

extent, by the existing obligation on all vehicle sellers to report, pursuant to 26 U.S.C. 6050I, 31 U.S.C. 5331, and 31 CFR 103.30, the receipt of cash or monetary instruments in excess of \$10,000,⁷ a rule that requires an anti-money laundering compliance or customer identification program may alleviate further the money laundering risk associated with large cash purchases. In response to documented instances of abuse, industry associations representing new car dealers have already taken steps to guard against the laundering of illicit proceeds through the purchase of automobiles with cash, providing their members with educational materials concerning their legal obligations and cash-related money laundering red flags.

The next stage of money laundering, the layering stage, involves the distancing of illegal funds from their criminal source through the creation of complex layers of financial transactions. Examples of layering through the vehicle sellers industry might include trading in vehicles for other vehicles and engaging in successive transactions of buying and selling both new and used vehicles.

Vehicle sales businesses also could be used for integrating illicit income into assets that appear legitimate. Integration occurs when illegal funds appear to have been derived from a legitimate source. This could occur, for instance, when the funds or vehicles received from the vehicle seller in the aftermath of the layering transactions are held out as coming from a legitimate source.

Vehicle sellers may need to have an understanding of the identity of customers who participate in transactions with money laundering risk. For purchases of vehicles involving large sums of cash, knowing the customer's identity may be an essential part of an effective anti-money laundering program. Customers may request complex invoicing arrangements or payment arrangements or may structure their cash payments to avoid BSA reports. While vehicle sellers may scrutinize non-cash transactions to manage fraud risk, they are undoubtedly less aware of possible money laundering risk with both cash and non-cash transactions.

FinCEN has received reports indicating that some vehicle sellers have

engaged in structuring⁸ sequential deposits of cash near the reporting threshold of \$10,000. FinCEN also has received reports of the purchase of automobiles with structured checks and money orders. Other instances of suspicious activity reported to FinCEN concerning this industry include consumer loan fraud and check fraud. These instances all involve the placement stage of money laundering.

Accordingly, FinCEN solicits comments on the existence of the above, and other, types of risks in the vehicle sellers business. Specifically, FinCEN is interested in identifying risks in the products that vehicle sellers provide that make them uniquely susceptible to money laundering, as opposed to the risks inherent in all businesses that sell products or services to the public that may be purchased with tainted funds. Such heightened risks include, for example, the payment of funds to the seller by third parties on behalf of customers, particularly from jurisdictions with lax money laundering controls, and the ability to pay funds to the vehicle seller and, in return, receive funds from the seller that have the appearance of legitimacy. FinCEN further seeks comment on whether differentiation should be made for lines of business that appear to have minimal money laundering risks, such as the sale of vehicles to federal, state, and local governments. Are there other functional distinctions that should be made?

2. Should Vehicle Sellers Be Exempt from Coverage Under Sections 352 and 326 of the Patriot Act?

Based on the determination of the extent of the risk of money laundering posed by vehicle sellers, the question arises as to whether the industry should be exempt under sections 352 and 326 of the Act. If the risk of money laundering in the vehicle sellers industry is determined to be minimal such that it does not justify the imposition of a regulatory burden, it might be reasonable to exempt the industry from coverage of these provisions. This judgment will be based on the existing risks of money laundering, the potential risks of money laundering, as well as the volume of possible illicit funds that may flow through vehicle sellers.

In light of these issues, FinCEN would like to solicit comments with regard to the issue of whether there should be an exemption from these provisions for vehicle sellers, or any category thereof.

These comments should be designed to enable FinCEN to decide whether or not to propose an appropriate regulation designed to provide protection for the vehicle seller industry from the risks of money laundering.

3. If Vehicle Sellers, or Some Subset of the Industry, Should Be Subject to the Anti-Money Laundering Program Requirements, How Should the Program Be Structured?

In applying section 352 of the Act to vehicle sellers, FinCEN must take into account which requirements are "commensurate with the size, location, and activities" of this industry. In undertaking this review, FinCEN recognizes that vehicle sellers likely have some programs already in place to meet existing legal obligations. For example, as a nonfinancial trade or business, vehicle sellers are required to report on Form 8300 the receipt of over \$10,000 in currency and certain monetary instruments. Vehicle sellers also may have procedures in place to protect themselves against fraud. Such procedures may be sufficient in themselves, given the money laundering risk in the industry, or they may serve as a foundation on which additional anti-money laundering program requirements could be based. FinCEN therefore seeks comment on the particular elements that should be included in any required anti-money laundering program, should it be determined that such a requirement should be imposed on this industry. In this regard, comment is requested regarding the types of programs vehicle sellers currently have in place to prevent fraud and illegal activities, and the applicability of such programs to the prevention of money laundering.

4. How Should a Vehicle Seller Be Defined? Should There Be a Minimum Threshold Value in the Definition? Should it Include Wholesale and Retail Sellers? Should Sellers of Used Vehicles Be Included?

In the event FinCEN determines to propose requirements on vehicle sellers under sections 352 and 326 of the Act, it will be necessary to define the term vehicle seller. Although the BSA identifies a vehicle seller as a financial institution, the statute contains no definition of the term, other than to state that it includes sellers of automobiles, airplanes, and boats. The legislative history of the BSA provides no insight into how Congress intended the term to be defined, nor has FinCEN had an occasion to define the term in a regulation.

⁷ Sellers of vehicles for personal consumption (as opposed to commercial sales) fall within the type of retail business required to report receipts of monetary instruments (cashier's checks, traveler's checks, money orders) that have face amounts of less than \$10,000 and which are used to make a purchase of greater than \$10,000. See 31 CFR 103.30.

⁸ Structuring refers to the breaking up of a transaction into multiple smaller transactions to evade recordkeeping or reporting requirements.