



**Testimony
of
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On behalf of

**Independent Community Bankers of America
Washington, DC**

***“Legislative Hearing on H.R. 5341, Seasoned
Customer CTR Exemption Act of 2006”***

United States House of Representatives

**Committee on Financial Services
Subcommittee on Financial Institutions
and Consumer Credit**

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Mr. Chairman, Ranking Member Frank and members of the committee, my name is Robert Rowe and I serve as Regulatory Counsel for the Independent Community Bankers of America. I've held that position since April 1995, but I've worked on matters under the Bank Secrecy Act (BSA) since 1991. For over seven years, I've served as an active member of the Treasury Department's Bank Secrecy Act Advisory Group. Before becoming an active member of the BSAAG, I provided staff support for our banker representative. As a member of the Bank Secrecy Act Advisory Group, I've played an active role on a number of subcommittees, including currently co-chairing a subcommittee on cross-border wire transfers and serving as a member of a subcommittee reviewing the suspicious activity reporting process and another subcommittee on the *SAR Activity Review*. In 2005, I was awarded FinCEN's Director's Medal for Exceptional Service for supporting FinCEN's mission to combat money laundering and terrorist financing. During that time, I've also played an active role in discussions on how to improve the currency transaction reporting (CTR) process and have served on a Bank Secrecy Act Advisory Group subcommittee on the issue.

On behalf of ICBA's more than 5000 member banks, I want to express our appreciation for the opportunity to testify on legislation to reduce the regulatory burden of filing currency transaction reports. We applaud this committee and the House for passing H.R. 3505, a comprehensive financial regulatory relief bill. Unfortunately, the Senate counterpart to this bill does not include provisions from H.R. 3505 that would reduce some of the burdens faced by community banks in complying with the Bank Secrecy Act.

We commend Chairman Bachus, Representative Frank and the many other members of the committee for introducing H.R. 5341, the "Seasoned Customer CTR Exemption Act of 2006," which is based on section 701 of H.R. 3505. We look forward to working closely with Chairman Bachus and this committee to find solutions to reducing the BSA compliance burden while still meeting the needs of law enforcement. We hope today's hearing will improve the chances for this provision to become law.

Community Banks are an Essential Part of the Economy

Before turning specifically to BSA burden relief, I would like briefly explain why regulatory burden relief is so important to community banks and our customers. Community banks' survival depends on the economic vitality of our communities just as the economic vitality of our communities depends on the local community banks. Community bankers provide tremendous leadership which is critical to local economic development and community revitalization.

Community banks are particularly attuned to the needs of small businesses, our nation's engine for job creation. They are the leading suppliers of credit to small businesses and account for a disproportionate share of total lending to small business. Banks with less than \$1 billion in assets hold only 13 percent of bank industry assets. However, they are responsible for 37 percent of bank loans small business loans and 64 percent of bank loans to farms.

Community Banks Need Regulatory Relief

ICBA supports a bank regulatory system that fosters the safety and soundness of our nation's banking system. However, statutory and regulatory changes continually increase the cumulative regulatory burden for community banks. In recent years, community banks have been saddled with the privacy rules of the Gramm-Leach-Bliley Act, the customer identification rules and anti-money laundering/anti-terrorist financing provisions of the USA Patriot Act, and the accounting, auditing and corporate governance reforms of the Sarbanes-Oxley Act.

This disproportionate impact of the ever-mounting regulatory burden is significantly affecting community banks.¹ Since 1992, the market share of community banks with less than \$1 billion in assets has dropped from approximately 20 percent of overall banking assets to 13 percent. During the same period, the market share of large banks with over \$25 billion in assets grew from approximately 50 percent to 70 percent. While the industry as a whole has reported record profits in recent years, that profitability is not shared by smaller banks. And, there is growing evidence that compliance places a disproportionate cost on community banks. Therefore, this regulatory burden is affecting the viability of local community banks – and affecting the amount of funds these institutions have to reinvest in their local communities through loans and other activities.

For example, an analysis of banking trends conducted by two economists at the Federal Reserve Bank of Dallas concluded that the competitive position and future viability of small banks is questionable. The authors suggest that the regulatory environment has evolved to the point of placing small banks at an artificial disadvantage to the detriment of their primary customers: small business, consumers and the agricultural community.

Larger banks may have hundreds or thousands of employees to handle the many complications of regulatory demands. However, a community bank with \$100 million in assets typically has just 30 fulltime employees while a \$200 million bank may have about 60 employees in total. If the bank is faced with a new regulation, it must train one or more current employees to take on added responsibilities. This burden not only places more responsibility on the employee, but also distracts them from their primary duty of serving customers. Unlike larger institutions, the typical community bank cannot merely hire a new employee and pass the costs on to its customers.

¹ Gunther and Moore, "Small Banks' Competitors Loom Large," *Southwest Economy*, Federal Reserve Bank of Dallas, Jan./Feb. 2004.

The Burden of Bank Secrecy Act Compliance

The nation's community banks are committed to supporting the federal government's efforts to prevent money laundering, terrorist financing and other fraudulent activities. However, **ICBA also believes that it is critical that resources be focused where the risks are greatest. Over the years, there has been a tendency to require reports that have little value for law enforcement. These reports merely clog the system and obscure truly suspicious activities.** Moreover, all this data places additional demands on the federal government to properly process and analyze the information – and to ensure that it is properly secured. Committees in each house of Congress are currently focusing on data security, and it is critical that the federal government ensure that sensitive BSA data is properly protected.

Bankers across the country continue to identify the Bank Secrecy Act as the most burdensome area of compliance. ICBA appreciates the efforts by Congress to bring greater focus to the many reports required under the Bank Secrecy Act. We look forward to continuing to work with Congress, the Treasury and the banking agencies to achieve an effective compliance regime that directs resources to banks, regulators and law enforcement agencies where it can be of the most benefit.

Seasoned Customer Exemption Act

ICBA fully supports the committee's efforts to address this regulatory burden through the Seasoned Customer CTR Exemption Act of 2006.

As the bill properly notes, "the completion of and filing of currency transaction reports...poses a compliance burden on the industry." Unfortunately, despite these efforts and compliance burdens, the bill also notes that not all the reports are "relevant to the detection, deterrence, or investigation of financial crimes, including money laundering and the financing of terrorism."

ICBA has long believed that it is important to develop a simple and easily applied exemption process that can eliminate currency transaction reports that have little value for law enforcement. Therefore, ICBA supports the provisions of H.R. 5341 that would allow banks to exempt seasoned customers from CTRs without being required to renew the exemption annually. Past efforts to increase the use of the current exemption process have not succeeded, despite years of efforts by interested parties, including industry representatives, regulators and law enforcement. ICBA supports this committee's efforts and H. R. 5341 because they have the potential to eliminate many unnecessary reports that are costly to produce but that offer little or no use for law enforcement. Eliminating unnecessary reporting would result in substantial savings to our banks and increase the time our employees can spend on customers' financial needs. **They would also make law enforcement investigation more efficient by eliminating unnecessary data.**

The bill offers a definition of which customers would be eligible for this new “seasoned customer” exemption. One of the provisions would require that a customer maintain a deposit account with the bank for at least 12 months. ICBA recommends that the Treasury Department be given some flexibility to shorten this timeframe in appropriate circumstances, as determined by Treasury in consultation with other interested parties, including law enforcement and industry representatives.

Ultimately, though, for this provision to succeed, Treasury will have to develop an exemption process for qualified customers that can be simply and easily applied – in other words, a system that truly works. ICBA looks forward to working with Treasury and other interested parties to develop such a regulation.

Costs and Burdens Associated with the Current Exemption Process

Many financial institutions report that the cost of using the current exemptions outweighs any associated benefits. As a result, many institutions find it is much simpler and less risky to file a CTR on every cash transaction over \$10,000. Our members report that this approach is more practical and cost effective than using the exemption process.

Compliance Responsibility. Using the existing BSA exemption not only consumes a community bank’s limited resources in time and money, it also increases the burden on the bank’s existing compliance program by requiring the bank to develop policies and procedures for exempting customers, train personnel on the procedures, be prepared to educate customers on the exemption process, and establish audit programs to monitor compliance with the exemption process.

For example, if a community bank establishes an exemption for a customer under current rules, it must document the decision and annually file an exemption with the government. It then must ensure that it has up-to-date exemption lists available for all branch personnel and that all branch personnel are properly trained in which customers are exempt – and when those exemptions can be used since not all transactions for an exempt customer may be exempt.

With turnover of tellers and other branch staff, it is often much simpler, less complicated and certainly less confusing to simply file the currency report. All that the bank staff has to remember is that currency in or currency out over \$10,000 requires a report. Plain, simple and easily applied. Unfortunately, it also means many routine transactions are reported.

Another advantage to avoiding the current exemption process is that the bank does not run the risk of error for mistakenly exempting a transaction, does not have to have the process audited, and does not invite regulator scrutiny of the process. In other words, the costs for the current process and the risks associated with using it have caused most bankers – especially community bankers – to conclude that it simply isn't worth it.

Resource Allocation. For many institutions, particularly community banks, implementing exemptions under the current rules is not cost effective. Many community banks lack the time or resources to study the exemption requirements and how they would apply to specific customers. Under the current system, it is not only a matter of exempting a customer, but the regulatory burden continues since **the bank must continue to monitor exempted accounts and must certify that a customer continues to meet the regulation's exemption criteria.** This is especially true for community banks that file a small number of CTRs. For these institutions, simply filing on all cash transactions over \$10,000 is a more efficient means of allocating precious compliance resources. **Instituting simpler procedures could make the process more cost effective and reduce the risk of compliance violations.**

Automation. Many institutions that file CTRs on every transaction above the \$10,000 threshold have elected to automate the reporting process. **Automated filing systems maximize efficiency by reducing the time that institution staff must devote to the filing process. Some automated systems automatically generate a CTR for transactions above the \$10,000 threshold. Other systems flag transactions for further review by staff. Moreover, since banks must aggregate transactions in order to properly report currency transactions, automated systems facilitate compliance with the aggregation requirements.**

However, it is much more difficult to automate the CTR process if the bank attempts to include exemptions since it requires customization of software systems. Unfortunately, the demands on bank technology systems is rapidly increasing, not just for new demands of BSA compliance, but also the FACT Act's provisions, data security demands, fraud detection and new payment systems technologies. As a result, it is not hard to see why many community banks have concluded it is not cost effective to expend limited resources automating a process fraught with regulatory risk for little benefit.

Increased Threshold for CTRs Would Reduce Burden

Fundamentally, **ICBA believes that a simple increase in the dollar threshold for CTRs would be easier to apply.** The dollar threshold has not been changed since the Bank Secrecy Act was adopted more than thirty-five years ago. **However, we recognize that law enforcement agencies are concerned that such a change might eliminate valuable information for detecting and prosecuting criminal activities,** especially as they begin to develop new databases and new technologies that can take use the information diligently supplied by the nation's banks.

ICBA's goal is to find a way to eliminate reports of routine transactions that are costly and burdensome to produce but that provide little use for law enforcement. ICBA has actively participated in many discussions on this issue over a number of years through our role on Treasury's Bank Secrecy Act Advisory Group and we will continue to pursue a solution through that venue. However, we also believe that **Congressional action will send a strong signal to regulatory agencies and law enforcement that a solution is needed.** **Community bankers often comment that law enforcement seems to have a tendency to shift costs and burdens to the banking industry. Because it is the industry – and not law enforcement – that bears the costs, community banks believe there is a tendency to disregard the substantial costs of compliance created by the demands for information. It is vitally important that the costs be assessed against the overall benefits. ICBA believes today's hearings helps bring useful focus to that need for balance.**

Increased Communication Between Government and Banks

ICBA believes it would be helpful to community banks' efforts against money laundering and terrorist financing if they received better information from law enforcement about what activities to watch for. Under section 314 of the USA Patriot Act, Congress adopted a provision in part designed to encourage law enforcement to enhance communication with financial institutions to improve the banking sector's focus on those transactions that present the greatest risk of money laundering or terrorist financing. Through Treasury's Financial Crimes Enforcement Network's *SAR Activity Review*, law enforcement has been steadily – if slowly - increasing the information it provides banks. ICBA encourages Congress to continue to take steps to ensure that this information is provided by law enforcement agencies. An open dialogue between law enforcement and the industry would help community banks focus efforts where they are the most effective.

Other Key Provisions in H.R. 3505 Would Help Relieve Burden

The tremendous weight of over regulation is rapidly driving the consolidation of the industry to the disadvantage of our communities and customers. Therefore, ICBA also strongly recommends that the House seek to include additional provisions from H.R. 3505 in the final regulatory relief legislation. In particular, we hope that it will include the following sections:

- **Privacy notice exemption** (section 617). Exempts a bank from the annual privacy notice requirement if the bank does not share customer information other than as permitted by one of the statutory exceptions, does not share information with affiliates under the Fair Credit Reporting Act, and has not changed its policies.

- **Short-form call reports** (section 608). Permits highly-rated, well-capitalized banks with assets of \$1 billion or less to file a short form quarterly Call Report in two of the four quarters of each year.
- **Small-BHC policy statement** (section 616). Requires the Federal Reserve to revise the Small Bank Holding Company Policy Statement on Assessment of Financial and Managerial Factors so that the policy applies to Bank Holding Companies with consolidated assets of less than \$1 billion and that are not engaged in any non-banking activities involving significant leverage and do not have a significant amount of outstanding debt.

These provisions were based on sections of Rep. Jim Ryun's Communities First Act (H.R. 2061), which is sponsored by 81 members of the House. CFA was introduced in the Senate as S. 1568 and has five sponsors. These simple steps will go a long way to helping to reduce the regulatory burden that is slowly strangling the nation's community banks.

Conclusion

Specific data is not available that compares the cost of filing CTRs on all transactions above \$10,000 to the cost of using the exemptions. However, anecdotal evidence and comments from financial institutions of all sizes support the notion that avoiding the current exemption process is significantly less burdensome in terms of cost and compliance management. **Barring a significant change in the CTR filing process or the exemption regulations, many institutions will continue to file reports on all transactions that exceed the \$10,000 threshold as a simple means of complying.**

ICBA believes this bill is an important step in that direction and appreciates this committee's commitment to moving legislation that would reduce the regulatory burden on community banks by clarifying the seasoned customer exemption to the CTR requirement. ICBA looks forward to continuing to work with you in this regard. Thank you.