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VIA ELECTRONIC MAIL

Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA. 22183
regcomments@fincen.treas.gov
Attention: PRA Comments -

**Re: RIN 1506-A485 - Access to Banking Services by Money Services
Businesses (MSB)**

Ladies and Gentlemen:

Bank of Bartlett appreciates the opportunity to comment on the Financial Crimes Enforcement Network's (FinCEN) advance notice of proposed rulemaking (ANPR) to solicit facts and recommendations regarding the provision of banking services to money services businesses (MSBs).¹ (March 10, 2006). The Bank of Bartlett is a community bank that operates 8 branch locations in the Greater Memphis area with assets of \$476 million.

In the current regulatory environment banks are feeling extreme pressures from regulators. Zero tolerance is on the mind of every banker when it comes to complying with BSA/AML standards. It has become impossible to price MSB accounts to cover the BSA risks. Whether or not additional guidance on existing rules are made will not change the mindset of most bankers. Only regulatory changes as discussed in this comment letter will aid in moving all objectives forward. The financial industry has been pelted with news of millions of dollars of fines placed on banks for BSA/AML deficiencies. Banks generally feel that it is only a matter of time before those same fines and penalties are assessed against them. Until the fear subsides, banks will continue to close their MSB relationships. Community banks have felt the pressure to serve all areas of the communities within which they serve. Since April 2005, MSBs have come to the doorstep of the community banks seeking banking relationships as larger financial institutions have closed their accounts. Many of these MSBs are very reluctant to self identify at account opening because their previous bank discontinued their relationships based on regulatory burden.

The Interagency Interpretive Guidance on Providing Banking Services to Money Services Businesses Operating in the U.S. was an important step in the right direction. It has been made clear with the Frequently Asked Questions (FAQs) that "the Bank Secrecy Act does not require, and neither FinCEN nor the federal banking agencies expect, banking

¹ 71 Federal Register 12308 March 10, 2006

organizations to serve as the *de facto* regulators of the money services businesses for which they maintain accounts." This statement was an important step in the right direction. However, much more needs to be done to redress banking trends that steer away from maintaining MSB relationships. Banks need to have confidence that the government agencies responsible for regulating MSBs are in fact doing so. MSBs should be regulated with the same scrutiny as financial institutions and held accountable. It was somewhat comforting to see the IRS and State join forces to combat Money Laundering in a statement issued April 27, 2006. Several states (33 including TN) have signed partnership agreements with the IRS and agree to share information as well as leverage resources to ensure that MSBs are complying with federal and state responsibilities to register with the government and report cash transactions and suspect activities. Furthermore; it would be interesting to note just how many MSBs have actually been examined by the government agencies that regulate them for BSA compliance. All banks have been examined for BSA compliance. If the answer is less than 100%, it is apparent that additional guidance on existing regulation is not the solution and that regulatory change is the only option. More needs to develop in the areas of: assigning appropriate risk to MSBs; education to bankers, MSBs and examiners; reduce regulatory fear within the banking industry by providing a safe harbor clause; and reduce the regulatory burden of monitoring MSB accounts perhaps by re-evaluating the definition of MSB.

Since 9/11 the banking industry has basically become the financial police for any banking relationship. The implementation, continued monitoring, periodic due diligence, and ongoing training of personnel dealing with Bank Secrecy Act compliance creates a substantial financial burden for our financial institution. The cost of BSA/AML compliance makes maintaining MSB accounts cost prohibitive. Over the last year, we added 2.5 employees along with the purchase of monitoring software to help comply with the regulatory requirements that the Bank Secrecy Act and USA Patriot Act has imposed. We are confident that further staff will be needed as rules change.

The Bank of Bartlett remains committed and a willing partner with the federal government in the fight against terrorism. However, there must be some middle ground.

The advance notice of proposed rulemaking has requested comment on several specific questions. Please see the following for the Bank of Bartlett's response.

1. What requirements have banking institutions imposed on money services businesses to open or maintain account relationships since the issuance of the joint guidance in April 2005?

The Bank of Bartlett for the time being has taken a risk based position in evaluating MSB relationships. First, we have spent considerable time and resources to just identify MSBs. Once identified the bank applies customer identification program requirements, confirms registration with FinCEN, if required, confirms compliance with state licensing requirements, if required, and conducts a risk assessment to determine the level of BSA risk. If the MSB is categorized as high risk, the bank will not open a new account or continue the banking relationship. In the case of existing MSB customers, the bank takes into consideration the entire customer relationship. However, in the case of new account relationships with MSBs, the regulatory risks are too great to begin seeking these new customers. The bank awaits future conditions that will make banking MSBs conducive to making good business decisions.

2. Describe any circumstances under which MSBs have provided or have been willing to provide the information specified in the guidance issued by us to MSBs in April 2005, concerning their obligations under the BSA, and yet have had banking institutions decline to open or continue account relationships for the money services businesses.

The Bank of Bartlett has declined to open MSB accounts that fall into a higher risk category as the perceived risk far outweighs the benefits of maintaining the relationship. As a community bank, we recognize the impact this has on the mom and pop businesses; since they are often unaware that some portion of their activity qualifies them as an MSB. Even though bank employees interview potential customers in efforts to identify a potential MSB, at times accounts are opened without knowing that the business is an MSB. Later MSB activity is discovered and the account is subject to enhanced due diligence or closure.

3. Have BSA-related grounds been cited for why banking institutions have decided not to open, or have decided not to continue to maintain, account relationships for MSBs since the issuance of the guidance to MSBs and to banking institutions in April 2005?

The Bank has declined to retain high risk MSBs on the premise that regulators have substantially increased due diligence and monitoring requirements of accounts that are money service businesses and that in turn these enhanced regulatory expectations carry significant cost and regulatory risk with no real benefit.

4. Would additional guidance (including, if applicable, clarification of existing guidance) to the banking industry regarding the opening and maintenance of accounts for money services businesses within the BSA regulatory framework be beneficial? If so, what specifically should such guidance address?

Additional guidance will not be beneficial in the form of additional requirements but rather regulatory changes. Guidance issued in April of 2005 was very clear. However, more needs to be done. Since banks are having a hard time understanding the MSB activities, it would be beneficial to offer some guidance for suspicious activity. Offer banks models that fit all risk levels and types of MSBs. It should be something that can be built into account monitoring software. It is challenging to detect existing MSB accounts.

Consider redefining MSB or at the very least issue guidance that will reflect an appropriate risk level for MSBs in which their MSB activity is ancillary to their normal business operations. Businesses that only offer one service that is only a small part of their business should not fall under the definition of MSB or at least not fall into the same risk category. It is clear that the perceived risk of some MSBs is largely inflated.

5. Would additional guidance (including, if applicable, clarification of existing guidance) to money services businesses regarding their responsibilities under the Bank Secrecy Act as it pertains to obtaining banking services be beneficial? If so, what specifically should such guidance address?

Many MSBs, such as mom and pop operations or check cashers that offer MSB services as an ancillary portion of their business, are unaware of regulatory requirements. These businesses face significant obstacles in navigating through registration and/or licensing requirements not to mention the task of gaining a full understanding of their BSA/AML requirements. It is often beyond their means or expertise.

6. Are there steps that could be taken with regard to regulation and oversight under the Bank Secrecy Act that could operate to reduce perceived risks presented by money services businesses?

Banking the MSB customer should be considered as a 'Community Development' service under the Community Reinvestment Act. The MSB customer offers financial services to those individuals that typically do not have a bank account or banking relationship. There should be incentives for banks to offer services to the MSB.

Provide a "safe harbor" statement similar to the one provided for suspicious activity reporting. The statement should convey that the bank's BSA and anti-money laundering program will be judged as a whole and not by any one specific scenario. Banks need to have the reinforced assurance that as long as all reasonable measures have been performed for due diligence on MSB accounts, that they will not be held liable.

7. Since the March, 2005, hearing and the issuance of guidance in April, 2005, to banks and to money services businesses, has there been an overall increase or decrease in the provision of banking services to money services businesses? Please offer any thoughts as to why this has occurred.

There was a dramatic reaction to guidance issued in March 2005. Banks took proactive and protective measures and as a result began closing known MSB accounts and refused new relationships with MSBs. Processes were developed to further detect account relationships that could be potential MSBs. The guidance issued the following month greatly aided banks in determining their risk positions in dealing with maintaining MSB account. However the decline still continues as the perceived risk to banks is still too great.

The Bank of Bartlett thanks you for your consideration of the forgoing. If you have any questions or would like to discuss please contact me at (901)328-4071.

Sincerely,



Jennifer Branan Mason
BSA Officer