

Managing MSB Relationships

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Section 1: Overview

Money service businesses (MSB) have often been a challenge for community banks. Many community banks have not worked with MSBs in the past, and therefore are uncertain as to what needs to be done in these relationships. Secondly, community banks have limited resources – in both the number of employees and employee skill sets, which makes the management of such entities a challenge. Finally, community banks often only work with a very limited number of MSBs meaning that there are very few efficiencies related to these entities as managing a small number of MSBs lack an economies of scale in comparison to larger entities who manage a large number of MSBs.

Therefore, MSB management is an essential element to the BSA program of any community bank. To effectively manage the MSBs in an organization, each financial institution should develop a management system to mitigate the risk associated with these entities.

Generally, an MSB management system will contain three main elements:

1. Assessing the risk of each MSB.
2. Conducting initial due diligence on each MSB.
3. Conducting ongoing monitoring for each MSB.

When all three elements are effectively integrated and appropriately managed, the risk associated with working with MSBs can be greatly reduced.

The following sections of this manual will look at the three essential components for developing a MSB management system.

Section 2: Overview of MSBs

Defining an MSB

The first step in developing a MSB management system is to understand what an MSB is. On their website, FinCEN defines a money service business (MSB) as the following:

Money Services Business. The term "money services business" includes any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the following capacities:

- (1) Currency dealer or exchanger.
- (2) Check casher.
- (3) Issuer of traveler's checks, money orders or stored value.
- (4) Seller or redeemer of traveler's checks, money orders or stored value.
- (5) Money transmitter.
- (6) U.S. Postal Service.

An activity threshold of greater than \$1,000 per person per day in one or more transactions applies to the definitions of: currency dealer or exchanger; check casher; issuer of traveler's checks, money orders or stored value; and seller or redeemer of travelers' checks, money orders or stored value. The threshold applies separately to each activity. If the threshold is not met for the specific activity, the person engaged in that activity is not an MSB on the basis of that activity.

No activity threshold applies to the definition of money transmitter. Thus, a person who engages as a business in the transfer of funds is an MSB as a money transmitter, regardless of the amount of money transmission activity.

Notwithstanding the previous discussion, the term "money services business" does not include:

- A bank, as that term is defined in 31 CFR 1010.100(d) (formerly 31 CFR 103.11(c)), or
- A person registered with, and regulated or examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission.

For the complete regulatory definition of "money services business", see 31 CFR 1010.100(ff) (formerly 31 CFR 103.11(uu)).

Definition Under 31 CFR 1010.100(ff)

The official regulatory definition is:

(ff) Money services business. A person wherever located doing business, whether or not on a regular basis or as an organized or licensed business concern, wholly or in substantial part within the United States, in one or more of the capacities listed in paragraphs (ff)(1) through (ff)(7) of this section. This includes but is not limited to maintenance of any agent, agency, branch, or office within the United States.

(1) **Dealer in foreign exchange.** A person that accepts the currency, or other monetary instruments, funds, or other instruments denominated in the currency, of one or more countries in exchange for the currency, or other monetary instruments, funds, or other instruments denominated in the currency, of one or more other countries in an amount greater than \$1,000 for any other person on any day in one or more transactions, whether or not for same-day delivery.

(2) Check casher

(i) **In general.** A person that accepts checks (as defined in the Uniform Commercial Code), or monetary instruments (as defined at § 1010.100(dd)(1)(ii), (iii), (iv), and (v)) in return for currency or a combination of currency and other monetary instruments or other instruments, in an amount greater than \$1,000 for any person on any day in one or more transactions.

(ii) **Facts and circumstances; Limitations.** Whether a person is a check casher as described in this section is a matter of facts and circumstances. The term “check casher” shall not include:

(A) A person that sells prepaid access in exchange for a check (as defined in the Uniform Commercial Code), monetary instrument or other instrument;

(B) A person that solely accepts monetary instruments as payment for goods or services other than check cashing services;

(C) A person that engages in check cashing for the verified maker of the check who is a customer otherwise buying goods and services;

(D) A person that redeems its own checks; or

(E) A person that only holds a customer’s check as collateral for repayment by the customer of a loan.

(3) Issuer or seller of traveler's checks or money orders. A person that

(i) Issues traveler's checks or money orders that are sold in an amount greater than \$1,000 to any person on any day in one or more transactions; or

(ii) Sells traveler’s checks or money orders in an amount greater than \$1,000 to any person on any day in one or more transactions.

(4) ***Provider of prepaid access.***

(i) ***In general.*** A provider of prepaid access is the participant within a prepaid program that agrees to serve as the principal conduit for access to information from its fellow program participants. The participants in each prepaid access program must determine a single participant within the prepaid program to serve as the provider of prepaid access.

(ii) ***Considerations for provider determination.*** In the absence of registration as the provider of prepaid access for a prepaid program by one of the participants in a prepaid access program, the provider of prepaid access is the person with principal oversight and control over the prepaid program. Which person exercises “principal oversight and control” is a matter of facts and circumstances. Activities that indicate “principal oversight and control” include:

- (A) Organizing the prepaid program;
- (B) Setting the terms and conditions of the prepaid program and determining that the terms have not been exceeded;
- (C) Determining the other businesses that will participate in the prepaid program, which may include the issuing bank, the payment processor, or the distributor;
- (D) Controlling or directing the appropriate party to initiate, freeze, or terminate prepaid access; and
- (E) Engaging in activity that demonstrates oversight and control of the prepaid program.

(iii) ***Prepaid program.*** A prepaid program is an arrangement under which one or more persons acting together provide(s) prepaid access. However, an arrangement is not a prepaid program if:

- (A) It provides closed loop prepaid access to funds not to exceed \$2,000 maximum value that can be associated with a prepaid access device or vehicle on any day;
- (B) It provides prepaid access solely to funds provided by a federal, State, local, Territory and Insular Possession, or tribal government agency;
- (C) It provides prepaid access solely to funds from pre-tax flexible spending arrangements for health care and dependent care expenses, or from Health Reimbursement Arrangements (as defined in 26 U.S.C. 105(b) and 125) for health care expenses; or

(D)

(1) It provides prepaid access solely to:

(i) Employment benefits, incentives, wages or salaries; or

(ii) Funds not to exceed \$1,000 maximum value and from which no more than \$1,000 maximum value can be initially or subsequently loaded, used, or withdrawn on any day through a device or vehicle; and

(2) It does not permit:

(i) Funds or value to be transmitted internationally;

(ii) Transfers between or among users of prepaid access within a prepaid program; or

(iii) Loading additional funds or the value of funds from non-depository sources.

(5) **Money transmitter**

(i) **In general.**

(A) A person that provides money transmission services. The term “money transmission services” means the acceptance of currency, funds, or other value that substitutes for currency from one person AND the transmission of currency, funds, or other value that substitutes for currency to another location or person by any means. “Any means” includes, but is not limited to, through a financial agency or institution; a Federal Reserve Bank or other facility of one or more Federal Reserve Banks, the Board of Governors of the Federal Reserve System, or both; an electronic funds transfer network; or an informal value transfer system; or

(B) Any other person engaged in the transfer of funds.

(ii) **Facts and circumstances; Limitations.** Whether a person is a money transmitter as described in this section is a matter of facts and circumstances. The term “money transmitter” shall not include a person that only:

(A) Provides the delivery, communication, or network access services used by a money transmitter to support money transmission services;

(B) Acts as a payment processor to facilitate the purchase of, or payment of a bill for, a good or service through a clearance and settlement system by agreement with the creditor or seller;

(C) Operates a clearance and settlement system or otherwise acts as an intermediary solely between BSA regulated institutions. This includes but is not limited to the Fedwire system, electronic funds transfer networks, certain registered clearing agencies regulated by the Securities and Exchange Commission (“SEC”), and derivatives clearing organizations, or other clearinghouse arrangements established by a financial agency or institution;

(D) Physically transports currency, other monetary instruments, other commercial paper, or other value that substitutes for currency as a person primarily engaged in such business, such as an armored car, from one person to the same person at another location or to an account belonging to the same person at a financial institution, provided that the person engaged in physical transportation has no more than a custodial interest in the currency, other monetary instruments, other commercial paper, or other value at any point during the transportation;

(E) Provides prepaid access; or

(F) Accepts and transmits funds only integral to the sale of goods or the provision of services, other than money transmission services, by the person who is accepting and transmitting the funds.

(6) **U.S. Postal Service.** The United States Postal Service, except with respect to the sale of postage or philatelic products.

(7) **Seller of prepaid access.** Any person that receives funds or the value of funds in exchange for an initial loading or subsequent loading of prepaid access if that person:

(i) Sells prepaid access offered under a prepaid program that can be used before verification of customer identification under § 1022.210(d)(1)(iv); or

(ii) Sells prepaid access (including closed loop prepaid access) to funds that exceed \$10,000 to any person during any one day, and has not implemented policies and procedures reasonably adapted to prevent such a sale.

(8) **Limitation.** For the purposes of this section, the term “money services business” shall not include:

(i) A bank or foreign bank;

(ii) A person registered with, and functionally regulated or examined by, the SEC or the CFTC, or a foreign financial agency that engages in financial activities that, if conducted in the United States, would require the foreign financial agency to be registered with the SEC or CFTC; or

(iii) A natural person who engages in an activity identified in paragraphs (ff)(1) through (ff)(5) of this section on an infrequent basis and not for gain or profit.

Typical Structure of an MSB

MSBs can range from large sophisticated chains with interstate operations facilities that focus on providing a range of financial services such as check cashing and money transmission to small one-owner storefront operations that provide a few financial services, such as check cashing as an auxiliary service to its primary retail store operations. The business and management structure, as well as the overall risk profile, of an MSB can vary based on the size and complexity of the MSB. Some MSBs may engage in several different types of MSB-defined activities simultaneously. Some MSB-defined activities require more record keeping reporting under the BSA than others do.

MSB chains may maintain several organizational levels to conduct business. Each level is authorized to approve certain size transactions. The number of authorization levels may vary depending on the dollar amounts customer transactions and the number of branches. The principal employees can include the following:

- ***Director/Manager/Owner*** – Oversees the entire operation of the MSB. The manager may approve the largest currency transactions and may also be responsible for maintaining the internal control and records of the operations.
- ***Store Manager/Supervisor*** – Reviews daily teller work and reconciliations. The supervisor may approve medium-size transactions (for example, between \$3,000 and \$5,000), and often receives shipments of currency to and from the correspondent bank or other currency supplier. In addition, the supervisory may be charged with ensuring all transaction information required by federal and state recordkeeping requirements is obtained.
- ***Teller*** – Responsible for conducting all transactions and reconciling the total currency transaction to the teller's beginning and ending cash balances. The teller usually will have the lowest authorization for conducting currency transactions. The teller is the MSB's front line employee who should be aware enough of BSA regulations to perform duties such as securing information when appropriate from individuals conducting transactions that will trigger recordkeeping or currency transaction reporting requirements.
- ***BSA Compliance Officer*** – Responsible for implementing and monitoring the day-to-day BSA compliance and internal controls of the program. In a small business with only a few employees, the BSA compliance officer may execute all the tasks himself or herself. In a small business, duties may have to be discharged by a non-dedicated supervisor or employee. In a large, multi-state business, the BSA compliance officer will have a supervisory responsibility over the AML program, and may have dedicated staff that performs specific duties related to BSA compliance. Some MSB chains may centralize the compliance and reporting function, while other MSBs with agent relationships prefer each agent to comply with its own recordkeeping and reporting obligations.

Branches and/or Agents

An MSB can provide more services to more customers through branches or agents. So an MSB may set up branches or enter into agent agreements with other commercial entities (like grocery stores) to establish portals that provide customers with convenient access to its locations and services.

What is the difference between a branch and an agent?

- Branches are “brick and mortar” locations where the MSB maintains an office, employs the staff directly, and is responsible for the operating costs of the branch, such as rent and utilities.
- Conversely, in an agent relationship, the MSB enters into an agent service agreement with an independent entity, which in the vast majority of cases is another commercial entity that is seeking to add specific MSB services to its existing inventory of customer products and services. Many of the terms of the agreement or contract are generally stipulated by the state MSB regulations where the MSB is domiciled. Among other features, the agreement or contract typically sets forth the rights and obligations of both parties, as well as responsibilities for complying with all state and federal laws. Other important features include the fee structure and the fee remittance policy of the MSB. The advantage is that the cost of the agent agreement is generally an agreed upon service fee to be paid to the agent based upon the transactions the agent takes in. Using agents allows the MSB to expand its marketing network with less overhead requirements. As opposed to operating through a limited number of branch locations, constrained by costs, an MSB can enlist a network of agents to be able to reach a wider customer market.

Section 3: MSB Registration Requirements

The Financial Crimes Enforcement Network (FinCEN) has specific registration requirements for Money Service Businesses.

The Bank Secrecy Act (BSA) requires certain money services businesses (MSBs) to register with the Financial Crimes Enforcement Network (FinCEN), of the U.S. Department of the Treasury, **within 180 days after the date on which the MSB is established**. These businesses are also required to prepare and maintain a list of agents. This fact sheet is designed to provide the information you need to know in order to comply with the MSB registration requirement. For further information, please visit www.msb.gov or call the FinCEN Regulatory Helpline at 800-949-2732.

MSB Registration Requirement

A business that meets the definition of an MSB because it provides one or more of the following products or services must register (except as noted below):

- Money orders
- Check cashing
- Traveler's checks
- Currency dealing or exchange
- Money transmission

Solely an Agent

A business that is an MSB solely because it serves as an agent of another MSB is not required to register. However, a business that is an MSB because it engages in MSB activities (above), both on its own behalf and as an agent of another MSB, must register.

Example: A supermarket corporation that acts as an agent (as a seller of money orders) for an issuer of money orders, and performs no other services of a nature and amount that would cause the supermarket corporation to be an MSB, is not required to register. This is true even if the supermarket corporation serves as an agent for two or more MSBs. However, the supermarket corporation will have to register if, in addition to acting as an agent of the money order issuer, it provides check cashing or currency exchange services (other than as an agent for another MSB) in an amount greater than \$1,000 for any person on any day in one or more transactions.

Stored Value

A business that is an MSB solely as an issuer, seller, or redeemer of stored value is not required to register. If, however, a business is an MSB because of other services it provides (above), providing stored value services does not relieve it of the responsibility to register.

Other

The U.S. Postal Service and agencies of the United States, of any State, or of any political subdivision of any State, are not required to register.

Filing Instructions

MSBs must be registered by using FinCEN Form 107, Registration of Money Services Business. The owner or controlling person must sign and file the completed form. Instructions for completion and filing accompany the form.

Registration is the responsibility of the owner or controlling person of the MSB. If more than one person owns or controls the MSB, the owning or controlling persons may enter into an agreement designating one of them to register the business. The failure of the designated person to register the MSB, however, does not relieve any of the other persons who own or control the business of the liability for the failure to register the MSB.

Owner or Controlling Person

An owner or controlling person includes the following:

MSB	Owner or Controlling Person
Sole Proprietorship.....	the individual who owns the business
Partnership.....	a general partner
Trust.....	a trustee
Corporation.....	the largest single shareholder

In addition to this, there are specific rules regarding the make-up of the organization:

- *MSB is a Public Corporation.* If the MSB is a public corporation, a duly authorized officer of the public corporation may register the MSB and may sign the form on behalf of the corporation.
- *Multiple Owners/Controlling Persons.* If two or more persons own equal numbers of shares of an MSB that is a corporation, those persons may enter into an agreement designating one of them to register the MSB.
- *Owner/Controlling Person is a Corporation.* If the owner or controlling person is a corporation, a duly authorized officer of the owner-corporation may sign the form on behalf of the owner-corporation.

Additional Filing Instructions

Registration must be renewed every two years. Re-registration is required in limited circumstances.

Renewal

After an MSB completes its initial registration, the form to renew its registration must be filed by December 31 of the second calendar year preceding the 24-month renewal period and is accomplished by filing the Registration of Money Services Business Form, FinCEN Form 107. Thereafter, registration renewal must be filed every 24 months by December 31.

Re-register

Re-register means to re-file a registration form (with information different from that reported on the form originally filed) during the initial registration period (before the deadline for renewal) because an event triggering re-registration has occurred. An MSB must be re-registered when any of the following events occurs during a registration period:

- *Change in Ownership or Control under State Law.* There has been a change in ownership or control of the MSB that requires the MSB to be re-registered under State law.
- *Transfer of Voting Power or Equity Interest.* More than 10 percent of the voting power or equity interest of the MSB has been transferred (except MSBs that must report such transfer to the Securities and Exchange Commission);
- *Increase in the Number of Agents.* The number of agents of the MSB has increased by more than 50-percent.

To re-register, the registration form, TD F 90-22.55, must be completed and filed not later than 180 days after the date the triggering event occurs.

The calendar year in which the triggering event occurs is treated as the first year of a new two-year registration period.

MSBs with questions regarding their renewal deadline should contact the FinCEN Resource Center at FRC@fincen.gov or 1-800-767-2825, select option 3

Agent Lists

An MSB that is required to register and has agents must prepare and maintain a list of its agents.

That list must be updated annually. Generally, the list must include:

- *Name:* The name of the agent, including any trade names or doing-business-as names.
- *Address:* The address of the agent, including street address, city, state, and ZIP code.

- *Telephone Number:* The telephone number of the agent.
- *Type of Services:* The type of MSB services the agent provides on behalf of the MSB maintaining the list.
- *Gross Transaction Amount:* A listing of the individual months in the 12 months immediately preceding the date of the agent list in which the agent's gross transaction amount for financial products or services issued by the MSB maintaining the agent list exceeded \$100,000.
- *Depository Institution:* Name and address of any depository institution at which the agent maintains a transaction account for any of the funds received in or for the MSB services the agent provides on behalf of the MSB maintaining the list.
- *Year Became Agent.* The year in which the agent first became an agent of the MSB.
- *Branches:* The number of branches and sub-agents the agent has, if any.

Supporting Documentation

Supporting documentation, including a copy of the filed form, an estimate of business volume, information regarding ownership or control, and the agent list must be retained by the MSB for a period of five years.

Section 4: MSB BSA/AML Program Requirements

Each money services business must develop, implement, and maintain an effective anti-money laundering program. An effective anti-money laundering program is one that is reasonably designed to prevent the money services business from being used to facilitate money laundering and the financing of terrorist activities.

General Requirements

In creating a BSA/AML program, there are certain general requirements that each MSB must consider. The BSA/AML program shall

- be commensurate with the risks posed by the location and size of, and the nature and volume of the financial services provided by, the money services business.
- be in writing, and a money services business shall make copies of the anti-money laundering program available for inspection to the Department of the Treasury upon request.

FinCEN provides specific guidance as to what must be contained in an MSB's BSA/AML program. At a minimum, a program shall do a number of things.

Policies, Procedures, and Internal Controls

A MSB's program must incorporate policies, procedures, and internal controls reasonably designed to assure compliance with FinCEN's rules.

Policies, procedures, and internal controls developed and implemented shall include provisions for complying with the requirements including, to the extent applicable to the money services business, requirements for:

- Verifying customer identification, including as set forth in paragraph (d)(1)(iv) of this section;
- Filing Reports;
- Creating and retaining records;
- Responding to law enforcement requests.

Money services businesses that have automated data processing systems should integrate their compliance procedures with such systems.

A person that is a money services business solely because it is an agent for another money services business as set forth in §1022.380(a)(3), and the money services business for which it serves as agent, may by agreement allocate between them responsibility for development of policies, procedures, and internal controls required by this paragraph (d)(1). Each money services business shall remain solely responsible for implementation of the requirements set forth in this section, and nothing in this paragraph (d)(1) relieves any money services business from its obligation to establish and maintain an effective anti-money laundering program.

A money services business that is a provider or seller of prepaid access must establish procedures to verify the identity of a person who obtains prepaid access under a prepaid program and obtain identifying information concerning such a person, including name, date of birth, address, and identification number. Sellers of prepaid access must also establish procedures to verify the identity of a person who obtains prepaid access to funds that exceed \$10,000 during any one day and obtain identifying information concerning such a person, including name, date of birth, address, and identification number. Providers of prepaid access must retain access to such identifying information for five years after the last use of the prepaid access device or vehicle; such information obtained by sellers of prepaid access must be retained for five years from the date of the sale of the prepaid access device or vehicle.

Responsibility Assignment

A MSB's program must designate a person to assure day-to-day compliance with the program and this chapter. The responsibilities of such person shall include assuring that:

- The money services business properly files reports, and creates and retains records, in accordance with applicable requirements of this chapter;
- The compliance program is updated as necessary to reflect current requirements of this chapter, and related guidance issued by the Department of the Treasury; and
- The money services business provides appropriate training and education in accordance with paragraph (d)(3) of this section.

Training

In addition to the above, a BSA/AML program must provide education and/or training of appropriate personnel concerning their responsibilities under the program, including training in the detection of suspicious transactions to the extent that the money services business is required to report such transactions.

Independent Review

An MSB's BSA/AML program must also provide for independent review to monitor and maintain an adequate program. The scope and frequency of the review shall be commensurate with the risk of the financial services provided by the money services business. Such review may be conducted by an officer or employee of the money services business so long as the reviewer is not the person designated in paragraph (d)(2) of this section.

Compliance Date

A money services business must develop and implement an anti-money laundering program that complies with the requirements of this section on or before the end of the 90-day period beginning on the day following the date the business is established.

Section 5: Independent MSB Reviews

Money Service Businesses have a requirement to conduct regular independent reviews. On September 22, 2006, FinCEN issued guidance for MSBs regarding their responsibilities in conducting independent reviews. This guidance is FIN-2006-G012 and can be found at https://www.fincen.gov/financial_institutions/msb/pdf/Guidance_MSBIndependent_Audits9-21.pdf

The guidance explains that money services businesses are required under the Bank Secrecy Act to establish anti-money laundering programs that include “an independent audit function to test programs.” In implementing this requirement, FinCEN determined to make clear that money services businesses are not required to hire a certified public accountant or an outside consultant to conduct a review of their programs. Rather, the relevant Bank Secrecy Act regulation requires money services businesses to establish anti-money laundering programs with written policies and procedures that:

Provide for independent review to monitor and maintain an adequate program. The scope and frequency of the review shall be commensurate with the risk of the financial services provided by the money services business. Such review may be conducted by an officer or employee of the money services business so long as the reviewer is not the person designated in paragraph (d)(2) of this section.

The primary purpose of the independent review is to monitor the adequacy of the money services business’ anti-money laundering program. The review should determine whether the business is operating in compliance with the requirements of the Bank Secrecy Act and the business own policies and procedures. Each money services business should identify and assess the money laundering risks that may be associated with its unique products, services, customers, and geographic locations. Regardless of where risks arise, money services businesses must take reasonable steps to manage them. Each money services business should focus resources on the areas of its business that management believes pose the greatest risks, and the level of sophistication of the associated internal controls should be appropriate for the size, structure, risks, and complexity of the money services business.

1. What should be done during the review?

The review should provide a fair and unbiased appraisal of each of the required elements of the company’s anti-money laundering program, including its Bank Secrecy Act-related policies, procedures, internal controls, recordkeeping and reporting functions, and training. The review should include testing of internal controls and transactional systems and procedures to identify problems and weaknesses and, if necessary, recommend to management appropriate corrective actions. For example, if the program requires that a particular employee or category of employee should be trained once every six months, then the independent testing should determine whether the training occurred and whether the training was adequate.

The review also should cover all of the anti-money laundering program actions taken by – or defined as part of the responsibility of – the designated compliance officer. These actions include, for example, the determination of the level of money laundering risks faced by the business, the frequency of Bank Secrecy Act anti-money laundering training for employees, and the adoption of procedures for implementation and oversight of program-related controls and transactional systems.

2. Who should conduct the review?

Our regulations require an independent review, not a formal audit by a certified public accountant or third-party consultant. Accordingly, a money services business does not necessarily need to hire an outside auditor or consultant. The review may be conducted by an officer, employee or group of employees, so long as the reviewer is not the designated compliance officer and does not report directly to the compliance officer.

3. How often should the review occur?

The review should be conducted on a periodic basis. The scope and frequency of the review will depend on the money services business' risk assessment, which should take into account the business' products, services, customers, and geographic locations. For some money services businesses, based on their risk assessments, an annual review may not be necessary; for others, more frequent review may be warranted. For example, if the money services business' risk assessment changes, more frequent review may be prudent. Similarly, if compliance problems are identified in a review, it may be advisable to advance the date of the next review to confirm that corrective actions have been taken.

4. Should the review be documented in some manner and reported to management?

Yes. The person or persons responsible for conducting the review should document the scope of the review, procedures performed, transaction testing completed, if any, findings of the review, and recommendations to management for corrective actions, if any. After the review, the reviewer or the designated compliance officer should track deficiencies and weaknesses discovered during the review and document corrective actions taken by the money services business. All of the documentation should, as appropriate, be made accessible to government examiners and law enforcement personnel who have authority to examine such documents.

Section 6: MSB SAR Filing Requirements

Money Service Businesses have a requirement to conduct regular independent reviews. On September 22, 2006, FinCEN issued guidance for MSBs regarding their responsibilities in conducting independent reviews.

Reporting Requirements

Certain money services business (MSBs) are required to report suspicious activity. The following MSBs are subject to the suspicious activity reporting (SAR) requirement:

- Money transmitters
- Currency dealer or exchanger
- Money order - issuers, sellers and redeemers
- Traveler's check - issuers, sellers and redeemers
- US Postal Service

SAR Exceptions

The SAR requirement does not apply to the following types of MSB:

- Check casher
- Stored value - issuer, seller, and redeemer

A business that is two types of MSB

Any person that is both a type of MSB that is required to file SARs and a type of MSB that is not required to file SARs, is required to file SARs. The mandatory SAR requirement applies only to the type of transactions that make the business an MSB type subject to the SAR requirement. The MSB may voluntarily report suspicious activity occurring in transactions that are not subject to the SAR requirement; i.e., check cashing and stored value.

Example: A convenience store company cashes checks for customers in amounts greater than \$1,000 and conducts send and receive money transfer transactions for customers. Thus, the convenience store company is an MSB as a check casher and as a money transmitter. Since the company is both a type of MSB that is required to file SARs (a money transmitter) and type of MSB that is not required to file SARs (a check casher), the company is required to file SARs. The SAR obligation is limited to the money transfer transactions conducted by, at or through the MSB. The MSB may voluntarily report suspicious activity occurring in its check cashing transactions.

SAR Thresholds

There are two different dollar thresholds depending on the type of MSB and the stage and type of transaction involved:

- *\$2,000 or more* - for transactions conducted or attempted by, at or through an affected MSB, the threshold of \$2,000 applies.
- *\$5,000 or more* - for transactions identified by issuers of money orders or traveler's checks from a review of clearance records or other similar records of instruments that have been sold or processed, the threshold of \$5,000 applies.

Suspicious Transactions

A transaction must be reported if the MSB knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

1. *Involves funds derived from illegal activity* or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity, or is
2. *Designed to evade the requirements of the Bank Secrecy Act*, whether through structuring or other means, or
3. *Serves no business or apparent lawful purpose*, and the reporting business knows of no reasonable explanation for the transaction after examining all available facts.

Filing

A SAR must be filed using a SAR MSB form. MSBs have 30 days after becoming aware of a suspicious transaction to complete and file the form.

Retention

A copy of the filed form and supporting documentation must be retained for a period of five years from the date of filing.

Disclosure Prohibited

MSBs (including MSB employees) are prohibited from disclosing to a person involved in the transaction that a suspicious activity report has been filed. Further, each MSB (including each MSB employee) is protected from civil liability for any SAR filed by the MSB.

Penalties

Civil and criminal penalties may be imposed for willful violation of the SAR requirement.

Additional Guidance

The following Q&A is provided by FinCEN on their website at

https://www.fincen.gov/financial_institutions/msb/pdf/sar_qa_final.pdf

Reporting Suspicious Activity: Q&A for Money Services Businesses

As of January 1, 2002, certain money services businesses (MSBs) became obligated under the Bank Secrecy Act to report suspicious activity to the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN). Following are answers to frequently asked questions about this requirement.

To which businesses does this rule apply?

This rule applies to any business that:

- Provides *money transfers* in any amount; or
- Issues, sells, or redeems *money orders or traveler's checks* in an amount greater than \$1,000 for the same customer on the same day in either instrument, or
- Provides *currency dealing or exchange* in an amount greater than \$1,000 for the same customer on the same day in either activity.

What is suspicious activity?

Suspicious activity is any transaction or pattern of transactions that the MSB knows, suspects or has reason to suspect meets any of the following four conditions:

- *Involves funds from an illegal activity*, or attempts to hide funds raised from illegal activity.
- *Appears to be an attempt to evade Bank Secrecy Act requirements*, such as filing of a Currency Transaction Report (CTR), by breaking a large transaction into smaller amounts.
- *Seems to have no business or other lawful purpose* and available facts provide no reasonable explanation.
- *Involves use of the money services business to facilitate criminal activity.*

Must all suspicious activity be reported?

Suspicious activity, as described above, must be reported if it involves transactions or attempted transactions at or above a certain amount:

- *\$2,000 or more* - for transactions conducted or attempted by, at or through an affected money services business, the threshold of \$2,000 applies;

- *\$5,000 or more* - for transactions identified by issuers of money orders or traveler's checks from a review of clearance records or other similar records of instruments that have been sold or processed, the threshold of \$5,000 applies.

How does a business report suspicious activity?

Suspicious Activity Report by MSB forms are available at www.msb.gov or by calling the IRS forms distribution center at 1-800-829-3676. Completed forms should be sent to: Detroit Computing Center, ATTN: SAR-MSB, P.O. Box 33117, Detroit, MI 48232-5980.

Other reporting requirements:

- *Deadline:* MSBs have 30 calendar days to file a Suspicious Activity Report after becoming aware of a suspicious transaction.
- *Urgency:* If a situation seems to require urgent attention, the MSB should immediately notify the appropriate law enforcement authority, as well as file the required form.
- *Confidentiality:* It is against the law to inform anyone other than an appropriate law enforcement or supervisory agency that a Suspicious Activity Report has been filed.
- *Liability:* The law protects MSBs that report suspicious activity from civil liability.

Section 7: Other MSB Requirements

Overview

MSBs have several other requirements, which must be followed.

Currency Transaction Reports

Each financial institution other than a casino shall file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution which involves a transaction in currency of more than \$10,000, except as otherwise provided in FinCEN's rules. In the case of the U.S. Postal Service, the obligation contained in the preceding sentence shall not apply to payments or transfers made solely in connection with the purchase of postage or philatelic products.

Funds Transfers

Each agent, agency, branch, or office located within the United States of a financial institution other than a bank is subject to FinCEN's requirements with respect to a transmittal of funds in the amount of \$3,000 or more.

Negotiable Instruments

The rules for collecting and retaining information relating to monetary instruments are the same for MSB's as they are for banks.

Prepaid Access

With respect to transactions relating to providers and sellers of prepaid access described in FinCEN's rules, each provider of prepaid access shall maintain access to transactional records for a period of five years. The provider of prepaid access shall maintain access to transactional records generated in the ordinary course of business that would be needed to reconstruct prepaid access activation, loads, reloads, purchases, withdrawals, transfers, or other prepaid-related transactions.

Record Retention

Wherever it is required that there be retained either the original or a microfilm or other copy or reproduction of a check, draft, monetary instrument, investment security, or other similar instrument, there shall be retained a copy of both front and back of each such instrument or document, except that no copy need be retained of the back of any instrument or document which is entirely blank or which contains only standardized printed information, a copy of which is on file.

Records required by this chapter to be retained by financial institutions may be those made in the ordinary course of business by a financial institution. If no record is made in the ordinary course of business of any transaction with respect to which records are required to be retained by this chapter, then such a record shall be prepared in writing by the financial institution.

The rules and regulations issued by the Internal Revenue Service under 26 U.S.C. 6109 determine what constitutes a taxpayer identification number and whose number shall be obtained in the case of an account maintained by one or more persons.

All records that are required to be retained by this chapter shall be retained for a period of five years. Records or reports required to be kept pursuant to an order issued under §1010.370 of this chapter shall be retained for the period of time specified in such order, not to exceed five years. All such records shall be filed or stored in such a way as to be accessible within a reasonable period of time, taking into consideration the nature of the record, and the amount of time expired since the record was made.

Section 8: Assessing MSB Risk

To ensure that MSBs have in place the processes necessary to identify, measure, monitor, and control risk exposures, financial institutions should emphasize evaluating the appropriateness of these processes. While some testing may or may not be appropriate (based on the size and complexity of the MSB), the amount of testing will be reduced or even eliminated when a financial institution determines that internal risk-management processes are adequate or risks are minimal. However, when risk-management processes or internal controls are considered inappropriate, such as when there is an inadequate segregation of duties or when interviews or on-site visits determine that necessary processes are inadequate or absent, transaction testing may need to be performed.

In addition, if a financial institution believes that an MSB's management is being less than candid, has provided false or misleading information, or has omitted material information, then substantial on-site transaction testing should be performed. Alternatively, the financial institution may choose to not open the account or renew the account relationship.

Effective MSB due diligence will cover an MSB's major activities. The depth of each area's review should vary according to the risk assessment of that area. Financial institutions should determine the appropriate depth and scope of due diligence based on the assessment of the risks of the MSB.

The due diligence process builds on itself, as well as on the facts determined at each stage of the process. For example, if a financial institution is not able to gather enough information during the pre-due diligence phase to make a complete risk assessment of the MSB, then the financial institution should conduct extensive interviews to perform a complete risk assessment. If the MSB does not have an AML program or the program is not based on the risks that actually apply to the particular MSB, then a financial institution should conduct extensive interviews and perform more extensive transaction tests to determine whether and to what extent the MSB is in violation of BSA requirements.

Due Diligence

The objective of any MSB due diligence should be to identify the MSB's BSA/AML risks, develop the scope of due diligence, and to document the due diligence steps taken.

MSB due diligence is intended to assess an MSB's compliance with the regulatory requirements pertaining to the BSA, in particular the effectiveness of the MSB's AML program. It is important to keep in mind that this is distinct from assessing the health of the MSB – something the lending department should do.

In conducting MSB BSA due diligence, a financial institution should attempt to gather as much information as possible before meeting with the MSB in order to gain an understanding of the business, make a preliminary risk assessment, identify potential money laundering risks, and identify appropriate due diligence methods based upon the preliminary risk assessment of the business. This will maximize the effectiveness of the due diligence process.

Whenever possible, the pre-planning process should be completed before meeting with or contacting the MSB. During this process, it may be helpful to discuss BSA matters with the MSB's management, including the BSA compliance officer. The scoping and planning process begins with an analysis of:

- Historical information;
- Prior examination reports, correspondence, and work papers;
- BSA-reporting databases in order to determine if the MSB has registered with FinCEN,
- The MSB's BSA/AML risk assessment and "registrant profile"
- Independent reviews or audits; and
- Business structure, including (if applicable) whether the MSB maintains branches and/or agent relationships.

Guidance on Providing Banking Services to MSBs

On November 10, 2014, FinCEN released a statement to all financial institutions regarding providing services to money services businesses. This guidance can be found at the following web address and is included below as found on FinCEN's website:

https://www.fincen.gov/news_room/nr/html/20141110.html

FinCEN Statement on Providing Services to Money Services Businesses

Money services businesses ("MSBs"), 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.

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. 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. 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. 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.).