

Statement of Representative Gary G. Miller
Subcommittee on Oversight and Investigations
Committee on Financial Services
Hearing Preparation, "Suspicious Activity and Currency Transaction Reports: Balancing
Law Enforcement Utility and Regulatory Requirements."

May 10, 2007

Today, the Subcommittee on Oversight and Investigations meets to consider the usefulness of data collected by financial institutions pursuant to the Bank Secrecy Act (BSA) compared to the costs and burdens of compliance. I commend Chairman Watt for convening this hearing today and I look forward to working with him to find a reasonable balance between the information needs of our nation's law enforcement authorities to combat financial crime and terrorist financing and the burdens placed on financial institutions to provide such information.

The BSA was enacted in order to prevent financial institutions from being used to hide or transfer money derived from or intended to finance criminal activity. The law and regulations supporting BSA require the creation of a paper trail for certain high dollar or suspicious transactions. The Suspicious Activity Reports and Currency Transaction Reports that are required to be filed by financial institutions are utilized by law enforcement to investigate money laundering schemes and other illegal activities. This effort, if undertaken reasonably, can be for the benefit of both the financial industry and our nation.

I think everyone in this room can agree that it is of utmost importance to do what we can to keep our country safe from terrorism and to keep money launderers and other criminals from using our financial system to further their unlawful activities. The reason we are here today is that we have asked financial institutions to bear the burdens of reporting information to law enforcement that could potentially help in this effort. We do not pay for them to do this and there is clearly a cost of reporting in time and resources. Instead of compensation for compliance, we threaten penalties for non-compliance. Of course, like anything else the costs of compliance are ultimately borne by consumers in the form of more expensive banking services and credit options.

It is our responsibility to financial institutions, and ultimately to our constituents, that as we work to detect criminal activity through our financial system, we also work to ensure that what we are requiring to be reported is necessary and valuable. We must also be careful that our requests for information are not unreasonably burdensome.

The hearing today will explore how close we are to achieving this important balance. Both sides have made convincing arguments in their written testimony, indicating to me that we are not quite there yet. Banks are willing to report the information – they just want more understanding built into the system, more certainty about what they should and should not file, and more uniformity in regulation. And they want the filing requirements to be realistic and based on an assessment of actual risks. Law enforcement want to have as much information as possible to fight financial crimes and cut off terrorist financing. Financial information has been shown to be an important evidentiary tool to help stop terrorists before they strike and to detect

criminal activity in our society. The fear is that if we change what is required to alleviate the burden on financial institutions we run the risk of losing information that is critical to our security. I agree with both sides and believe there is validity to each position. But, I also believe that the goals of law enforcement and financial institutions are not incompatible. As long as we work together, we can find the right balance.

I supported efforts, led by full committee Ranking Member Bachus, to create a seasoned customer exemption for the filing of CTRs because I thought it was a good step in achieving such a balance. This legislation would preserve the integrity of our law enforcement efforts while at the same time reducing a reporting burden on banks. If an exempted seasoned customer did something suspicious, then law enforcement would still know about it because the financial institution would file a Suspicious Activity Report. Otherwise, if the seasoned customer's behavior never changed, then there would be no need to ask a financial institution to file a CTR every time that small business made a cash deposit. We are told by banks that the current CTR exemption process is underutilized because it is more costly and time consuming to apply for the exemption than to file the CTR. I think the seasoned customer exemption will address some of the banks' concerns with the current exemption system. I am glad the House acted swiftly this year to pass H.R. 323 because this is a simple step we can take to address the strain on financial institutions' resources by having to file unnecessary CTRs without compromising law enforcement investigations.

The bottom line is that we need to come together to find workable solutions to improve the effectiveness of the current system. We are told that the information reported by financial institutions is extremely valuable to law enforcement. I do not support hampering their efforts to keep our country safe. But I also do not support the status quo, where there is inconsistent regulation of BSA requirements and where banks feel the need to "defensively file" reports to protect themselves. We can not tolerate a system that is inconsistently applied and creates a sense of trepidation among financial institutions rather than a sense of duty and purpose. Financial institutions are an important part of our efforts to fight crime and our policies toward them should treat them as such.

On FinCEN's website, it states, "Working together is critical in succeeding against today's criminals. No organization, no agency, no financial institution can do it alone." I am pleased that FinCEN recognizes the importance of viewing financial institutions as a partner in their efforts to combat money laundering and terrorist financing. Our purpose is clear: we must ensure that this partnership is reflected in policy, regulation and practice.

I look forward to hearing from the witnesses today. I hope this hearing will continue the dialogue that resulted in House passage of H.R. 323.