

present some potential money laundering risks. For example, some travel agencies have a significant portion of their clients pay for the agencies' products and services in cash. While the risk of money laundering is minimized, to some extent, by the existing obligation on all travel agencies 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 the cash intensive nature of some travel agencies. Moreover, some travel agencies are associated with ancillary businesses, including money services businesses offering money transfer and check cashing, that pose additional money laundering risk. To the extent customers wish to avoid the recordkeeping and reporting requirements applicable to the money services side of the business, they may try to route their transactions through the unregulated travel agency side of the business. Instead of obtaining a money order or traveler's check to make an illicit payment (which would be subject to FinCEN's recordkeeping rules if over \$3,000), a money launderer could buy an expensive airline ticket for another person, who could then exchange it for a legitimate-seeming refund.

FinCEN has received reports indicating that some travel agencies (or their customers) have engaged in structuring sequential deposits and withdrawals of cash near the reporting threshold of \$10,000. There have also been reports of some travel agencies structuring outgoing wire transfers in small amounts to avoid BSA recordkeeping requirements. Some travel agents have been observed receiving unusual wire transfers from foreign countries or wire transfers of unusually large amounts.

In addition, travel agencies reportedly have been used to transfer value through the provision of in-kind services. A travel agent sending groups to a foreign country, for example, can make an offsetting payment in a foreign entity's U.S. or other account and instruct that entity to cover the costs of the group during their trip. This method is one way that businesses involved in informal value transfer systems, such as

hawala,⁸ can transfer funds between entities in various countries.

Travel agencies may need to have an understanding of the identity of customers who participate in transactions with money laundering risk. For purchases of travel services 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 travel agencies 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.

Accordingly, FinCEN solicits comments on the existence of the above, and other, types of risks in the travel agency business. Specifically, FinCEN is interested in identifying risks in the products and services that travel agencies 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 ability to transfer funds, even with a sizable penalty or cost, from one person to another; the ability to pay in funds and, in return, receive funds from the travel agency or related business that have the appearance of legitimacy and no ties to incoming funds. Furthermore, should regulatory distinctions based on money laundering risk be made between travel agencies that restrict their sales to domestic travel and those that handle international travel? Are there other functional distinctions that should be made?

3. Should Travel Agencies 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 within the travel agency industry, 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 travel agency 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 travel agencies.

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 travel agencies. These comments should be designed to enable FinCEN to decide whether or not to propose the promulgation of an appropriate regulation designed to provide protection for the travel agency industry with regard to the risk of money laundering.

4. If Travel Agencies, 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 to travel agencies, 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 travel agencies likely have some programs already in place to meet existing legal obligations. For example, as a nonfinancial trade or business, travel agencies are required to report on Form 8300 the receipt of over \$10,000 in currency and certain monetary instruments. Travel agencies 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 built. FinCEN therefore seeks comment on what types of programs travel agencies have in place to prevent fraud and illegal activities, and the applicability of such programs to the prevention of money laundering.

5. Do Travel Agencies Maintain "Accounts" for Their Customers?

Section 326 requires the setting of minimum standards for identification of customers "in connection with the opening of an account at a financial institution." Section 311 of the Patriot Act provides a definition of "account" for banks, but requires the Secretary to promulgate a regulation defining "account" for non-bank financial institutions. Although such a regulation has yet to be issued, the definition for banks ("a formal banking or business relationship established to provide regular services, dealings, and other

⁷ Sellers of travel 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 See Report to Congress in Accordance with Section 359 of the USA Patriot Act (November 22, 2002), available on FinCEN's Web site at <http://www.fincen.gov> under Publications, Reports.