations now authorize banks to exempt routine transactions from reporting under certain conditions. However, according to Treasury officials and banking industry representatives, most banks are reluctant to use this exemption authority because of difficulty in understanding the exemption procedures and concern that they may incur liability for granting improper exemptions.

S. 1664 contains several provisions designed to address these problems and encourage greater use of exemptions to eliminate CTRs for routine transactions that have no law enforcement value. GAO supports these provisions.

Mr. Chairman and Members of the Committee:

We are pleased to appear before you to discuss some of our work concerning Currency Transaction Reports (CTRs) required by the Bank Secrecy Act, in relation to S. 1664. Among other things, S. 1664 contains provisions designed to reduce the filing of CTRs on routine business transactions that have no value for law enforcement purposes. Our testimony today is based on the previous GAO reports and testimony listed at the end of this statement.

Money laundering supports a wide range of illegal activities--basically any crime where profit is the primary motive. Consequently, combating money laundering is a vital component of this country's war on crime. In October 1992, we reported that federal law enforcement agencies have found Bank Secrecy Act reports, and especially CTRs, extremely useful in identifying, investigating, and prosecuting money laundering operations or any other criminal activity generating large amounts of cash. The data are also used to identify and trace the disposition of proceeds from illegal activity for possible seizure and forfeiture.

It is important that optimal use be made of the financial intelligence data provided by CTRs. As we testified last May, the volume of CTRs filed annually has been steadily increasing. The number of reports then on the computer database--almost 50 million--could nearly double in 3 years. The large volume of reports has made analysis difficult, expensive, and time-consuming. Moreover, many of the reports being filed are of normal business transactions that could have been exempted from being reported. CTRs that report normal business transactions are of no value to law enforcement and regulatory agencies in detecting money laundering activity.

FEDERAL EFFORTS TO FIGHT MONEY LAUNDERING

Money laundering is the disguising or concealing of illicit income to make it appear legitimate. Although precise figures are not available, federal law enforcement officials estimate that between $100 billion and $300 billion in U.S. currency is laundered each year. The methods used can vary from extremely complex schemes involving sham corporations to something as simple as purchasing expensive commodities with cash.

The process of money laundering has been broken down into a number of steps. It is generally agreed that the point at which criminals are most vulnerable to detection is "placement." Placement is the concealing of illicit proceeds by (1) converting the cash to another medium that is more convenient or less suspicious for purposes of exchange--such as property, cashier's checks, or money orders--or (2) depositing the funds into a financial institution account for subsequent disbursement. Because of the problems associated with converting large amounts

of cash that are often in small denominations, placement is perhaps the most difficult part of money laundering and is currently the primary focus of U.S. law enforcement, legislative, and regulatory efforts to attack money laundering.

Federal efforts to detect the placement and track the flow of large deposits of money and monetary instruments were significantly enhanced with the enactment of the Bank Secrecy Act (BSA) in 1970. The act requires individuals as well as banks and other institutions, such as check cashing businesses, currency exchanges, and money transmitters, to report large foreign and domestic financial transactions to the Department of the Treasury. Treasury regulations implementing the act require four reports:

-- Currency Transaction Report, Internal Revenue Service (IRS) Form 4789;

-- Currency Transaction Report by Casino, IRS Form 8362;

-- Report of International Transportation of Currency or Monetary Instruments, Customs Form 4790; and

-- Report of Foreign Bank and Financial Accounts, Treasury Form TDF 90-22.1.

By far, the most frequently filed report has been the Currency Transaction Report. As of last May, over 95 percent of the 52 million BSA reports filed were CTRs. Financial institutions and certain types of businesses must file a CTR with IRS for each deposit, withdrawal, exchange, or other payment or transfer by, through, or to such financial institutions or businesses that involves more than $10,000 in currency.

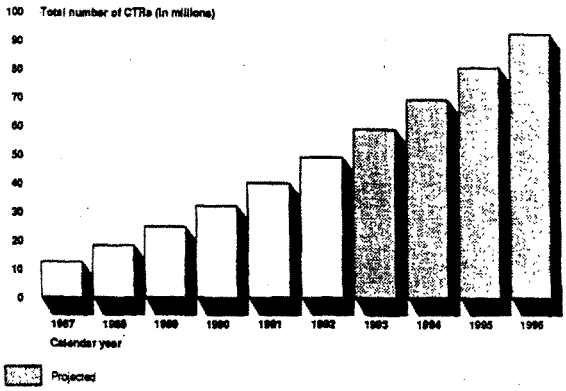
The financial institutions required to file CTRs--such as banks, thrifts, and credit unions--are subject to examination for compliance with BSA reporting requirements by their regulatory agency. Businesses required to file--such as check cashing operations, currency exchanges, and money transmitters--are subject to compliance examinations by IRS.

Treasury and law enforcement officials generally believe that, in the past, banks and other traditional financial institutions were the primary means used by money launderers. These officials also believe that increased efforts by federal regulatory and law enforcement agencies, as well as enhanced cooperation by the banks themselves, have significantly improved compliance with the reporting requirements, making it much more difficult to use these institutions for money laundering purposes.

The Department of the Treasury has reported that improved compliance with BSA reporting requirements is reflected by an

increase in the number of reports filed. In 1992, 8.97 million CTRs were filed with IRS, almost 5 times the number filed in 1985. Since 1987, annual filings have increased at an average rate of 12.7 percent. As of April 1993, there were 49.8 million CTRs in the IRS computer database. If this historical pattern continues, the total could exceed 92 million in 3 years. Figure 1 shows the growth in the number of CTRs on file in the past several years and the projected size of the database in 1996.

Figure 1: Historic and Projected Growth of the CTR Database



Note: We estimated the CTR filings for 1993 to 1996 by applying a simple statistical regression to the 1987 to 1992 filings. These estimates are subject to forecast error.

Source: GAO analysis of IRS data.

Filing CTRs represents a significant investment in costs and resources to financial institutions and the federal government. On the basis of a poll of its members, the American Bankers Association estimated in 1991 that it costs a bank between $3 and $15 to file a CTR, depending upon the extent to which an automated filing system is used. IRS estimated that in fiscal year 1992 it cost $2 per CTR to process the reports and store them on the computer.

LAW ENFORCEMENT USE OF BSA FINANCIAL INTELLIGENCE DATA

Duplicate databases of all of the BSA reports are stored on computers at two Treasury computer facilities: the Detroit

Computing Center operated by IRS and the Treasury Enforcement Communications System (TECS) in Newington, VA, which is operated by the U.S. Customs Service. Access to the BSA reports at both facilities is available to authorized users through a network of computer terminals. As of February 1993, slightly more than 10,000 staff, almost all of them IRS employees, were authorized access to BSA data at the IRS Detroit Computing Center. While most of the IRS staff accessing the data use the information for tax administration purposes, almost a third of the authorized users, or 3,287, are assigned to IRS' Criminal Investigation Division and use the data for law enforcement purposes.

The BSA reports at the Customs facility are used only for law enforcement purposes. As of February 1993, more than 10,000 staff were authorized access to BSA data at this facility, all of them assigned to Treasury agencies. Table 1 lists the number of authorized users by agency.

Table 1: TECS Users Authorized Access to BSA Reports as of February 1993

Agency	Number of authorized users
Customs	4,271
FinCEN	120
BATF	3,479
IRS	2,623
Secret Service	24
Office of Financial Enforcement	1
Total users	10,518

Source: U.S. Customs Service.

BSA reports, especially CTRs, are used by law enforcement in several ways. Some federal agencies analyze them on a strategic level. For example, Treasury's Financial Crimes Enforcement Network (FinCEN)[1] prepares reports assessing the threat from money laundering operations to particular geographic areas or for

[1]FinCEN is a relatively small Treasury organization established in 1990 to support federal, state, local, and foreign law enforcement agencies by analyzing and coordinating financial intelligence.

a particular state based on the number and type of CTRs filed in the region. Some agencies analyze the reports on a "proactive" basis. IRS criminal investigators, for example, routinely perform analyses of CTRs to identify investigative leads based on certain criteria. Law enforcement officials agree, however, that by far the biggest use of the data is in a "reactive" manner, where a name or other form of identification of a suspect is known and a search of the data is made to determine if the suspect has filed a report or been the subject of a report. Table 2 shows the number of times BSA reports were accessed for law enforcement purposes during 1992.

Table 2: Access to BSA Reports at Treasury Computer Facilities for Law Enforcement Purposes, Calendar Year 1992

User agency	Detroit Computing Center		TECS	
	Sessions	Queries	Sessions	Queries
IRS	43,090	800,627	142,619	283,730
Regulatory agencies[a]	1,057	7,695	-0-	-0-
FinCEN	2,433	23,163	46,604	173,465
BATF	-0-	-0-	14,170	40,968
Customs Service	-0-	-0-	393,376	1,152,296
Secret Service	-0-	-0-	1,439	4,748
Treasury - other	-0-	-0-	91	274
Totals	46,580	831,485	598,299	1,655,481

[a]Includes Treasury's Office of Financial Enforcement, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the Securities and Exchange Commission.

Note: Sessions are the number of users signing onto the system. Queries are the number of personal identifiers (e.g., names, zip codes, etc.) searched for.

Source: GAO analysis of IRS and Customs data.

While access to the BSA data through the Treasury facilities is generally limited to federal authorities, FinCEN serves as an access mechanism for both federal and state authorities. In 1992, FinCEN received 3,208 quick turnaround requests for BSA and other data. Table 3 shows the source of these requests. FinCEN also receives requests for more in-depth analysis of this data.

Table 3: Requests for BSA Data Through FinCEN Received During Calendar Year 1992

Source	Number of requests
Treasury Dept. agencies	831
Justice Dept. agencies	801
State agencies	677
Postal Inspection Service	340
INTERPOL	113
Defense Dept. agencies	103
Financial regulatory agencies	90
Other	253
Total	3,208

Source: GAO analysis of FinCEN data.

Under guidelines promulgated by the Assistant Secretary of the Treasury (Enforcement), IRS and Customs may also disclose BSA data to state or local law enforcement agencies on the same case-by-case basis that FinCEN does. In October 1992, we reported the extent to which state law enforcement agencies were requesting and utilizing BSA reports obtained from these sources. IRS informed us that from April 1990 through December 1991, state and local law enforcement authorities in 24 states made 116 requests for BSA data. Customs officials estimated that they normally receive between 200 to 300 requests from state and local authorities a year.

Our October 1992 report also identified six states--Arizona, California, Florida, Illinois, Maryland, and New York--that have agreements with Treasury that permit them to receive CTRs and other BSA reports relating to the state already on magnetic tape, thus enabling them to process the data at their own computer facilities. Four other states--Georgia, Nebraska, North Carolina, and Utah--obtain CTRs by requiring that filers send

copies of the reports filed with Treasury to the state.

FACTORS AFFECTING THE USEFULNESS OF BSA DATA

Our previous work indicates that the usefulness of the CTR database is limited because

-- access to the data, particularly by state law enforcement agencies, is too cumbersome; and

-- the volume of data collected, processed, and stored has become extremely large, making the database cumbersome to handle.

Treasury and FinCEN are currently evaluating and testing several initiatives that would facilitate access to CTR data by state law enforcement agencies. We believe the initial results are very encouraging. There remains, however, the problem of the ever-increasing volume of CTRs being filed.

As previously mentioned, there were almost 50 million CTRs on Treasury's computers as of April 1993. This number could nearly double by the end of 1996. Even with computers, the extensive size of the BSA database makes intelligence analyses of the reports--particularly proactive analyses--difficult, expensive, and time-consuming. For example, FinCEN has developed a computer program for identifying potential suspects based on trends and other characteristics of reports. However, given the size of the database and FinCEN's computer capabilities, the system is unable to use all of the historical data and is limited to the more recent data.

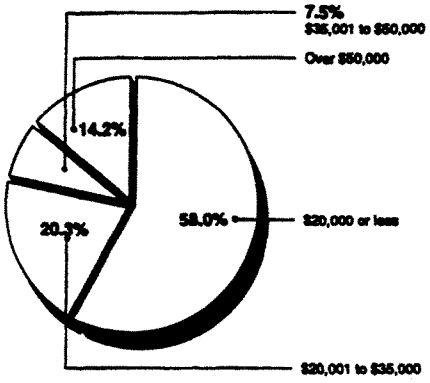
IRS officials have estimated that between 30 and 40 percent of the CTRs filed are reports of routine deposits by large, well-established, well-recognized, retail businesses each with a number of chain stores. IRS and Treasury recognize that these kinds of CTRs (1) are less likely to identify potential money laundering or currency violations, (2) increase the government's cost to process the reports, and (3) place an unnecessary reporting burden on the nation's banking industry.

Treasury has issued regulations that authorize banks to exempt certain businesses from the reporting requirements under certain conditions. We have been told, however, by Treasury and banking industry spokespersons that most banks are reluctant to use this exemption authority because of difficulty in understanding the exemption procedures and concern that they may be liable for penalties if they improperly grant exemptions. We have also been told that many banks use automated systems that make reporting all transactions easier and more cost-effective than dealing with exemptions.

In November 1993, we reported on the characteristics of CTRs filed in 1992. The data that we developed support IRS' estimate that 30 to 40 percent of the CTRs filed each year represent normal business transactions and meet the exemption criteria. Consequently, the potential exists to significantly reduce the number of CTRs filed annually.

Of the 8.98 million CTRs filed during 1992, 98 percent were filed by banks. Many of the CTRs could be eliminated by increasing the reporting threshold. As shown in figure 2, over half of the CTRs were for transactions of $20,000 or less.

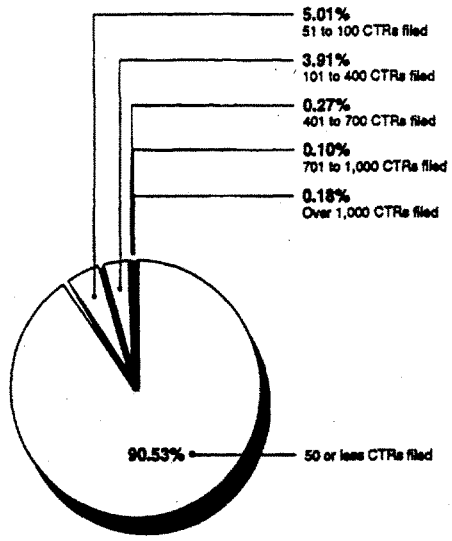
Figure 2: Distribution of 8.98 Million CTRs Filed in Calendar Year 1992, by Transaction Amount



Source: IRS Detroit Computing Center.

Businesses accounted for 8.29 million (92.3 percent) of all CTRs filed and for $411.8 billion (98.6 percent) of the total dollar amount of transactions reported. A total of 364,310 businesses were the subjects of the reports. As shown by figure 3, most of these businesses had 50 or fewer CTRs filed.

Figure 3: Distribution of 364,310 Businesses With CTRs Filed in CY 1992, by Number of CTRs Filed



Source: IRS Detroit Computing Center.

When a CTR identifies more than one business or individual, a separate record is established in the database for each entity shown on the report. The 8.29 million CTRs filed on businesses resulted in 9.2 million records. The 100 businesses listed on the most CTRs during 1992 accounted for 1.2 million (13 percent) of the 9.2 million business records. These 100 businesses, primarily chain stores and restaurants, also accounted for $89.7 billion (22 percent) of the $411.8 billion total transaction amount reported for businesses. Most of the transactions reported for these 100 businesses (94.9 percent) were deposits.

PROVISIONS OF S. 1664

S. 1664 contains several provisions that, while recognizing the value of CTRs, emphasize the need to reduce the number filed by ensuring that those transactions that could be exempted are exempted. The bill requires the Secretary of the Treasury to exempt certain categories of transactions from reporting and

authorizes the Secretary to exempt certain other transactions from reporting based on information submitted by depository institutions. The bill shields institutions from liability for failing to report an exempted transaction unless the institution knowingly filed false or incomplete information or had reason to believe that the exemption criteria were not met. The bill also establishes a goal for reducing the number of CTRs, using the mandatory and discretionary exemptions, by at least 30 percent of the number filed during the year preceding its enactment.

We support these provisions. It is clear that banks are not utilizing the exemption process to the extent they could in order to reduce the volume of CTRs filed. The bill addresses some of the factors that appear to underlie failure to grant more exemptions now. We believe any actions taken to increase the use of legitimate exemptions will help to both eliminate unnecessary costs and ensure that the CTR data collected will have maximum value to law enforcement authorities.

This concludes my statement, Mr. Chairman. We would be pleased to respond to any questions.

RELATED GAO PRODUCTS

Money Laundering: U.S. Efforts To Fight It Are Threatened by Currency Smuggling (GAO/GGD-94-73, March 9, 1994).

Money Laundering: Characteristics of Currency Transaction Reports Filed in Calendar Year 1992 (GAO/GGD-94-45FS, November 10, 1993).

Money Laundering: Progress Report on Treasury's Financial Crimes Enforcement Network (GAO/GGD-94-30, November 8, 1993).

Money Laundering: The Use of Bank Secrecy Act Reports by Law Enforcement Could Be Increased (GAO/T-GGD-93-31, May 26, 1993).

Money Laundering: State Efforts to Fight It Are Increasing but More Federal Help Is Needed (GAO/GGD-93-1, Oct. 15, 1992).

Money Laundering: Civil Penalty Referrals for Violations of the Bank Secrecy Act Have Declined (GAO/T-GGD-92-57, June 30, 1992).

Tax Administration: Money Laundering Forms Could Be Used To Detect Nonfilers (GAO/T-GGD-92-56, June 23, 1992).

Money Laundering: Treasury Civil Case Processing of Bank Secrecy Act Violations (GAO/GGD-92-46, Feb. 6, 1992).

Money Laundering: The Use of Cash Transaction Reports by Federal Law Enforcement Agencies (GAO/GGD-91-125, Sept. 25, 1991).

Money Laundering: The U.S. Government Is Responding to the Problem (GAO/NSIAD-91-130, May 16, 1991).

Money Laundering: Treasury's Financial Crimes Enforcement Network (GAO/GGD-91-53, Mar. 18, 1991).

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RICHARD M. WHITING
Executive Director and General Counsel

May 18, 2006

The Honorable Spencer Bachus
The United States House of Representatives
Washington, DC 20515

Dear Spencer:

On behalf of The Financial Services Roundtable, I would like to thank you for introducing and chairing a legislative hearing on H.R. 5341, the "Seasoned Customer Exemption (CTR) Act of 2006," which would reduce unnecessary regulatory burdens of complying with the Bank Secrecy Act (BSA) by improving an existing process through which financial institutions may be exempted from filing reports on large cash transactions by well-known customers.

The Roundtable strongly supports H.R. 5341 and Section 701 of Title VII of H.R. 3505, the "Regulatory Relief Act" which passed the House by a vote of 415-2. As you know, Title VII unfortunately is not part of regulatory relief legislation approved by the Senate Banking Committee.

The sheer volume of SAR filings poses a significant risk to the deterrence of the crimes they were meant to prevent. Based on a recent SARs Activity Review, a report that Financial Crimes Enforcement Network ("FinCEN") uses to track SAR filings by depository institutions, SAR filings have increased from 52,000 in 1996 to 689,000 in 2004 and projected to be close to a million in 2005. This flood of SARs, most of which do not relate to criminal activity, make it difficult for law enforcement to find and use the SARs that actually do relate to criminal activity.

The Roundtable believes that H.R. 5341 and Section 701 of H.R. 3505 should be enacted this year either as stand alone legislation or part of regulatory relief legislation for the following reasons:

- There are approximately 13 million Currency Transaction Reports (CTRs) filed defensively annually, with no nexus to terrorist financing. It is important that the Government receive useful information, and work with the financial services industry to reduce CTR filings. One solution is H.R. 5341 and Section 701 of H.R. 3505, which grants an exemption for CTR filings to financial institutions on their "seasoned customers." We believe that the CTR exemption can be improved. To ensure that a seasoned customer exemption is fully utilized, we suggest that it be made automatic: once a customer has had an account opened with a financial institution for twelve months, that customer automatically should be deemed "seasoned" and the institution accordingly should be exempt from CTR requirements with respect to that customer. In the absence of an automatic exemption, it is our view that filing a CTR generally would be easier for financial institutions than utilizing the exemption, which would mean more system-clogging CTR filings absent changes to the current filing requirements along the lines we have suggested. Moreover, many existing exemptions have been under-utilized because it is often harder to utilize the exemption than to file a CTR.

- Roundtable members consistently report that AML compliance represents the biggest line item in their compliance budgets, and these compliance budgets and the AML components in particular have grown dramatically in recent years. The recent AML study by the Institute For International Economics (IIE) estimates that the AML cost to financial institutions is now approaching a staggering figure of $3 billion annually. The IIE study further estimates that consumers bear an additional $1 billion as a result of the AML compliance regime.

The Financial Services Roundtable is committed to working with you and the Financial Services Committee to enact meaningful regulatory reform that the Roundtable and the industry can support. Again, we support your efforts on H.R. 5341 and appreciate your consideration of the incorporation of views from all sectors of the industry.

If you or your staff have any questions or would like to discuss these issues further, please feel free to call me or Irving Daniels at 202-289-4322.

Best regards,

Steve Bartlett
President and CEO

Responses of the Federal Bureau of Investigation Based Upon the May 18, 2006 Hearing Before the House Committee on Financial Services Subcommittee on Financial Institutions and Consumer Credit Regarding H.R. 5341, Seasoned Customer CTR Exemption Act of 2006

Questions Posed by Representative Kelly

1. We all want to find a system for implementing the Bank Secrecy Act (BSA) that makes more sense. None of us want to impose undue burdens on financial institutions or consumers. None of us want to weaken tools that the federal government uses for fighting crime and terrorism. So it's a real balance that needs to be struck here. As you know, some have suggested that a GAO report would be appropriate before enacting legislation on CTR exemptions. I'd like for the witnesses to comment on a preference between enacting this legislation now or waiting for a GAO analysis of this issue.

Response:

The FBI is committed to seeking a balance on Bank Secrecy Act implementation that both preserves the tools available for fighting crime and terrorism and relieves unnecessary burdens on the private financial sector. The fullest possible support of and cooperation with the financial industry will enhance our ability to keep America safe. Accordingly, the FBI welcomes every opportunity to work with the regulatory and financial sectors to reach the best possible resolution concerning this matter.

The FBI believes the best means of reaching an optimal resolution is to allow sufficient time for the Government Accountability Office to examine the full range of benefits and detriments associated with the available options. Certainly, decisions regarding policy changes that may exert significant impact on terrorism prevention efforts should be made with as much information as practical. Therefore, absent exigent circumstances, the FBI fully supports allowing the time and allotting the resources needed to review this issue before enacting new legislation.

2. Secretary Snow testified yesterday that he is attending a ministerial meeting in Egypt this weekend to encourage Middle Eastern Finance Ministers to work harder to crack down on terrorist finance and money laundering. I am currently circulating a letter to the UAE asking them to strengthen and enforce their own cash transfer registrations, and am working with Saudi Arabia to improve their monitoring of cash shipments. Do you have any concerns about the mixed message other governments may receive if they see the

United States lowering its cash monitoring systems while we are asking them to do the opposite?

Response:

The FBI believes that, if the United States is to retain its role as the global leader in the war on terror, it must lead by example, and our policy and actions must send a consistent message. Inconsistency could undermine American credibility in the eyes of our partners, and potential partners, concerning our efforts to defeat terrorists and their networks around the world. Any perception of a double standard on this issue could increase the obstacles we face in developing the international systems needed to effectively work against the financing of terrorism.

For example, if the U.S. Government advises that enhancing the cash monitoring systems in other countries is critical to the war on terror, then it is also critical to the war on terror that we maintain our own internal cash monitoring systems. To combat the flow of money to terrorists, we need a strong, internationally consistent, and cooperative system of financial regulations. The ease with which money can be moved from one side of the world to the other in our modern, globalized society necessitates a forceful, thorough, and consistent legislative approach by all nations.

American Bankers Association (ABA) Responses to Questions 1 and 2 in Letter to Bradley E. Rock at ABA, Dated June 2, 2006

#1 We all want to find a system for implementing the BSA that makes more sense. None of us want to impose undue burdens on financial institutions or consumers. None of us want to weaken tools that the federal government uses for fighting crime and terrorism. So it's a real balance that needs to be struck here. As you know, some have suggested that a GAO report would be appropriate before enacting legislation on CTR exemptions. I'd like for the witnesses to comment on a preference between enacting this legislation now or waiting for a GAO analysis of this issue.

ABA members believe that the time to act on a simplified seasoned customer exemption for reporting routine cash transactions is now. Prior studies by GAO and FinCEN (as recently as October 2002) acknowledge that the existing standards for invoking the business transaction filing exemptions have failed and should be changed. We urge Congress to make the proposed changes that are contained in the Seasoned Customer CTR Exemption Act of 2006, H.R. 5341, and then monitor the impact of such streamlined reporting. We believe that the Seasoned Customer Exemption will still generate sufficient information to enable law enforcement to identify those engaged in large cash transaction activity and to access relevant bank records when circumstances warrant.

During a period of heightened concern about the security of sensitive financial information, we should also recognize that pursuing the statutory BSA policy of reporting only information that has a high degree of usefulness for law enforcement prosecutions has the added benefit of reducing the risk of security breaches from unnecessary data sharing that could subject legitimate American business men and women to significant damages and hardship from identity theft and fraud.

#2 Secretary Snow testified yesterday that he is attending a ministerial meeting in Egypt this weekend to encourage Middle Eastern Finance Ministers to work harder to crack down on terrorist finance and money laundering. I am currently circulating a letter to the UAE asking them to strengthen and enforce their own cash transfer registrations, and am working with Saudi Arabia to improve their monitoring of cash shipments. Do you have any concerns about the mixed message other governments may receive if they see the United States lowering its cash monitoring systems while we are asking them to do the opposite?

ABA believes that sound financial crime enforcement policy should be built around a regime of risk-based suspicious activity detection due diligence and reporting. Indiscriminate reporting of routine financial transactions is not a proven means of generating data with a high degree of usefulness, nor is it a universally accepted approach to guarding financial institutions from illicit activity. For example, the United Kingdom does not have a financial institution currency transaction reporting requirement.

House Financial Services Subcommittee on Financial Institutions and Consumer Credit hearing entitled "H.R. 5341, Seasoned Customer CTR Exemption Act of 2006"

Questions for the Record

Congresswoman Sue Kelly (NY)

1) We all want to find a system for implementing the BSA that makes more sense. None of us want to impose undue burdens on financial institutions or consumers. None of us want to weaken tools that the federal government uses for fighting crime and terrorism. So it's a real balance that needs to be struck here.

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I'd like for the witnesses to comment on a preference between enacting this legislation now or waiting for a GAO analysis of this issue.

Response

In the fall of 2005, FinCEN offered technical assistance during the drafting of the CTR exemption language contained in H.R. 3505. Although we support the intent of this provision, as well as the effort and expertise behind the assistance provided, it is imperative that we do not undermine law enforcement's efforts to combat money laundering and terrorist financing. As such, we must be very attentive to reasonable concerns raised by law enforcement regarding the potential loss of the investigative value of CTR data presently collected.

It is our understanding that law enforcement has significant concerns with the proposed language of H.R. 5341 that would permit the exemption of certain businesses currently ineligible for a CTR filing exemption (i.e .car dealerships, attorneys, physicians, accountants). The ability of law enforcement to exploit BSA data has been improving at a rapid pace in light of advances in technology and analytic practices. This has led to a concern on their part that we will end up losing data that, once excluded, we will be unable to assess the value of through subsequent data mining. Given these concerns expressed by our law enforcement partners, we believe it would be prudent to permit further study of the issue before making any changes to the current exemption system.

2) Secretary Snow testified yesterday that he is attending a ministerial meeting in Egypt this weekend to encourage Middle Easter Finance Ministers to work harder to crack down on terrorist finance and money laundering. I am currently circulating a letter to the UAE asking them to strengthen and enforce their own cash transfer registrations, and am working with Saudi Arabia to improve their monitoring of cash shipments.

Do you have any concerns about the mixed message other governments may receive if they see the United States lowering its cash monitoring systems while we are asking them to do the opposite?

Response

As you know, FinCEN offers a wide array of technical assistance to foreign governments, providing policy recommendations and guidance, analytical training, technological advice and staff support in order to foster the implementation of anti-money laundering and counter-terrorism financing regimes worldwide. FinCEN works in tandem with other government agencies such as the Departments of State and Justice in assessing nations' efforts to combat money laundering and terrorism finance, and plays a lead role in reporting on countries in the money laundering section of the annual International Narcotics Control Strategy Report.

It is important to strike the right balance between the regulatory policies imposed upon the financial services industry and the amount of useful information supplied to law enforcement officials. This is an ongoing challenge that confronts policy makers at home and abroad. That is why any action taken to reduce existing anti-money laundering filing thresholds, both within the U.S. and abroad, should be made with extreme caution and certainty.

3) Director Werner, I am concerned that the whistleblower protections of Title 12, Section 1831 of the US Code do not apply to CTRs and SARS. According to the law only communications with Federal Banking agencies is protected, and FinCEN is not one of the listed agencies. Do you share my belief that there should be a law against firing an individual for informing FinCEN that a CTR or SAR was not filed?

Response

FinCEN certainly shares your view that an employee of any financial institution should be protected against discharge or discrimination for informing FinCEN of any violation of the Bank Secrecy Act, including a wrongful failure to file a SAR or CTR. It appears that an employee may not be protected under 12 U.S.C. 1831(j), which by its terms applies only to information provided to either a "Federal banking agency" (which term does not include FinCEN) or the Department of Justice of a possible violation of law. However, we note that the protection would apply if the employee notified the institution's primary federal regulator, as well as FinCEN, of such violation.

In addition, the BSA already contains its own whistleblower protections in 31 USC 5328, which covers employee disclosures of information regarding BSA violations provided to FinCEN, as well as to Federal supervisory agencies and the Justice Department. However, subsection (e) of this section appears to make the protection inapplicable with respect to employees of depository institutions. FinCEN is reviewing the interplay of these two statutes to determine whether there is a need for legislation to ensure that an employee of any depository institution making a disclosure to FinCEN of a BSA violation would be protected.

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