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**Research Note**

# The Proposed FinCEN Reporting Regulations: Privacy, Security and the Cross-border Electronic Transmittals of Funds

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Applicable Sectors: Finance and Banking

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Abstract: On the 27th of September 2010, the US Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) announced a set of new rules regarding the monitoring and reporting of cross-border electronic transmittals of funds (CBETF). If approved, banks would be required to file annual reports to FinCEN of taxpayer identification numbers of all citizens who send or receive any CBETFs. While these new regulations could potentially aid law enforcement agencies and regulatory officials, they also raise some serious concerns about the invasion of privacy for both individuals and organizations.

## Introduction

Recently, on the 27th of September 2010, the Financial Crimes Enforcement Network (FinCEN) released a new set of rules that would change the way banks and other financial institutions record and report any money transfers in and out across the U.S. border. Referred to as cross-border electronic transmittals of funds (CBETF), these new requirements, if passed by the US Department of Treasury, would compel banks to report every international transaction, regardless of monetary amount or suspicious behavior. Additionally, each bank would be required to give an annual report including the taxpayer identification number of everyone who had either sent or received a CBETF.

## Background

In the press release given by FinCEN, the Intelligence Reform and Terrorism Prevention Act is cited as the source of the requirements that the new proposal would fulfill. (Hudak).

The basis of these laws, though, goes back to 1995. At that time, FinCEN issued a policy that required "banks and nonbank financial institutions to collect and retain information on certain funds transfers and transmittals of funds" and to also "include certain information on funds transfers and transmittals of funds to other banks or nonbank financial institutions". (US Department of Treasury) These rules were created in order to better aid law enforcement agencies and those required to regulate financial systems to "detect, investigate, and prosecute money laundering and other financial crimes by preserving an information trail about persons sending and receiving funds through the funds transfer system" (US Department of Treasury). The newest set of regulations builds on this precedence, and integrates the results from the 9/11 Commission report.

## New Proposal

The new rules proposed by FinCEN, if approved by the Department of Treasury, would set new reporting standards for various financial institutions that deal with international monetary transactions. Banks would be required to report to FinCEN every CBETF processed through their institution, whether received or sent and regardless of amount. Money services businesses (MSBs) would also be required to report any CBETFs that they process equal to or greater than $1,000 USD. As mentioned previously, banks would also be required to report the taxpayer identification numbers (Sanford).

## Justification

The new laws grew from a stipulation in the IRTPA for FinCEN to analyze the feasibility of these kinds of reporting requirements, “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." Conducting that feasibility analysis, FinCEN reports that these new laws would be possible, and that they could help law enforcement officers better identify and stop transnational criminal activity, whether organized crime, drug cartels, terrorism, or tax-evasion (Hudak). FinCEN’s press release claims that the new laws would be possible, given that “current regulations already require that these financial institutions maintain and make available, but not affirmatively report, essentially the same CBETF information” (Hudak). Allowing a centralized database to be created of these kinds of transaction would enable swifter and more accurate investigations into potential security threats.

The Feasibility Report conducted by FinCEN regarding the implementation of these new policies concluded that the data they want to collect is “reasonably necessary to support the Secretary's efforts to combat money laundering and terrorist financing. Specifically, the inability to conduct proactive analysis on the information currently recorded by banks hinders law enforcement's ability to identify significant relationships to active targets”. (US Department of Treasury)

One argument that is made by the FinCEN report as well is that at the time, the existing reporting requirements for electronic funds transfers “were not sufficient to alert law enforcement agencies to the more than $130,000 sent to the 19 9/11 hijackers via electronic funds transfers” (Sanford). Of course, tracking financial transaction is only one of the many sources of complex data law enforcement agencies must sift through.

## Privacy versus Security

Benjamin Franklin has been attributed with variations of the quote "Those who desire to give up freedom in order to gain security will not have, nor do they deserve, either one." There is sometimes a very fine line between security and privacy – it should be carefully considered what privacy in financial transactions is given up to potentially identify security threats. Perhaps the most important question that arises from these regulations is whether or not the invasion of privacy is worth any additional security that is gained from these rules. The purpose of banking regulations is truly to create and sustain a safe and secure system for financial transactions. Is it the role of the banks and MSBs to become an extension of the law enforcement agency, at the expense of their customers’ privacy? Or are they responsible for providing the information in order to protect the “bigger” picture of their customers’ security?

## Conclusion

If these new rules do pass, individuals, financial institutions, and non-financial organizations will all have to integrate awareness about where their financial information is being shared into their everyday practices.

Other alternatives to reporting all CBETFs and taxpayer identification numbers should also be considered. One of the arguments by FinCEN itself is the importance of having data available and centrally located – but there is much more than financial data that needs to be centralized and made available. One of the biggest difficulties our law enforcement communities face is the segregation and decentralization of various bits of data that could make up a more complete picture of the security landscape.

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