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May 5, 2006

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

Re: RIN 1506-AA85 - Providing Banking Services to Money Services Businesses

Dear Sir or Madam:

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to comment on the availability of banking services for money services businesses (MSBs).²

In early 2005, due to concerns about whether these companies were being driven from banks by burdensome Bank Secrecy Act (BSA) regulations, the Financial Crimes Enforcement Network (FinCEN) held a fact-finding hearing that produced detailed guidelines for both banks and MSBs in late April 2005. That guidance was incorporated into the Bank Secrecy Act/Anti-Money Laundering Examination Manual issued by the banking agencies, FinCEN and OFAC last June. However, because there continue to be reports of MSB encountering problems with obtaining banking services, FinCEN continues to examine the issue.

¹ The Independent Community Bankers of America represents the largest constituency of community banks of all sizes and charter types in the nation, and is dedicated exclusively to representing the interests of the community banking industry. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.

With nearly 5,000 members, representing more than 18,000 locations nationwide and employing over 265,000 Americans, ICBA members hold more than \$876 billion in assets \$692 billion in deposits, and more than \$589 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

² MSBs are: (1) currency dealers or exchanges; (2) check cashers; (3) issuers of traveler's checks, money orders, or stored value; (4) sellers or redeemers of travelers' checks, money orders, or stored value; and (5) money transmitters. For a business to qualify in the first four categories, it must exceed a threshold of over \$1,000 in transactions with one person in one day.

Background

Like other financial institutions, MSBs must have written anti-money laundering programs, file currency transaction reports (CTRs) and suspicious activity reports (SARs), and maintain certain records. MSBs must also register with Treasury and, in certain states, obtain a state license. At the federal level, MSBs are examined by the Internal Revenue Service (IRS).

As noted, when complaints surfaced in early 2005 that MSBs were being denied bank accounts, FinCEN held a fact-finding meeting followed by a statement verifying that these businesses provide important financial services. The statement also committed to ensuring that MSBs would have continued access to banking services. Guidelines were issued on April 26, 2005 that stressed that not all MSBs present the same level of risk and that banks are *not* the de facto regulators of their MSB customers.

The April guidelines also outlined the steps banks would be expected to take when establishing a banking relationship with an MSB. Generally, a bank must apply its standard customer identification program procedures, confirm FinCEN registration (if required), confirm compliance with state or local licensing requirements (if required), confirm agent status (if applicable), and conduct a basic risk assessment of the business. In assessing risk, the bank should consider the products and services offered by the MSB, its locations and markets served, anticipated account activity and purpose of the account. At the same time, guidance was issued to MSBs about what to expect when seeking to open a bank account (additional information for MSBs is available at www.msb.gov).

Despite these efforts, MSBs continue to report problems with being denied banking services.

ICBA's Position

ICBA believes that clarification is needed in the guidelines and examination procedures. First, it must be clear that the responsibility for ensuring MSB compliance with the BSA lies with FinCEN, the IRS, and state authorities – *not* banks. If community banks are to be encouraged to provide banking services for MSBs, it is important that an MSB not be subject to any special assessment or analysis. Rather, like any other commercial customer, an MSB should be subject to the bank's normal customer identification procedures and risk assessment. Then, if and when it is merited, enhanced due diligence should be applied. However, banks should not be expected to review and evaluate the anti-money laundering programs or policies of any customers, including MSBs.

Second, although it has been stated in the guidelines and elsewhere, examiners must clearly understand that, as with other commercial customers, MSBs present varying risk levels. It appears there still is a tendency of some examiners to treat all MSBs as high risk, especially in rural areas where there are few MSBs.

Third, the identification and designation of a business as an MSB should be simplified. ICBA recommends FinCEN consider re-examining the existing definition to determine whether further exemptions are appropriate. In addition to the existing \$1,000 per person per day threshold for most categories of MSB, ICBA recommends a clearly articulated *de minimis* standard so that any company that only occasionally or rarely engages in a transaction that would categorize it as an MSB be exempt. ICBA also urges FinCEN to take appropriate steps to ensure the registration list is current and implement a system for companies to de-register if they no longer qualify as an MSB.

Specific ICBA Comments

Community Bank Services for MSBs. An informal survey of ICBA community bankers found a mixed response in whether community banks continue to provide banking services for MSBs. Some continue to offer services for MSBs. Some community banks are willing to offer banking services for MSB customers, but only if the customer can be classified low-risk. Still others report having had customers who met the definition of an MSB, such as convenience stores, that changed policies and procedures (e.g., no longer cashing checks for one person over \$1,000 in one day) to avoid the classification and the requirements. And finally, there are community banks that report having policies that would permit them to offer banking services for MSBs but operate in markets where there are no MSBs.

Community banks are very concerned about the current BSA enforcement climate as well as potential criticism from examiners (whether official or through informal comments). Consequently, community bankers tend to gravitate towards practices that offer the least potential for problems or regulator criticism. In other words, community banks increasingly gravitate towards the lowest level of risk in matters involving BSA compliance. While none of the banks in ICBA's informal survey noted specific criticism by bank examiners, anecdotal evidence suggests that community banks are risk averse when considering offering services to MSBs and many determine that the path of least resistance is not to offer these services.

Few community banks reported instances of MSBs in their markets that could not obtain banking services. Those bankers that did report instances commented that the MSBs that encountered difficulties were unwilling to comply with the BSA requirements. Where MSB accounts were closed within the past two years, it was attributed to burdensome monitoring and investigation requirements.

Current Compliance by Community Banks. Community banks with policies that would allow them to provide banking services for MSBs have policies requiring they verify registration and state licensing and conduct a risk assessment. Overall, though, community banks find the existing MSB requirements burdensome. While the customer identification and verification of licensing and registration are not problematic, the risk assessment and monitoring requirements are burdensome, especially since it is not entirely clear what level of monitoring is expected. However, community bankers find the level of supervision needed for MSB accounts is often beyond their limited resources. Moreover, constant monitoring adds potential liability for the bank that should be placed with the MSB or agencies responsible for supervising MSBs. Community banks also

reported discomfort with requirements to investigate MSB anti-money laundering policies and procedures. They believe this is both beyond the normal scope of banking operations and resented by customers as intrusive.

ICBA Recommendations. ICBA recommends FinCEN institute a system that clearly defines the responsibility for overseeing MSB BSA compliance. Community banks believe that even though the March 30, 2005, statement issued by the banking agencies and FinCEN clearly stated that “the Bank Secrecy Act does not require, and neither FinCEN nor the Federal Banking Agencies expect, banking institutions to serve as the *de facto* regulator of the money services business industry,” the actual steps required by the April 26, 2005, guidelines and expectations – or potential expectations – of examiners contradict that statement. Community banks are uncomfortable being required to evaluate their customer’s anti-money laundering policies, procedures and programs.

ICBA believes FinCEN’s guidance that a customer that adjusts its policies and procedures to no longer be an MSB, such as no longer cashing checks for a single customer for over \$1,000 in one day, is helpful. However, ICBA also recommends FinCEN consider whether additional exemptions would be appropriate, whether the \$1,000 per customer per day threshold should be increased in some circumstances, and whether it would be worthwhile to create a *de minimis* standard to exempt companies that rarely engage in transactions that would cause them to become MSBs.

Finally, ICBA recommends FinCEN take steps to adjust the registration information on its website so that a company no longer classified as an MSB can de-register instead of waiting for the existing registration to lapse. Listing a company that is no longer an MSB is confusing.

Conclusion

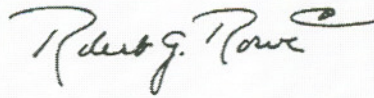
ICBA appreciates the steps that FinCEN and the banking agencies have been taking to address the problems encountered by MSBs. It is important that these financial services providers have access to the banking system. The market for their products and services is well-established, but without access to the banking system, it is very likely that these services will be driven underground. If that occurs, the ability of law enforcement and other supervisory authorities to obtain access to transaction information or to be informed about potential suspicious activities will be substantially diminished. As a result, the transparency provided by bank transactions would be lost and the fundamental goals of the BSA to detect and deter money laundering and terrorist financing would be undermined.

While the steps already taken are important, community banks continue to perceive the risks, monitoring and compliance issues for continuing a relationship with an MSB likely outweigh potential revenue.

Thank you for the opportunity to comment. ICBA looks forward to continuing to work with other interested parties and federal regulators to find solutions to these

problems. If you have any questions or would like any additional information, please contact me by telephone at 202-659-8111 or by e-mail at robert.rowe@icba.org.

Sincerely,

A handwritten signature in black ink that reads "Robert G. Rowe, III". The signature is written in a cursive style with a large, sweeping flourish at the end.

Robert G. Rowe, III
Regulatory Counsel