



Terrorist Financing:

Balancing the Benefits and Burdens of Reporting Requirements

Since Bank Secrecy Act (BSA) reporting requirements were enhanced by passage of the U.S.A. PATRIOT Act following the 9/11 terrorist attacks, there has been an ongoing debate about their usefulness. In essence, are the benefits of reporting requirements to the law enforcement community outweighed by the burdens placed on financial institutions? The more important question is: are such measures effective or ineffective? The reality is, reporting requirements are here to stay. Therefore, we must continuously strive to develop, implement, improve and modify mechanisms to make reporting requirements as effective as possible.

Another reality is that terrorist and criminal organizations require funding in order to operate and succeed. Invariably, their funding sources will flow through financial institutions. This is why BSA reporting requirements are critically important to our National Security. This fact becomes more compelling in view of the actuality that finance is one of the two most significant vulnerabilities to terrorist and criminal organizations.

Regardless of how limited, there is a level of effectiveness with respect to BSA reporting requirements in identifying terrorist financing. The bottom line is, it is possible for financial institutions to identify terrorist financing, but it is highly improbable. We must take continual actions that increase the probability factor, and thereby increasing the possibility. The challenge confronting the government and banking community is to improve the effectiveness of the process.

Each side of the issue presents persuasive arguments supporting their respective positions. Starting with the burden side, many in the financial sector are frustrated by the fact that, unlike money laundering, terrorist financing is extremely difficult and challenging to detect. Many will argue it is virtually impossible to identify. This sense of frustration is exacerbated by the fact that industry experts frequently opine that law enforcement does not provide the intelligence information or guidance to enable financial institutions to effectively focus their monitoring and search capabilities to improve the probability of uncovering terrorist financing. These are the primary reasons they believe the BSA reporting requirements to identify terrorist financing are ineffective.

On the other side of the debate, law enforcement has been the direct beneficiary of BSA reporting requirements. There have been numerous law enforcement successes, and from a broader perspective, government wide terrorist financing successes, that were achieved because law enforcement was able to have legal access to BSA documents, such as Suspicious Activity Reports (SARs) and Currency

Transaction Reports (CTRs). The government considers many of these successes to be extremely significant in disrupting or denying terrorists the access to funding. Hence, law enforcement considers the reporting requirements beneficial.

In this context, the banking sector is generally not cognizant of the benefit to law enforcement. Instead, they consider the reporting requirements to be burdensome, cost prohibitive and ineffective. On the other hand, law enforcement is generally satisfied by the benefits they derive and therefore do not consider the reporting requirements to be ineffective. Consequently, they are not necessarily sensitive to the cost burden or sense of ineffectiveness felt by the financial sector. Likewise, the financial sector not being mindful of the true benefit, does not appreciate the significance of how law enforcement has benefited from BSA information. This is where the government and banking sector must come together to establish a middle ground where they can balance the benefits and burdens of BSA reporting requirements.

The first step moving forward is for government to understand why the banking sector considers BSA reporting requirements to be burdensome and ineffective and simultaneously, for the banking sector to understand why law enforcement considers the reporting requirements to be beneficial. The two sides need to work together both collectively and unilaterally to identify, develop, implement and improve mechanisms to effectively identify terrorist financing.

Collective measures would include working together to establish mechanisms to legally share information, finding meaningful feedback mechanisms and delineating red flags through case typologies. Unilateral measures would include the government enhancing mechanisms to identify emerging trends and developing methodologies to deal with such emerging trends. Likewise, financial institutions should take steps to better recognize risk within their institutions and to enhance their internal monitoring capabilities to identify terrorist and criminal exploitation threats.

There are six steps the government and industry should take to collectively and unilaterally increase the probability of identifying terrorist financing. They are:

1. The government and financial sector must recognize the importance of terrorist financing specific training. This is a dimension that is lacking on both sides. Without specific training, the ability to understand and disrupt terrorist financing is more difficult to achieve.
2. The government must develop a means to legally provide security clearances to select personnel in financial institutions in order to share limited intelligence information that could be scrubbed against bank monitoring systems to identify account or transactional information associated with terrorists. The FBI has been discussing this challenging issue since 9/11, in concert with select industry compliance leaders and experts.
3. A consistent and comprehensive feedback mechanism from law enforcement must be developed that demonstrates the importance of BSA reporting, especially the significance of SARs. FinCEN's SAR Activity Review is a good mechanism that provides insightful information. In addition, specific feedback from law enforcement to financial institutions concerning the value and benefit of BSA data, including SAR filings, would have a dramatic impact on the



morale of individuals responsible for SAR reporting. The FBI is currently in the process of initiating publication of a periodic newsletter, which will provide such feedback to the financial community. The FBI plans to disseminate this newsletter through FinCEN.

4. There must be an assessment by the government of all SARs related to or identifiable with terrorism cases. Such a review would identify specific red flags that could be used as a training mechanism and more importantly, could be factored into the monitoring/surveillance capabilities of financial institutions. In addition, a determination could be made as to why the financial institution filed a SAR. In many instances, the SAR was filed for violations other than terrorist financing. Understanding what triggered the SAR filing; in tandem with how the SAR ultimately was linked to terrorist interests would be insightful. The FBI's Investigative Data Warehouse (IDW) is a powerful data mining tool. IDW's implementation magnifies the importance of BSA data. Based on its capability, the FBI has determined that 41.7 percent of all terrorism investigations have BSA data identifiable with the case. In addition, this type of assessment would enable financial institutions to use their monitoring systems more effectively and increase the probability factor.
5. In addition to assessing SARs, the government and industry should collectively identify and assess as many case studies, of terrorist financing related investigations, as can be identified and legally publically accessed. The case studies should be compared to determine what types of commonalities and patterns of activity exist. In addition, common red flags should be easily discernable. This type of case study assessment, coupled with the SAR analysis, would provide more meaningful information to consider in identifying terrorist financing characteristics. This would enable financial institutions to more effectively surveil and monitor transactional information. There is at least one informal grassroots working group comprised of government, former government and industry experts who are identifying hundreds of case studies for analysis.
6. A combination of BSA data, particularly SARs, combined with empirical and anecdotal information would enable the government and financial sector to collectively and unilaterally conduct trend analyses. This would be a significant factor in identifying emerging trends. On a government level, this would contribute to implementing investigative and enforcement strategies. On the institutional level, this would enable the financial sector to implement strategies to mitigate risk.

As noted earlier, it is possible for financial institutions to identify terrorist financing, but it is highly improbable. The six steps set forth above would clearly increase the probability, and thereby, the possibility of detecting terrorist financing. These measures would not only enable financial institutions to better meet their BSA reporting requirements, they would improve the effectiveness of the process. In so doing, financial institutions would be taking steps to enhance our National Security by diminishing necessary funding streams to terrorists.

By Dennis M. Lormel

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