



State of Washington

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**October 7, 2022**

**To: Bank and Credit Union CEOs and BSA Officers Operating in Washington**  
**From: Charles Clark, Director, Washington State Department of Financial Institutions**  
**Re: Impact Money Services Business Program**

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This guidance is designed to support the adoption of the Impact Money Services Business Program, described herein, which assists banks and credit unions in providing account services to money services businesses (MSBs) that the Washington State Department of Financial Institutions (DFI) licenses and regulates. This guidance is designed to provide greater clarity and transparency regarding supervisory expectations for banks and credit unions providing commercial accounts to MSBs.<sup>1</sup> The regulatory expectations and best practices contained in the guidance should be considered an addition to, and a part of, existing BSA/AML guidance. DFI encourages depository institutions (DIs) to consider providing banking services to state licensed MSBs, taking into consideration the best practices in this guidance and the tools provided.

**Background:**

Certain licensed money services businesses (legally operating in Washington State and regulated by the DFI) have been unable to obtain and maintain bank accounts. This situation is often referred to as “de-risking” at the depository institutions level. The lack of access to bank accounts negatively impacts the immediate and long-term viability of MSBs affected by de-risking. De-risking makes it more difficult for these MSBs to serve consumers. More significantly, MSBs that are unable to secure bank accounts must operate on a cash basis, which poses an ongoing safety and security issue.

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<sup>1</sup> Banks and credit unions are distinctly defined at 31 CFR § 1010.100(d) and do not include Money Services Businesses. MSBs are defined at 31 CFR § 1010.100(ff).

Concerns have been raised that MSBs lacking access to bank accounts are disproportionately those providing foreign remittance services to communities of color, and that these concerns must be addressed so that these MSBs have the same access to bank accounts as other licensed MSBs in Washington. For more general information on this issue, please refer to *The State of State Money Services Businesses Regulation and Supervision*, published by the Conference of State Bank Supervisors and the Money Transmitters Regulators Association.

The current regulatory guidance<sup>2</sup> and expectations pertaining to compliance with the Bank Secrecy Act and Anti-money Laundering laws (BSA/AML) may not have sufficient detail for DIs to feel comfortable providing banking services to some MSBs that provide foreign remittance services.<sup>3</sup>

While federal regulatory banking agencies may have addressed the 2019 GAO recommendation (discussed below) to provide examiner training, DFI recognizes that banks and credit unions providing services to MSBs would benefit by additional clarity around regulatory expectations and examination procedures. The specific concern noted in the GAO report stated, “. . . the banks held the perception that supervisory and enforcement expectations lack transparency, predictability, and consistency.”<sup>4</sup> This guidance is intended explain supervisory expectations more thoroughly and provide transparency, predictability and consistency.

The December 2019 Report to Congressional Requesters GAO-20-46, *Bank Secrecy Act Examiners Need More Information on How to Assess Banks' Compliance Controls for Money Transmitter Accounts*<sup>5</sup> describes the challenges that regulators face when reviewing MSB accounts as well as the unintended consequences when banks de-risk MSBs because of a perceived heightened regulatory risk. The report recommended that the four federal banking agencies (Federal Deposit Insurance Corporation, Federal Reserve Board, Office of Comptroller of the Currency and National Credit Union Association), in coordination with and with input from BSA/AML examiners and other relevant stakeholders, “should take steps to improve examiners’ ability to evaluate the

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<sup>2</sup> See the Federal Financial Institutions Examination Council’s, *Bank Secrecy Act/Anti-Money Laundering Manual - Risks Associated with MoneyLaundering and Terrorist Financing - Nonbank Financial Institutions Overview*.

<https://bsaaml.ffiec.gov/manual/RisksAssociatedWithMoneyLaunderingAndTerroristFinancing/25>

<sup>3</sup> Certain geographic locations may be more vulnerable to money laundering or terrorist financing via money transfers. Such locations can be either international or domestic and according to [FinCEN’s MSB examination manual](#) generally include: 1) countries, jurisdictions and governments subject to OFAC sanctions, including state sponsors of terrorism; 2) countries identified as supporting international terrorism under section 6(j) of the Export Administration Act of 1979, as determined by the Secretary of State; 3) jurisdictions determined to be “of primary money laundering concern” by the Secretary of the Treasury, and jurisdictions subject to special measures imposed by the Secretary of the Treasury, through FinCEN, pursuant to section 311 of the USA PATRIOT Act; 4) countries and territories identified as non-cooperative by the Financial Action Task Force (FATF); and 5) major money laundering countries and jurisdictions identified in the U.S. Department of State’s annual International Narcotics Control Strategy Report (INCSR), in particular, countries that are identified as jurisdictions of primary concern.

<sup>4</sup> See Page 38, GAO Report to Congressional Requesters *Bank Secrecy Act Examiners Need More Information on How to Assess Banks' Compliance Control for Money Transmitter Accounts*, <https://www.gao.gov/assets/710/702959.pdf>.

<sup>5</sup> GAO Report to Congressional Requesters GAO 20-46 *Bank Secrecy Act Examiners Need More Information on How to Assess Banks' Compliance Control for Money Transmitter Accounts*, <https://www.gao.gov/assets/710/702959.pdf>.

effectiveness of banks' BSA/AML compliance controls with respect to money transmitter accounts. Steps may include providing updates to examination procedures, examiner training, or a combination of methods."<sup>6</sup>

As a response to the GAO recommendations, the federal banking agencies and the Conference of State Bank Supervisors developed and delivered training for examiners related to MSBs at the July, 2020 Federal Financial Institutions Examination Council (FFIEC) Advanced BSA/AML Specialists Conference. This conference included examiners designated to review Bank Secrecy Act compliance programs in banks and credit unions that have a moderate to high money laundering, terrorist financing, or other illicit activity risk identified through the DI's risk assessment processes. This conference was attended by 513 individuals from various federal and state agencies.

### **Impact Money Services Business Program – Guidance and Regulatory Expectations**

- Before a DI enters any new business line, its board of directors should establish overall risk tolerance limits. Regarding MSBs, the risk limits would address the foreign countries or geographic locations to which the DI will allow MSB customers to make remittances. The DI's risk limits should also set the volume of remittance transactions in terms of dollar amount and frequency.
- The DI should verify appropriate state licensure of the MSB. DI's can check the Nationwide Multistate Licensing System (NMLS) Consumer Access to verify state licensure in most states.<sup>7</sup> This is not the only way to confirm licensure.
- The DI should request from the MSB a copy of any Report of Examination (ROE) by DFI, which includes an assessment of the MSB's compliance with BSA/AML regulations. The ROE will aid in the DI's ability to understand the risk profile of the MSB. Note: The ROE does not in itself substitute for or satisfy the due diligence expected of the DI in meeting BSA/AML compliance program requirements.
- The DI should verify that the MSB has correctly registered with FinCEN.<sup>8</sup>
- The DI should request from the MSB any Title 31 examination report it has received. (FinCEN has delegated to the IRS examination authority for BSA/AML compliance of money transmitters. For more information on Title 31 examinations, refer to [FinCEN's Bank Secrecy Act/Anti-Money Laundering Examination Manual for Money Services Businesses](#)). Note: Obtaining a MSB's Title 31 examination report does not in itself substitute for or satisfy the due diligence expected of DIs in complying with BSA/AML compliance program requirements.
- The DI should develop a MSB account agreement that specifies the roles and responsibilities of both the DI and the MSB customer. The agreement should include a

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<sup>6</sup> Ibid.

<sup>7</sup> Consumer Access ([nmlsconsumeraccess.org](https://nmlsconsumeraccess.org))

<sup>8</sup> See codes for MSB Key, [https://www.fincen.gov/fcn/financial\\_institutions/msb/definitions/msbKey.html](https://www.fincen.gov/fcn/financial_institutions/msb/definitions/msbKey.html)

section that details any prohibited MSB activities, and that is tailored to the risk tolerance limits set forth by the DI's board of directors. Such administrative controls facilitate the scope of transaction testing where an independent party can test adherence to the account agreement. Please also see the Model Master Addendum to Commercial Deposit Agreement template developed by DFI.

- The DI should require the MSB customer to have separate deposit accounts for separate types of services offered, such as check cashing and remittance sales. This requirement can be included in the MSB account agreement. Separate accounts would allow the DI to track funds in and out and prevent or identify the commingling of cash in for remittances and cash out for check cashing.
- To the extent practicable, the DI should require the MSB customer to maintain all of its commercial banking relationships with the DI. This will allow the DI to better understand the MSB's risk profile and provide for transparency in all its transactions. This will make it easier for DI BSA/AML compliance officers and regulators to ascertain the reasonableness of sources and uses of funds for all businesses conducted by the MSB. This requirement can be included in the account agreement. It should be noted that there may be some circumstances that make consolidation of the MSBs accounts difficult, such as locations and access to banking services in other states in which the DI does not do business. If these circumstances exist, the DI should make appropriate accommodations. Note: The primary reason MSBs have multiple banking relationships is the fear of being de-risked, resulting in no bank account at all. According to the [GAO-20-46](#) Report to Congressional Requesters, *Bank Secrecy Act: Examiners Need More Information on How to Assess Banks' Compliance Controls for Money Transmitter Accounts* "The officials added that when banks terminate accounts with the money transmitter or its agents, the money transmitter cannot conduct the necessary transactions with its agents to facilitate the cash transfer. As a result . . . account terminations can cause the money transmitter to cease operations in a particular country or cause the agents to go out of business."<sup>9</sup>
- In order to comply with the Bank Secrecy Act rule (31 CFR 1010.410), known as the "Travel Rule," the DI should collect and retain certain information about all parties to the transaction, including the ultimate beneficiary of the remittance, in connection with funds transfers of \$3,000 or more. This information is often included in the "For Further Credit" field on the wire transfer form. Note: On October 23, 2020, FinCEN and the Federal Reserve Board proposed a new rule that will lower the applicable threshold from \$3,000 to \$250 for international transactions.<sup>10</sup> This is a proposed rule, which may be changed or not adopted.

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<sup>9</sup> See Page 38, "Bank Secrecy Act Examiners Need More Information on How to Assess Banks' Compliance Control for Money Transmitter Accounts", <https://www.gao.gov/assets/710/702959.pdf>.

<sup>10</sup> See proposed rule by FinCEN and FRB, "Threshold for the Requirement to Collect, Retain, and Transmit Information on Funds Transfers and Transmittals of Funds That Begin or End Outside the United States, and Clarification of the Requirement to Collect, Retain,

- The DI should recommend that MSBs periodically conduct a test of its BSA/AML compliance program, conducted by a qualified independent consultant or auditor. FFIEC's BSA/AML Manual indicates that this test or audit need not be a formal audit conducted by a CPA.<sup>11</sup> This recommendation could be addressed in the account agreement. In the absence of an audit, a documented BSA site visit performed by the DI's qualified staff, which tests adherence to the MSB's internal controls and the account agreement, can achieve the control testing component of ongoing monitoring.

### **Additional Best Practice Recommendations**

- The BSA Compliance Officer (BSAO) should develop a separate written MSB program that includes Customer Identification Program, Customer Due Diligence, Enhanced Due Diligence and OFAC requirements.
- The BSAO should familiarize themselves with the MSB Examination Manual<sup>12</sup>.
- The BSAO should be familiar with the MSB's BSA and AML programs.
- The BSAO should perform a risk assessment and define risk mitigation factors (when applicable) prior to offering account service to a MSB. The risk assessment of the MSB should include an assessment of all authorized delegate activity.
- If a DI has multiple MSBs, the BSAO should document a risk assessment of each of them.
- The DI's BSA department or its qualified designee should conduct periodic on-site review of the DI's MSB accounts at least every 12 – 18 months as a part of its Enhanced Due Diligence procedures.
- The BSA department should conduct transaction testing of the remittance transfers of MSBs. Reviews should include negative news searches on agents and beneficiaries.
- The BSAO should provide regulators with evidence of due diligence regarding remittances to more vulnerable geographic locations if they allow MSBs to remit to such locations.

### **References and Additional Resources for Banking MSBs**

Conference of State Bank Supervisors and Money Transmitter Regulators Association, "The State of State Money Services Businesses Regulation & Supervision" (May 2016) retrieved from:

**<https://www.depositslipsllc.com/assets/files/docs/State-MSB-Regulation.pdf>**

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and Transmit Information on Transactions Involving Convertible Virtual Currencies and Digital Assets with Legal Tender Status", <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20201023a.htm>.

<sup>11</sup> See the Federal Financial Institutions Examination Council's, Bank Secrecy Act/Anti-Money Laundering Manual - Risks Associated with MoneyLaundering and Terrorist Financing - Nonbank Financial Institutions Overview, <https://bsaaml.ffiec.gov/manual/RisksAssociatedWithMoneyLaunderingAndTerroristFinancing/25>.

<sup>12</sup> [https://www.fincen.gov/sites/default/files/shared/MSB\\_Exam\\_Manual.pdf](https://www.fincen.gov/sites/default/files/shared/MSB_Exam_Manual.pdf)

Financial Crimes Enforcement Network, “Funds ‘Travel’ Regulations: Question & Answers”(November 9, 2010) retrieved from: <https://www.fincen.gov/resources/statutes-regulations/guidance/funds-travel-regulations-questions-answers>.

Financial Crimes Enforcement Network, “Funds ‘Travel’ Regulations: Questions & Answers”(January 1997) retrieved from: <https://www.sec.gov/about/offices/ocie/aml2007/fincen-advissu7.pdf>.

Board of Governors of the Federal Reserve System and Financial Crimes Enforcement Network invite comment on proposed rulemaking, “Threshold for the Requirement to Collect, Retain, and Transmit Information on Funds Transfers and Transmittals of Funds That Begin or End Outside the United States, and Clarification of the Requirement to Collect, Retain, and Transmit Information on Transactions Involving Convertible Virtual Currencies and Digital Assets with Legal Tender Status” (October 23, 2020) retrieved from: <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20201023a.htm>

Financial Crimes Enforcement Network, “Bank Secrecy Act/Anti-Money Laundering Examination Manual for Money Service Businesses” (2008) retrieved from: [https://www.fincen.gov/sites/default/files/shared/MSB\\_Exam\\_Manual.pdf](https://www.fincen.gov/sites/default/files/shared/MSB_Exam_Manual.pdf)

Federal Financial Institutions Examination Council, “Bank Secrecy Act/Anti-Money Laundering Examination Manual” FFIEC InfoBase, retrieved from: <https://bsaaml.ffiec.gov/>.

Federal Financial Institutions Examination Council, “Bank Secrecy Act/Anti-Money Laundering Examination Manual, Risks Associated with Money Laundering and Terrorist Financing, Nonbank Financial Institutions - Overview” retrieved from:

<https://bsaaml.ffiec.gov/manual/RisksAssociatedWithMoneyLaunderingAndTerroristFinancing/25>

United States Government Accountability Office, GAO-20-46, “Bank Secrecy Act, Examiners Need More Information on How to Assess Banks’ Compliance Controls for Money Transmitter Accounts” (December 2019) retrieved from: <https://www.gao.gov/assets/710/702959.pdf>.

Financial Crimes Enforcement Network registration codes for money services businesses, retrieved from: [https://www.fincen.gov/fcn/financial\\_institutions/msb/definitions/msbKey.html](https://www.fincen.gov/fcn/financial_institutions/msb/definitions/msbKey.html).

Financial Crimes Enforcement Network *Interagency Interpretive Guidance on Providing Banking Services to Money Services Businesses Operating in the United States:*

**<https://www.fincen.gov/sites/default/files/guidance/guidance04262005.pdf>**

Financial Crimes Enforcement Network Statement on Providing Banking Services to Money Services Businesses: **[https://www.fincen.gov/sites/default/files/news\\_release/20141110.pdf](https://www.fincen.gov/sites/default/files/news_release/20141110.pdf)**