

Financial Crimes Enforcement Network

April 26, 2005

Advisory

GUIDANCE TO MONEY SERVICES BUSINESSES ON OBTAINING AND MAINTAINING BANKING SERVICES

This Advisory emphasizes the obligations of money services businesses under the Bank Secrecy Act, and outlines the information and documentation those businesses should have and be prepared to provide when seeking to open or maintain account relationships with banking organizations.

Background

In response to concerns by money services businesses and banking organizations alike, on March 30, 2005, the Financial Crimes Enforcement Network (“FinCEN”) and the Federal Banking Agencies¹ issued a joint statement recognizing the importance of ensuring that money services businesses that comply with the law have reasonable access to banking services. The statement also confirmed that banking organizations should apply the Bank Secrecy Act requirements to money services businesses, as they do with all accountholders, on a risk-assessed basis.

As a follow-up to the joint statement, FinCEN and the Federal Banking Agencies are issuing joint guidance to banking organizations to clarify the requirements of the Bank Secrecy Act and to set forth the minimum steps that banking organizations should take when providing banking services to money services businesses. FinCEN is issuing this document concurrently to identify and explain to money services businesses the types of information and documentation they are expected to have and to provide to banking organizations.

Money Services Businesses Compliance with the Bank Secrecy Act and Other Applicable Requirements

FinCEN has defined money services businesses to include five distinct types of financial services providers and the U.S. Postal Service: (1) currency dealers or exchangers; (2) check cashers; (3) issuers of traveler’s checks, money orders, or stored value; (4) sellers or redeemers of traveler’s checks, money orders, or stored value; and (5) money transmitters. There is a threshold requirement for businesses in the first four categories – a business that engages in such transactions will not be considered a money services business if it does not engage in such transactions in an amount greater than \$1,000 for any person on any day in one or more transactions. *See* 31 CFR 103.11(uu). Among other requirements, certain money

¹ The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision.

services business principals are required to register with FinCEN.² Additionally, many states require money services businesses to obtain a license.

Money services businesses provide valuable financial services, especially to individuals who may not have ready access to the formal banking sector. Like other financial institutions, money services businesses must take reasonable steps to guard against money laundering and the financing of terrorism by assessing the risks and vulnerabilities associated with their operations and understanding and complying with the requirements of the Bank Secrecy Act and applicable state laws.³ It is critical that the money services business industry maintain the same level of transparency, including the implementation of the full range of anti-money laundering controls required by law, as do banking organizations.

The money services business industry has, as a whole, joined us in the fight against money laundering and the financing of terrorism by diligently implementing the requirements of the Bank Secrecy Act as well as similar state-based requirements. Industry leaders have made compliance a top priority. Yet the money services business industry, and the range of products and services offered and customer bases served, are extremely diverse. Thus, over the past several years, we have devoted considerable resources to conduct aggressive outreach and education campaigns concerning Bank Secrecy Act requirements.⁴ Despite those efforts, some in the industry, particularly those that offer these services only as an ancillary component of their primary business, appear to be unfamiliar with or unaware of their obligations under the Bank Secrecy Act, even if they have been in business for some time.

Given the importance of compliance with the anti-money laundering requirements to the protection of our financial system and our national security, money services businesses that fail to comply with even the most basic requirements of the Bank Secrecy Act, such as registration with FinCEN if required, not only are subject to regulatory and law enforcement scrutiny, but also are likely to lose banking services that enable them to function. We will continue to work closely with the Internal Revenue Service and state regulators going forward to ensure compliance while at the same time providing all money services businesses with the necessary resources and support.

² See 31 CFR 103.41. The registration requirement applies to all money services businesses (whether or not licensed as a money services business by any state) except the U.S. Postal Service; agencies of the United States, of any state, or of any political subdivision of a state; issuers, sellers, or redeemers of stored value, or any person that is a money services business solely because that person serves as an agent of another money services business (however, a money services business that engages in activities described in § 103.11(uu) both on its own behalf and as an agent for others is required to register).

³ A comprehensive summary of the Bank Secrecy Act requirements applicable to money services businesses is located at www.msb.gov.

⁴ Additional resources are provided for money services businesses at the end of this Advisory.

Obtaining Banking Services – Basic Information Concerning the Money Services Business and Account Activity

Banking organizations have been instructed, at a minimum, to take the following steps when determining whether to open or maintain an account for a money services business:

- ❑ Obtain basic identifying information about the money services business through the application of their Customer Identification Program;⁵
- ❑ Confirm FinCEN registration, if required;
- ❑ Confirm compliance with state or local licensing requirements, if applicable;
- ❑ Confirm agent status, if applicable; and
- ❑ Conduct basic risk assessment to determine the level of risk associated with the account to solicit additional information, as deemed necessary.

A money services business should be prepared to provide this information to its banking organization when seeking to open an account or when requested to do so by its banking organization for purposes of maintaining an existing account relationship. Registration with FinCEN, if required, and compliance with any state licensing requirements represent the most basic of compliance obligations for money services businesses; a money services business operating in contravention of registration or licensing requirements would be violating Federal and possibly state laws.⁶ As a result, banking organizations will require confirmation of a money services business's registration and licensing status prior to opening an account.

The extent to which a banking organization will seek additional information from a money services business beyond the minimums outlined above will be dictated by the banking organization's assessment of the level of risk posed by the individual customer. Care has been taken to remind the banking industry that not all money services businesses pose the same level of risk, and that not all money services businesses will always require additional due diligence. In some cases, the amount of additional customer due diligence performed by a banking organization will be negligible. In other situations, the additional due diligence performed will be extensive.

Like other financial institutions subject to the Bank Secrecy Act, money services businesses must assess the risks of their operations as a step in developing effective anti-money laundering programs. Money services businesses seeking to obtain or maintain account relationships with banking organizations should be prepared to provide information or explanation to their banking organizations about the risks associated with the services offered, the customer base, the markets served, and the locations of the money services business.

⁵ Banking organizations are required to implement a Customer Identification Program. *See* 31 CFR 103.121 (FinCEN); 12 CFR 21.21 (Office of the Comptroller of the Currency); 12 CFR 208.63(b), 211.5(m), 211.24(j) (Board of Governors of the Federal Reserve System); 12 CFR 326.8(b) (Federal Deposit Insurance Corporation); 12 CFR 563.177(b) (Office of Thrift Supervision); 12 CFR 748.2(b) (National Credit Union Administration).

⁶ In addition to violating the FinCEN registration regulation, which can result in both civil and criminal penalties, failure to register with FinCEN is a violation of 18 U.S.C. 1960. *See U.S. v. Uddin*, No. 04-CR-80192 (E.D.Mich. April 11, 2005). Under certain circumstances, failure to obtain a required state license to operate a money services business can also result in a violation of 18 U.S.C. 1960. *See U.S. v. Velastegui*, 199 F.3d 590 (2nd Cir. 1999).

Such information may be very simple for many small money services businesses operating in local areas with limited products, in contrast with sophisticated, global money services businesses. Accordingly, money services businesses should be prepared to provide and explain to their banking organizations certain basic operational information:

- Types of products and services offered by the money services business

A money services business should help its banking organization understand –

- the categories of services engaged in by the particular money service business;
- whether the money service business is a “principal” (with a fleet of agents) or an agent of another money services business;
- whether the money services business is new or an established operation; and
- whether or not money services represent a primary or ancillary aspect of the business (such as a grocery store that derives a small fraction of its overall revenue from cashing checks).

- Location(s) and Market(s) served by the money services business

A money services business should help its banking organization understand –

- the markets it targets;
- the locations it serves;
- whether it offers international services; and
- whether it caters exclusively to local residents.

- Anticipated account activity

A money services business should help its banking organization understand –

- the services the business intends to use, such as currency deposits or withdrawals, check deposits, or funds transfers;
- the branch locations the business intends to use;
- estimated transaction amounts;
- any external or seasonal factors that may impact expected transactions.

- Purpose for the account

A money services business should be prepared to explain to its banking organization the purposes for which its accounts would be used. For example, a money transmitter might require a bank account to remit funds to its principal U.S. clearing account or may intend to use the account to remit funds cross-border to foreign-based agents.

Finally, banking organizations have been advised to take additional steps in circumstances where, based on the collection of the information described above, heightened risk has been identified. Once again, care has been taken to explain that these additional steps are not

appropriate in all cases and should not be considered the standard to be applied to all money services business accounts. Money services businesses should nonetheless be prepared to provide additional information to banking organizations, including details into the operation of their business and their anti-money laundering program. Such additional information could include –

- ☑ The money services business's anti-money laundering program;⁷
- ☑ The results of the money services business's independent testing of its anti-money laundering program;⁸
- ☑ Review list of agents, including locations, within or outside the United States, that will be receiving services directly or indirectly through the money services business account;
- ☑ Written procedures for the operation of the money services business;
- ☑ Written agent management and termination practices for the money services business; or
- ☑ Written employee screening practices for the money services business.

Given the diversity of the money services business industry, and the directive in our regulations to apply the requirements of the Bank Secrecy Act on a risk-assessed basis, the extent and content of information identified above will vary markedly.

314(b) Voluntary Information Sharing

Section 314(b) of the USA PATRIOT Act of 2001 allows certain financial institutions, after providing notice to FinCEN, to voluntarily share information with each other for the purpose of identifying and, where appropriate, reporting possible money laundering or terrorist financing under protection of legal safe harbor.⁹

Banks and money services businesses can utilize Section 314(b) information sharing to work together to identify money laundering and terrorist financing. While participation in the

⁷ FinCEN's regulations require money services businesses to establish anti-money laundering programs tailored to their operations and the risks posed. 31 CFR 103.125. For example, the anti-money laundering program of a small money services business involved solely in the transmission of funds in small amounts will differ dramatically from the global money services business with both domestic and foreign agents.

⁸ FinCEN's regulations do not require money services businesses to retain outside auditors to conduct the independent test of an anti-money laundering program. 31 CFR 103.125; 67 Fed. Reg. 21114 (Apr. 29, 2002) at 21115. This is especially important for small money services businesses that may not have the ability to retain an outside auditing firm.

⁹ Section 314(b) of the USA PATRIOT Act, as implemented by 31 CFR 103.110, establishes a safe harbor from liability for a financial institution or association of financial institutions that voluntarily chooses to share information with other financial institutions for the purpose of identifying and, where appropriate, reporting money laundering or terrorist activity. To avail itself of the 314(b) safe harbor, a financial institution must comply with the requirements of the implementing regulation, 31 CFR 103.110, including notice to FinCEN, verification that the other financial institution has submitted the requisite notice, and restrictions on the use and security of information shared. The safe harbor afforded by Section 314(b) is only available to financial institutions that are required to implement an anti-money laundering program, which includes banks regulated by a federal functional regulator (*see* 31 CFR 103.120) and money services businesses (*see* 31 CFR 103.125). For additional information on the 314(b) voluntary information sharing program, or to submit a notice to FinCEN to share information voluntarily, please refer to www.fincen.gov.

314(b) information sharing program is voluntary, FinCEN encourages banking organizations and their money services business customers to consider how voluntary information sharing could enable each institution to more effectively discharge its anti-money laundering and suspicious activity monitoring obligation.

Additional Resources

FinCEN has made comprehensive resources available to money services businesses, free of charge, that provide information about compliance with the Bank Secrecy Act and explain how money services businesses can prevent money laundering.

FinCEN has established a web site, www.msb.gov, dedicated to money services business regulations and guidance, such as FinCEN Rulings and answers to frequently asked questions.

Free, easy-to-understand educational materials include:

- “Quick Reference Guide to Bank Secrecy Act Requirements for Money Services Businesses;”
- “Guide to Money Laundering Prevention;”
- Posters and “Take One” cards, available in multiple languages and bi-lingual versions, to inform money services business customers about Bank Secrecy Act requirements and help customers understand why the business must ask for personal information; and
- Videos and CD-ROMs, in English and Spanish, with case studies designed to educate money services business employees about the Bank Secrecy Act requirements.

Money services businesses can obtain these free educational materials by:

- Submitting an online order form through www.msb.gov (fastest option)
- Printing an order form from www.msb.gov and faxing to 1-800-773-8356 or mailing to:
Money Services Business Program Office
P.O. Box 39
Vienna, VA 22183
- Phoning an order to 1-800-386-6329

FinCEN Regulatory Helpline – 800-949-2732 – for questions concerning Bank Secrecy Act requirements.

FinCEN Financial Institutions Hotline – 866-556-3974 – to report suspicious activity that may be related to terrorist financing or ongoing money laundering schemes.

Money Transmitter Regulators Association (www.mtra.web) - the association of state regulators of the money transmitter industry.