



# Department of the Treasury Financial Crimes Enforcement Network

## Advisory

**FIN-2012-A001**

**Issued: February 15, 2012**

**Subject: Foreign-Located Money Services Businesses**

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On July 21, 2011, the Financial Crimes Enforcement Network (FinCEN) published in the Federal Register a final rule on definitions and other regulations relating to money services businesses (Final Rule).<sup>1</sup> The Final Rule amended the definition of “money services business” at 31 CFR 1010.100(ff). An entity may now qualify as a money services business (MSB) under the Bank Secrecy Act (BSA) regulations based on its activities within the United States, even if none of its agents, agencies, branches or offices are physically located in the United States. The Final Rule arose in part from the recognition that the Internet and other technological advances make it increasingly possible for persons to offer MSB services in the United States from foreign locations.<sup>2</sup> FinCEN seeks to ensure that the BSA rules apply to all persons engaging in covered activities within the United States, regardless of the person’s physical location.

FinCEN is issuing this Advisory to advise financial institutions of their obligations under the BSA when providing financial services to foreign-located MSBs. Financial institutions should note the following:

- To qualify as an MSB, a person, wherever located, must do business, wholly or in substantial part within the United States, in one or more of the capacities listed in 31 CFR 1010.100(ff).<sup>3</sup> Relevant factors include whether the foreign-located person, whether or not on a regular basis or as an organized or licensed business concern, is providing services to customers located in the United States.
- Foreign-located MSBs are financial institutions under the BSA. With respect to their activities in the United States, foreign-located MSBs must comply with recordkeeping, reporting, and anti-money laundering (AML) program requirements under the BSA. They must also register with FinCEN.<sup>4</sup>
- Foreign-located MSBs are subject to the same civil and criminal penalties for violations of the BSA and its implementing regulations as MSBs with a physical presence in the United States.
- The Final Rule requires each foreign-located MSB to appoint a person residing in the United States as an agent for service of legal process with respect to compliance with the BSA and its implementing regulations.
- The Final Rule became effective on September 19, 2011. Reporting, recordkeeping and AML program requirements under the BSA now apply to

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<sup>1</sup> Definitions and Other Regulations Relating to Money Services Businesses, 76 FR 43585 (July 21, 2011). <http://www.gpo.gov/fdsys/pkg/FR-2011-07-21/pdf/2011-18309.pdf>.

<sup>2</sup> *Id.* at 43588.

<sup>3</sup> See 31 CFR 1010.100(ff)(1)-(7) for a full description of these activities.

<sup>4</sup> See 31 CFR 1022.380 *et seq.*

foreign-located MSBs. However, registration and the appointment of an agent for service of legal process will not be required until the revised registration form is available, which is currently planned for release in early March 2012.

### Guidance

Financial institutions may find it necessary to update their AML programs if they provide financial services to foreign-located MSBs or engage in financial transactions with these entities.<sup>5</sup> Financial institutions may find previously issued Guidance and Advisories helpful when incorporating foreign-located MSBs into their AML policies and procedures. In 2005, FinCEN and the federal banking agencies issued guidance (Joint Guidance) on providing financial services to MSBs operating in the United States.<sup>6</sup> Additionally, financial institutions may find FinCEN's 2010 Advisory on informal value transfer systems (IVTS) to be useful in determining if their customers are operating as unregistered money transmitters.<sup>7</sup>

### Suspicious Activity Reporting

Consistent with the standard for reporting suspicious activity under the BSA, if a financial institution knows, suspects, or has reason to suspect that a transaction conducted or attempted by, at, or through the financial institution involves funds derived from illegal activity or appears to be indicative of money laundering, terrorist financing, or other violation of law or regulation, the financial institution should file a suspicious activity report (SAR).<sup>8</sup> As noted in the Joint Guidance, financial institutions that provide banking services to MSBs should file a SAR if they become aware that their customers are operating as unregistered or unlicensed MSBs.<sup>9</sup>

Questions or comments regarding the contents of this Advisory should be addressed to the FinCEN Regulatory Helpline at 800-949-2732. ***Financial institutions wanting to report suspicious transactions that may relate to terrorist activity should call the Financial Institutions Toll-Free Hotline at (866) 556-3974 (7 days a week, 24 hours a day).*** The purpose of the hotline is to expedite the delivery of this information to law enforcement. Financial institutions should immediately report any imminent threat to local-area law enforcement officials.

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<sup>5</sup> See, Federal Financial Institutions Examination Council (FFIEC) Exam Manual, pp. 307-313 (April 29, 2010). Although the FFIEC Exam Manual is issued by the federal banking regulators regarding AML requirements applicable to banks, it contains guidance that may be of interest to other financial institution types that provide financial services to foreign-located MSBs.

<sup>6</sup> Advisory – Interagency Interpretive Guidance on Providing Banking Services to Money Services Businesses Operating in the United States (April 26, 2005).

[http://www.fincen.gov/statutes\\_regs/guidance/html/guidance04262005.html](http://www.fincen.gov/statutes_regs/guidance/html/guidance04262005.html)

<sup>7</sup> FIN-2010-A011, Advisory – Informal Value Transfer Systems (September 1, 2010).

[http://www.fincen.gov/statutes\\_regs/guidance/html/FIN-2010-A011.html](http://www.fincen.gov/statutes_regs/guidance/html/FIN-2010-A011.html).

<sup>8</sup> See e.g. 31 CFR 1020.320.

<sup>9</sup> *Supra* at note 6.