

Requirements for Money Service Businesses Under the Bank Secrecy Act

By Neil H. Fishman

Since its original implementation in 1970, the Bank Secrecy Act (BSA) has been strengthened by subsequent legislation, making it a formidable tool for fighting money laundering and curbing the funding of terrorist activities. With the federal filing requirements imposed on money service business (MSB) activities, it is more important than ever to understand MSB definitions and requirements.

In order to improve awareness of, and disseminate knowledge about, the expanded BSA and related MSB issues, a recent *Tax Talk Today* webcast featured a panel of IRS officials and tax experts. The panel focused on the definition of an MSB as well as other topics, such as the registration, filing, and reporting requirements for MSBs in the BSA.

MSB Requirements

The first step is understanding what constitutes an MSB. An MSB is any business that offers money orders, traveler's checks, stored value, check cashing, or currency dealing; and conducts more than \$1,000 in money services business activity with the same person, in one type of activity, on the same day; or provides money transfer services in any amount.

A business is classified as an MSB even if the MSB activity is ancillary to the primary business activity. A travel agent selling traveler's checks, a grocery store offering check cashing, and a convenience store selling money orders would all qualify as MSBs.

When dealing with any business, one should be alert for MSB activity. For example, examine the addition of ser-

vices or revenue streams to determine whether MSB requirements will play a role in how the new activity is integrated into the business. In addition to integrating MSB services, a business must be aware of the federal requirements for registration, reporting, and compliance programs.

Registration. All MSBs are required to register with the Financial Crimes Enforcement Network (FinCEN) using Form FinCEN 107, Registration of Money Services Business. The only exemptions from this requirement are government agencies; the U.S. Postal Service; an issuer, seller, or redeemer of stored value; an agent of an MSB; and a branch office of an MSB. MSBs are required to keep a copy of the FinCEN registration and supporting documentation for five years.

Reporting. Reports required of MSBs usually fall into two categories: currency transaction reports and suspicious activity reports:

- Currency transaction reports (CTR): FinCEN Form 104, Currency Transaction Report; or FinCEN Form 103, Currency Transaction Report by Casinos, are required for currency-in or currency-out transactions in excess of \$10,000. Because same-day individual transactions well below the \$10,000 reporting threshold can easily add up to the reportable amount, accurate records are critical to maintaining proper reporting.

- Suspicious activity reports (SAR): Once required only of banks and other traditional financial institutions, SARs provide the primary tool for criminal investigations into money laundering and are the responsibility of any MSB that knows, suspects, or has reason to suspect that a transaction, or pattern of transactions, involving a certain dollar amount is suspicious.

MSBs must be mindful of customers operating outside the box, which may mean they are trying to use the MSB to circumvent the system. In most cases, SARs must be filed no later than 30 days after the date that the suspicious activity occurred. FinCEN provides a guide on its website, www.FinCEN.gov, designed to help MSBs provide useful information if an investigation is launched.

Compliance programs. Every MSB is required to develop and implement an anti-money laundering compliance program designed to ensure that a business meets BSA guidelines for proper record-keeping, proper reporting of certain transactions, and proper policies and procedures to prevent the use of the business to launder money.

IRS and tax experts agree that the key components of an anti-money laundering compliance program include:

- Policies and procedures that establish the anti-money laundering program;
- A compliance officer tasked with enforcing policies and procedures, educating employees, and maintaining daily BSA compliance;
- A training program to educate all employees about BSA requirements and MSB transactions of any size; and
- Regular, independent audits of the anti-money laundering program.

FinCEN provides guidance for the creation of MSB compliance programs on its website, www.FinCEN.gov. □

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