

FinCEN Statement on Providing Banking Services to Money Services Businesses

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The Financial Crimes Enforcement Network (FinCEN), as the agency primarily responsible for administering the Bank Secrecy Act, is issuing this Statement to reiterate expectations regarding banking institutions' obligations under the Bank Secrecy Act for money services businesses.

Money services businesses (MSBs),¹ including money transmitters important to the global flow of remittances, are losing access to banking services, which may in part be a result of concerns about regulatory scrutiny, the perceived risks presented by money services business accounts, and the costs and burdens associated with maintaining such accounts.

MSBs play an important role in a transparent financial system, particularly because they often provide financial services to people less likely to use traditional banking services and because of their prominent role in providing remittance services. FinCEN believes it is important to reiterate the fact that banking organizations can serve the MSB industry while meeting their Bank Secrecy Act obligations.²

Currently, there is concern that banks are indiscriminately terminating the accounts of all MSBs, or refusing to open accounts for any MSBs, thereby eliminating them as a category of customers. Such a wholesale approach runs counter to the expectation that financial institutions can and should assess the risks of customers on a case-by-case basis. Similarly, a blanket direction by U.S. banks to their foreign correspondents not to process fund transfers of any foreign MSBs, simply because they are MSBs, also runs counter to the risk-based approach. Refusing financial services to an entire segment of the industry can lead to an overall reduction in financial sector transparency that is critical to making the sector resistant to the efforts of illicit actors. This is particularly important with MSB remittance operations.

FinCEN, the IRS, and state regulators have all taken steps to increase the effectiveness of their oversight of MSB Bank Secrecy Act compliance. In 2005, FinCEN issued guidance to MSBs to explain their Bank Secrecy Act regulatory obligations and to notify them of the type of information that they may be expected to produce to a bank in the course of opening or maintaining an account. In 2008, FinCEN, working with the Internal Revenue Service and the states, issued an examination manual for MSB examiners to strengthen the examination process and make it more consistent nationally. In 2010, the Federal Financial Institution Examination Council BSA/AML Examination Manual provided updated information in connection with the examination of banks for, among other things, providing services to money services businesses.³ In addition, state efforts to coordinate supervision and examination practices have increased. States have expanded their use of the Nationwide Multistate Licensing System and Registry (NMLS) for collecting and storing information on MSBs.⁴ FinCEN and the IRS will continue to work with state regulators, consistent with the Money Remittances Improvement Act of 2014, to strengthen examination and oversight of the MSB industry with respect to Bank Secrecy Act compliance by leveraging appropriate state efforts.

FinCEN does not support the wholesale termination of MSB accounts without regard to the risks presented or the bank's ability to manage the risk. As noted, MSBs present varying degrees of risk, and not all money services businesses are high-risk. Therefore, when deciding whether to provide services to an MSB customer, financial institutions should assess the risks associated with that particular MSB customer. A financial institution's risk assessment should include considering whether customer risks can be managed appropriately and the financial institution should maintain levels of controls

commensurate with the customer risks presented. Banks that can properly manage customer relationships and effectively mitigate risks are neither prohibited nor discouraged from providing services to MSB customers, regardless of any MSB's specific business model.

A banking organization's due diligence should be commensurate with the level of risk presented by the MSB customer as identified in the bank's risk assessment. If a banking organization's risk assessment indicates a heightened risk of money laundering or terrorist financing, then the organization should conduct further due diligence in a manner commensurate with the heightened risk. A bank needs to know and understand its MSB customer. To do so, it should understand the MSB's business model and the general nature of the MSB's own customer base, but it does not need to know the MSB's individual customers to comply with the Bank Secrecy Act. This is no different from requirements applicable to any other business customer.

Banking organizations are expected to manage the risk associated with all accounts, including MSB accounts. However, the Bank Secrecy Act does not require, and neither does FinCEN expect, banking institutions to serve as the de facto regulator of the money services business industry any more than of any other industry. FinCEN recognizes that, as a practical matter, it is not possible for a bank to detect and report all potentially illicit transactions that flow through an institution.⁵ But where an institution follows existing guidance and establishes and maintains an appropriate risk-based program, the institution will be well-positioned to appropriately manage such accounts, while generally detecting and deterring illicit transactions.

In summary, FinCEN, as the agency primarily responsible for administering the Bank Secrecy Act, expects banking organizations that open and maintain accounts for MSBs to apply the requirements of the Bank Secrecy Act, as they do with all accountholders, based on risk. Banking organizations must have appropriately designed policies and procedures to assess an MSB's money laundering and terrorist financing risks. As with any category of accountholder, the levels of risk will vary; therefore, MSBs should be treated on a case-by-case basis. FinCEN and its regulatory colleagues will continue to monitor trends with respect to the provision of banking services to MSBs and are committed to taking steps to address the wholesale de-banking of an important part of the financial system.

Any questions with respect to this document or existing guidance should be directed to FinCEN's Resource Center at 1-800-767-2825 or (703) 905-3591 (telephone) or FRC@fincen.gov (email.)

1 FinCEN has defined MSBs to include the U.S. Postal Service and six distinct types of financial services providers: (1) dealers in foreign exchange; (2) check cashers; (3) issuers and sellers of traveler's checks or money orders; (4) providers of prepaid access; (5) money transmitters; and (6) sellers of prepaid access. 31 CFR 1010.100(ff).

2 *See* Interagency Interpretative Guidance on Providing Banking Services to Money Services Businesses Operating in the United States (Apr. 26, 2005) *available at*

http://www.fincen.gov/statutes_regs/guidance/pdf/guidance04262005.pdf; Prepared Remarks of FinCEN Director Jennifer Shasky Calvery delivered at the 2014 Mid-Atlantic AML Conference (Aug. 12, 2014) *available at*

http://www.fincen.gov/news_room/speech/pdf/20140812.pdf; Remarks of Comptroller of the Currency Thomas J. Curry delivered at the Association of Certified Anti-Money Laundering Specialists Conference (Mar. 17, 2014)

available at <http://www.occ.gov/news-issuances/speeches/2014/pub-speech-2014-39.pdf> *See* also Testimony of Daniel P. Stipano, Deputy Chief Counsel Office of the Comptroller of the Currency, before the Subcomm. on Oversight and Investigations, H. Comm. on Financial Services (Jul. 15, 2014) *available at*

<http://www.occ.gov/news-issuances/congressional-testimony/2014/pub-test-2014-101-written.pdf> and Testimony of Scott G. Alvarez, General Counsel of the Board of Governors of the Federal Reserve System, before the Subcomm. on Oversight and Investigations, H. Comm. on Financial Services (Jul 15, 2014) *available at*

<http://www.federalreserve.gov/newsevents/testimony/alvarez20140715a.htm>.

³ *See Federal Financial Institution Examination Council, Bank Secrecy Act/Anti-Money Laundering (BSA/AML)*

Examination Manual, *available at* https://www.ffiec.gov/bsa_aml_infobase/documents/BSA_AML_Man_2010.pdf

4 NMLS is the system of record for non-depository, financial services licensing or registration in participating state agencies, including the District of Columbia and U.S. Territories of Puerto Rico, the U.S. Virgin Islands, and Guam. In these jurisdictions, NMLS is the official system for certain companies and individuals seeking to apply for, amend, renew and surrender license authorities managed through NMLS by 61 state or territorial governmental agencies. NMLS itself does not grant or deny license authority. NMLS was created by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. Operations began in January 2008 and the system currently retains records on over 17,000 non-depository companies, almost 10,000 banks, and over 400,000 mortgage loan originators, entities and individuals. In 2012, the states expanded NMLS to other non-depository entities, including MSBs. NMLS is the legal system of record for non-depository, financial services licensing or registration for participating state agencies, including the District of Columbia and U.S. Territories. 24 states currently use NLMS for the licensing and/or registration of MSBs. As of July 1, 2014, 737 companies held an MSB license in one or more states. These companies had registered over 95,000 agent locations. NMLS is available at <http://mortgage.nationwidelicensingsystem.org/Pages/default.aspx>

⁵ See *FFIEC Examination Manual*; *supra* note 3, at 67.

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