

Office of the Chief Counsel
Financial Crimes Enforcement Network
Department of the Treasury
P.O. Box 39
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Attention: PRA Comments – SAR - MSB Form

We appreciate this opportunity to comment on the proposed revision to the form used by certain money services business to report suspicious activity found in the Notice of Proposed Rulemaking, Proposed Collection; Comment Request; Suspicious Activity Report by Money Services Businesses, 70 Fed. Reg. 20204 (April 18, 2005). The revised form, Suspicious Activity Report by Money Services Business, FinCEN Form 109, would replace the current form, Suspicious Activity Report by Money Services Business, TD F 90-22.56.

According to the Notice of Proposed Rulemaking, FinCEN's objective is to make it easier for the industry members to complete the form while still obtaining the information that is critical for law enforcement. It is a laudable effort to attempt to simplify the MSB-SAR form to ease the burden on those MSBs that are required to use the form to report suspicious activity. A real reduction in the compliance burden is always a positive step for any regulated entity.

I am concerned, however, that in the long term the revised form, FinCEN Form 109, may not result in an actual reduction in the compliance burden to many MSBs, especially those companies that are issuers of money orders, issuers of traveler's checks and primary money transmitter companies that do not have face-to-face contact with the ultimate "consumer" of the MSB product or service and therefore must rely on data analysis to identify possible suspicious activity.

The following comments are respectfully submitted.

1. Identifying Numbers of Money Transfers, Money Orders and Travelers Checks.

Comment

The identifying number of the MSB product used in a criminal act may be the most critical piece of information that is reported by an MSB and should be retained on any new or revised version of the MSB SAR form.

Explanation

The critical nature of the serial numbers of money orders, traveler's checks and money transfers is illustrated in the following examples.

Money Orders. A bank that has processed (cleared through one of its accounts) a money order, a business that has sold a money order and the issuer of a money order all identify the specific money order based on suspicious activity detection parameters that each participant in the life cycle of a money order has established. The bank, the money order seller, and the money order issuer each file a suspicious activity report; however, no filer identifies a "suspect" because there is no name or other identifier on

the money order. Without the serial number, there is no way to connect the reports submitted by each filer.

Traveler's Checks. A bank that has processed (cleared through one of its accounts) a traveler's check, a business that has sold a traveler's check and the issuer of a traveler's check all identify the specific traveler's check based on suspicious activity detection parameters that each participant in the life cycle of a traveler's check has established. The bank, the money order seller, and the money order issuer each file a suspicious activity report. The bank may or may not identify a "suspect" (possibly the owner of the account through which the traveler's check has cleared), however, neither the traveler's check issuer, nor the traveler's check seller identifies a "suspect" because there is no name or other identifier on the traveler's check. Without the serial number, there is no way to connect the reports submitted by each filer.

Money Transfers. Criminal investigators arrest a drug trafficker. Among the items lawfully seized during the arrest is a list of money transfer numbers. In sending money transfers, the drug trafficker used a number of false identities. The money transfer send agent, the money transfer receive agent and the primary money transfer company have each identified and reported on a suspicious activity report, the money transfers sent by the drug trafficker. With only the false names used in the money transfer transactions, that is, without the money transfer number, there is no way to connect the reports submitted by each filer.

2. Item 20, Use of Term "Redemption"

Comment

Delete the term "redemption" and replace it with a term that has a meaning that is generally understood among the members of the relevant industry or generally understood among the general English speaking population or is clearly defined in the instructions or regulations.

Explanation

The term "redemption" is not a term used in the money order industry, the traveler's check industry, or the money transfer industry. Money orders and traveler's checks are negotiated in the United States in the same manner as any other negotiable instrument. Money transfers are generally paid at the "receive" or payout location.

The BSA regulations currently do not provide any definition of the activity that constitutes "redemption", nor do the regulations provide a clear definition of the activity that would cause a person to be a money order "redeemer" or a traveler's check "redeemer." See 31 C.F.R. 103.11(uu)(4). Use of a term whose meaning is ambiguous is likely to produce uncertainty and result in reporting of questionable if not wholly unreliable information.

If the purpose of the suspicious activity report is to provide basic information to law enforcement so that such personnel can evaluate whether further investigation is warranted, the failure to include a space for, or instructions to include, the standard identifiers of money orders, traveler's checks and money transfers in the initial report

appears to defeat the purpose of the form and of the reporting requirement and would likely result in wasted efforts of both MSBs and law enforcement, as well as FinCEN.

Respectfully submitted,

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