



FINANCIAL SERVICE CENTERS OF AMERICA, INC.  
A NATIONAL TRADE ASSOCIATION

Via Email ([regcomments@fincen.treas.gov](mailto:regcomments@fincen.treas.gov))  
July 10, 2006

Robert W. Werner, Director  
Financial Crimes Enforcement Network  
P.O. Box 39  
Vienna, Virginia 22183

Re: RIN 1506-AA85  
FiSCA Response to Advance Notice of Proposed Rulemaking

Dear Director Werner:

These comments are submitted on behalf of Financial Service Centers of America ("FiSCA"), the national trade association representing more than 6,000 neighborhood financial service providers throughout the United States. FiSCA's members provide non-traditional financial services including check cashing, money orders, funds transfers and utility bill payment services. We serve hundreds of thousands of customers, banked and un-banked, who use us for the advantages that we provide: convenient access, service and the ability to obtain instant liquidity. The most important service that we offer is a place for hard-working people to cash their paychecks, a necessary service that they cannot always obtain at a bank, or choose not to. We serve customers from all walks of life, including urban communities and the under-banked, groups that the Financial Crimes Enforcement Network (FinCEN) and the federal banking agencies have stressed as being underserved by more traditional financial institutions.

FiSCA is very appreciative of FinCEN's efforts regarding the Advance Notice of Proposed Rulemaking relating to banking services to money services businesses (MSBs). We appreciate the opportunity to comment on this important issue which affects many of our members.

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## Bank Discontinuance

Check cashers are absolutely dependent on access to bank depository accounts and check clearing services. The emergence of a bank discontinuance problem was initially reported by FiSCA to FinCEN in 2000. Since that time, the industry has seen an increasing trend of banks making wide-scale terminations of their check casher customers. A growing number of banks presently serving the industry are refusing to open new accounts, or are placing onerous requirements on the accounts they maintain.

Before 2000, there were few problems between check cashers and the many banks that served them. Check cashers and other MSBs were simply among the numerous commercial customers regularly and profitably served by their depositories. The shift in climate was not the result of a rash of money laundering convictions among check cashers. There is no legitimate nexus between the current trend and money laundering within our industry. To our knowledge, no check casher has ever been implicated in a terrorist financing situation.

The MSB and banking industries are generally in agreement that the problem stems from a perception by federal bank regulators that check cashers and other MSBs are a heightened risk for money laundering and financial crime. The trend gained momentum in 2000 following the OCC's issuance of a BSA Handbook and an advisory letter (Advisory Letter 2000-3) placing check cashers and other MSBs in "high risk" account categories. Due to this guidance and the subsequent heightened focus on BSA compliance following implementation of the USA Patriot Act, coupled with existing prejudices, federal bank examiners have been exerting undue pressure on banks servicing the industry. There is no question but that banks are required to expend greater resources in maintaining MSB customer compliance and monitoring systems, which has directly impacted the profitability of servicing this market sector. As a result some banks have decided to invest resources in more profitable business lines. In some instances banks have terminated check cashers due to direct criticism from bank examiners. In some cases the decision has been due to nebulous "reputational risk" concerns. Doubtless, many terminations have been in response to highly publicized multi-million dollar penalties assessed against other banks.

The results of a 2005 banking industry survey revealed that 70% of banks do not service check cashers or that there are none in their market area. Of the remaining 30% of the banks that responded, 50% said that they had "recently stopped" servicing check cashers. This is a dangerous trend. In New York, for example, there are some 640 licensed check cashers which last year cashed 35,687,745 checks with a total value of \$15,509,239,471. Fully 87% of the state's check cashers are now served by only two banks. Other states are seeing similar conditions.

We are unaware of any situation where a bank has been penalized due to money laundering or BSA violations by its check casher customer. Nonetheless, the tendency among federal bank examiners has been to treat all MSBs as high risk. With respect to the regulated check cashing industry, this presumption is inaccurate and damaging. As compared with other financial sectors, the industry's BSA enforcement record is quite good. Although the FinCEN website lists many multi-million dollar civil penalties against banks and other financial institutions, there have been only a few assessed against check cashers – and only one since 9/11. Moreover, since passage of the USA Patriot Act, IRS has greatly increased the number and scope of Title 31 compliance examinations, yet there has been no corresponding increase in the number of BSA enforcement actions within this industry sector. FiSCA and the community financial services industry remain committed to the fight

against money laundering and terrorist financing, and have dedicated significant resources towards this end. Additionally, FinCEN and IRS have done remarkably well in their industry outreach and education efforts.

The vast bulk of money laundering occurs through tried and true methods, including bulk cash smuggling, off-shore banking, trade pricing schemes and unregulated cash intensive businesses. Regulated check cashers are not an attractive vehicle for money launderers. Simply stated, the current regulatory regime is not catching more criminals, but is harming scores of legitimate businesses and the customers they serve.

#### The April 26, 2005 Interagency Guidance on Banking Services to MSBs

The MSB industry as a whole was greatly encouraged by FinCEN's efforts in convening the March 2005 fact-finding hearing, and in spearheading the resulting Interagency Interpretive Guidance on Providing Banking Services to Money Services Businesses Operating in the United States (the "MSB Guidance"), issued April 26, 2005. The industry was further encouraged by the subsequent FFIEC Manual, which incorporated the policies as set forth in the MSB Guidance.

One year later, however, it is clear from reports from our membership that the MSB Guidance has not resulted in greater access to banking services for the industry. The policies as articulated in the Guidance have not trickled down to the examiner level, as banks continue to face an uncertain and threatening regulatory environment. Since issuance of the MSB Guidance there has been a net loss in the overall number banks willing to serve check cashers. We are aware of no major bank which, having previously terminated its MSBs, has returned to the industry. In fact, a number of banks have terminated their check casher customers specifically *because* of the perceived added regulatory burden required to implement the MSB Guidance, or because of inconsistent regulatory interpretation thereof.

FinCEN and the federal banking agencies appear to be in agreement that a bank discontinuance problem does exist, and that termination of check casher and MSB accounts is not in the interest of national security and threatens the under-banked and low-income markets that MSBs serve. As stated by Treasury Secretary John Snow, MSBs "are key components of a healthy financial sector, and it is very important that they have access to banking services." Whether intended or not, federal regulatory action created the current situation affecting check cashers and MSBs. Only insightful and clear regulatory guidance will correct the current misalignment.

#### Recommendations

There clearly needs to be a paring down and clarification of the regulatory requirements of banks servicing the MSB industry. What is needed is direct guidance to federal examiners which gives force to the policy in the MSB Guidance to the effect that banks are not expected to act as "*de facto* regulators" of their MSB customers. Equally important, there needs to be a clear expression of policy by FinCEN and the federal banking agencies that acknowledges the enforcement record attributable to regulated check cashers, and that expressly eliminates the presumption of "high risk." To achieve these ends, FiSCA would recommend the issuance of new guidance as explained below.

*1. Guidance expressly removing regulated check cashers from the category of "high risk" bank customers, and instituting a presumption of "low risk."*

FinCEN, IRS and numerous state officials have publicly acknowledged that there is no palpable money laundering problem within the regulated check cashing industry. Moreover, significant government oversight of the industry presently exists. As MSBs, check cashers must register with the federal government and are subject to periodic IRS examination. In many states, check cashers are required to be licensed, and must undergo background screening and financial review. Licensing authorities typically impose recordkeeping and reporting requirements, and subject licensees to periodic examination by state (often banking department) examiners. As the result of recent Memoranda of Understanding between FinCEN and the various states, information gathered in examinations of check cashers is now shared between IRS and state authorities.

Future guidance should also make a distinction between the regulated check casher industry and other forms of MSBs. There are vast differences between the various categories of MSBs, both in terms of the services and products they offer, the markets they serve, and the level of regulatory oversight to which they are subjected. Nonetheless, they are lumped together and given a blanket label of "high risk." As a result, the term "money services business" has come to have very negative connotations, without regard to the relatively low risk attributable to the vast majority of registered, licensed check cashers doing business within the United States.

Check cashers have traditionally served low-income and immigrant communities, groups that FinCEN and the federal banking agencies have stressed as deserving access to basic financial services. By easing the regulatory burden on banks servicing the MSB industry, the policies underlying the Community Reinvestment Act would be directly served. Future guidance should address these policies as well.

In summary, given the industry's good enforcement record, coupled with existing levels of regulatory oversight, registered and licensed check cashers should be afforded an express presumption of "low risk."

*2. Guidance that clearly eliminates the requirement that banks must, as part of customer due diligence, examine compliance programs, policies or controls implemented by MSB customers.*

As previously articulated in the MSB Guidance, it is the policy of FinCEN and the federal banking agencies that banks are not expected to act as the functional regulators of their MSB customers. Moreover, although banks are expected to manage accounts on a risk-assessed basis, the Guidance states that they "will not be held responsible for their customers' compliance with the Bank Secrecy Act and other applicable federal and state laws and regulations." Notwithstanding these policy statements, the checklist set forth at Part II of the Guidance requires that banks conduct an analysis of their MSB customers' internal compliance policies and controls. These requirements would appear to be at odds with the policies as expressed in the Guidance.

Banks should be relieved of the burden of reviewing the compliance programs of their licensed and registered check casher customers. As articulated above, such customers are subjected to several levels of compliance oversight by state regulators and IRS. Banks should not be required to conduct their own redundant and costly review and monitoring of customer BSA compliance programs.

As suggested by prominent banking industry representatives, a more reasonable alternative would be implementation of a certification process whereby the MSB would provide its bank with basic compliance

documentation (i.e., state license and federal MSB registration), and a certified statement by the MSB to the effect that the MSB does maintain appropriate BSA policies, procedures and controls. Future guidance should acknowledge this certification as the recommended industry standard, and should expressly relieve banks of a "heightened" due diligence obligation. A similar process has been utilized to ensure bank compliance with BSA proscriptions against maintaining correspondent accounts for foreign shell banks under 31 USC section 5318. Under the corresponding regulations, banks receive a "safe harbor" for compliance if they adhere to the certification process as set forth under 31 CFR 103.177. A comparable process should be implemented for banks serving MSBs.

FiSCA supports an MSB certification process. We agree that the MSB customer must take responsibility for its compliance obligations, and must be able to certify to its depository that it maintains appropriate controls. We are in accord that banks should be relieved of this burden, including attendant costs and regulatory exposure.

*3. Policy pronouncement that administrative enforcement actions will not be pursued against banks that provide services to check cashers and other MSBs in good faith.*

There is little question but that administrative enforcement actions against banks have had a chilling effect on access to depository services to the MSB industry. In one notable example, a multi-million dollar penalty was assessed against a bank due to the bank's internal BSA deficiencies. Although the bank also served many check cashers, none were implicated in connection with the bank's regulatory violations or internal compliance deficiencies. Nonetheless, the bank responded to FinCEN and FED sanctions by terminating its check cashers, a result clearly not intended by the enforcement action.

Future guidance should clearly express that it is the policy of FinCEN and the federal banking agencies that banks should not be held responsible for the compliance deficiencies or illegal activities of their MSB customers. There should be a clear expression that a bank that services check cashers or other MSBs in good faith will not face administrative enforcement action. Although bank and non-bank financial institutions may not remain willfully blind to suspicious activity, banks should not be held accountable for the conduct of their check casher customers occurring outside of the depository relationship.

FiSCA's Response to Issues for Comment

With respect to the specific issues submitted by FinCEN for comment, FiSCA solicited responses directly from its national membership, and conducted a poll of a representative cross-section of its members. The responses are set forth below.

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

Following the MSB Guidance, banks have imposed various requirements on their MSB customers, some of which have been onerous or unreasonable. Seemingly without exception, banks that continue to serve check cashers apply not only the minimum due diligence standards as set under Part I of the Guidance, but also some or all the heightened risk criteria under Part II. A number of banks require that their customers retain at their

own expense outside BSA examiners or consultants recommended by the bank. These measures can be cost prohibitive and exceed requirements under 31 CFR 103.125, which permits MSBs to utilize internal staff for compliance examinations.

FiSCA members report that banks have implemented unusual procedures, conditions, and even character requirements for approving check casher customers. Some banks now require that existing, long-time customers undergo criminal background screening. In one instance, the bank terminated an existing customer because the company owner had been convicted of an offense many years prior to opening the account, notwithstanding the fact that the customer's record was otherwise perfect, and notwithstanding the fact that the prior conviction was no bar to the company receiving state licensing. Similar examples were provided; one bank reportedly refused a check casher customer because a part-owner had reflected gambling winnings in a personal financial statement submitted with its application to the bank.

In another example, after banking a check casher for seven years, the bank sought to terminate its customer on the basis of perceived deficiencies in the customer's compliance manual. The check casher made 3 attempts to remedy the perceived deficiency, submitting increasingly detailed compliance manuals prepared by counsel or outside compliance experts, each of which was rejected by the bank. The bank relented only upon threat of litigation.

FiSCA members also report that banks have implemented various other conditions and collateral requirements, and have increased service fees charged to their check casher customers. Some examples include the following:

Prohibitions against money transfer services. Banks have prohibited check cashers from acting as agents for licensed money transmitters, requiring them to terminate agency agreements with internationally prominent companies and refuse remittance services to regular customers.

Limitations on the check casher deposits. In one particularly severe example the bank directed its customer not to deposit more than 50 items per day, and not deposit any single check with a face amount exceeding \$900. These measures have no reasonable connection to prevention of money laundering, and threaten the very livelihood of the affected check cashers.

New collateral requirements. One bank now requires that its existing and new check casher customers post a \$50,000 certificate of deposit, to remain in place for a period of 3 to 5 years following any subsequent closure of the account. This effectively creates a \$50,000 cost to remain in business. One FiSCA member reported that its bank required it to pledge a \$230,000 certificate of deposit as collateral to the bank as a condition of maintaining its account. Other examples of new collateral requirements were reported.

Significant increases in banking fees. As a result of increased monitoring requirements, many banks have increased fees charged to their check casher customers. One bank now charges a "monthly compliance monitoring fee" of \$2,000 in addition to all regular banking charges for each MSB account. Other FiSCA members have reported that their banks have tacked on monthly "monitoring fees" of \$100 to \$500, regardless of actual account activity.

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

In virtually every situation relating to bank closures the check casher or other MSB has been willing to meet any of the requirements described in the MSB Guidance, or other reasonable requirements that may be imposed by the particular bank. We received no reports of any situation where the check casher was unwilling to meet such criteria. Nonetheless, banking institutions continue to close accounts and refuse to open new accounts.

3. *Have Bank Secrecy Act-related grounds been cited for why banking institutions have decided not to open, or have decided not to continue to maintain, account relationships for money services businesses since the issuance of the guidance to money services businesses and to banking institutions in April 2005?*

BSA-related grounds continue to be cited in many situations where banks have declined to open or maintain MSB accounts. In a letter to a check casher customer, one bank stated as follows:

The day-to-day regulatory requirements and operational responsibilities expected of banks that service these businesses have grown significantly over a very short period of time. And frankly, there does not appear to be any relief in sight.

Recognizing these challenges and the inherent risk of failing to fulfill our responsibilities, [the bank] has chosen to withdraw from the servicing of MSB's including check cashing facilities.

One prominent national bank provided notice of termination to its MSBs as follows:

As part of our ongoing Money Service Business (MSB) risk management process, we continually assess the overall risk profile of the MSB industry and the individual risk of our MSB clients. As a result of that assessment process, we have determined that, in order to effectively manage the risk inherent in the MSB industry, we must exit many of our current relationships. Therefore, we regret to inform you that your account(s) will be restricted in 30 days and closed shortly thereafter.

One check casher in Florida received a letter from its bank stating simply that "[w]e regret to inform you that our institution is unable, in the current regulatory environment, to continue servicing your bank account."

In many situations, however, banks do not cite specifically to the BSA, although the connection is clear. For example, as one bank informed its customer, "[w]e have determined your business is a high risk relationship for [the bank] and feel that continuing this relationship is not in the best interest of [the bank]."

In multiple other instances, banks decline to offer any explanation for the terminations, citing only to regulatory pressures.

Alarming, check cashers have also reported that they have been turned down for other bank services, including financing, due to their MSB status. One FiSCA member reported that he was rejected for a commercial loan, unconnected with his check cashing business, specifically because he was the owner of a check cashing facility.

**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 Bank Secrecy Act regulatory framework be beneficial? If so, what specifically should such guidance address?***

We believe that clarification of requirements and an easing of the regulatory burden on banks is necessary. As recommended above, banks should be relieved of the burden of reviewing the compliance programs of their licensed and registered check casher customers. Banks should be permitted to rely on existing levels of regulatory supervision by state and IRS examiners, as well as attestations by their check casher clients regarding compliance, and not be required to conduct their own redundant and costly review of customer BSA programs.

**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?***

Generally, it is our belief that additional guidance directed to the MSB industry will not alleviate the current banking crisis. In our assessment, the MSB Guidance issued April 26, 2005, together with the prior industry guidance materials issued through FinCEN and IRS, provide clear and sufficient direction to the industry on obtaining banking services.

As a general matter, however, additional direction is needed with respect to the independent examination process, both in terms designating acceptable examiners for small MSBs, and the manner in which the examination may be documented. It is our understanding that FinCEN is in the process of developing additional guidance with regard to MSBs. We believe that both of these areas should be addressed.

Additionally, although the vast majority of regulated, licensed check cashers and money transmitters are aware of their BSA requirements, greater outreach should be made to the "incidental" MSB industry. This group includes the great number of retail merchants that provide financial services ancillary to regular business activities.

**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?***

As set forth under FiSCA's recommendations outlined above, there clearly needs to be a reduction and clarification of the regulatory requirements of banks servicing the MSB industry, together with recognition that the regulated check cashing industry does not pose a high risk for money laundering. Our three specific recommendations are detailed above.

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.*

The MSB Guidance has not resulted in greater access to banking services for MSBs. Banks continue to terminate check cashers and refuse to open new accounts. No major banks have reentered the market as a result of the MSB Guidance. As expressed above, the policies as articulated in the Guidance have not filtered down to the examiner level, as banks servicing this market continue to face direct pressure and a threatening regulatory environment.

#### Conclusion

We appreciate the opportunity afforded us to comment with respect to this very important issue. We hope that FinCEN and the federal banking agencies will consider favorably our recommendations, and those of the banking industry, with respect to what we perceive to be a mutual problem. We are grateful for FinCEN's efforts thus far and we are committed to continuing to work with all interested parties in this regard.

Please contact the undersigned if you should require any further information.

Thank you.

Very truly yours,

Gerald Goldman, Esq.  
General Counsel  
Financial Service Centers of America, Inc.