

May 9, 2006

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Financial Crimes Enforcement Network
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RE: MSB Advance Notice of Rulemaking (RIN 1506-AA85)

To Whom It May Concern:

We at Hate Free Zone Washington appreciate the opportunity to share some of our findings pursuant to this advance notice of proposed rulemaking (RIN 1506-AA85). As a non-profit working with immigrant communities to achieve equality, dignity, and respect, we are aware of many community stories that FinCEN may find helpful as it explores the lack of access to banking services experienced by money services businesses (MSBs).

Hate Free Zone Washington was contacted by a concerned member of Seattle's Somali business community in December of 2005. This community member was alarmed by the termination and denial of banking services to legitimately registered hawala money remittance businesses in Seattle and asked for Hate Free Zone Washington's assistance. In the months that followed, Hate Free Zone Washington assisted eleven local hawala owners who had faced similar denials of services as they compiled their stories, located documents, held ongoing dialogue with their banks, spoke with elected officials, and talked with representatives of FinCEN and the Washington State Department of Financial Institutions (DFI). Both Hate Free Zone Washington and the hawala owners emerged from this process convinced that banks' ongoing denial of services to the hawala community reflects those banks' misunderstanding of FinCEN guidelines regarding the Bank Secrecy Act. Regardless of the banks' motives, their actions have a disproportionate and discriminatory effect, targeting legitimate immigrant-owned businesses and denying important services to immigrant communities.

Banking Requirements

In assessing risk for new hawala accounts and pursuing due diligence for existing accounts, banks have often diverged from the guidelines laid out in FinCEN's April 2005

document, *Interagency Interpretive Guidance on Providing Banking Services to Money Services Businesses Operating in the United States*. More than a third of the registered hawala owners we spoke with reported that in the last year and as recently as the last two months, Bank of America and Washington Mutual branches rejected their requests to open new hawala business accounts without assessing risk at all. In these cases, bank employees did not ask for any information about the hawala business, its clientele, its registration with FinCEN and DFI, or even the name of the person to whom they were speaking. Without assessing the business or following FinCEN guidelines, these banks made the decision that hawalas are universally “too risky.”

At the other end of the spectrum, some banks have asked for enormous amounts of information, often with unrealistic deadlines, and followed up each submission with a letter requesting more information. Banks have requested years of old tax records and copies of the very personal and lengthy application to DFI when state registration was already verified. Hawala owners reported that Wells Fargo has been difficult to work with, requesting information for months without ever actually approving or denying a new hawala bank account.

Larger national banks have not been alone in denying bank accounts to hawala owners. Local credit unions have also denied access to banking services; moreover, hawala owners have found that sympathetic credit unions cannot transfer larger sums of money because to do this, they must utilize the same larger corporate banks that deny hawala owners bank accounts.

Across the board, banks in the greater Seattle area have asked hawalas with new and existing accounts for all of the information listed in Sections I and II of FinCEN’s April 2005 *Guidance* publication, as well as for many detailed pieces of information not listed in that document. Despite FinCEN regulation and strict state regulation in Washington that licenses, monitors, inspects, renews, and investigates hawalas, banks here have become the *de facto* regulators of money services businesses.

Loss of Banking Services

In many cases, hawalas have had their bank accounts shut down without any clear explanation. In a letter to North American Money Transfer, Inc (Minneapolis) dated August 19, 2005 and a letter to Hashi Money Wiring (Seattle) dated September 23, 2005, Bank of America wrote:

“As part of our ongoing Money Services 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 MSB relationships. ...Having reviewed your account, we have decided that we can no longer serve your MSB needs. This decision was difficult to make and was only reached after careful analysis of our position regarding our relationship with MSBs.”

Around this same time, other hawala owners in Seattle received similar letters from Bank of America and Wells Fargo informing them that due to the “overall risk profile of the MSB industry,” their accounts would be closed. In addition, these letters informed the account holders that all of their other accounts with the bank would also be shut down. As a result, hawala owners who also operated other businesses, such as restaurants and grocery stores, found their other business accounts closed and their viability of their other businesses compromised.

In some cases, hawala owners received no notification before their accounts were closed. In August of 2005, a Seattle hawala agent went to Bank of America to make a deposit and was told by the teller that his account had been closed. He was referred to a risk management employee who informed him that his bank account had been closed due to “terrorist risk.” In each case of denied banking services, owners and agents were running compliant, legal businesses registered with and monitored by both the Federal government and the state of Washington. In addition to closing accounts, banks often froze the assets in them for three months afterwards before sending a cashier's check to the business for the remaining balance. This practice hurt businesses and further denied service to immigrant communities in Seattle.

Recommended Guidance for Banks

While FinCEN attempted to restore communication and services between banks and MSBs by holding a fact finding meeting and releasing guidance publications in March and April of 2005, banks of all sizes are still unclear about how to abide by the Bank Secrecy Act while simultaneously serving the community. In order to ensure banking services for legally registered MSBs, we recommend FinCEN take the following steps with regard to banks:

- Outline a standard protocol for risk management and due diligence for banks working with MSBs. While this was clearly a goal of FinCEN's April 2005

Guidance publication, banks have failed to follow FinCEN's suggestions. Further clarifications, including examples of information that is inappropriate to ask for, are necessary. Definition of key terms and concepts, including "independent testing of an anti-money laundering program" are also necessary.

- Acknowledge state regulation and oversight. States vary widely in policy affecting MSBs. Some states go to great lengths to license, monitor, investigate, and regulate the MSB industry. Banks should be advised to gauge risk accordingly. Banks must acknowledge that in states with a great deal of oversight, MSBs, including hawalas, are at a much lower risk of money laundering.
- Clarify the relationship between risk assessment and due diligence. We recommend that FinCEN again advise banks that MSBs with a higher risk (because they remit money out of country, for instance) should not be universally denied service; rather, due diligence should be commensurate with the level of risk, and take into account existing money laundering protections such as federal and state regulation.

Recommended Guidance for Money Services Businesses

In order to ensure smooth compliance with the Bank Secrecy Act, we recommend that FinCEN work to ensure a wider dissemination of its publications. While the information present in FinCEN's April 2005 *Guidance to Money Services Businesses Obtaining and Maintaining Banking Services* contains very useful information for MSB owners and agents, none of the hawala owners in Seattle had seen this information until last month, one year after the publication date. In addition, no one was aware of this commenting period or the advance notice of proposed rulemaking until just before the deadline. While all of this information is published on FinCEN's website, we recommend that in the future, FinCEN be proactive in informing MSB owners of their rights, FinCEN's expectations, and interpretations of the Bank Secrecy Act. Specifically, we recommend that this information be mailed to all MSB businesses registered with FinCEN.

Additional Recommendations

In addition to the above recommendations, we ask FinCEN to take the following actions:

- Establish an effort to educate banks and the public about hawalas. In 2001 and 2002, FinCEN released two reports that outlined the role of hawalas and other alternative money remittance systems in money laundering. These reports are still easily accessible, along with other hawala information, at

<http://www.ustreas.gov/offices/enforcement/key-issues/hawala/>. These publications give the impression that most hawalas are underground, illegal operations. In reality, the vast majority of hawalas and other alternative money remittance business have been compliant in registering with the Federal and state governments and have cooperated with government efforts to combat money laundering. FinCEN should take measures to educate banks and the public about the vital services offered by legitimately registered, legal money remittance businesses.

- Devote resources to mediating disputes between banks and MSBs. FinCEN should actively, and through clearly advertised avenues, assist MSBs who believe they are being wrongly denied banking services. FinCEN should develop a formal grievance process and be willing to directly intervene. In the event that MSBs, including hawalas, feel that banks are not following FinCEN guidelines in providing banking services and enforcing the Bank Secrecy Act, FinCEN should directly contact the banks involved, investigate the situation, pressure noncompliant banks, and help mediate the dispute.

Conclusion

Despite efforts in 2005 by FinCEN to ameliorate the loss of banking services to MSBs and clear up misconceptions about the Bank Secrecy Act, hawalas in the greater Seattle area have been denied services and had services terminated at an increased rate over the last year. Banks have not provided clear reasons for denying services to the MSB community. Within the Somali community, the decline in banking services to legally registered hawalas has escalated into a crisis. We ask that FinCEN act quickly to reverse this situation by clarifying risk assessment and due diligence protocols, investigating and pressuring noncompliant banks, and by continuing to support legitimate MSBs who have difficulty securing and maintaining banking services.

Sincerely,

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