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Financial Crimes Enforcement Network  
U.S. Department of the Treasury  
P.O. Box 39  
Vienna, Virginia 22183

**RE: Provision of Banking Services to Money Services Businesses;  
RIN 1506-AA85**

Dear Sir,

The Food Marketing Institute<sup>1</sup> is pleased to respond to the Financial Crimes Enforcement Network's (FinCEN's) request for comments on the Advance Notice of Proposed Rulemaking (ANPR) entitled, "Provision of Banking Services to Money Services Businesses" (71 Fed. Reg. 12308 (March 10, 2006)). FinCEN issued the ANPR to obtain updated information on the access that money services business (MSB's) have to banking services in the wake of the Bank Secrecy Act regulations.

We appreciate FinCEN's attention to this very important matter that continues to present significant concern to supermarkets as they endeavor to serve consumers by providing services that the banking sector is unable or unwilling to provide. Although FinCEN has been diligent in its efforts to communicate the requirements of the Bank Secrecy Act through public meetings and guidance, as discussed more fully below, we are still concerned about the information requested of our members by the financial institutions and with the Internal Revenue Service (IRS) audits held in field offices.

Many supermarkets initially entered the money services business (MSB) because of consumer demand for alternate banking services that were low cost, convenient, available for purchase or use in a safe environment, and accessible outside of the standard 9-5 banking hours. Consumers have been satisfied with the services, and that satisfaction has translated into a wider range of MSB services provided at supermarkets and a broader range of demographics of those customers utilizing these services (from an immigrant sending money to his family overseas to a soccer Mom buying products on e-Bay).

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<sup>1</sup> FMI conducts programs in research, education, industry relations and public affairs on behalf of its 1,500 member companies — food retailers and wholesalers — in the United States and around the world. FMI's U.S. members operate approximately 26,000 retail food stores with a combined annual sales volume of \$340 billion — three-quarters of all retail food store sales in the United States. FMI's retail membership is composed of large multi-store chains, regional firms and independent supermarkets. Its international membership includes 200 companies from 50 countries.



While most of our supermarket members who are considered MSBs by virtue of their check cashing, money order sales or wire transfers have ongoing open accounts with financial institutions and accounts that include a wide range of activities outside of the MSB-covered activities and thus would not have had difficulty opening new accounts, they have seen significant deterrents to maintaining the MSB portion of those existing account relationships. Specifically, most supermarkets continue to be subject to aggressive oversight in the form of record reviews from financial institutions who claim to be acting under color of the Bank Secrecy Act, when it is clear from FinCEN's guidance that neither FinCEN 'nor the Federal Banking Agencies expect banking institutions to serve as the *de facto* regulator of the money services business industry.' 71 Fed. Reg. at 12309.

For example, most supermarkets have received some type of form letter from financial institutions expressing concerns about their MSB activity and calling for additional scrutiny of the supermarket's records in this area. When the financial institution auditor arrives at the store location and asks to see and/or copy sensitive personal financial records contained in the log book maintained on transactions, some supermarkets become very concerned about providing the level of detail requested by the financial institution representative due to the supermarket's corporate privacy policy. Some companies received verbal assurances that this new scrutiny by the financial institutions was "required by law," yet the representatives were not able to produce any statute mentioning the specific items requested. The ensuing negotiation about the level of detail "required by law" and the level of detail "desired" by the financial institution as well as the need for the supermarket to abide by their corporate privacy policy and maintain the privacy of their customers is difficult, particularly when the financial institution threatens to close the supermarket's account.

In addition to the increased and excessive scrutiny from financial institutions, IRS audits of supermarket MSBs have also increased. With an almost tenfold increase in the number of agents focused in this area, we are seeing a corresponding increase in audits, with a concerning, lack of consistency in the requirements of those audits. Some of the audits are conducted at store or corporate offices, while other agents require the audits to be conducted in their field offices with all relevant materials transported to the field offices, even if those offices are out of the home state or hundreds of miles away from the supermarket corporate offices, requiring a significant investment of corporate personnel and resources to travel for the audit. We believe that all initial audits in this area should be conducted at store or corporate offices and would appreciate FinCEN's assistance in this regard.

Thank you for the opportunity to comment. We hope this information is helpful to you in your review of the Provision of Banking Services to Money Services Businesses.

Sincerely,

Deborah White  
Vice President &  
Associate General Counsel,  
Regulatory Affairs