



FEDERAL RESERVE BANK OF DALLAS

2200 N. PEARL ST.
DALLAS, TX 75201-2272

May 9, 2005

Notice 05-25

TO: The Chief Executive Officer of each
financial institution and others concerned
in the Eleventh Federal Reserve District

SUBJECT

Guidance and Advisory on Banking Services for Money Services Businesses Operating in the United States

DETAILS

The Financial Crimes Enforcement Network (FinCEN), along with 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, have issued interpretive guidance designed to clarify the requirements for, and assist banking organizations in, appropriately assessing and minimizing risks posed by providing banking services to money services businesses.

FinCEN also has issued a concurrent advisory to money services businesses to emphasize their Bank Secrecy Act regulatory obligations and to notify them of the types of information that they will be expected to provide to a banking organization in the course of opening or maintaining account relationships.

While recognizing the importance and diversity of services provided by money services businesses, the guidance to banking organizations specifies that FinCEN and the federal banking agencies expect banking organizations that open and maintain accounts for money services businesses to apply the requirements of the Bank Secrecy Act, as they do with all account holders, on a risk-assessed basis. Registration with FinCEN, if required, and compliance with any state licensing requirements represent the most basic of compliance obligations for money services businesses.

Based on existing Bank Secrecy Act requirements applicable to banking organizations, the minimum compliance expectations associated with opening and maintaining accounts for money services businesses are:

- Apply the banking organization's Customer Identification Program;
- 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.

Through the interpretive guidance, FinCEN and the federal banking agencies confirm that banking organizations have the flexibility to provide banking services to a wide range of money services businesses while remaining in compliance with the Bank Secrecy Act. While banking organizations are expected to manage risk associated with all accounts, including money services business accounts, banking organizations are not required to ensure their customers' compliance with all applicable federal and state laws and regulations.

The guidance contains examples that may be indicative of lower and higher risk within money services business accounts to assist banking organizations in identifying the risks posed by a money services business customer and in reporting known or suspected violations of law or suspicious transactions relevant to possible violations of law or regulation.

In addition, the guidance addresses the recurring question of the obligation of a banking organization to file a suspicious activity report on a money services business that has failed to register with FinCEN, if required to do so, or failed to obtain a license under applicable state law, if required. The guidance states that a banking organization should file a suspicious activity report if it becomes aware that a customer is operating in violation of the registration or state licensing requirements. This approach is consistent with long-standing practices of FinCEN and the federal banking agencies under which banking organizations file suspicious activity reports on known or suspected violations of law or regulation.

The concurrently issued FinCEN advisory to money services businesses emphasizes the importance of compliance with Bank Secrecy Act regulatory requirements by money services businesses. The advisory is designed to assist money services businesses by outlining the types of information that they should have and be prepared to provide to a banking organization in the course of opening or maintaining account relationships. The advisory also makes clear that money services businesses that fail to comply with the most basic requirements of the Bank Secrecy Act, such as registration with FinCEN if required, will be subject to regulatory and law enforcement scrutiny, and that continued noncompliance will likely result in the loss of banking services.

ATTACHMENTS

A copy of the interagency interpretative guidance is attached. Also attached is a copy of the advisory to money services businesses.

MORE INFORMATION

For more information, please contact Gayle Teague at (214) 922-6151 or Randy Steinley at (713) 652-9117, Banking Supervision Department. Paper copies of this notice or previous Federal Reserve Bank notices can be printed from our web site at www.dallasfed.org/banking/notices/index.html.

**Financial Crimes Enforcement Network
Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
National Credit Union Administration
Office of the Comptroller of the Currency
Office of Thrift Supervision**

April 26, 2005

Interagency Interpretive Guidance on Providing Banking Services to Money Services Businesses Operating in the United States

The Financial Crimes Enforcement Network (“FinCEN”), along with 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 (collectively, the “Federal Banking Agencies”), issue this interpretive guidance to clarify further the requirements of the Bank Secrecy Act and its implementing regulations (including the parallel provisions issued by the Federal Banking Agencies) for banking organizations when providing banking services to money services businesses operating in the United States.

As a follow-up to the joint statement issued on March 30, 2005, this guidance sets forth the minimum steps that banking organizations should take when providing banking services to money services businesses. Additionally, this guidance provides assistance to banking organizations in assessing and minimizing the risk of money laundering posed by individual money services business customers. While banking organizations are expected to manage risk associated with all accounts, including money services business accounts, banking organizations will not be held responsible for their customers’ compliance with the Bank Secrecy Act and other applicable federal and state laws and regulations.

By clarifying our expectations, FinCEN and the Federal Banking Agencies are confirming that banking organizations have the flexibility to provide services to a wide range of money services businesses while remaining in compliance with the Bank Secrecy Act. This guidance will be reflected in the forthcoming interagency Bank Secrecy Act/Anti-Money Laundering examination procedures.

Concurrent with this document, FinCEN is also issuing guidance to money services businesses to emphasize their Bank Secrecy Act regulatory obligations and to notify them of the type of information that they may be expected to produce to a banking organization in the course of opening or maintaining an account relationship. Through regular supervisory processes and through dissemination of additional information, FinCEN and the Federal Banking Agencies will continue to provide guidance to assist banking organizations on issues related to money services businesses, such as providing indicators to banking organizations that would help in identifying entities that may be operating as money services businesses when those entities have not disclosed the nature of their

business to the banking organizations and guidance on appropriate due diligence when maintaining accounts for foreign providers of money services.

Background

Under existing Bank Secrecy Act regulations, 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).

With limited exceptions, money services businesses are subject to the full range of Bank Secrecy Act regulatory controls, including the anti-money laundering program rule, suspicious activity and currency transaction reporting rules, and various other identification and recordkeeping rules.¹ Additionally, existing FinCEN regulations require certain money services business principals to register with FinCEN.² Many money services businesses, including the vast majority of money transmitters in the United States, operate through a system of agents. While agents are not presently required to register with FinCEN, they are themselves money services businesses that are required to establish anti-money laundering programs and comply with the other recordkeeping and reporting requirements described above. Finally, many states have established anti-money laundering supervisory requirements, often including the requirement that a money services business be licensed with the state in which it is incorporated or does business.

The money services business industry is extremely diverse, ranging from Fortune 500 companies with numerous outlets worldwide to small, independent “mom and pop” convenience stores in communities with population concentrations that do not necessarily have access to traditional banking services or in areas where English is rarely spoken.

¹ *See* 31 CFR 103.125 (requirement for money services businesses to establish and maintain an anti-money laundering program); 31 CFR 103.22 (requirement for money services businesses to file currency transaction reports); 31 CFR 103.20 (requirement for money services businesses to file suspicious activity reports, other than for check cashing and stored value transactions); 31 CFR 103.29 (requirement for money services businesses that sell money orders, traveler's checks, or other instruments for cash to verify the identity of the customer and create and maintain a record of each cash purchase between \$3,000 and \$10,000, inclusive); 31 CFR 103.33(f) and (g) (rules applicable to certain transmittals of funds); and 31 CFR 103.37 (additional recordkeeping requirement for currency exchangers including the requirement to create and maintain a record of each exchange of currency in excess of \$1,000).

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).

The range of products and services offered, and the customer bases served by money services businesses, are equally diverse. In fact, while they all fall under the definition of a money services business, the types of businesses are quite distinct. In addition, many money services businesses only offer money services as an ancillary component to their primary business, such as a convenience store that cashes checks or a hotel that provides currency exchange. Other money services businesses offer a variety of services, such as check cashing and stored value card sales.

I. Minimum Bank Secrecy Act Due Diligence Expectations

FinCEN and the Federal Banking Agencies expect banking organizations that open and maintain accounts for money services businesses to apply the requirements of the Bank Secrecy Act, as they do with all accountholders, on a risk-assessed basis. As with any category of accountholder, there will be money services businesses that pose little risk of money laundering and those that pose a significant risk. It is essential that banking organizations neither define nor treat all money services businesses as posing the same level of risk. Put simply, a local grocer that also cashes payroll checks for customers purchasing groceries cannot be equated with a money transmitter specializing in cross-border wire transfers to jurisdictions posing heightened risk for money laundering or the financing of terrorism, and therefore the Bank Secrecy Act obligations on a banking organization will differ significantly.³

Registration with FinCEN, if required, and compliance with any state-based 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.⁴ As a result, it is reasonable and appropriate for a banking organization to insist that a money services business provide evidence of compliance with such requirements or demonstrate that it is not subject to such requirements.

³ Jurisdictions posing heightened risk include those that have been (1) identified by the Department of State as a sponsor of international terrorism under 22 USC 2371; (2) designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member (such as the Financial Action Task Force, www.fatf-gafi.org) and with which designation the United States representative or organization concurs; or (3) designated by the Secretary of the Treasury pursuant to 31 U.S.C. 5318A as warranting special measures due to money laundering concerns. *See also* note 7, *infra*.

⁴ 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).

Based on existing Bank Secrecy Act requirements applicable to banking organizations, the minimum due diligence expectations associated with opening and maintaining accounts for money services businesses are:

- ❑ Apply the banking organization’s 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 a basic Bank Secrecy Act/Anti-Money Laundering risk assessment to determine the level of risk associated with the account and whether further due diligence is necessary.

The Appendix to this guidance explains FinCEN’s registration and state-based licensing requirements and outlines steps that banking organizations can take to confirm and document the registration, licensing, or agent status of a money services business.

Basic Bank Secrecy Act/Anti-Money Laundering Risk Assessment

While the extent to which banking organizations should perform further due diligence beyond the minimum compliance obligations set forth above will be dictated by the level of risk posed by the individual customer, it is not the case that all money services businesses will always require further due diligence. In some cases, no further customer due diligence will be required. In other situations, the further due diligence required will be extensive. In all cases, the level of due diligence applied will be dictated by the risks associated with the particular customer.

Accordingly, as with any business account, in determining how much, if any, further due diligence would be required for any money services business customer, the banking organization should consider the following basic information:

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

In order to properly assess risks, banking organizations should know the categories of money services engaged in by the particular money services business account holder. In addition, banking organizations should determine whether the money services business is a “principal” (with a fleet of agents) or is itself an agent of another money services business. Other relevant considerations include whether or not the money services business is a new or established operation, and whether or not money services are the customer’s primary or ancillary business (such as a grocery store that derives a small fraction of its overall revenue from cashing checks).

⁵ 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).

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

Money laundering risks within a money services business can vary widely depending on the locations, customer bases, and markets served by the money services business. Relevant considerations include whether markets served are domestic or international, or whether services are targeted to local residents or broad markets. For example, a convenience store that only cashes payroll checks generally presents lower money laundering risks than a check casher that cashes any type of third-party check or cashes checks for commercial enterprises (which generally involve larger amounts).

- Anticipated account activity

Banking organizations should ascertain the expected services that the money services business will use, such as currency deposits or withdrawals, check deposits, or funds transfers. For example, a money services business may operate out of one location and use one branch of the banking organization, or may have several agents making deposits at multiple branches throughout the banking organization's network. Banking organizations should also have a sense of expected transaction amounts.

- Purpose of the account

Banking organizations should understand the purpose of the account for the money services business. For example, a money transmitter might require the bank account to remit funds to its principal U.S. clearing account or may use the account to remit funds cross-border to foreign-based agents.

Risk Indicators

To further assist banking organizations in determining the level of risk posed by a money services business customer, set forth below are examples that may be indicative of lower and higher risk, respectively. In determining the level of risk, a banking organization should not take any single indicator as determinative of the existence of lower or higher risk. Moreover, the application of these factors is fact-specific, and a conclusion regarding an account should be based on a consideration of available information. An effective risk assessment should be a composite of multiple factors, and depending upon the circumstances, certain factors may be weighed more heavily than others.

Examples of potentially lower risk indicators: The money services business –

- primarily markets to customers that conduct routine transactions with moderate frequency in low amounts;
- offers only a single line of money services business product (for example, only check cashing or only currency exchanges);
- is a check casher that does not accept out of state checks;
- is a check casher that does not accept third-party checks or only cashes payroll or government checks;

- ☑ is an established business with an operating history;
- ☑ only provides services such as check cashing to local residents;
- ☑ is a money transmitter that only remits funds to domestic entities; or
- ☑ only facilitates domestic bill payments.

Examples of potentially higher risk indicators: The money services business –

- ☑ allows customers to conduct higher-amount transactions with moderate to high frequency;
- ☑ offers multiple types of money services products;
- ☑ is a check casher that cashes any third-party check or cashes checks for commercial businesses;
- ☑ is a money transmitter that offers only, or specializes in, cross-border transactions, particularly to jurisdictions posing heightened risk for money laundering or the financing of terrorism or to countries identified as having weak anti-money laundering controls;⁶
- ☑ is a currency dealer or exchanger for currencies of jurisdictions posing heightened risk for money laundering or the financing of terrorism or countries identified as having weak anti-money laundering controls;
- ☑ is a new business without an established operating history; or
- ☑ is located in an area designated as a High Risk Money Laundering and Related Financial Crimes Area or a High-Intensity Drug Trafficking Area.⁷

II. Due Diligence for Higher Risk Customers

A banking organization's due diligence should be commensurate with the level of risk of the money services business customer identified through its risk assessment. If a banking organization's risk assessment indicates potential for a heightened risk of money laundering or terrorist financing, it will be expected to conduct further due diligence in a manner commensurate with the heightened risk. This is no different from requirements applicable to any other business customer and does not mean that a banking organization cannot maintain the account.

Depending on the level of perceived risk, and the size and sophistication of the particular money services business, banking organizations may pursue some or all of the following actions as part of an appropriate due diligence review or risk management assessment of a money services business seeking to establish an account relationship. Likewise, if the banking organization becomes aware of changes in the profile of the money services

⁶ *Supra*, note 3.

⁷ While the operation of a money services business in either of these two areas does not itself require a banking organization to conclude that the money services business poses a high risk, it is a factor that may be relevant. Information concerning High Risk Money Laundering and Related Financial Crimes Areas can be found at http://www.fincen.gov/le_hifcadesign.html. Designations of High Risk Money Laundering and Related Financial Crimes Areas are made in the Treasury Department's National Money Laundering Strategy reports. Information concerning High-Intensity Drug Trafficking Areas can be found at <http://www.whitehousedrugpolicy.gov/hidta/>.

business to which banking services are being provided, these additional steps may be appropriate. However, it is **not** the expectation of FinCEN or the Federal Banking Agencies that banking organizations will uniformly require any or all of the actions identified below for all money services business customers:

- ☑ review the money services business's anti-money laundering program;
- ☑ review results of the money services business's independent testing of its anti-money laundering program;
- ☑ conduct on-site visits;
- ☑ 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;
- ☑ review written procedures for the operation of the money services business;
- ☑ review written agent management and termination practices for the money services business; or
- ☑ review written employee screening practices for the money services business.

As with any other accountholder that is subject to anti-money laundering regulatory requirements, the extent to which a banking organization should inquire about the existence and operation of the anti-money laundering program of a particular money services business will be dictated by the banking organization's assessment of the risks of the particular relationship. Given the diversity of the money services business industry and the risks they face, banking organizations should expect significant differences among anti-money laundering programs of money services businesses. However, FinCEN and the Federal Banking Agencies do not expect banking organizations to act as the *de facto* regulators of the money services business industry.

III. Identification and Reporting of Suspicious Activity

Existing regulations require banking organizations to identify and report known or suspected violations of law or/and suspicious transactions relevant to possible violations of law or regulation. Risk-based monitoring of accounts maintained for all customers, including money services businesses, is a key element of an effective system to identify and, where appropriate, report violations and suspicious transactions. The level and frequency of such monitoring will depend, among other things, on the risk assessment and the activity in the account.

Based on the banking organization's assessment of the risks of its particular money services business customers, monitoring should include periodic confirmation that initial projections of account activity have remained reasonably consistent over time. Account activity would typically include deposits or withdrawals of currency, deposits of checks, or funds transfers. The mere existence of variances does not necessarily mean that a problem exists, but may be an indication that additional review is necessary. Furthermore, risk-based monitoring generally does not include "real-time" monitoring of all transactions flowing through the account of a money services business, such as a review of the payee or drawer of every deposited check.

Examples of potential suspicious activity within money services business accounts, generally involving significant unexplained variations in transaction size, nature, or frequency through the account, include:

- A check casher deposits checks from financial institutions in jurisdictions posing heightened risk for money laundering or the financing of terrorism or from countries identified as having weak anti-money laundering controls when the money services business does not overtly market to individuals related to the particular jurisdiction;⁸
- A check casher deposits currency in small denomination bills or unusually large or frequent amounts. Given that a check casher would typically deposit checks and withdraw currency to meet its business needs, any recurring deposits of currency may be an indicator of suspicious activity;
- A check casher deposits checks with unusual symbols, stamps, or written annotations either on the face or on the back of the negotiable instruments;
- A money transmitter transfers funds to a different jurisdiction than expected, based on the due diligence information that the banking organization had assessed for the particular money services business. For example, if the money transmitter represented to the banking organization or in its business plan that it specializes in remittances to Latin America and starts transmitting funds on a regular basis to another part of the world, the unexplained change in business practices may be indicative of suspicious activity; or
- A money transmitter or seller/issuer of money orders deposits currency significantly in excess of expected amounts, based on the due diligence information that the banking organization had assessed for the particular money services business, without any justifiable explanation, such as an expansion of business activity, new locations, etc.

One recurring question has been the obligation of a banking organization to file a suspicious activity report on a money services business that has failed to register with FinCEN or failed to obtain a license under applicable state law. Given the importance of the licensing and registration requirement, a banking organization should file a suspicious activity report if it becomes aware that a customer is operating in violation of the registration or state licensing requirement.⁹ This approach is consistent with long standing practices of FinCEN and the Federal Banking Agencies under which banking organizations file suspicious activity reports on known or suspected violations of law or regulation.

Finally, banking organizations are not expected to terminate existing accounts of money services businesses based solely on the discovery that the customer is a money services business that has failed to comply with licensing and registration requirements (although continuing non-compliance by the money services business may be an indicator of heightened risk). There is no requirement in the Bank Secrecy Act regulations that a

⁸ *Supra*, note 3.

⁹ *See U.S. v. Uddin, supra*, note 4.

banking organization must close an account that is the subject of a suspicious activity report. The decision to maintain or close an account should be made by a banking organization's management under standards and guidelines approved by its board of directors. However, if an account is involved in a suspicious or potentially illegal transaction, the banking organization should examine the status and history of the account thoroughly and should determine whether or not the institution is comfortable maintaining the account. If the banking organization is aware that the reported activity is under investigation, it is strongly recommended that the banking organization notify law enforcement before making any decision regarding the status of the account.

IV. Existing Accounts for Known Money Services Businesses

This guidance is not a directive to banking organizations to conduct immediately a review of existing accounts for known money services businesses for the sole purpose of determining licensing or registration status. However, the guidance does not affect a banking organization's existing anti-money laundering compliance program obligations to assess risk, including periodic risk assessments of existing money services business accounts to update risk factors such as licensing and registration status.

V. 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.¹⁰

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 314(b) information sharing program is voluntary, FinCEN and the Federal Banking Agencies encourage 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.

Any banking organizations that have questions on this guidance are encouraged to contact FinCEN or their primary federal regulator.

¹⁰ 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.

Additional Resources

- www.msb.gov – FinCEN website dedicated to money services business regulations and guidance, such as FinCEN rulings and answers to frequently asked questions. This website also contains a list of registered money services businesses.
- Free, easy-to-understand educational materials to help inform money services businesses about their obligations under the Bank Secrecy Act, available at www.msb.gov, including:
 - “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 bilingual 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.
- 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.
- FinCEN Advisory 33, “Informal Value Transfer Systems” (November 2003) (available on the www.fincen.gov website).
- “Report to Congress in Accordance with Section 359” of the USA PATRIOT Act concerning Informal Value Transfer Systems, March 2003 (available on the www.fincen.gov website).
- Money Transmitter Regulators Association (www.mtra.web) - the association of state regulators of the money transmitter industry.
- Board of Governors of the Federal Reserve System (www.federalreserve.gov).
- Federal Deposit Insurance Corporation (www.fdic.gov) and (www.fdic.gov/regulations/examinations/bsa).
- National Credit Union Administration (www.ncua.gov).
- Office of the Comptroller of the Currency (www.occ.treas.gov).
- Office of Thrift Supervision (www.ots.treas.gov) and (www.ots.treas.gov/bsa).

APPENDIX

Frequently Asked Questions on Providing Banking Services to Money Services Businesses

Registration and Licensing

1. What are the FinCEN registration requirements for Money Services Businesses?

As set forth in 31 CFR 103.41, all money services business must register with FinCEN (whether or not licensed as a money services business by any state) except:

- A business that is a money services business solely because it serves as an agent of another money services business;
- A business that is a money services business solely as an issuer, seller, or redeemer of stored value;
- The U.S. Postal Service; and
- Agencies of the United States, of any state, or of any political subdivision of any state.

A branch office of a money services business is not required to file its own registration form. Those money services businesses required to register must complete and submit to the Internal Revenue Service – Detroit Computer Center a form [www.msb.gov/pdf/msbregform01102004.pdf] that identifies the following: (1) the name, location, and taxpayer identification number of the business; (2) information concerning the owners of the business; (3) the location(s) of operation and the number of branch locations and number of agents; (4) the products and services offered; (5) information about the primary transaction account; and (6) the location of supporting documentation.

Additionally, under existing FinCEN regulations, a money services business has 180 days in which to register from the time that it begins performing the functions that subject it to the money services business regulations.¹¹ Therefore, it is possible that a money services business will appropriately seek banking services before completing the registration process with FinCEN, but still be in full compliance with the law.

2. What resources are available for banking organizations to use to confirm registration or licensing status of a money services business?

Regarding FinCEN registration, a banking organization may rely on the correspondence received by the money services business from the Internal Revenue Service – Detroit Computing Center as confirmation that the money services business has registered with FinCEN. All registered money services businesses will have such correspondence and should be prepared to provide it to the banking organization. Note that it may take 60

¹¹ See 31 CFR 103.41(b)(3).

days or more after a money services business files its registration form for the business to receive an acknowledgment letter from the Internal Revenue Service. The acknowledgment letter from the Internal Revenue Service will be the only confirmation received by the money services business. As an alternative, if the money services business has filed its registration but has not yet received its acknowledgement letter, the banking organization may rely on a copy of the registration form submitted by the money services business until such time as the money services business either receives its acknowledgement letter or appears on the money services business registration list published by FinCEN (accessible at www.msb.gov). FinCEN seeks to assist banking organizations by assembling, preparing and forwarding information on the money services business industry and applicable Bank Secrecy Act requirements on FinCEN's website dedicated to the money services business industry, www.msb.gov.

Regarding state licensing requirements, individual state regulatory authorities offer a variety of information. Also, FinCEN is working with state regulators on a variety of information-sharing initiatives that will enhance cooperation with respect to anti-money laundering regulatory issues. One initiative will be to identify and promote resources where banking organizations and others can go to learn about state anti-money laundering requirements applicable to money services businesses as well as the status of individual money services businesses.

3. *How can a banking organization confirm that a money services business is an agent that is not required to register with FinCEN?*

A money services business that is an agent of a principal money services business will generally have contracts and agreements with the principal money services business, and agents should be expected to provide these documents to a banking organization upon request. Additionally, many large money services businesses list information about their agents on their public web sites.

4. *How should a banking organization document its review of registration, licensing, or agent status of a money services business?*

Banking organizations should document their review of the applicable registration, licensing, or agent status of a money services business customer, but are not required to maintain copies of actual documentation received from a money services business. Banking organizations should also consider the availability of public information regarding licensing, registration, or agent status for money services businesses. For example, many states make licensing information publicly available, and many large money services businesses list their agents on their public web sites.

Due Diligence

5. ***After applying the Customer Identification Program, and confirming registration, licensing, and agent status, as applicable, and when a banking organization's risk assessment of a money services business customer indicates a low risk of money laundering or other illicit activity for the particular customer, is a banking organization required to perform further due diligence?***

No. After assessing basic information of a particular money services business customer, including: (1) the products and services offered by the money services business; (2) the locations and markets served by the money services business; (3) anticipated account activity; and (4) purpose of the account, if a banking organization determines that its relationship with the particular money services business constitutes a low risk of money laundering or other illicit activity, a banking organization is not routinely expected to perform further due diligence. Banking organizations should consider and perform further due diligence, such as a review of a money services business's anti-money laundering program, if the banking organization's risk assessment of a relationship with a particular money services business indicates heightened risks.

However, banking organizations are reminded that risk-based monitoring of all accounts, regardless of the amount of due diligence performed for a particular customer, is a key element of an effective system to identify, and where appropriate, report suspicious activity. Discovery of suspicious activity in transactions with a money services business initially deemed to represent low risk may necessitate further due diligence.

6. ***Can a banking organization open or maintain an account for a money services business that has not registered or obtained a state license because the customer was unaware of applicable requirements? Should a banking organization file a suspicious activity report in such instances?***

Yes. Banking organizations are not required to refuse to open new accounts for money services businesses that have failed to comply with registration or licensing requirements. Similarly, there is no requirement in the Bank Secrecy Act regulations that a banking organization terminate existing accounts of customers based solely on the discovery that the customer is a money services business that has failed to comply with licensing and registration requirements. The decision to maintain or close an account should be made by a banking organization's management under standards and guidelines approved by its board of directors.

However, continued noncompliance by a customer with applicable licensing, registration or other regulatory requirements after learning of such requirements would likely be an indicator of heightened risk. Banking organizations should file suspicious activity reports if they become aware that customers are operating in violation of the registration or state licensing requirements.

7. Do FinCEN and the Federal Banking Agencies have an expectation that banking organizations should educate money services businesses about any requirements of the Bank Secrecy Act?

No. The Bank Secrecy Act does not require, and neither FinCEN nor the Federal Banking Agencies expect, banking organizations to serve as the *de facto* regulators of the money services businesses for which they maintain accounts. Accordingly, banking organizations are not expected to educate money services businesses about the Bank Secrecy Act requirements that apply to the industry. However, when a banking organization is conducting due diligence with respect to its money services business customers, questions will inevitably arise. In such cases, banking organizations can direct inquiries by money services businesses about applicable Bank Secrecy Act requirements to existing regulatory resources such as www.msb.gov or FinCEN's Regulatory Helpline at 1-800-949-2732.

In addition, there are several ways for banking organizations to obtain free educational materials produced by FinCEN for money services businesses:

- Submit an online order form through www.msb.gov (fastest option)
- Print an order form from www.msb.gov and fax to 1-800-773-8356 or mail to:
Money Services Business Program Office
P.O. Box 39
Vienna, VA 22183
- Phone an order to 1-800-386-6329

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.