

December 16, 2009

Financial Crimes Enforcement Network  
Department of the Treasury  
P.O. Box 39  
Vienna, VA 22183

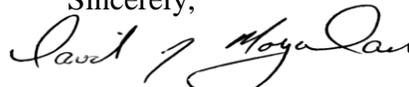
Electronically: <http://www.regulations.gov/search/Regs/home.html#submitComment?R=0900006480a5afdb> Attention: Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity, RIN1506-AB04.

**Re: Financial Crimes Enforcement Network; Expansion of Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity (31 CFR Part 103)**

The New York State Society of Certified Public Accountants, representing 30,000 CPAs in public practice, industry, government and education, submits the following comments to you regarding the above captioned proposed rule. The NYSSCPA thanks the Department of the Treasury for the opportunity to comment.

The NYSSCPA's Anti Money Laundering and Counter Terrorist Financing Committee deliberated the proposed rule and drafted the attached comments. If you would like additional discussion with us, please contact Robert Goecks, Chair of the Anti Money Laundering and Counter Terrorist Financing Committee, or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303.

Sincerely,



David J. Moynihan  
President

Attachment

**NEW YORK STATE SOCIETY OF  
CERTIFIED PUBLIC ACCOUNTANTS**

**AMENDMENT TO THE BANK SECRECY ACT REGULATIONS; EXPANSION  
OF SPECIAL INFORMATION SHARING PROCEDURES TO DETER MONEY  
LAUNDERING AND TERRORIST ACTIVITY  
(31 CFR Part 103)**

**December 16, 2009**

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## **New York State Society of Certified Public Accountants**

### **Anti Money Laundering and Counter Terrorist Financing Committee**

#### **Financial Crimes Enforcement Network; Expansion of Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity, RIN 1506-AB04 (31 CFR Part 103)**

The NYSSCPA for the most part agrees with the Financial Crimes Enforcement Network's ("FinCEN") proposal to amend the relevant Bank Secrecy Act ("BSA") information sharing rules to allow certain foreign law enforcement agencies and state and local law enforcement agencies to submit requests for information to financial institutions. The proposed rule also clarifies that FinCEN on its own behalf and on behalf of other appropriate components of the Department of the Treasury may submit such requests.

However, we do have a number of comments and concerns with the proposed amendment. As we understand it, the purpose of FinCEN is to support law enforcement efforts and to foster interagency and global cooperation against domestic and international financial crimes. Amending the rules and regulations of the BSA to include information sharing with certain foreign law enforcement agencies extends the mission of FinCEN to include access of financial informational data to entities outside the borders of the United States. FinCEN should take precautions to ensure that while making a rule change to include access of sensitive financial data to others outside the borders and protection of the United States, it not lose sight of the fact that FinCEN is charged, first and foremost, with safeguarding the financial system of the United States from abuse by criminals and terrorists. The certification from the requesting law enforcement agency, referenced in proposed Section 103.100(b), should include appropriate assurances that the requested information be used only for the investigation of terrorist financing or other terrorist activity or money laundering. Further, it is recommended that there be a provision protecting a financial institution that provides such information from liability under local laws of the requesting law enforcement agency. This is of particular concern in non-U.S. jurisdictions in which standards for sharing and protecting information might not be fully understood.

In many law enforcement organizations, money laundering and terrorist financing investigations are usually done in addition to regular duties and not as a specialty. We remain concerned that requests could effectively be "fishing" from all sources possible. FinCEN should be provided with sufficient information to make an appropriate judgment as to the validity of the request.

Allowing submissions from state and local agencies may result in many more requests than would have resulted without the change despite FinCEN's estimate of no more than 50 requests per year. There are over 18,000 law enforcement agencies in the U.S. compared to approximately 81 Federal agencies. As noted by FinCEN, the number of

state and local law enforcement agencies investigating terrorism and money laundering cases is low. Many agencies are focused on terrorism prevention and traditional crime reduction. We understand that very few state and local agencies actually have the capacity or currently allocate resources to do such investigations. In cases in which Federal law violations are suspected, Federal agencies have jurisdiction.

Paragraph II, B, Section 103.100(a)(4) states, “The addition of State and local law enforcement agencies would provide a platform for such agencies to deal more effectively with multi-jurisdictional financial transactions in the same manner as Federal law enforcement agencies.” For state and local law enforcement to investigate Federal money laundering violations under 18 U.S.C. 1956 or 1957, they must be working with a Federal law enforcement agency and deputized to investigate U.S. Code offenses to act in a Federal investigative capacity. Accordingly, we remain concerned that state and local law enforcement requests may not be limited to the investigation of money laundering and terrorist financing activities.

Overall, we believe the proposed rule changes appear appropriate in order to facilitate continued information sharing with foreign countries that reciprocate with the United States. Nevertheless, we suggest that access to this sensitive financial information only be shared with those countries that actually cooperate with the United States via a treaty or other bilateral agreement. We also suggest that FinCEN be required to destroy or to return the information once the foreign law enforcement entity has completed its use of the data. FinCEN should also require certification from the foreign law enforcement agency that they will not forward the information to any other agency, either within or outside of their nation. The only exception to this would be situations in which the foreign law enforcement agency has received permission to share the information with their government prosecutors for a determination of whether to proceed with charges against the prospective defendant.

In terms of FinCEN self-originated requests, we suggest that an office be established to represent the rights and interests of the individual who is being examined. This office should be similar to the National Taxpayer Advocate, and have the right to disallow a 314(a) inquiry from being processed in situations in which it is deemed to be a violation of the rights of the individual or in which there is insufficient documentation that the traditional sources of information have not been thoroughly examined. The office should also seek to prevent political abuses.

FinCEN has asked for comments specifically addressing the following points:

- (a) Whether the proposed recordkeeping requirement is necessary for the proper performance of the mission of FinCEN and whether the information will have a practical utility.
- (b) The accuracy of our estimate of the burden of the proposed recordkeeping requirement.
- (c) Ways to enhance the quality, utility and clarity of the information required to be maintained.

- (d) Ways to minimize the burden the burden of the record keeping requirement, including through the use of automated collection techniques or other forms of information technology.
- (e) Estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to maintain the information.

Points (a) and (b) are largely a function of volume. Utility is based on the end user and will likely be shaped over time. Overall points (a) and (b) seem to further the mission and goals of FinCEN.

On point (c), FinCEN should consider adopting standardized forms for requested information and standardized responses which may assist a more efficient administration of this program by diminishing the time and attention that would otherwise be required to respond to a variety of information requests. Additionally, FinCEN should consider providing a notice to the financial institution regarding the information that was actually provided to the requesting party, and such notice should not incur any additional compliance obligations by the financial institution.

Points (d) and (e), should place no additional burdens or start-up costs because 314(a) is already in place and financial institutions should have procedures in place to process these requests.