



Money Services Business Association
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September 17, 2018

Financial Crimes Enforcement Network
Policy Division
P.O. Box 39
Vienna, Virginia
23183 USA

Re: Docket Number FinCEN-2018-0005, OMB Control Number 1506-0013

Dear Deputy Director El-Hindi,

This letter is submitted on behalf of the Money Services Business Association (“MSBA”). The MSBA is a trade association focused on the non-bank money services industry, including licensed money transmitters and their agents and/or authorized delegates, payment card issuers, and distributors, payment processors, international remittance companies, bill payment companies, mobile payment application providers, payment aggregators, virtual currency exchanges and administrators, eWallet providers and other similar money services providers that are engaged in payments. For additional information, please see: www.msbassociation.org.

The MSBA appreciates the opportunity to provide comments regarding the information collection contained in 31 CFR 1022.380 and in the Registration of Money Services Business report, Financial Crimes Enforcement Network (“FinCEN”) Form 107. MSBA members all use FinCEN Form 107 when registering as money services businesses with FinCEN and, when so registered, are all subject to the suspicious activity reporting requirements of the implementing regulations (the “Regulations”) of the Bank Secrecy Act (“BSA”) regarding money services businesses (“MSBs”). Many of our future members will follow this process as well and are therefore directly impacted by the approved information collection and forms used during the registration process.

I. § 1022.380 Registration of money services businesses.

MSBA believes that the Regulations serve their intended purpose and that maintaining them, would be good for the industry.

There are, however, some minor elements of the Regulations concerning MSB registration that may better serve their legislative intent if they were to be amended.



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(a) §1022.380(a)(3) Agent registration

The current regulations do not require agents or authorized delegates to register with FinCEN. However, banks and credit unions do not understand the difference between a principal MSB that is licensed with state agencies and is required to register with FinCEN, and agents or authorized delegates that do not have a registration requirement.

The MSBA requests that FinCEN issue guidance directed at banks and credit unions that serve MSBs and their agents or authorized delegates making it clear to them that, under §1022.380(a)(3), agents of MSBs do not need to register with FinCEN.

(b) §1022.380(b)(2) Registration period

The current Regulations direct an MSB to file an initial FinCEN registration form 180 days after the date the business was established,¹ followed by the renewal period of every two calendar years. However, if a defined event triggers re-registration², the renewal date changes. As evidenced by the erstwhile need for an online calculator³ to calculate registration dates, the MSBA membership finds the difference in length of the initial registration period, the renewal date calculation, and subsequent reregistration triggers that change the renewal date calculation, to be confusing. The MSBA respectfully submits that the initial registration period and the renewal registration periods be similar in length, such that an initial registration shall remain valid for two years from the end of the year in which it was made, and subsequent renewals are every two years thereafter. There would still be a requirement for a re-registration for any triggering event, however the re-registration event would not impact the renewal date calculation.

Given that the renewal due date is known to FinCEN, but not always obvious to the MSB, its financial partners, or applicable regulators, it would also help if FinCEN could publish the due date for the next renewal filing as part of the MSB Registration Status Information available from the FinCEN MSB Registrant Search Web page.

(c) § 1010.100(ff)(2) Definition of Check casher

The regulations currently define a Check casher requiring FinCEN registration as follows at § 1010.100(ff)(2):

“(2) **Check casher.** A person engaged in the business of a check casher (other than a person who does not cash checks in an amount greater than \$1,000 in currency or monetary or other instruments for any person on any day in one or more transactions).”

¹ 31 CFR 1022.380(b)(2).

² 31 CFR 1022.380(b)(4).

³ <https://www.fincen.gov/msb-registration-calculator>



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MSBA members that are check cashers have found this language to be problematic for two reasons. First, the \$1,000 threshold for registration is so low as to capture many ordinary course of business check cashing instances for which a FinCEN registration is not properly required. Secondly, because there continues to be a request by banks and credit unions for authorized delegates to register with FinCEN, due to the threshold limit, and not based on the circumstances of the activity. It should be noted that this issue, is not unique to check cashers but also to other entities that may be categorized under the MSB umbrella.

The MSBA respectfully submits that FinCEN could eliminate both of these ambiguities by rephrasing the definition of Check casher to raise the minimum threshold, as follows:

“(2) **Check casher.** A person engaged in the business of a check casher (other than a person who does not cash checks in an amount greater than \$3,000 in currency or monetary or other instruments for any person on any day in one or more transactions).”

The MSBA respectfully submits that the foregoing amendment would assist in creating greater coherence between state check casher licensing law and the perception of FinCEN registration requirements.

(d) § 1022.380(a)(2) Registration of foreign-located MSBs

Ever since the 2011 revision to the Regulations⁴ that clarified which entities are covered by the definitions, it has been clear that non-US persons, who are MSBs, are obligated to register with FinCEN.

The Regulations are clear that registration is required where a foreign MSB is providing services to customers located in the United States. However, there are two sets of facts for which the registration requirement for foreign MSBs is not clear.

x. Foreign MSB that is an authorized delegate of US MSB

A foreign MSB that is in one of the capacities listed in paragraphs 31 CFR 1010.100 (ff)(1) through (5) must register with FinCEN. Some foreign MSBs operate within the United States, without US state licenses, in their capacity as authorized delegates of US state-licensed and FinCEN registered MSBs. The Regulations are not clear as to whether this specific sub-set of authorized delegates should, in fact be registered with FinCEN. We therefore respectfully request clarity from FinCEN on the expectations as it relates for foreign-located MSBs as authorized delegates of registered MSBs.

⁴ 76 FR 43585 (July 21, 2011), available at <http://www.gpo.gov/fdsys/pkg/FR-2011-07-21/pdf/2011-18309.pdf>.



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y. Foreign MSB without account(s) or office(s) in the US

Despite the publication of helpful guidance related thereto⁵, the Regulations remain unclear as to whether registration is required for a foreign MSB that, while serving customers in the United States, does so through accounts located in only foreign locations.

For example, if a U.K. money transfer service, that is fully registered as such with the U.K. Financial Conduct Authority, but with no bank accounts or other presence in the United States, moves funds for a United States customer with a London, U.K. account to a Paris, France account of a third party, does that activity trigger a FinCEN registration requirement despite no movement of funds in or out of the United States? We respectfully submit that the current wording of the Regulations is not clear on this point and request additional clarity.

The lack of clarity is germane to correspondent financial institutions engaged by US MSBs to deliver funds from one foreign jurisdiction to another. For example, a US money transmitter may wish to deliver funds to India but might not have a correspondent relationship in India. In order to be able to deliver funds to India, that U.S. money transmitter might deliver funds to a U.K. money transfer service that, in turn, would use its correspondent in India to deliver the funds to the designated payee. Currently, an MSB would utilize FinCEN's guidance (Interpretative Release 2004-1)⁶ with respect to Foreign Agents or Foreign Counterparties but are uncertain as to whether its U.K. correspondent is also expected to register with FinCEN, despite never handling money within the U.S. nor having any other presence here.

One possible remedy to this ambiguity, and the other ambiguity discussed above, would be to limit the definition of MSB to only entities that, in addition to any other activities, participate in the movement of funds in or out of the U.S. The definition of MSB at 31 CFR 1010.100(ff) could, perhaps, be amended as follows:

“(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 movement of funds from, to or within the United States, maintenance of any agent, agency, branch, or office within the United States, whether or not as an agent or authorised delegate of another United States entity that is registered with FinCEN.”

MSBA membership would have greater certainty as to the U.S. legal compliance of their foreign correspondents if the foregoing amendment were made to the Regulations.

⁵ FIN-2012-A001, FinCEN Advisory, Foreign-Located Money Services Businesses, February 15, 2012.

⁶ [Guidance – \(Interpretative Release 2004-1\) Anti-Money Laundering Program – Requirements for Money Services Businesses with Respect to Foreign Agents or Foreign Counterparties](#)



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II. FinCEN Form 107

FinCEN’s Form 107 is a simple and easy to use form that allows MSBs to register with FinCEN.

There are, however, some minor amendments to Form 107 that might improve the form.

(a) Part III - Beneficial ownership

Form 107 requires the disclosure of, amongst other information, the owner or controlling person of the MSB. The instructions for Part III of the Form, might be improved by indicating that the owner or controlling person of a corporation or partnership should be the ultimate beneficial owner and not simply the direct owner of the MSB. Such improvement might be accomplished by: (i) adding four separate fields in Part III, one for each potential owner of 25% or more of the MSB; and (ii) adding the following to the instructions:

“Each reference to Owner or Controlling Person in this Part III is a reference to the ultimate beneficial owner of 25% or more of the MSB and not simply the direct legal owner.”

With the benefit of this clarification, MSBA membership would be able to register with FinCEN or renew their FinCEN registration using a coherent point of reference as to beneficial ownership. With greater interest on the part of FinCEN on beneficial ownership⁷, this clarification would also serve the interest of law enforcement in that regard.

(b) Part IV – Money Services Product Information

Part IV of Form 107 requires the MSB to disclose those states in which it has a branch. The concept of a ‘branch’, while applicable to the majority of MSBs, does not apply to those MSBs that have none, but still serve U.S. customers in multiple states.

The MSBA believes that there are, at present, three types of presence that an MSB may have within any given state or territory of the United States:

- x. **branch**, meaning a physical office premises at which the MSB is present in the state/territory;
- y. **authorized delegate** or **agent**, meaning a person or entity other than the MSB that, pursuant to a written agency agreement with the MSB, carries on the business of the MSB within the state/territory; or
- z. **service**, meaning, with or without a branch, authorized delegate or agent, the MSB provides MSB services to persons or entities within the state/territory.

⁷ FIN-2018-G001 FinCEN Guidance, Frequently Asked Questions Regarding Customer Due Diligence Requirements for Financial Institutions, April 3, 2018, available here https://www.fincen.gov/sites/default/files/2018-04/FinCEN_Guidance_CDD_FAQ_FINAL_508_2.pdf



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Given the factual reality of each US MSB performing some mixture of the three foregoing activities in, or in respect of, any given state, MSBA respectfully submits that: (i) the above definitions be added to the Form 107 instructions; (ii) the list of states at question 24 of Form 107 be amended to add three checkboxes per state, one for each of the three activities identified above; and (iii) question 24 be rephrased as follows:

“24. States and/or territories where the registrant, its agents or branches are located or where it provides services. Check the activities at boxes a, b, or c as appropriate (check only one) and do not check individual state/territory boxes. If none of the boxes at a, b, or c apply, check as many state/territory activity boxes as necessary.”

(c) Form 107 Technical Access

Although not related to the content of Form 107, MSBA members have found it difficult to access Form 107 via the internet. It appears that there may be certain browser and operating-system limitations related to the use of Form 107 which, together, reduce access to the form. We respectfully submit that a review of the usability of Form 107 be carried out to see that it can be readily accessed and completed by a typical user on a typical computer whether within the U.S. or from a foreign location.

III. § 1022.320 Reports by money services businesses of suspicious transactions.

The MSBA membership request additional clarity around various aspects of suspicious activity reporting. As of April 1, 2013, financial institutions were required to file suspicious activity report (SAR) filings through the BSA E- Filing system, replacing SAR-MSB Form 109, with the FinCEN SAR Form 111. Additionally, on a regular basis, FinCEN has provided instructions on how to complete and submit the FinCEN SAR Form 111, with the most recent update as of June 2018.⁸

Currently §1022.320(b)(3) requires an MSB to file a SAR no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing a SAR. However, under the FinCEN SAR Form 111 filing instructions, if no suspect is identified on the date of the initial detection, a SAR may be delayed an additional 30 calendar days to identify a suspect, but no more than 60 calendar days after initial detection. Please provide clarity around the MSB due dates for SAR filing if no suspect is identified on the date of the initial detection.

It is our understanding that severity of prosecutions for failure to file SARs vary, in part, on the number of SARs not filed in violation of the Regulations. Where a single set of facts could give rise to the filing of one SAR, multiple SARs, or continuing SARs, both prosecutors and would-be filers may objectively make different determinations on the number of SARs that ought to have been filed for a single set of facts. This ambiguity could be resolved by a new sub-section (g) to § 1022.320 as follows:

“(g) **Number of SARs.** Where a single set of facts gives rise to an obligation to file one or more SARs, the money services business shall not be penalized for filing less than the maximum number

⁸ [FinCEN Suspicious Activity Report \(FinCEN SAR\) Electronic Filing Requirements](#)



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of SARs that might otherwise be filed, provided that the SAR(s) that are filed disclose all of the facts that must be reported.”

IV. Conclusion

The Regulations accomplish their legislative intent, but on the occasion of their re-adoption, MSBA respectfully submits the foregoing comments as possible improvements.

The MSBA is grateful to have the opportunity to comment on the Regulations, as they are a cornerstone of our membership’s compliance with both Federal law and best practices.

We are happy to meet with you and discuss our comments and recommendations.

Sincerely,

A handwritten signature in black ink that reads "Kathy Tomasofsky". The signature is written in a cursive, flowing style.

Kathy Tomasofsky
Executive Director
Money Services Business Association, Inc.