

**Financial Crimes Enforcement Network
Cross-Border Funds Transfer Survey**

**FINANCIAL CRIMES ENFORCEMENT NETWORK (FinCEN)
CROSS-BORDER FUNDS TRANSFER SURVEY**

This report is authorized by law [12 U.S.C. §5015]. Your voluntary cooperation in submitting this report is needed to make the results comprehensive, accurate, and timely. FinCEN may not conduct or sponsor, and an organization is not required to respond to, a collection of information unless it displays a currently valid OMB control number. FinCEN regards the individual bank information provided by each respondent as confidential.

Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time to gather and maintain data in the required form, to review the instructions and to complete the information collection. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: X, Financial Crimes Enforcement Network, Vienna, VA X; and to the Office of Management and Budget, Paperwork Reduction Project (1505-0191), Washington, D.C. 20503.

You are encouraged to complete the survey by responding to a telephone survey.

Alternatively, you may complete this form and e-mail, fax, or mail it to FinCEN at X, Y, Z. Please include the name and phone number of a person that we can contact should there be questions about your responses.

All responses are requested by X, 2008. Thank you for your time and cooperation.

Survey

I. Institution information	
Name:	
Contact name:	Phone number: ()
Email:	
Type of institution (please circle the appropriate response):	
<i>Commercial bank Credit Union Savings bank or Thrift Money Transmitter</i>	

II. Potential Cross-border Electronic Funds Transmittal Reporting Requirements

Section 6302 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Act) requires, among other things, that the Secretary of the Treasury study the feasibility of “requiring such financial institutions as the Secretary determines to be appropriate to report to the Financial Crimes Enforcement Network (FinCEN) certain cross-border electronic transmittals of funds, if the Secretary determines that reporting of such transmittals is reasonably necessary to conduct the efforts of the Secretary against money laundering and terrorist financing.” Prior to prescribing any such regulations, however, the Secretary must report to Congress regarding what cross-border information would be reasonably necessary to combat money laundering and terrorist financing; outline the criteria to be used in determining what situations require reporting; outline the form, manner, and frequency of reporting; and identify the technology necessary for FinCEN to keep, analyze, protect, and disseminate the data collected.

To meet these requirements, FinCEN completed a study that assessed the overall feasibility of establishing a limited cross-border funds transmittal reporting requirement for certain financial institutions. FinCEN reported the results of that study to Congress in October 2006. The report concluded that while it may be feasible to establish a limited cross-border funds transmittal reporting requirement on certain financial institutions, it would require additional time and resources to identify and implement a reporting regime. The report also provided general responses regarding FinCEN’s administrative approach and needed data security measures to support any data reporting. The report also concluded that the basic information already obtained and maintained by U.S. financial institutions (banks and non-bank financial institutions) pursuant to the Funds Transfer Rule, including the \$3,000 recordkeeping threshold, provides sufficient basis for meaningful data analysis. In addition, any reporting requirement should apply only to those U.S. institutions that exchange payment instructions directly with foreign institutions. Finally, the \$3,000 recordkeeping threshold should apply only to discrete transactions and not to the aggregated total value of multiple transactions conducted very closely to one another in time.

To better understand the implications for the U.S. financial services industry and the government the report recommended proceeding further on an incremental basis to validate the continued appropriateness of any reporting requirement. To that end, FinCEN is identifying and quantifying the potential benefits and costs of any potential cross-border funds transmittal reporting requirement. To determine the benefit to U.S. anti-money laundering and counter-terrorist financing activities, FinCEN is engaging law enforcement, regulatory, and intelligence communities to identify and quantify the value of the potential data reporting. FinCEN is also evaluating its ability to manage, protect, and analyze any reported data and the associated costs and benefits. For the costs to the financial services industry, economy, and payments system, FinCEN is engaging with the industry and key regulatory and payment system participants, including via this survey.

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Description of reportable cross-border electronic funds transmittals

For the purpose of responding to this survey, please consider the implications of the following potential regulatory requirement for U.S. financial institutions (banks and certain non-bank financial institutions as defined by 31 C.F.R. § 103.11(n)(1) and (3)) to report certain cross-border electronic transmittals of funds. See the attached glossary for any further necessary clarification of terms.

Requirements for banks

- 1) Report any Society for Worldwide Interbank Financial Telecommunications (SWIFT) MT103 message that meets the following requirements:
 - a. Reporting U.S. (domestic) bank (a bank that is physically located or doing business within the United States) either directly sends (“last out”) the payment order to a foreign bank (a bank that is physically located or doing business outside the United States) or directly receives (“first in”) the payment order from a foreign bank.
 - b. Record of the payment order already must be retained under the “Funds Transfer Recordkeeping” rule (31 C.F.R § 103.33(e)).
 - i. Only a single SWIFT MT103 message that meets the requirements of the recordkeeping rule’s \$3,000 threshold would be reported. Multiple SWIFT MT103 messages involving the same customer that are conducted very closely to one another in time and in the aggregate are valued at \$3,000 or more would NOT be reported.
 - ii. Any transaction exempted from the recordkeeping rule in 31 C.F.R. § 103.33(e)(6) would NOT be reportable.
- 2) For each reportable message, only the following information must be reported:
 - a. Name and address of the originator
 - b. Amount of payment order
 - c. Execution date of the payment order
 - d. Name of the beneficiary’s bank
 - e. Name, address, account number, or other beneficiary identifier (if available)
- 3) The domestic (U.S.) bank will batch report this information once every business day to FinCEN using the BSA E-Filing system and using the SWIFT MT103 file format.

Requirements for nonbank financial institutions (money transmitters)

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- 1) Report any transmittal order that meets the following requirements:
 - a. Reporting U.S. (domestic) nonbank financial institution (a money transmitter that is physically located or doing business within the United States) either directly sends (“last out”) the transmittal order to a foreign nonbank financial institution (a money transmitter that is physically located or doing business outside the United States) or directly receives (“first in”) the transmittal order from a foreign nonbank financial institution.
 - b. Record of the transmittal order already must be retained under the “Funds Transfer Recordkeeping” rule (31 C.F.R 103.33(f)).
 - i. Only a single transmittal order that meets the requirements of the recordkeeping rule’s \$3,000 threshold would be reported. Multiple orders involving the same customer that are conducted very closely to one another in time and in the aggregate are valued at \$3,000 or more would NOT be reported.
 - ii. Any transaction exempted from the recordkeeping rule in 31 C.F.R. § 103.33(f)(6) would NOT be reportable.
- 2) For each reportable transmittal order, only the following information must be reported:
 - a. name and address of the transmitter
 - b. amount of the transmittal order
 - c. Execution date of transmittal order
 - d. name of the recipient’s financial institution
 - e. name, address, account number, or other recipient identifier (if available)
- 3) U.S. nonbank financial institutions will batch report this information once every business day to FinCEN using the BSA E-Filing system and formatted as a SWIFT MT103 message.

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III. Cost to the Financial Services Industry of a Cross-border Electronic Funds Transmittal Reporting Requirement

Please respond in full to the following nine (9) questions and all their associated subparts. Please refer to the above description of a proposed cross-border electronic funds transmittal reporting requirement (see Section II) to determine your institution's response.

See the attached glossary for further clarification of the survey terms

1. Based upon the above description of reportable cross-border electronic funds transfers/transmittals (hereafter "transmittals"), would your institution be able to identify the payment or transmittal orders that would need to be reported to FinCEN? (*Please circle your response*) Y / N

(i) Estimate the number of electronic funds transmittals your institution processed in 2006 that could be considered reportable cross-border electronic funds transmittals (as described in Section II): _____

(a) Percentage of all electronic funds transmittals your institution processed in 2006: _____%

(b) Percentage of the total value of all electronic funds transmittals your institution processed in 2006: _____%

(ii) Estimate the total number of electronic funds transmittals your institution processed in 2006 that were valued at less than 3,000 USD that otherwise meet all requirements to be considered reportable cross-border electronic funds transmittals. _____

(a) Percentage of all electronic funds transmittals your institution processed in 2006: _____%

(b) Percentage of the total value of all electronic funds transmittals your institution processed in 2006: _____%

(iii) Estimate the number of electronic funds transmittals your institution expects to process in 2010 that could be considered reportable cross-border electronic funds transmittals (as described in Section II): _____

(a) Percentage of all electronic funds transmittals your institution expects to process in 2010: _____%

(b) Percentage of the total value of all electronic funds transmittals your institution expects to process in 2010: _____%

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2. What would be the total cost (in thousands of U.S. dollars) to your institution to implement the potential reporting requirement described above and report the total number of cross-border electronic funds transmittals expect to be processed in 2010?

(i) \$ _____,000.00 () *estimate*

(ii) Please list the five (5) major sources of cost to your institution that would be incurred to comply with the potential reporting requirement and indicate the percentage of your estimated total cost for which each accounts. Please also indicate (with an "X") whether it would be a one-time implementation or annual recurring cost.

<i>Source of cost</i>	<i>Percentage of total costs</i>	<i>Implementation (one-time) cost</i>	<i>Annual (recurring) cost</i>
	%		
	%		
	%		
	%		
	%		

3. Based upon the following sliding scale, please indicate how the cost of complying with the proposed reporting rule would differ from the cost of responding to government subpoenas or other legal demands for the same information? _____

Less costly **No difference** **More costly**
 [-----1-----2-----3-----4-----5-----]
 Significantly Slightly Slightly Significantly

In responding to this question, please consider all the costs associated with your procedures to comply with a government subpoena or other legal demand for similar data. For example, you should consider the cost of extracting the records or data from your systems, data editing, data validation, data formatting, reporting method, and the time commitment of staff to have follow-up discussions with law enforcement and regulators regarding the data.

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7.a How satisfied is your institution with FinCEN's published industry-wide reports and analysis of suspicious activity report filings? Please use a scale from 1 to 10 where 1 means "not at all satisfied" and 10 means "Extremely satisfied" _____

7b. To what extent do FinCEN's published industry-wide reports and analysis of suspicious activity report filings fall short of or exceed your expectations? Please use a scale from 1 to 10 where 1 means "Fall short of" and 10 means "Exceeds your expectations."

7c. How do FinCEN's published industry-wide reports and analysis of suspicious activity report filing compare to the ideal? Please use a scale from 1 to 10 where 1 means "Not very close to the ideal" and 10 means "Very close to the ideal."

(i) If a potential cross-border funds transmittal reporting requirement was implemented, what would be the value (if any) to your institution of receiving aggregated, industry-wide reports and analysis from FinCEN on cross-border funds transmittal trends, including reports similar to those currently provided for suspicious activity reports?

8. How satisfied is your institution with the level of outreach and communication FinCEN pursued regarding the potential cross-border electronic funds transmittal reporting rule raised in this survey? _____

(i) If a potential cross-border funds transmittal reporting regulation was implemented, what types of outreach or guidance from FinCEN regarding its requirements would be most helpful to the financial services industry?

9. How satisfied is your institution with this survey and its ability to provide sufficient information for FinCEN to assess effectively the potential cost to the financial services industry of the proposed reporting requirement? _____

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(i) Would your institution be willing to discuss the questions and issues raised in this survey in more detail with FinCEN representatives? Y / N

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Instructions

As a survey participant, your responses may be used to represent other institutions like yours that were not selected for the study. To achieve the most reliable results, it is important that you respond completely and accurately.

The information collected from the survey will be released on an aggregated basis only. Individual responses will be kept confidential.

Survey period

The survey will be conducted from December X, 2007 to X, 2008. Please take the time to review this survey and prepare appropriate responses over the next two weeks. Beginning December X, 2007, a survey taker will contact your institution by telephone to gather your responses. You may also respond in writing via fax, e-mail, or U.S. postal mail.

Responding to survey questions

Please report only for your institution and not for any affiliated institutions. Please leave no item blank.

Reporting estimated data

Your institution may not routinely maintain data statistics in the same categories or in the same detail requested on the survey form. If you are unable to give a precise response, we encourage you to provide an estimate

Questions about the survey

Please submit your comments or questions by e-mail to X.

Completed survey

Institutions are encouraged to complete the survey by telephone or may complete the attached paper version of the survey and fax it to XXX.XXX-XXXX, e-mail it to Y, or send it by U.S. Mail to xxx. Please include the name and phone number of a person whom we can contact should there be questions about your responses. All responses are requested by X, 2008

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Glossary

The terms used in the survey generally are defined in 31 C.F.R. § 103.33 and 103.11. The following definitions are provided to assist your institution in better responding to the survey. For a more complete definition of any of the terms used in the survey, please refer to the regulation.

Bank

Each agent, agency, branch or office within the United States or any person doing business as a bank as defined by 31 C.F.R. § 103.11(c).

Beneficiary

The person to be paid by the beneficiary's bank.

Beneficiary's bank

The bank or foreign bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to a deposit account.

Cross-border transmittal of funds or funds transmittal

A transmittal of funds directly exchanged between a domestic and foreign financial institution. For the purposes of this survey and any potential reporting requirement, only cross-border electronic transmittals of funds are considered.

Deposit account

Transaction accounts, savings accounts, and other time deposits as defined by 31 C.F.R. § 103.11(j).

Domestic

Located or doing business within the United States. See 31 C.F.R. § 103.11(k).

Financial institution (institution)

Each agent, agency, branch, or office within the United States of any person doing business, whether or not on a regular basis or as an organized business concern, as a bank (except bank credit card systems) or a money transmitter. See 31 C.F.R. § 103.11(n).

Foreign

Located or doing business outside of the United States or not domestic.

Foreign bank

A bank organized under foreign law, or an agency, branch, or office located outside the United States of a bank. The term does not include an agent, agency, branch or office within the United States of a bank organized under foreign law. See 31 C.F.R. § 103.11(o).

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Foreign financial institution (foreign institution)

A financial institution organized under foreign law, or an agency, branch, or office located outside the United States. The term does not include an agent, agency, branch or office within the United States of a financial institution organized under foreign law.

Funds transfer

The series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. Funds transfers governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. 95-630, 92 Stat. 3728, 15 U.S.C. 1693, *et seq.*), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition. See 31 C.F.R § 103.11(q). For the purposes of this survey and any potential reporting requirement, only electronic funds transfers are considered.

Money transmitter

Any person, whether or not licensed or required to be licensed, who engages as a business in accepting currency or funds, or the value of the currency or funds, by any means through a financial agency or institution, a Federal Reserve Bank or other facility of one or more Federal Reserve Banks, the Board of Governors of the Federal Reserve System, or both, or an electronic funds transfer network; or, any other person engaged as a business in the transfer of funds. See 31 C.F.R. § 103.11(uu)(5).

Originator

The sender of the first payment order in a funds transfer.

Originator's bank

The receiving bank to which the payment order of the originator is issued if the originator is not a bank or foreign bank.

Payment order

An instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause to pay, a fixed or determinable amount of money to a beneficiary as defined by 31 C.F.R § 103.11(y).

Person

An individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated institution or group, an Indian Tribe (as that term is defined in the Indian Gaming Regulatory Act codified at 25 U.S.C. 2701-2721 and 18 U.S.C. 1166-68), and all entities cognizable as legal personalities.

Receiving or recipient's bank

The bank or foreign bank to which the sender's instruction is addressed.

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Receiving or recipient's financial institution

The financial institution or foreign financial institution to which the sender's instruction is addressed. The term receiving financial institution includes a receiving bank.

Recipient or receiver

The person to be paid by the recipient's financial institution. The term recipient includes a beneficiary, except where the recipient's financial institution is a financial institution other than a bank.

Sender

The person giving the instruction to the receiving financial institution.

Transaction

A deposit, withdrawal, transfer between accounts, or payment involving financial institutions.

Transmittal of funds or funds transmittal

The series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order, or a series of transactions beginning with the transmitter's transmittal order, made for the purpose of making payment to the recipient of the order. The term "transmittal of funds" includes a funds transfer. Funds transfers governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. 95-630, 92 Stat. 3728, 15 U.S.C. 1693, *et seq.*), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition. See 31 C.F.R § 103.11(jj). For the purposes of this survey and any potential reporting requirement, only electronic funds transmittals are considered.

Transmittal order

A payment order or the instruction of a sender to a receiving financial institution, transmitted orally, electronically, or in writing, to pay, or cause another financial institution or foreign financial institution to pay, a fixed or determinable amount of money to a recipient as defined by 31 C.F.R § 103.11(kk).

Transmitter (or transmittor)

The sender of the first transmittal order in a transmittal of funds. The term transmitter includes an originator, except where the transmitter's financial institution is a financial institution or foreign financial institution other than a bank or foreign bank.

Transmitter's financial institution

The receiving financial institution to which the transmittal order of the transmitter is issued if the transmitter is not a financial institution or foreign financial institution or agency, or the transmitter if the transmitter is a financial institution or foreign financial institution or agency. The term transmitter's financial institution includes an originator's bank, except where the originator is a transmitter's financial institution other than a bank or foreign bank.