

Fact Sheet for the Industry on MSB Suspicious Activity Reporting Rule

The Treasury Department is issuing today a final rule concerning the application of the Bank Secrecy Act (BSA) to certain non-bank financial institutions called “money services businesses” (MSBs). The rule would extend to the MSB industry the requirement to report suspicious activity under the BSA.

Under the rule (i) money transmitters, (ii) issuers, sellers and redeemers of money orders, (iii) issuers, sellers and redeemers of traveler’s checks, and (iv) the U.S. Postal Service (except with regard to the sale of postage or philatelic products) are required to report certain classes of transactions that meet certain dollar thresholds to the Department of the Treasury, beginning on January 1, 2002. The reportable transactions include:

- transactions involving funds derived from illegal activity or intended or conducted in order to hide or disguise funds or assets derived from illegal activity;
- transactions designed, whether through structuring or other means, to evade the requirements of the BSA; and
- transactions that appear to serve no business or apparent lawful purpose.

The rule includes two different dollar thresholds depending on the stage and type of transaction involved:

- for transactions conducted or attempted by, at or through a money services business or its agent, the threshold of \$2,000 applies;
- for transactions identified by issuers of money orders or traveler’s checks from a review of clearance records or other similar records of instruments that have been sold or processed, the threshold of \$5,000 applies.

MSBs are given 30 days after becoming aware of a suspicious transaction to complete a Suspicious Activity Report – MSB (SAR-MSB) and file it in a central location, to be determined by FinCEN; in situations involving violations that require immediate attention, such as ongoing-money laundering schemes, the appropriate MSB or MSBs are to notify the appropriate law enforcement authority immediately, by telephone, in addition to filing the required form. Supporting documentation relating to each SAR-MSB is to be collected and maintained by the reporting MSB for review as needed by law enforcement and regulatory agencies.

The rule incorporates the statutory provision (called a “safe harbor”) that provides broad protection from liability to customers of financial institutions that report suspicious transactions. In addition, the rule specifically prohibits persons filing suspicious transaction reports from disclosing, except to law enforcement and regulatory agencies, that a report has been filed or from providing any information that would disclose that a report has been prepared or filed.

Information about the MSB SAR Rule

The following questions and answers are intended to deal with general, basic, issues concerning the implementation of the new regulation. The questions and answers are not intended to be comprehensive and do not replace or supersede the regulation.

1. What is the basis for the final rule?

The rule is based on a notice of proposed rulemaking issued on May 21, 1997. See 62 FR 27900. The rule is issued pursuant to Congressional direction in both the Money Laundering Suppression Act of 1994 and Annunzio-Wylie Anti-Money Laundering Act of 1992. It completes the second rulemaking relating to the application of the BSA to MSBs under the 1992 and 1994 laws begun on May 21, 1997. The first rulemaking resulted in a final rule, published on August 18, 1999, that revises the definition of certain businesses for BSA purposes and requires MSBs to register with the Department of the Treasury. See 64 FR 45438. It should be noted that, under the BSA, MSBs are currently required to report to FinCEN cash transactions exceeding \$10,000. The information plays a key role in helping law enforcement investigators follow the money trail of criminals.

2. What does the final rule provide?

The final rule extends the obligation to file suspicious activity reports under the Bank Secrecy Act to certain money services businesses, including (i) money transmitters, (ii) issuers, sellers and redeemers of money orders, (iii) issuers, sellers and redeemers of traveler's checks, and (iv) the U.S. Postal Service (except with regard to the sale of postage or philatelic products). It requires these MSBs to report suspicious transactions of certain classes that meet certain dollar thresholds to the Department of the Treasury.

3. How does the final rule differ from the notice of proposed rulemaking?

FinCEN received nearly thirty comments, many quite lengthy and detailed, dealing in whole or in part with issues raised by the proposed rule. Based on those comments, the rule reflects the following significant changes:

- the dollar threshold for reporting suspicious transactions has generally been raised from \$500 to \$2,000. In addition, the dollar threshold for reporting has been raised from \$500 to \$5,000 for issuers of money orders or traveler's checks to the extent that the identification of transactions required to be reported is derived from a review of clearance records or other similar records of money orders or traveler's checks that have been sold or processed;
- specific examples of potentially suspicious transactions have been removed from the text of the rule, a discussion of application of the reporting requirement to specific situations will appear in a "guidance document" that will be published by FinCEN in the near future;

- language relating to the allocation of responsibility for reporting suspicious activity among various persons involved in a money transmission or the sale and collection of a money order or traveler's check has been revised; and
- language has been added to clarify that reports containing the same information need not be filed by both the issuer of a money services product and its selling agent with respect to the same reportable transaction.

4. How are money services businesses defined by the BSA?

MSBs are specifically defined to include each agent, agency, branch or office within the United States of any person (except a bank or person registered with, and regulated or examined by, the Securities Exchange Commission or the Commodity Futures Trading Commission) doing business in one or more of the following capacities:

- currency dealer or exchanger;
- check casher;
- issuer of traveler's checks, money orders, or stored value;
- seller or redeemer of traveler's checks, money orders, or stored value;
- money transmitter; and
- the United States Postal Service (except with respect to the sale of postage or philatelic products).

Notwithstanding the above, persons who do not exchange currency, cash checks, or issue, sell or redeem traveler's checks, money orders, or stored value in an amount greater than \$1,000 to any person on any day in one or more transactions are not MSBs for purposes of the Bank Secrecy Act.

5. Which MSBs must file suspicious activity reports?

The rule requires (i) money transmitters, (ii) issuers, sellers and redeemers of money orders, (iii) issuers, sellers and redeemers of traveler's checks, and (iv) the U.S. Postal Service to file suspicious activity reports with the Department of the Treasury. The rule also allows for voluntary filing of these reports by other MSBs including, check cashers and currency dealers or exchangers.

For this purpose, it should be understood that "redeemer" is a narrow category. The rule extends to "redeemers" of money orders and traveler's checks only insofar as the instruments involved are redeemed for monetary value. The taking of the instruments in exchange for goods or services is not a redemption for purposes of the rule.

6. When must money services businesses begin to report suspicious transactions?

The rule requires that suspicious transactions occurring after December 31, 2001 be reported to the Treasury Department.

Once in effect, the rule will require an MSB to report suspicious transactions on a form that FinCEN specifies with the Detroit Computing Center of the Internal Revenue Service (or such other location as the form may specify). FinCEN expects to continue to work with the money services business industry to develop the reporting form, called the SAR-MSB form. As part of that process, FinCEN will publish in the Federal Register a separate notice regarding the form.

Suspicious activity reports must be filed within 30 days after a money services business becomes aware of a suspicious transaction.

7. What kind of suspicious activities are required to be reported?

An MSB subject to the new rules must report a transaction if the MSB knows, suspects, or has reason to suspect that the transaction requires reporting. The following three classes of transactions require reporting:

- transactions involving funds derived from illegal activity or intended or conducted in order to hide or disguise funds or assets derived from illegal activity;
- transactions designed, whether through “structuring” or other means, to evade the requirements of the BSA;
- transactions that appear to serve no business or apparent lawful purposes.

Whether a particular transaction requires reporting must be decided by the MSB based on all of the facts and circumstances relating to the transaction or pattern of transactions in question. Guidance that includes specific examples of types of reportable transactions is being prepared by FinCEN in conjunction with representatives from the money services business industry, law enforcement and other regulatory agencies. That guidance shortly will be published by FinCEN and made available on its website.

8. At what dollar threshold must a money services business report a suspicious transaction?

The rule includes two different dollar thresholds depending at which stage in the transaction the suspicious activity is detected. For transactions that are conducted or attempted by, at or through a money services business or its agent, the threshold that triggers the reporting requirement is \$2,000. For those transactions identified by issuers of money orders or traveler’s checks from a review of clearance records or other similar records of money orders or traveler’s checks that have been sold or processed, the threshold which triggers the reporting requirement is \$5,000.

9. Who has the obligation to report a suspicious transaction?

The rule places responsibility for reporting a suspicious transaction on each money services business involved in the transaction. Thus, an agent of a money services business will be a money services business itself for purposes of the reporting rule (although not necessarily for purposes of the rule requiring MSBs to register with the Treasury Department). However, the rule specifically makes it clear that only one report should be filed with respect to a reportable

transaction, in order to avoid double reporting on the same transaction. It should be noted that filing of multiple reports (by a principal MSB and its agent) may be justified if different facts are contained in the two reports.

10. What information can a money services business give to the public about the filing of a suspicious transaction report?

The rule specifically prohibits persons filing reports in compliance with the rule from disclosing, except to law enforcement and regulatory agencies, that a report has been filed. In addition, the rule prohibits persons filing such reports from providing any information that would disclose that a report has been prepared or filed.

11. Can a money services business be sued by its customer for filing a suspicious activity report?

The Bank Secrecy Act contains a broad protection from liability for making reports of suspicious activity, whether such reports are required by the rule or made voluntarily. In addition, the BSA provides protection from liability for failure to disclose the fact of such reporting.

12. What are the consequences for failing to report suspicious transactions?

The rule provides that the failure to satisfy its requirements may constitute a violation of the reporting rules of the Bank Secrecy Act and thereby subject a money services business to possible civil money penalties and/or criminal sanctions.

13. Who should a money services business contact with further questions concerning the suspicious activity reporting requirement?

Any money services business may contact FinCEN's Regulatory Helpline at 1-800-949-2732, press 4 for MSBs, or FinCEN's Office of Chief Counsel at (703) 905-3590 regarding questions on the Bank Secrecy Act rules.