

## THE BURDEN OF CURRENCY TRANSACTION REPORTING ON DEPOSIT INSTITUTIONS AND THE NEED FOR REGULATORY RELIEF

### INTRODUCTION

The cost of complying with the filing requirements of the Bank Secrecy Act (“BSA”) is often cited by financial institutions as their “number one regulatory expense.”<sup>1</sup> The required submission of Currency Transaction Reports (“CTRs”) and Suspicious Activity Reports (“SARs”) to the Financial Crimes Enforcement Network (“FinCEN”) was originally intended to provide information with “a high degree of usefulness” to the investigation of money laundering.<sup>2</sup>

However, FinCEN and the Government Accountability Office (“GAO”) have acknowledged that, under the current BSA regulations, an overwhelming percentage of the filings submitted by financial institutions relate to ordinary business transactions, which “are of no value to law enforcement and regulatory agencies.”<sup>3</sup> Government officials have estimated that “between 30 and 40 percent of the CTRs filed” annually relate to innocuous daily transactions by regular business customers with whom the banks have long-standing relationships.<sup>4</sup> Industry reports indicate that as many as seventy-five percent of the nearly sixteen million CTRs filed by financial institutions in 2006 related to these innocent business transactions.<sup>5</sup> The filings on the transactions of known

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1. *Financial Services Regulatory Relief Act of 2005: Hearing on H.R. 3505 Before the Subcomm. on Financial Institutions and Consumer Credit of the H. Comm. on Financial Servs.*, 109th Cong. 102 (2005) [hereinafter *Financial Services Hearing*] (statement of William J. Fox, Director, Financial Crimes Enforcement Network).

2. 12 U.S.C. § 1829b(a)(1) (2000).

3. *Money Laundering: The Volume of Currency Transaction Reports Filed Can and Should Be Reduced: Hearing on S. 1664 Before the S. Comm. on Banking, Housing and Urban Affairs*, 97th Cong. 1 (1994) [hereinafter *Money Laundering Hearing*] (statement of Henry R. Wray, Director, Administration of Justice Issues), available at <http://archive.gao.gov/t2pbat4/151052.pdf>.

4. *Id.* at 7.

5. *Suspicious Activity and Currency Transaction Reports: Balancing Law Enforcement Utility and Regulatory Requirements: Hearing Before the Subcomm. on Oversight and Investigations of the H. Comm. on Financial Servs.*, 110th Cong. 84 (2007) [hereinafter *Suspicious Activity Hearing*] (statement of Megan Davis Hodge, American Bankers Association) (“Based on a small sample

business customers create an enormous cost burden on the financial services industry yet contain no potential leads relating to criminal activity. Therefore, while CTRs may provide useful information in some instances, the filing requirements should be streamlined to eliminate the burden on financial institutions of filing valueless reports.

This Comment outlines the current BSA filing requirements and exemptions, illustrates the failures of the current exemption process for business customers, outlines the solutions proposed by financial industry associations and government agencies, and describes proposed legislation addressing the burden of the current CTR filing requirement.

#### I. THE CURRENT BANK SECRECY ACT FILING REQUIREMENTS AND EXEMPTIONS

The BSA, through its central provisions requiring that financial institutions file CTRs and SARs, is a tool of the United States government to combat money laundering and other criminal financing through United States accounts.<sup>6</sup> Money laundering, in general, “is the criminal practice of filtering ill-gotten gains or ‘dirty’ money through a maze or series of transactions, so the funds are ‘cleaned’ to look like proceeds from legal activities.”<sup>7</sup> The BSA filing requirements are designed to generate a paper trail of all transactions described within the Act, between institutions and their customers, to enable law enforcement to monitor and investigate potential illegal activity.

The Office of the Comptroller of the Currency (“OCC”) monitors compliance with the CTR and SAR filing requirements of the BSA. The OCC employs fraud specialists who attempt to analyze the filings. FinCEN, a branch of the United States Department of the Treasury, serves as an administrator for the filed BSA reports. In order to manage the annual BSA filings, FinCEN maintains a database of all filings, searchable by OCC specialists.<sup>8</sup>

Although the regulations promulgated by the Department of the Treasury apply the BSA filing requirements to mutual funds, insurance companies, commodities brokers, and even casinos, this

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conducted by ABA, three-quarters of bank filings were for business customers who had been with the bank for over a year.”).

6. See 31 U.S.C. § 5313 (2000 & Supp. 2006); see also 31 C.F.R. §§ 103.18, 103.30 (2007).

7. OFFICE OF THE COMPTROLLER OF THE CURRENCY, COMPTROLLER’S HANDBOOK, BANK SECRECY ACT/ANTI-MONEY LAUNDERING 2 (2000) [hereinafter COMPTROLLER’S HANDBOOK], available at <http://www.occ.treas.gov/handbook/bsa.pdf>.

8. *Id.* at 3.

Comment will focus primarily on the impact and utility of the CTR filing requirements as applied to traditional deposit institutions.

A. *The Currency Transaction Report*

The BSA requires each financial institution to file a CTR “of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution which involves a transaction in currency of more than \$10,000.”<sup>9</sup> Multiple transactions must be aggregated and treated as a single transaction for the purposes of the \$10,000 threshold if the financial institution has knowledge that the transactions are conducted by or on behalf of the same person.<sup>10</sup>

The CTR filing requirement is, by far, the most significant requirement in the BSA. For example, over sixteen million CTRs were submitted to FinCEN in the year 2006, which accounted for approximately 6.6 million financial institution staff hours.<sup>11</sup>

B. *The Current Exemptions to the CTR Filing Requirement*

Banks are entitled to exempt transactions made by certain customers, including other financial institutions, government agencies, and, most notably, certain business customers, from the CTR filing requirements.<sup>12</sup> A bank may choose to exempt any business customer who has maintained a transaction account at the bank for longer than twelve months and who frequently engages in transactions which exceed \$10,000.<sup>13</sup>

However, the process of exempting a business customer under the current regulations can be quite burdensome. First, a bank must make an initial designation of the customer as an “exempt person” under the BSA by filing a form with the Department of the Treasury within thirty days of the customer becoming eligible for

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9. 31 C.F.R. § 103.22(b)(1). For a detailed illustration of the process commonly employed by bank employees in submitting CTRs, see U.S. GEN. ACCOUNTABILITY OFFICE, BANK SECRECY ACT: INCREASED USE OF EXEMPTION PROVISIONS COULD REDUCE CURRENCY TRANSACTION REPORTING WHILE MAINTAINING USEFULNESS TO LAW ENFORCEMENT EFFORTS 32 fig.4 (2008), available at <http://www.gao.gov/new.items/d08355.pdf>.

10. 31 C.F.R. § 103.22(c)(2).

11. *Suspicious Activity Hearing*, *supra* note 5, at 84 (statement of Megan Davis Hodge, American Bankers Association); H.R. 5341, *The Seasoned Customer CTR Exemption Act of 2006: Hearing on H.R. 5341 Before the Subcomm. on Financial Institutions and Consumer Credit of the H. Comm. on Financial Servs.*, 109th Cong. 91 (2006) (statement of Bradley E. Rock, Vice Chairman, American Bankers Association). For data relating specifically to the costs imposed by the CTR filing requirement, see Appendix, Figure 1.

12. 31 C.F.R. § 103.22(d).

13. *Id.* § 103.22(d)(2)(vi).

the exemption.<sup>14</sup> Then, each bank that has filed an initial designation about a customer must analyze the customer's transactions each year, monitor for suspicious activity, and file an updated notice of exemption to the Department of the Treasury every two years in order to maintain the customer's exempt status.<sup>15</sup> Practically, this requires a bank to devote staff hours to analyze every transaction of even their most frequent business customers each year in order to maintain the exemption.

Because of the burden of filing the initial designation, analyzing the exempt customer's transactions each year, and refile at least once every two years, many banks are choosing to file the CTR forms for these exemptible business customers. They reason that the CTR filing requirements represent a more cost-effective method of compliance than going forward with the exemption requirements.<sup>16</sup> As a result of this Hobson's choice, as many as three-quarters of the overall CTR filings are related to ordinary business transactions, which are of "no value" to law enforcement.<sup>17</sup>

### C. *The Suspicious Activity Report*

Although the SAR reporting requirement is not the focus of this Comment, these reports provide a meaningful context against which to gauge the cost and utility of the CTR requirement. The BSA requires that banks submit SARs for any transaction conducted through it that involves or aggregates to at least \$5000 in funds if the bank or its employees know, suspect, or have reason to suspect that the transaction involves funds derived from illegal activities or that the transaction itself was in violation of criminal law.<sup>18</sup> Furthermore, a SAR is required if a bank employee believes that the transaction has no business or apparent lawful purpose, or is not the sort of transaction in which the particular customer would normally be expected to engage, and the bank knows of no reasonable

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14. *Id.* § 103.22(d)(3)(i).

15. *Id.* § 103.22(d)(5)(i).

16. U.S. DEPT OF THE TREASURY, FINANCIAL CRIMES ENFORCEMENT NETWORK, REPORT TO THE CONGRESS, USE OF CURRENCY TRANSACTION REPORTS 8–9 (2002) [hereinafter TREASURY REPORT]; *Consideration of Regulatory Relief Proposals: Hearing Before the S. Comm. on Banking, Housing and Urban Affairs*, 109th Cong. 10–11 (2006) [hereinafter *Regulatory Relief Proposals Hearing*] (statement of Bradley E. Rock, Vice Chairman, American Bankers Association), available at <http://www.aba.com/NR/rdonlyres/222CE044-577A-11D5-AB84-00508B95258D/44031/BRockTestimony03012006.pdf>.

17. *Money Laundering Hearing*, *supra* note 3, at 7 (statement of Henry R. Wray, Director, Administration of Justice Issues); *Suspicious Activity Hearing*, *supra* note 5, at 9 (statement of Megan Davis Hodge, American Bankers Association).

18. 12 C.F.R. § 21.11(c) (2007); 31 C.F.R. § 103.18(a) (2007).

explanation for the transaction after examining the available facts.<sup>19</sup>

The focus of the SAR is to make law enforcement aware of the bank's suspicion regarding a particular transaction. This focus should be contrasted with the focus of the CTR, which is required for each and every transaction above \$10,000, whether suspicious circumstances are present or not. For example, a common SAR filing involves a report of a bank customer apparently making several separate transactions, close in time, possibly in a deliberate attempt to avoid the CTR threshold.

The SAR filing requirement places much reliance on a bank employee's discretion as to whether a transaction contains suspicious circumstances. For this reason, banks often report that a significant amount of training is required to enable their employees to effectively detect suspicious activity. To counter this problem, the OCC has issued a handbook containing an illustrative list of the most popular instances that trigger the filing of a SAR.<sup>20</sup>

#### *D. General Requirements*

The BSA includes the general provision that each deposit institution "shall develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with the recordkeeping and reporting requirements" of the BSA and its implementing regulations.<sup>21</sup> Minimum requirements for a bank's internal compliance program include: a written policy approved by the bank's directors, a method for independently testing the procedures, a system of internal controls, and a training program for appropriate staff.<sup>22</sup>

Although the time spent by deposit institutions creating an internal compliance program may not amount to a large burden, the resources spent training the affected staff may be very significant. Each bank employee who accepts deposits or participates in transactions with customers must be trained to carry out the deposit institution's internal compliance program.<sup>23</sup>

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19. 31 C.F.R. § 103.18(a).

20. COMPTROLLER'S HANDBOOK, *supra* note 7, at 11–18. For data relating specifically to the costs imposed by the SAR filing requirement, see Appendix, Figure 2.

21. 12 C.F.R. § 21.21(b)(1) (2007).

22. *Id.* § 21.21(b)–(c).

23. *Id.*; COMPTROLLER'S HANDBOOK, *supra* note 7, at 5.

## II. THE NEED FOR REGULATORY RELIEF

A. *The Cost of Compliance with BSA Filing Requirements*

In 2006, financial institutions submitted 15,994,484 CTRs to the FinCEN database.<sup>24</sup> Since the CTR filing requirement was put into place, the number of filings submitted annually by financial institutions has continued to increase. The nearly sixteen million CTRs filed in 2006 represent an increase of more than 1.7 million from the total number of filings just one year prior.<sup>25</sup> This alarming increase in the number of CTRs filed has occurred despite recommendations from the GAO that the regulations be amended to decrease the CTR filing burden by thirty percent.<sup>26</sup> For detailed information regarding the number of CTRs filed annually, see Appendix, Figure 1.

Banks often cite the cost of submitting BSA reports as their “number one regulatory expense and burden.”<sup>27</sup> One industry study estimates that BSA compliance in general costs financial institutions “approximately \$7 billion a year.”<sup>28</sup> The study also estimates that this enormous compliance cost is passed along to consumers of bank services at a public cost of nearly one billion dollars.<sup>29</sup> Because banks submit nearly thirty times more CTRs for transactions over \$10,000 than SARs, it is clear that the CTR filing requirement is the primary regulatory expense and burden for financial institutions.<sup>30</sup>

FinCEN estimates that each CTR requires twenty-five minutes of staff time to fill out and submit the form to the agency database.<sup>31</sup>

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24. U.S. DEP'T OF THE TREASURY, FINANCIAL CRIMES ENFORCEMENT NETWORK, ANNUAL REPORT FOR FISCAL YEAR 2006, at 11 (2006) [hereinafter ANNUAL REPORT 2006], available at <http://www.fincen.gov/AnnualReportFY2006.pdf>; see also app. at fig.1.

25. Compare ANNUAL REPORT 2006, *supra* note 24, at 11, with U.S. DEP'T OF THE TREASURY, FINANCIAL CRIMES ENFORCEMENT NETWORK, ANNUAL REPORT FOR FISCAL YEAR 2005, at 11 (2005) [hereinafter ANNUAL REPORT 2005], available at <http://www.fincen.gov/fincenannualreport2005.pdf>.

26. *Money Laundering Hearing*, *supra* note 3, at 7–8, 10 (statement of Henry R. Wray, Director, Administration of Justice Issues).

27. *Financial Services Hearing*, *supra* note 1, at 14 (statement of William Fox, Director, Financial Crimes Enforcement Network).

28. *Suspicious Activity Hearing*, *supra* note 5, at 53 (statement of Steve Bartlett, Financial Services Roundtable).

29. *Id.*

30. See ANNUAL REPORT 2006, *supra* note 24, at 11; U.S. DEP'T OF THE TREASURY, FINANCIAL CRIMES ENFORCEMENT NETWORK, THE SAR ACTIVITY REVIEW—BY THE NUMBERS, ISSUE 8 (June 2007) [hereinafter SAR REVIEW], available at [http://www.fincen.gov/sars/btn\\_8/sar\\_btn\\_Issue8.pdf](http://www.fincen.gov/sars/btn_8/sar_btn_Issue8.pdf).

31. *Regulatory Relief Proposals Hearing*, *supra* note 16, at 7 (statement of

Financial industry associations regard the twenty-five minute estimate as conservative.<sup>32</sup> Even under FinCEN's conservative estimate, financial institutions would have had to devote approximately 6.5 million staff hours solely to submitting CTRs in 2006. Financial industry associations report that as many as seventy-five percent of their CTR filings involve the routine transactions of their established business customers; as a result, in 2006 approximately 4.8 million staff hours were spent filing useless CTRs, which FinCEN has admitted "are of little relevance in the investigation of financial crime."<sup>33</sup> This finding represents a remarkable inefficiency and an enormous compliance burden for deposit institutions, without generating any useful information in return.

The data provided above only represents the cost to the financial services industry of actually filling out and submitting CTR reports. There are also significant costs associated with training employees to submit the CTRs and purchasing technology that flags transactions requiring CTR filings each day. For instance, the two million form increase in the number of CTR forms filed over the past few years has required the addition of 400 new employees throughout the financial services industry, hired solely to keep pace with the increasing burden of BSA compliance.<sup>34</sup> Additionally, the account monitoring software necessary to ensure BSA compliance often costs between \$30,000 and \$50,000 initially, plus a \$5000 per month (\$60,000 per year) maintenance fee for even the smallest community banks.<sup>35</sup>

Without a change in the current BSA regulations, the recent upward trend in the number of CTRs submitted annually provides strong evidence that CTR filings will only increase in the future and impose greater administrative costs on both financial institutions and government agencies. Spending on anti-money-laundering systems for banks has increased an average of sixty-one percent

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Bradley E. Rock, Vice Chairman, American Bankers Association); *Suspicious Activity Hearing*, *supra* note 5, at 84 (statement of Megan Davis Hodge, American Bankers Association).

32. *Suspicious Activity Hearing*, *supra* note 5, at 84 (statement of Megan Davis Hodge, American Bankers Association).

33. *Financial Services Hearing*, *supra* note 1, at 102 (statement of William Fox, Director, Financial Crimes Enforcement Network).

34. *Suspicious Activity Hearing*, *supra* note 5, at 84 (statement of Megan Davis Hodge, American Bankers Association).

35. Letter from Charlotte M. Bahin, Senior Vice President of Regulatory Affairs, Am.'s Cmty. Bankers, to Jennifer Johnson, Sec'y, Bd. of Governors of the Fed. Reserve Sys., & Robert E. Feldman, Executive Sec'y, FDIC 5 (May 6, 2005) [hereinafter ACB Letter], available at <http://www.egrpra.gov/05c97egrpra.pdf>.

over the past three years and is expected to increase an additional forty percent over the next three years.<sup>36</sup>

Recently, FinCEN has emphasized the increased number of financial institutions that are e-filing reports. In 2006, nearly forty-five percent of all CTR reports were e-filed; an increase from twenty-four percent in 2005, eleven percent in 2004, and just three percent in 2003, the first year that e-filing was available.<sup>37</sup> FinCEN claims that e-filing provides a streamlined filing process, reducing costs by decreasing the time required to complete the filing.<sup>38</sup> The e-filing process certainly reduces processing time by eliminating the need to send forms by traditional mail, thus making the information available to law enforcement much sooner. Also, the data clearly indicate that e-filing reduces the cost to FinCEN of processing the vast number of BSA filings.<sup>39</sup>

However, no data is available from FinCEN, or any other source, that predict just how much time bank staff save by e-filing CTR reports. Any staff time saved by the e-filing system will disproportionately benefit the several largest national banks, which are seemingly the only banks to embrace e-filing on a broad scale.<sup>40</sup> For smaller community banks, their relatively small number of reports may make continuing with paper filings more cost-effective than retraining employees and implementing the necessary technology to e-file.<sup>41</sup>

More centrally, the ability of deposit institutions to e-file their CTR reports does not eliminate the underlying problem of banks continuing to submit CTR reports for ordinary business transactions, which have no value to law enforcement.<sup>42</sup> Streamlining the process of receiving these reports also does nothing to address the growing database of BSA filings, filled with reports detailing innocuous transactions.

### B. *The Failure of the Current Exemption Requirements*

The current method of exempting qualified business customers

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36. Alan E. Sorcher, *Lost in Implementation: Financial Institutions Face Challenges Complying with Anti-Money Laundering Laws*, 18 *TRANSNAT'L LAW.* 395, 396 (2005).

37. ANNUAL REPORT 2006, *supra* note 24, at 12; ANNUAL REPORT 2005, *supra* note 25, at 10–11.

38. ANNUAL REPORT 2006, *supra* note 24, at 2.

39. *Id.* at 35, 49.

40. *Id.* at 35, 42.

41. For a discussion of how the technology requirements of the BSA have negatively impacted small community banks, see ACB Letter, *supra* note 35, at 4.

42. *Money Laundering Hearing*, *supra* note 3, at 1 (statement of Henry R. Wray, Director, Administration of Justice Issues).



from the CTR filing requirements, outlined above, was adopted in the Code of Federal Regulations in 1994 in response to a mandate from the GAO and the OCC that CTR filings be reduced by thirty percent.<sup>43</sup> The goal of eliminating thirty percent of the CTRs filed was set after a GAO report to Congress revealed that “between 30 and 40 percent of the CTRs filed are reports of routine deposits by large, well-established retail businesses.”<sup>44</sup> The GAO stated that “[t]hese 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.”<sup>45</sup>

Since the current exemption process has been in effect, annual CTR filings have not decreased, but have actually increased by more than 4.7 million filings,<sup>46</sup> or forty-two percent. Therefore, it is clear that the current exemption process has fundamentally failed to reduce the CTR filing burden on the financial services industry.

The current exemption process has fundamentally failed. All but the largest banks have found that it remains more cost-effective to continue to file CTRs for the transactions of exemptible customers than to perform the necessary monitoring and biennial review filings required under the current regulations to maintain a customer’s exempt status with the OCC.<sup>47</sup> In 2002, FinCEN performed a study which confirmed that the current exemption regulations were not effective and attempted to explain why banks continued to file CTRs for exemptible customers. The study showed that *no bank* was exempting “more than 12% of exemptible customers” and that smaller banks appeared to be bypassing the exemption process entirely.<sup>48</sup> Additionally, the number of exempted transactions was equal to only 0.002% of the total CTR filings in 1998 and 0.01% of the total CTR filings in 2002.<sup>49</sup>

FinCEN’s findings mirror the comments of industry organizations who, when advocating for a revamped exemption process, state that it is more cost-effective to file a CTR for each and every transaction than to fill out the paperwork required to exempt a customer.<sup>50</sup> In a recent GAO survey targeted at determining why

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43. 31 C.F.R. § 103.22(d) (2007).

44. *Money Laundering Hearing*, *supra* note 3 (statement of Henry R. Wray, Director, Administration of Justice Issues).

45. *Id.*

46. *Compare* ANNUAL REPORT 2006, *supra* note 24, at 12, *with* TREASURY REPORT, *supra* note 16, at 17.

47. TREASURY REPORT, *supra* note 16, at 8–9; *Regulatory Relief Proposals Hearing*, *supra* note 16, at 10 (statement of Bradley E. Rock, Vice Chairman, American Bankers Association).

48. TREASURY REPORT, *supra* note 16, at 9.

49. *Id.* at 8.

50. *Regulatory Relief Proposals Hearing*, *supra* note 16, at 3 (statement of

banks chose not to utilize the current exemption process, bank professionals indicated that the time consuming nature of annual review and biennial recertification for exempted customers were of “Very Great” or “Great” importance when deciding not to exempt an eligible customer.<sup>51</sup>

The current exemption regulations appear to have correctly focused on allowing financial institutions to eliminate CTRs filed for the regular transactions of the known business customers. When arguing in support of his sponsored bill, House Bill 323, which proposed to streamline the qualified customer exemption process, Rep. Spencer Bachus (R-AL) of the Sixth District of Alabama summarized the issue by stating that FinCEN, the GAO, and the IRS “have all recommended that the number of CTRs be reduced by 30 to 40 percent by simply exempting large well-established customers.”<sup>52</sup> However, the failure of current exemption regulations results from the transactional cost of exempting these qualified business customers. The GAO and FinCEN estimate that between thirty and forty percent of the CTRs filed are for the routine transactions of business customers, and financial industry associations estimate that the figure is seventy-five percent. Therefore, the key to regulatory relief in this area is adopting an exemption process that makes it easy for financial institutions to exempt those transactions which have no value to law enforcement.

### *C. Argument for Raising the CTR Filing Threshold to Account for Inflation*

The \$10,000 threshold for the CTR filing requirement was established nearly forty years ago, in 1970, and has not been increased to account for inflation during that forty-year period.<sup>53</sup> Many financial industry associations have proposed an increase in the threshold, to either \$20,000 or \$30,000, in an effort to better replicate the value of those transactions which Congress originally intended to generate CTRs in 1970.<sup>54</sup> To illustrate the original intention of Congress, the relative value of \$10,000 in 1970 would

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Bradley E. Rock, Vice Chairman, American Bankers Association).

51. U.S. GEN. ACCOUNTABILITY OFFICE, *supra* note 9, at 93.

52. 153 CONG. REC. H13,851 (daily ed. Jan. 23, 2007) (statement of Rep. Bachus).

53. *Suspicious Activity Hearing*, *supra* note 5, at 7 (statement of Scott K. McClain, Deputy General Counsel, Financial Service Centers of America).

54. *Regulatory Relief Proposals Hearing*, *supra* note 16, at 195 (statement of F. Weller Meyer, Chairman, America’s Community Bankers); *see also Suspicious Activity Hearing*, *supra* note 5, at 27 (statement of Scott K. McClain, Deputy General Counsel, Financial Service Centers of America).

correspond to a transaction of over \$53,000 today.<sup>55</sup> Conversely, a transaction of \$10,000 today would correspond to a transaction of less than \$2000 in 1970.<sup>56</sup> As the CTR filing threshold has not been updated to reflect the financial reality of inflation, the filing requirement has become watered down to include transactions of much lower relative value than those originally captured by the \$10,000 threshold in 1970.

Data from FinCEN and financial industry associations reveal that increasing the CTR filing threshold would immediately create a significant reduction in the BSA compliance burden for financial institutions. In 2004, FinCEN reported to the Bank Secrecy Act Advisory Group, a committee of industry actors who serve as overseers of the BSA regulations, that seventy-four percent of all CTR filings were the result of transactions under \$30,000 and fifty-seven percent of all CTR filings were the result of transactions under \$20,000.<sup>57</sup> An increase in the filing threshold would have an even greater impact on smaller community banks. One industry survey indicates that as much as eighty percent of the CTRs filed by community banks are the result of transactions of less than \$20,000.<sup>58</sup> Therefore, increasing the CTR filing threshold to \$30,000 would immediately eliminate seventy-four percent of the nearly sixteen million CTRs filed by financial institutions in 2006. This proposed remedy becomes even more convincing considering that Congress's original intent to require filings for transactions of more than \$10,000 in 1970 would translate into a relative value threshold of more than \$53,000 today.

While this proposed method of regulatory relief would instantly bring about a dramatic reduction in the cost of BSA compliance, there are law enforcement costs that weigh against increasing the CTR filing threshold. Unlike exempting qualified business customers whose routine, daily transactions provide no useful information regarding financial crimes, raising the CTR threshold might actually eliminate information relevant to the prevention and prosecution of money laundering. Raising the CTR filing threshold to \$30,000 would allow persons to deposit larger sums or make a series of smaller deposits, for a criminal purpose, without raising the suspicion of a bank employee and generating a report.

FinCEN data show that suspected structuring of transactions in

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55. U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, CONSUMER PRICE INDEXES, <http://www.bls.gov/cpi/> (last visited Mar. 25, 2008) (providing consumer price index calculations from the U.S. Bureau of Labor Statistics).

56. *Id.*

57. *See Regulatory Relief Proposals Hearing, supra* note 16, at 195 (statement of F. Weller Meyer, Chairman, America's Community Bankers).

58. *Id.*

an effort to avoid the \$10,000 CTR filing threshold is by far the most common suspected criminal activity cited in SAR reports, with 48.2% of all SARs dedicated to this issue.<sup>59</sup> Because structuring deposits is the most frequent method of suspected money laundering, and because the increase in the CTR filing threshold would increase the ability of persons to make structured deposits of larger sums without generating a report, it appears likely that an increase in the CTR filing threshold would cause at least some valuable information to be lost. This informational cost would likely not be significant because bank employees are required to file SAR reports at the appearance of suspected structuring, but the risk of losing relevant information must at least be considered.

*D. Proposed Legislation Addressing the Bank Secrecy Act Filing Requirements*

As of the writing of this Comment, two bills are under consideration before the current Congress, at different stages in the legislative process. Both propose to reduce the burden of CTR filings on the financial services industry. The sponsorship of these bills is some evidence that the relief requests of the financial service industry are being heard and understood.

The first bill introduced before the 110th Congress is the Seasoned Customer CTR Exemption Act of 2007.<sup>60</sup> This bill, sponsored by Rep. Spencer Bachus, was introduced in the House on January 9, 2007, and was passed by the House on January 23, 2007.<sup>61</sup> The bill is currently under consideration in the Senate and has been referred to the Committee on Banking, Housing, and Urban Affairs.<sup>62</sup> This delay by the Senate Committee, however, provides evidence that the bill's chances of passing the Senate are bleak, particularly since an identical bill, House Bill 5341, was introduced in the 109th Congress only to die in the same Senate Committee.<sup>63</sup>

House Bill 323 proposes two major reforms to the current CTR filing requirements. First, the bill proposes a revised "Qualified

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59. U.S. DEP'T OF THE TREASURY, BANK SECRECY ACT ADVISORY GROUP, THE SAR ACTIVITY REVIEW: TRENDS, TIPS & ISSUES, ISSUE 5, 10 (Feb. 2003), available at <http://www.fincen.gov/sarreviewissue5.pdf>.

60. Seasoned Customer CTR Exemption Act of 2007, H.R. 323, 110th Cong. (2007).

61. *Id.*; GovTrack Bill Tracking of H.R. 323, <http://www.govtrack.us/congress/bill.xpd?bill=h110-323> (last visited Mar. 24, 2008).

62. Seasoned Customer CTR Exemption Act of 2007, H.R. 323, 110th Cong. (2007).

63. Seasoned Customer CTR Exemption Act of 2006, H.R. 5341, 109th Cong. (2006).

Customer Exemption.” The exemption maintains the current definition of an “exempt person” contained in the current regulations: business customers who have maintained a deposit account at the financial institution for more than twelve months and who have made multiple transactions that would otherwise be subject to the filing requirements.<sup>64</sup> However, the bill would require only a one-time filing to maintain a customer exemption, meaning that banks would need only to file the introductory exemption form, not perform annual monitoring and file biennial updates.

The Qualified Customer Exemption, as explained in the bill, provides an alternative to the underutilized 1994 exemptions in the current regulations and addresses the reality that CTR reports for known customers are not “relevant to the detection, deterrence, or investigation of financial crimes.”<sup>65</sup> The exemption would reduce the transaction costs to banks by exempting the innocuous daily transactions of their long-term business customers, which industry data show could be as much as three-quarters of all CTR filings.<sup>66</sup> This less burdensome alternative to the current exemption scheme provides regulatory relief to financial institutions without sacrificing any information relevant to financial crimes.<sup>67</sup>

Second, House Bill 323 would also require the Secretary of the Treasury to make appropriate adjustments to the CTR filing threshold within ninety days of enactment and to review those adjustments at least every five years.<sup>68</sup> This requirement is a clear effort to bring the current threshold for CTR filings back in line with Congress’s intentions when it created the \$10,000 threshold nearly forty years ago.

The second bill being considered by the current Congress, House Bill 1447: CTR Modernization Act, is a companion bill to House Bill 323. House Bill 1447 contains an identical “Qualified Customer Exception” and would also require the Secretary of the Treasury to adjust the CTR filing threshold upward for inflation.<sup>69</sup> House Bill 1447 is sponsored by Rep. Walter Jones, Jr. (R-NC) of the Third District of North Carolina and was introduced before the House on March 9, 2007.<sup>70</sup> The bill is currently under consideration by the House Committee on Financial Services.<sup>71</sup>

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64. H.R. 323.

65. *Id.*

66. *Suspicious Activity Hearing, supra* note 5, at 83–84 (2007) (statement of Megan Davis Hodge, American Bankers Association).

67. *See* 31 U.S.C. § 5313(e) (2000).

68. H.R. 323, § 3.

69. H.R. 1447, 110th Cong. §§ 4–5 (2007).

70. 153 CONG. REC. H41,2399 (daily ed. Mar. 9, 2007).

71. H.R. 1447.

Similar to House Bill 323, House Bill 1447 states that its purpose is “to maintain the high degree of usefulness of currency transaction reports” and to further investigations “by reducing the number of spurious, duplicative, and innocent” filings.<sup>72</sup> While the bills are identical in most respects, House Bill 1447 takes a stronger stance on raising the threshold for CTR filings in the current regulations. House Bill 1447 would mandate an immediate change in the filing threshold to \$30,000 and would require the Secretary of the Treasury to reassess the threshold at least every five years, but would not allow modification below the \$30,000 threshold.<sup>73</sup>

### III. CONCLUSION

The key to regulatory relief from the burden of CTR filing requirements is the adoption of a revised exemption process that would allow banks to more easily exempt business customers. This adoption would eliminate the current reality that financial institutions are filing a staggering percentage of reports “that ha[ve] little relevance to the deterrence, detection, and investigation of financial crime.”<sup>74</sup> Streamlining the CTR exemption process for business customers has been projected to have the potential effect of reducing the number of CTRs filed by as much as seventy-five percent, thus significantly reducing the compliance burden on financial institutions.<sup>75</sup>

In a detailed report released in February 2008, the GAO, after interviewing bank professionals and reviewing CTR data, recommended that Congress “[r]emove the regulatory requirement that deposit institutions biennially renew Phase II exemptions” for business customers as well as the requirement to “annually review the supporting information” for such an exemption.<sup>76</sup> The GAO’s objective endorsement of regulatory relief in this area indicates that perhaps change is on the horizon.

Additionally, there is merit to the argument that the threshold for filing CTRs should be raised from its current threshold of \$10,000. The data show that increasing it to \$30,000 would eliminate as many as seventy-four percent of all CTR filings. However, this reform may be less prudent than the revised exemption procedure, as raising the filing threshold would cause law

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72. *Id.* §§ 3–4.

73. *Id.*

74. *Financial Services Hearing, supra* note 1, at 14 (statement of William Fox, Director, Financial Crimes Enforcement Network).

75. *Id.* at 102; *Suspicious Activity Hearing, supra* note 5, at 84 (statement of Megan Davis Hodge, American Bankers Association).

76. U.S. GEN. ACCOUNTABILITY OFFICE, *supra* note 9, at 49.

2008]            *CURRENCY TRANSACTION REPORTING*            573

enforcement to lose data that may contain valuable information regarding money laundering and would almost certainly make it easier for criminals to deposit larger amounts of funds without raising the suspicion of bank employees. By contrast, ending CTR reporting for seasoned customers would be a way to make the CTR reporting system “more effective while still ensuring that . . . information critical to identifying criminal financial activity is made available to law enforcement.”<sup>77</sup>

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77. *Financial Services Hearing*, *supra* note 1, at 102–03 (statement of Megan Davis Hodge, American Bankers Association).

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## APPENDIX

FIGURE 1: Burden of CTR Filings on Financial Institutions and Government Agencies

Fiscal Year	Total CTRs Filed <sup>78</sup>	Percentage of CTRs E-filed <sup>79</sup>	Estimated Financial Institution Staff Hours <sup>80</sup>
2006	15,994,484	45	6,664,367
2005	14,210,333	24	5,920,971
2004	13,674,114	11	5,697,547
2003	13,341,699	4	5,559,040
2002	12,300,000	N/A	5,124,999
2001	12,600,000	N/A	5,249,999
2000	13,000,000	N/A	5,416,666
1999	12,900,000	N/A	5,374,999
1998	12,400,000	N/A	5,166,666
1997	12,200,000	N/A	5,083,333
1996	12,500,000	N/A	5,208,333
1995	12,200,000	N/A	5,083,333
1994	11,200,000	N/A	4,666,666

78. ANNUAL REPORT 2006, *supra* note 24, at 11; ANNUAL REPORT 2005, *supra* note 25, at 11; U.S. DEP'T OF THE TREASURY, FINANCIAL CRIMES ENFORCEMENT NETWORK, ANNUAL REPORT FOR FISCAL YEAR 2004, at 34 (2004) [hereinafter ANNUAL REPORT 2004], *available at* <http://fincen.gov/fincenannualreport2004.pdf>. The total CTRs filed from 1994–2002 are approximate. *See* TREASURY REPORT, *supra* note 16, at 17.

79. ANNUAL REPORT 2006, *supra* note 24, at 12; ANNUAL REPORT 2005, *supra* note 25, at 10–11.

80. Staff hours are calculated based on FinCEN's conservative estimate of twenty-five minutes per report for filing and recordkeeping. *See Suspicious Activity Hearing*, *supra* note 5, at 84 (statement of Megan Davis Hodge, American Bankers Association); H.R. 5341, *The Seasoned Customer CTR Exemption Act of 2006: Hearing on H.R. 5341 Before the Subcomm. on Financial Institutions and Consumer Credit of the H. Comm. on Financial Servs.*, 109th Cong. 91 (2006) (statement of Bradley E. Rock, Vice Chairman, American Bankers Association).



2008]

## CURRENCY TRANSACTION REPORTING

575

FIGURE 2: Burden of SAR Filings on Financial Institutions and Government Agencies

Fiscal Year	Total SARs Filed <sup>81</sup>	Percentage of CTRs E-filed <sup>82</sup>	Estimated Financial Institution Staff Hours
2006	567,080	45	236,283
2005	522,655	42	217,773
2004	381,671	17	159,030
2003	288,343	4	120,143
2002	273,823	N/A	114,093
2001	203,538	N/A	84,807
2000	162,720	N/A	67,800
1999	120,505	N/A	50,210
1998	96,521	N/A	40,217
1997	81,197	N/A	33,832
1996	62,388	N/A	25,995

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81. SAR REVIEW, *supra* note 30, at 3.

82. ANNUAL REPORT 2006, *supra* note 24, at 12; ANNUAL REPORT 2005, *supra* note 25, at 10–11; ANNUAL REPORT 2004, *supra* note 78, at 6.