

activities appropriate for the particular customer or type of customer as to have no reasonable explanation.

Although the rule does not require the filing of multiple reports of suspicious activity by both a money services businesses and its agent with respect to the same reportable transaction, the obligation to identify and report suspicious transactions rests with each money services business involved in a particular transaction.

In accordance with paragraph 103.20(b) of the MSB SAR rule, money services businesses must report a suspicious transaction within 30 days after the money services business becomes aware of the suspicious transaction, by completing a Suspicious Activity Report-MSB ("SAR-MSB"). FinCEN published for comment on July 25, 2002, a draft SAR-MSB, which is now final and available for use.<sup>6</sup> FinCEN has made special provision for situations requiring immediate attention (e.g., where delay in reporting might hinder law enforcement's ability to fully investigate the activity), in which case money services businesses are immediately to notify, by telephone, the appropriate law enforcement authority in addition to filing a SAR-MSB. Reports filed under the terms of the MSB SAR rule are lodged in a central database. Information contained in the database is made available electronically to federal and state law enforcement and regulatory agencies, to enhance their ability to fight financial crime and terrorism.

Paragraph 103.20(c) of the MSB SAR rule requires money services businesses to maintain copies of each filed SAR-MSB for five years. In addition, money services businesses must collect and maintain for five years supporting documentation relating to each SAR-MSB and make such documentation available to law enforcement and regulatory agencies upon request.

Paragraph 103.20(d) of the MSB SAR rule incorporates the terms of 31 U.S.C. 5318(g)(2) and (g)(3), and specifically prohibits persons filing reports in compliance with the MSB SAR rule (or voluntary reports of suspicious transactions) from disclosing, except to appropriate law enforcement and regulatory agencies, that a report has been prepared or filed. The paragraph also restates the BSA's broad protection from liability for making reports of suspicious transactions (whether such reports are required by the MSB SAR

rule or made voluntarily), and for declining to disclose the fact of such reporting. The regulatory provisions do not extend the scope of either the statutory prohibition or the statutory protection; however, because FinCEN recognizes the importance of these statutory provisions in the overall effort to encourage meaningful reports of suspicious transactions and to protect the legitimate privacy expectations of those who may be named in such reports, they are repeated in the rule to remind compliance officers and others of their existence.

Paragraph 103.20(e) of the MSB SAR rule provides that compliance with the MSB SAR rule will be audited by the Department of the Treasury through FinCEN or its delegee. Failure to comply with the rule may constitute a violation of the BSA regulations, which may subject non-complying money services businesses to enforcement action under the BSA.

As originally promulgated, the MSB SAR rule only applied to certain categories of money services businesses including issuers, sellers, and redeemers (for monetary value) of traveler's checks and money orders, money transmitters, and the United States Postal Service.<sup>7</sup> The original MSB SAR rule did not apply to either check cashers or to currency dealers/exchangers. This rulemaking is based on FinCEN's determination that it is now appropriate to extend to currency dealers and exchangers the requirement to report suspicious transactions. FinCEN has determined that such reports will have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings, and in the conduct of intelligence and counter-intelligence activities, including analysis, to protect against international terrorism.

#### *C. Importance of Suspicious Transaction Reporting in Treasury's Counter Money-Laundering Program*

The Congressional authorization of reporting of suspicious transactions recognizes two basic points that are central to Treasury's counter-money laundering and counter-financial crime

programs. First, to realize full use of their ill-gotten gains, money launderers at some point must turn to financial institutions, either initially to conceal their illegal funds, or eventually to recycle those funds back into the economy. Second, the employees and officers of those institutions are often more likely than government officials to have a sense as to which transactions appear to lack commercial justification or otherwise cannot be explained as constituting a legitimate use of the financial institution's products and services.

The importance of extending suspicious transaction reporting to all relevant financial institutions, including non-bank financial institutions, derives from the concentrated scrutiny to which banks have been subject with respect to money laundering. This attention, combined with the cooperation that banks have given to law enforcement agencies and banking regulators to root out money laundering, has made it far more difficult than in the past to pass large amounts of cash directly into the nation's banks unnoticed. As it has become increasingly difficult to launder large amounts of cash through banks, criminals have turned to non-bank financial institutions in their attempts to launder funds. Indeed, many non-bank financial institutions have come to recognize the increased pressure that money launderers have placed upon their operations and the need for innovative programs of training and monitoring necessary to counter that pressure.

The reporting of suspicious transactions is also recognized as essential to an effective counter-money laundering program in the international consensus on the prevention and detection of money laundering. One of the central recommendations of the Financial Action Task Force Against Money Laundering ("FATF") is that:

If financial institutions suspect that funds stem from a criminal activity, they should be required to report promptly their suspicions to the competent authorities.

#### *Financial Action Task Force Annual Report (June 28, 1996),<sup>8</sup> Annex 1*

<sup>8</sup> FATF is an inter-governmental body whose purpose is development and promotion of policies to combat money laundering. Originally created by the G-7 nations, its membership now includes Argentina, Australia, Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Kingdom of the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States, as well as the European Commission and the Gulf Cooperation Council.

<sup>6</sup> See 67 FR 48704 (July 25, 2002). The SAR-MSB and advice on how to complete it can be viewed on FinCEN's Web site (<http://www.fincen.gov>) under the categories of "What's New" and "Regulatory."

<sup>7</sup> The rule required money services businesses described in 31 CFR 103.11(uu)(3) (the money services business category that includes issuers of traveler's checks, money orders, or stored value), 103.11(uu)(4) (sellers or redeemers of traveler's checks, money orders, or stored value), 103.11(uu)(5) (money transmitters), and 103.11(uu)(6) (the United States Postal Service) to file reports of suspicious activity. Given the infancy of the use of stored value products in the United States at the time of issuance of the final rule, issuers, sellers, and redeemers of stored value were explicitly carved out of the final MSB SAR rule. See 31 CFR 103.20(a)(5).