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Community Financial Services Association of America

July 7, 2006

Via e-mail (regcomments@fincen.treas.gov)

Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183

Re: Advance Notice of Proposed Rulemaking, "Provision of Banking Services to Money Services Businesses" (RIN 1506-AA85)
Comments of Community Financial Services Association of America

Dear Sir or Madam:

On behalf of the Community Financial Services Association of America ("CFSA"), we appreciate the opportunity to comment on the referenced advance notice of proposed rulemaking. CFSA is a national association of payday advance providers whose members own and operate stores that make "payday" advances (also called deferred presentment transactions) available to consumers.[1] CFSA member companies have encountered problems in obtaining and maintaining banking relationships because of the improper or overly cautious application of Bank Secrecy Act (BSA) regulation by banking institutions.

Background on Payday Advances

Payday advance loans are of such small denomination and duration that they do not present the types of risks of money laundering associated with some money services businesses. Typically, payday advances are offered in amounts below $1,000 with maturities of 14 days. The average amount of payday advances is about $300. Payday advances are not secured by real property or any other form of collateral. Instead, a borrower usually provides the lender with a check or debit authorization for the amount of the loan plus the fee. The check is either post-dated to the borrower's next payday or the lender agrees to defer presenting the check for payment until a future date, usually two weeks or less. When the loan is due, the lender expects to collect the loan by depositing the check or debiting the borrower's account, or by having the borrower redeem the check with a cash payment. Payday advances appeal to individuals who are starting new careers or families, and who face a need for short-term, low-denomination

[1] CFSA member companies own and operate more than half of the estimated 15,000 retail outlets for payday advances in the United States.

credit to pay for unexpected life events, such as medical expenses, car repairs or school expenses.

Payday advance firms are subject to both state and Federal regulation. As a general rule, they are permitted to operate only in those states in which they may be licensed. State licensing statutes typically impose a number of conditions on payday advance firms, including limits on the overall advance amount, the term of the advance, the maximum fees that can be charged, and the number of renewals. Some states also mandate "cooling off" periods between transactions, and others prohibit payday advance providers from conducting a transaction with a customer who has an outstanding payday advance from another firm. In addition to protecting consumers, these restrictions make it highly impractical and inefficient to use payday advances to launder money.

At the Federal level, the Truth-in-Lending Act[2] and the Federal Trade Commission Act[3] are the principal laws relevant to payday advances. The Truth-in-Lending Act requires that payday advance firms disclose the cost of a payday advance in dollar amount and annual percentage terms. Section 5 of the Federal Trade Commission Act prohibits companies such as payday advance firms from engaging in unfair and deceptive marketing practices, and empowers the Federal Trade Commission to take civil actions against any company that engages in such practices.[4]

Improper and Overly Cautious Application of BSA

Although payday advance providers do not fit within the definition of a "money services business" under the Bank Secrecy Act (see 31 C.F.R. § 103.11(uu)), CFSA members indicate that banks often subject them to scrutiny as if they were high-risk money services businesses. This problem has continued, even after the issuance of the joint guidance by the Federal banking agencies in April 2005.

CFSA members began to experience problems with obtaining or maintaining banking services in 2002 and 2003, shortly after Federal regulators designated "money services businesses" as posing significant risk for money laundering. Many banks do not understand that payday advance firms do not fit within the definition of "money services businesses" and do not present the kinds of money laundering risks associated with such businesses. Instead, banks often take a broad-brush approach to what constitutes a money services business; as a result, payday advance providers often experience the taint of being incorrectly classified as a money services business and the extra scrutiny banks apply to such businesses. Moreover, instead of looking at each business customer and evaluating the risk associated with that business's account, banks tend to group all of the types of money services businesses together in one category and treat them all as high-risk businesses.

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[2] 15 U.S.C. §§ 1601 *et seq.*
[3] 15 U.S.C. §§ 41 *et seq.*
[4] 15 U.S.C. § 45.

Consequently, some banks continue to limit (or not offer) banking services to payday lenders. For example:

- One CFSA member had been doing business with a large national bank for over 15 years, but in 2004, for no apparent reason, the bank asked the company to establish significant collateralizing balances for each account to keep the accounts open. Rather than discussing the issue with the company and explaining the reason for the new requirement, bank personnel became evasive, and the company had significant difficulty getting the problem resolved until late 2005.

- Another member has maintained 20 to 30 accounts with a major bank over the past 15 years, having an aggregate balance of between $400,000 and $500,000. The bank has suffered no loss with respect to any of those accounts. About a year ago, however, the bank advised the lender that it would be required to put up $800,000 in collateralizing balances to continue doing business with the bank. The bank's justification for doing so was that the bank had put payday advances on its list of "high risk businesses." The same member reports that another bank refused to open an account for the same reason. The member also has had a bank refuse to negotiate a check relating to a payday advance – even though the member had an account with the bank. Another bank closed 10 accounts the member had with the bank, citing its payday advance business and the bank's concern about doing business with money services businesses.

- One CFSA member operating in Kentucky and Ohio had three banks close its accounts on the basis that it was involved in the "check cashing" business.

- Another CFSA member received a letter from a major bank advising that the bank was closing the member's account.

- Another bank canceled a member's credit card business. Moreover, the lender had to visit several branches of that bank before one was willing to open an account with the lender.

- One bank requires a member to participate in annual "know your customer" interviews. The bank said that the added scrutiny was because the banker thought the business was a money services business.

- Another member reports that it was twice denied a credit line renewal based on Bank Secrecy Act grounds. Additionally, several different bank branches have refused to service a number of that member's branch offices.

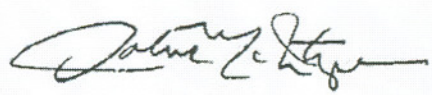
CFSA members report having had difficulty obtaining (or maintaining) account relationships with a number of banks, including money-center and regional banks. In most instances, the reason cited by the bank for the diminished services was compliance with the Bank Secrecy Act. It also appears that some bank examiners have pressured banks to deny banking services to payday lenders under the guise of complying with the Bank Secrecy Act.

Regulatory Guidance Needed

Payday advance providers have problems obtaining and maintaining banking services because bank personnel improperly classify payday advance providers as money services businesses, or are unwilling to differentiate among the various financial services providers. It would be helpful for FinCEN to provide banks with additional guidance, perhaps in the form of a regulation, to clarify that banks should not group payday advance companies together with money services businesses, and that they should take a risk-based approach to distinguish between payday loan providers, which pose little money laundering risk, and other financial services firms, which pose a significant risk.

Moreover, FinCEN should work with the various Federal financial regulators to ensure that their examiners follow the April 2005 joint guidance and any regulations that may be issued.

Sincerely,



John A. McIntyre
Executive Director