



The Florida Senate

Interim Project Report 2008-101

November 2007

Committee on Banking and Insurance

REGULATION OF MONEY SERVICES BUSINESSES

SUMMARY

Money services businesses (MSBs), also known as money transmitters, offer financial services such as check cashing, money transmittals, sales of monetary instruments and currency exchange outside the traditional banking environment. The MSB industry is expanding rapidly with limited supervision and has become an increasingly prevalent conduit for laundering illicit proceeds. State and federal law enforcement actions have been taken against MSBs, primarily targeting entities avoiding the payment of state and federal taxes and workers' compensation premiums.

The Office of Financial Regulation (OFR) within the Financial Services Commission is responsible for the regulation of the money services businesses, which includes payment instrument sellers, foreign currency exchangers, check cashers, funds transmitters, and deferred presentment providers (payday loans) under the provisions of ch. 560, F.S., the "Money Transmitters' Code."

To enhance the regulation of this growing industry, the Legislature and OFR should consider the following options:

1. Create law enforcement positions within the OFR, or as an alternative, transfer the money transmitter regulatory program to an agency with law enforcement staffing, such as the Department of Financial Services.
2. Provide additional staffing for the MSB program dedicated to the examination of these entities and require MSBs to incur the costs of examinations.
3. Revise registration criteria for check cashers by eliminating the "incidental business" exception and adopting the criteria for federal registration, that applies to an entity that engages in transactions in excess of \$1,000 per person per day.

4. Impose greater scrutiny and regulation of check cashers that cash "business to business" checks in excess of a monetary threshold, such as \$10,000. Alternatively, limit the monetary amount of checks that can be cashed to \$10,000, per person per day.

5. Require all sellers of payment instruments to submit audited financial statements.

6. Require the OFR to report alleged criminal violations of law disclosed through the examination or investigation process to the appropriate regulatory agency, state attorney, or other prosecuting agency.

7. The OFR should consider strengthening the examination and supervisory standards by applying more consistent safety and soundness protocols, particularly for entities that have received adverse examination findings or engage in commercial checking.

8. Require the Financial Services Commission to adopt, by rule, standards for the issuance of guidance letters for "insignificant violations" and fines for more significant violations.

9. The OFR should participate in task forces and interagency training in the area of insurance fraud.

BACKGROUND

Florida has been identified by the U.S. Drug Enforcement Agency (DEA) as a primary area for international drug-trafficking and money laundering organizations.¹ South Florida, particularly Miami, is considered the gateway to Latin America. As such, there are various banking-related industries and commercial businesses that specifically cater to Latin markets. According to the DEA, some of these entities are prime facilitators for money laundering activities.

¹ DEA State Factsheets, accessed at:
<http://www.usdoj.gov/dea/pubs/states/florida.html>.

Money laundering activity can be as basic as sending money via money remitter businesses back to source countries, or as elaborate as setting up numerous bank accounts and other financial-type accounts to enable the transfer of funds into and out of the U.S.

South Florida² is one of seven designated High Risk Money Laundering and Related Financial Crimes Areas (HIFCAs) in the United States.³ The HIFCAs are a means of concentrating law enforcement efforts at the federal, state, and local levels in high intensity money laundering zones.⁴ The HIFCAs may be defined geographically, or they may also be created to address money laundering in an industry sector, a financial institution, or group of financial institutions.

The MSBs offer financial services such as check cashing, money transmittals, sales of monetary instruments, and currency exchange outside of the traditional banking environment.⁵ These services can be provided by money transmitters, check cashers, currency dealers or exchangers, and issuers of traveler's checks, money orders, or stored value.⁶

The MSB industry assists in the remittance of funds to other countries and also provides check cashing and payment instrument issuing services, such as traveler's checks and money orders, in low-to-moderate income neighborhoods. Persons without checking or savings accounts comprise an estimated 10 million households or approximately 75 million individuals in the United States.⁷ Some benefits cited for cashing a check at a check casher rather than opening a bank account include: no minimum balance, less stringent identification requirements, generally no credit checks, and the immediate availability of funds.⁸

² Consisting of the following counties: Broward, Miami-Dade, Indian River, Martin, Monroe, Okeechobee, Palm Beach and St Lucie.

³ The HFCA designated areas can be found at: www.FinCEN.gov.

⁴ The Money Laundering and Financial Crimes Strategy Act of 1998, P.L. 105-310.

⁵ 31 CFR s. 103.11.

⁶ A stored-value card resembles a debit card, using a magnetic-stripe technology to store information and track funds. Stored value cards are prepaid, providing consumers with immediate funds.

⁷ Hillebrand, Gail, *Payment Mechanism: New Products, New Problems*, Consumers Union, presentation delivered at the Federal Reserve Bank of Chicago, May 29, 2003.

⁸ Congressional Research Service, *Check Cashers and Bankers Discontinuance of Services*, February 2, 2007.

While the exact number of MSBs in the United States is unknown, estimates suggest that less than 20 percent of the MSBs are registered with the federal regulator, the Financial Crimes Enforcement Network (FinCEN) of the U.S. Department of Treasury.⁹ Currently, Florida ranks first in the nation with respect to the total number of MSB firms, branches, and vendors (approximately 35,000) registered with the state regulator, the Office of Financial Regulation.

In recent years, an increasing number of state and federal law enforcement actions have been taken against MSBs. These actions have targeted those entities attempting to avoid the payments of state and federal taxes and workers' compensation premiums. Check cashers, in particular, can be used, knowingly or unknowingly, as facilitators of fraudulent workers' compensation insurance activity or money laundering activities.

Federal Regulation

The Federal Bank Secrecy Act of 1970 (BSA) established the regulatory framework to prevent and detect money laundering. This legislation was in response to growing concerns regarding money being "laundered" to conceal illegal activity, including the crimes that generate the money itself, such as drug-trafficking. These provisions were strengthened in 2001 by the USA PATRIOT ACT.¹⁰ The BSA requires traditional banks and MSBs, as defined by federal regulations, to establish written anti-money laundering programs, maintain certain records, and file reports that have a high degree of usefulness in criminal and regulatory proceedings. The 2001 law included additional measures to prevent, detect, and prosecute terrorism activities and international money laundering.

The reporting and record keeping requirements of the BSA apply to "banks" (banks, savings and loans, and credit unions), as well as nonbank, financial institutions. For purposes of the BSA, money services businesses subject to the act are generally businesses that issue, sell, or redeem money orders, traveler's checks, stored value cards, money transfers, check cashing, and currency dealers or exchangers. The financial services or activities need not be the primary activity of these businesses.

⁹ U.S. Department of Treasury, U.S. Department of Justice, and U.S. Department of Homeland Security, *2007 National Money Laundering Strategy*. 2007.

¹⁰ P.L. 107-56.

The Financial Crimes Enforcement Network serves as the nation's financial intelligence unit and is charged with safeguarding the U.S. financial system from the abuses of money laundering, terrorist financing, and other financial crime. FinCEN administers the federal Bank Secrecy Act. FinCEN analyzes and shares financial intelligence with law enforcement and regulatory agencies. In addition, FinCEN works with the financial industry to deter, detect, investigate, and prosecute money laundering, terrorist financing, and other crimes.

The BSA generally requires a MSB to register with FinCEN; if it conducts more than \$1,000 in business with one person in one or more transactions on the same day in one or more of the following services: money orders, traveler's checks, check cashing, currency dealing or exchange. However, if a business provides money transfer services in any amount, it is required to be registered. Certain entities, such as traditional financial institutions, entities regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission are exempt from these federal registration requirements. The following MSBs are not subject to the registration requirements:

- A business that is an MSB solely because it is an agent of another MSB;
- A branch of an MSB;
- A business that is an MSB solely because it is an issuer, seller, or redeemer of stored value;
- The U.S. Postal Service; and
- Any agencies of the United States, of any state, or of any political subdivision of a state.

The U.S. Department of Treasury has adopted regulations to implement the provisions of the Bank Secrecy Act under 31 C.F.R. s. 103, which requires MSBs to maintain certain records and report certain currency transactions and suspicious activities. The MSBs are required to establish an anti-money laundering program (AML), to obtain and verify customer identity, and to document certain information concerning the transactions. An AML program must include policies, procedures, and internal controls; designate a compliance officer; provide ongoing education and training; and provide for an independent review of the AML program.

An MSB is required to maintain records related to cash sales of monetary instruments, i.e., money orders and traveler's checks, (\$3,000 – 10,000, inclusive), and funds transfers of \$3,000 or more. A currency

exchanger is required to maintain records for each cash exchange of currency greater than \$1,000. Currency dealers or exchangers, issuers, sellers or redeemers of money orders or traveler's checks, money transmitters, and the U.S. Postal Service are required to file suspicious activity reports (SARs) if a transaction is suspicious and the transaction involves \$2,000 or more. However, if the transaction involves an issuer of traveler's checks or money orders, the threshold is \$5,000. Presently, the SAR requirement does not apply to check cashers or to a seller or redeemer of stored-value cards. Cash transaction reports (CTRs) are required to be filed for cash transactions involving more than \$10,000.

Comptroller's Money Transmitter Task Force

The Comptroller of the State of Florida created a task force in 1994 that was asked to determine whether the money transmitter industry should be subjected to additional governmental regulation. The task force noted that money order and traveler check issuers have been regulated in Florida since 1965.¹¹ However, in contrast, other segments of the money transmitter industry were not subject to licensure or regulation.

The task force recommended allocating adequate resources to this expanded regulatory effort. In particular, it emphasized the need for adequate legal support and examination staff. With respect to the examination process, the task force stated that an active, adequately funded examination program is essential. The task force recommended that the regulator should have the authority to recoup the costs of one examination of a money transmitter during any 12-month cycle, but not recover the costs for any subsequent examination unless the regulator determines that the money transmitter is operating in an unsafe or unsound manner.

Statewide Grand Jury on Check Cashing Stores

In 1994, the Office of Statewide Prosecution issued an interim report on check cashing stores, which noted that these businesses, unlike traditional financial institutions, operated essentially free of meaningful federal and state regulation, oversight, and enforcement.¹² The absence of such regulation had

¹¹ *Comptroller Gerald Lewis Money Transmitter Task Force Final Report*, Department of Banking and Finance. November 1994.

¹² *Check Cashing Stores: A Call for Regulation*, a report of the Eleventh Statewide Grand Jury in the Supreme Court of the State of Florida, Case Number 80,142. February 1994.

created an atmosphere conducive to facilitating money laundering and fraudulent financial transactions. The report also stated that these businesses did not have to maintain records of the identity of those for whom they transfer money. The report noted that the lack of records made it extremely difficult for law enforcement to identify and apprehend those responsible for criminal activities.

The Grand Jury also noted that the check cashing stores were under no legal obligation: (1) to verify that their business customers are legally registered with the State; (2) to verify that the person presenting the checks or money orders is authorized to cash them; or (3) to keep records of the identity of the person who cashed the checks or money orders. In contrast, banks and other traditional financial institutions are generally required to obtain proof of the proper formation or registration of a business (before opening a commercial account), and proof of identification for the authorized signatories on all accounts. In addition to recommendations made by the Comptroller's Task Force, the Grand Jury recommended that:

- Regulations be imposed requiring nonbank financial institutions to obtain identification from customers at the receiving end of a wire transfer and when cashing checks or money orders;
- Recordkeeping regulations be imposed that would require the identity of the payees of checks, wire transfers, and money orders be maintained for 5 years; and
- Nonbank financial institutions, like their traditional banking counterparts, should be required to file suspicious activity reports relating to possible money laundering or currency reporting violations.

State Regulation of Money Services Businesses

In response to concerns and recommendations addressed by the Comptroller's Money Transmitter Task Force and the Statewide Prosecutor's Grand Jury, the 1994 Legislature enacted the Money Transmitters' Code, (code) ch. 560, F.S. This legislation established a comprehensive regulatory program for the money transmitter industry.¹³ The code defines the term, "money transmitter," to mean any person located in or doing business in this state who acts as a payment instrument seller, foreign currency exchanger, check casher, funds transmitter, or deferred presentment provider (payday loan lender).¹⁴

The Office of Financial Regulation (OFR) within the Financial Services Commission is responsible for the regulation of the money transmitter industry (or money services businesses), which includes payment instrument sellers, foreign currency exchangers, check cashers, funds transmitters, and deferred presentment providers (payday loans) under the provisions of code.

Within the OFR, the Bureau of Money Transmitter Regulation in the Division of Finance is responsible for the regulation and examination of money transmitters. The Bureau of Regulatory Review is responsible for the licensure of money transmitters.

Licensure Requirements and Fees

Banks, credit unions, trust companies, associations, offices of an international banking corporation, or other financial depository institutions organized under the laws of any state of the United States are exempt from the provisions of ch. 560, F.S. The United States or any of its departments, instrumentalities, or agencies is also exempt from the provisions of the code.¹⁵ To qualify for registration as a money transmitter, an applicant must meet requirements under ch. 560, F.S., which incorporate certain federal requirements.

Money transmitters or MSBs are registered under the following license categories: wire transfer businesses and money order sellers (Part II of ch. 560, F.S.) and check cashers and foreign currency exchangers (Part III of ch. 560, F.S.). Authorized vendors of a funds transmitter or payment instrument seller (part II registrant) acting within the scope of authority conferred by the registrant are exempt from regulation. Entities licensed under part II or part III may also register as deferred presentment providers (Part IV, ch. 560, F.S.) and issue payday loans as part of either license category.

The initial application fee for registration as a funds transmitter or payment instrument issuer (Part II registrant) is \$500. The application fee for a check casher or foreign currency exchanger (Part III registrant) is \$250. In addition, a \$50 fee is required for each branch or authorized vendor, excluding the applicant's primary business location. The renewal cycle for part II and part III registrants is generally every two years.

Generally, a part II registrant is required to submit annual, audited financial statements unless it is exempt pursuant to s. 560.118(2)(a), F.S. However, this

¹³ Ch. 94-354, L.O.F.

¹⁴ Section 560.103(11), F.S.

¹⁵ Section 560.104, F.S.

requirement does not apply to any seller of payment instruments that has less than 50 employees and authorized vendors or has annual payment instrument transactions of less than \$200,000. If an entity is not required to submit audited financial statements, annual reviewed financial statements are required.

Examinations and Investigations

The examination process provides ongoing regulatory oversight.¹⁶ There is no examination schedule mandated by law. The OFR is authorized to contract with an independent third-party to conduct such examinations. The Division of Financial Investigations within the OFR is responsible for conducting financial investigations of unlicensed entities and fraudulent activities within the scope of OFR's jurisdiction.

Recordkeeping and Reporting Requirements

Generally, fund transmitters and check cashers are required to maintain specified accounts, books, and other records for a period of at least 3 years, pursuant to ss. 560.211(1) and 560.310(1), F.S. Any person who willfully fails to comply with this requirement commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

Failure to maintain, preserve, and keep available for examination all books, accounts, or documents required by specified federal provisions may result in disciplinary action by the OFR. Section 560.114, F.S., provides that money transmitters are subject to disciplinary action for operating in an "unsafe and unsound manner." Section 560.103(21), F.S., defines "unsafe and unsound practice" to include:

"...failure to adhere to the following provisions of 31 C.F. ss. 103.20, 103.22, 103.27, 103.28, 103.29, 103.33, 103.37, 103.41, and 103.12..."

These federal provisions require a MSB to develop and implement an anti-money laundering (AML) program, pursuant to federal regulations. This would include implementing customer identification procedures, filing suspicious activity reports and currency transactions reports, and retaining specified documents. In addition, an MSB must comply with FinCEN registration requirements.

According to the OFR, there is no specific statutory requirement for the submission and approval of an

AML program prior to the issuance of a license.¹⁷ The federal regulator, FinCEN, adopted AML regulations applicable to MSBs that became effective on July 24, 2002, for all existing MSBs. A MSB organized after that date must adopt an AML program within 90 days following the date the business is established.

Section 560.123, F.S., "The Florida Control of Money Laundering in Money Transmitters Act," requires money transmitters to submit reports of certain financial transactions and maintain specified records and provides administrative and criminal penalties for noncompliance. Section 560.123, F.S., requires the maintenance of each financial transaction known to involve currency or other monetary instrument of a value in excess of \$10,000 and to maintain appropriate procedures to ensure compliance with this section.

In addition, s. 560.123, F.S., requires MSBs to comply with the money laundering, enforcement, and reporting provisions of s. 655.50, F.S., relating to reports of transactions of currency reports and monetary instruments. Specifically, s. 560.123(5), F.S., requires a licensee to file a Cash Transaction Report (CTR) if the value of a transaction involving currency or a payment instrument is in excess of \$10,000. A person who willingly violates any provision of s. 560.123, F.S., commits a felony and is subject to the following criminal penalties, based on the value of the transaction:

- Felony of the third degree for currency or payment instruments exceeding \$300, but less than \$20,000 in any 12-month period;
- Felony of the second degree for currency or payment instruments exceeding \$20,000, but less than \$100,000 in any 12-month period; and
- Felony of the first degree for currency or payment instruments exceeding \$100,000 in any 12-month period commits a felony of the first degree.

These felony violations are punishable, as provided in s. 775.082, s. 775.083, or s. 775.084, F.S. Section 560.123, F.S., also authorizes the OFR to impose an administrative fine against any person found to have violated any provision of this section in an amount not to exceed \$10,000 per day for each willful violation or \$500 a day for each negligent violation.

¹⁶ Section 560.118, F.S.

¹⁷ Correspondence from the Office of Financial Regulation to Committee Staff, September 4, 2007.

Pursuant to s. 560.117, F.S., the OFR may impose an administrative fine, not to exceed \$10,000, for each violation of the code. In addition, the OFR may impose a fine not to exceed \$1,000 per day for each day a person violates the code by engaging in unlicensed activity.

Regulation of MSBs in Other States

In New York, as part of the regulatory oversight process, CTRs are reviewed to determine if there are any unusual patterns within the reportable transactions, e.g. large checks in excess of \$50,000, cash-in transactions; or unusual categories of businesses. More scrutiny is paid to the patterns of the checks cashed and to customer histories. At the time of application, the MSB must provide AML policies and procedures, designation of compliance officer, a training program, and an affidavit acknowledging an independent review of the BSA/AML is required. An examination of large check cashiers is conducted every two years, or as required based upon the risk profile of the licensee.¹⁸

In regards to imposition of examination fees, California assesses money transmitter licensees for the costs of examinations at a rate not to exceed \$75 per hour for each examiner.¹⁹ In Arizona, licensees are responsible for incurring the costs of examinations and the fee cannot exceed \$65 per hour.²⁰ Georgia requires licensees to pay an hourly rate of \$65 per examiner, per hour.²¹ New York also charges an hourly examination fee calculated by averaging the salaries of all examiners supervising each type of regulated entity within the Banking Department. Currently, Florida does not charge for examinations.

Discontinuance of Banking Services for MSBs

In April 2000, the U.S. Office of the Comptroller of the Currency issued an advisory letter to the banking industry identifying check cashers and other MSBs as inherently high-risk businesses. As a result, many banks terminated such accounts or would not open accounts with check cashers and other MSBs. After the enactment of the USA PATRIOT ACT, FinCEN strengthened its BSA enforcement. Substantial fines were levied by bank regulators on banks for BSA noncompliance. Banker's due diligence or compliance costs were affected by the risks associated with check cashing businesses.

Subsequently in 2005, federal banking regulators and FinCEN issued a joint advisory letter on banking services for MSBs. This advisory was issued in response to concerns over the loss of access to banking services by MSBs. The regulators were concerned about banks terminating banking accounts for check cashers. Specifically, the two issues were: the impact on the population served by check cashers and the possibility that such discontinuance could force businesses into an underground economy, which could potentially damage efforts to safeguard the U.S. financial system.

The guidance to banking organizations specifies that FinCEN and the federal banking regulators expect banking organizations that open and maintain accounts for MSBs to apply the requirements of the Bank Secrecy Act, as they do with all accountholders, on a risk-assessed basis.²² To ensure access to these necessary banking services, it is also imperative that the MSBs comply with state and federal requirements.

Florida Workers' Compensation Insurance Requirements

In Florida, any contractor or subcontractor who engages in construction in the state must secure and maintain workers' compensation insurance.²³ Generally, coverage can be secured by obtaining an insurance policy or self-insuring. No more than three officers of a corporation or members of a limited liability company, who are engaged in the construction industry, may elect to be exempt from this requirement, if certain conditions are met.²⁴ A contractor is required to obtain evidence of coverage from subcontractors. Failure to secure coverage is a felony offense.²⁵ In the last few years, the Division of Insurance Fraud in the Department of Financial Services has noticed a significant increase in the number of premium fraud cases, particularly in cases involving complex premium fraud and money laundering. These activities have surfaced in the south and central areas of Florida.

METHODOLOGY

Staff reviewed reports and studies of MSBs, reviewed the current Florida laws and federal and other state laws regulating MSBs, and interviewed agency

¹⁸ Correspondent from Diane Taylor, Superintendent of Banks, State of New York, to FinCEN, May 8, 2006.

¹⁹ Cal. Fin. Code, section 1801.1.

²⁰ Section 6-125 ARS.

²¹ O.C.G.A. Section 7-1-704(b).

²² FinCEN, et. al., *Guidance and Advisory Issued on Banking Services For Money Services Businesses Operating in the United States*. April 26, 2005.

²³ Sections 440.10 and 440.38, F.S.

²⁴ Section 440.02, F.S.

²⁵ Section 440.105, F.S.

personnel and other interested parties. Deferred presentment transactions, or payday loans, regulated under part IV of ch. 560, F.S., were excluded from the scope of the report.

FINDINGS

U.S. Money Laundering Emerging Issues

The 2005 U.S. Money Laundering Threat Assessment is the first government-wide analysis of money laundering in the United States. The report made the following observations regarding the risk posed by MSBs:

- The Federal Bureau of Investigation (FBI) field offices consistently identified MSBs as an increasingly prevalent conduit for laundering of illicit proceeds. The FBI notes that MSBs are the third-most utilized money laundering method that they encounter, after formal banking systems and cash businesses. They also noted that MSBs co-located within convenience stores and gas stations were cited as the most common sites for money laundering. Travel agencies that offer MSB services were also noted as an increasingly significant conduit for the illicit transmission of money.
- Money transmitters often impose less rigorous AML programs and compliance than traditional financial institutions.
- The exemption of check cashers from SAR reporting requirements may hinder law enforcement efforts to identify laundering.

Regulatory Efforts in Florida

In the last five years, the number of regulated entities has experienced dramatic growth. In fiscal year 2002-03, there were 690 licensed check cashers and money transmitters. For fiscal year ending 2006-07, there were 1,435.

Examinations of MSBs

Currently there are 20 positions dedicated to the regulation of MSB activities. These include 15 positions in the Bureau of Money Transmitter Regulation, four positions in the Bureau of Regulatory Review, and one attorney in Legal Services. Eleven of the 15 Bureau of Examinations' positions are assigned to field offices. The Bureau of Examinations is responsible for examining approximately 1,400 licensed firms. The scope of an examination may include more than one activity regulated under ch. 560. For example, a part II or part III registrant may also

engage in payday loans, which are regulated under part IV of the chapter.

The results of the OFR's examination efforts relating to licensed MSBs are depicted below:

Disposition of Closed Examinations					
Action	02-03	03-04	04-05	05-05	06-07
Final Order	5	17	68	30	50
Guidance Letter	42	22	77	32	47
No Action	8	4	5	13	8
No Violation	10	16	1	3	0
Closed No Business	2	9	0	5	3
License Terminated	1	2	1	3	4
Closed	2	5	0	2	2
Totals	70	75	152	88	114

Many of the federal provisions of the Bank Secrecy Act have been codified in ch. 560, F.S., which has provided the OFR with additional compliance and enforcement tools. During the last 3 fiscal years, the OFR issued 45 final orders that cited federal BSA violations. This represents approximately 30 percent of the final orders issued during that period.

Not all of the licensed MSBs pose the same regulatory risk. For instance, an entity with minimal or no international businesses that serves only a limited number of communities does not share the same risk profile as an entity that does business around the world. The OFR has developed a risk assessment system for purposes of scheduling examinations of licensees. The OFR evaluates certain factors related to the licensee to use in prioritizing examinations. These include the period of time an entity has been licensed, whether the entity has ever been examined; and the timeliness in submitting quarterly reports to the OFR. It is unclear how other factors, such as prior administrative actions, adverse examinations, complaints, or the dollar volume or business mix of a licensee, are incorporated into this assessment process.

In 2007, the Auditor General recommended that the OFR should develop and document a workable, comprehensive risk assessment process to be used as part of an enforcement and licensing system.²⁶ The

²⁶ Office of Financial Regulation, *Regulation of Money Transmitters and Mortgage Brokers and Lenders*,

OFR concurred with this recommendation and indicated that staff is continuing to refine the criteria as additional data becomes available.

Due to the limited staffing and resources, the OFR is unable to set a comprehensive, risk-based examination cycle. The OFR indicated that the preferred cycle for examinations would be 3 years for all part II companies and commercial check cashers, 4 years for all payday lenders and 4-5 years on all other check cashers. The OFR indicated that, based on the number of registrants that existed as of June 30, 2007, an additional 15 examiners would be needed in order to establish realistic examination cycles. The funding request made for fiscal year 2007-2008 for six positions was based on the OFR's ability to absorb and train additional resources without adversely impacting program activities. Five of the six requested positions would have been targeted towards expanding the Bureau of Money Transmitter's operations with respect to examinations of funds transmitters and deferred presentment providers. The remaining position would have been assigned to the licensing area and used to offset the double digit annual growth in applications over the past 5 years. However, none of the six requested positions were funded by the Legislature.

Contingent upon the violations noted in an examination, the OFR may issue a guidance letter to the licensee, which cites violations of law noted during the examination. The letter also indicates the examination is being closed with no further action by the OFR. Committee staff reviewed a limited sample of guidance letters, approximately 21 percent, issued between fiscal years 2003-2004 and 2006-2007, that documented CTR and record violations. Of the 37 files, seven licensees failed to file 1-5 CTRs, two licensees failed to file eight CTRs, and one entity failed to file 10 CTRs. One licensee cited for failure to file one CTR was also cited for failure to maintain adequate books and records to determine compliance with the provisions of the code, s. 560.310, F.S. Another entity cited for failure to submit two CTRs was also cited for failing to implement an effective AML program.

One licensee that failed to file three CTRs also failed to properly document information about the remitter's source of funds and the employer's name and address. It was noted by the examiner that this licensee had filed 11 SARs on one of its vendors, which may reflect a pattern consistent with the structuring of transactions

under \$3,000.²⁷ The licensee also failed to submit quarterly reports to the OFR within the required 45 days.

In the exam report for one of the entities that failed to file eight CTRs, the examiner commented that it appeared that instances of structuring of transactions by the maker of some checks on the behalf the beneficiary could be occurring. The examination documented that the beneficiaries for many of the checks for whom the CTRs were not filed were construction companies.

The other licensee that failed to file eight CTRs was examined in 2004 and in 2006 and issued guidance letters on both occasions. In 2004, the licensee failed to maintain adequate records to determine compliance and failed to submit an indeterminate number of CTRs. In 2006, the OFR noted that the licensee failed to submit eight CTRs and failed to file quarterly reports in a timely manner.

The remaining 27 guidance letters reviewed by staff cited the licensee for failing to maintain records, which severely limits the examiner's ability to determine whether the entity was complying with the provisions of ch. 560, F.S. In one examination report for fiscal 2004-05, the examiner noted that "lack of records prohibited an examination." The licensee was advised of the recordkeeping requirements and notified that an examination would be rescheduled in 6 months. Due to limited resources, the examination has not been conducted. Another examination report citing lack of records also noted that the entity began cashing checks approximately 2 years prior to obtaining a license with the OFR.

The OFR provided the following explanation about the use of guidance letters:

"...guidance letters are an informal agency action which serves to notify the registrant that problems have been uncovered during the examination process, but that the magnitude of the problem is not such that any formal legal action is necessary at the time. It is usually reserved for first offense situations where the registrant has indicated that corrective action has been taken to cure the violation..."

²⁷ Structuring is the unbundling of a transaction for the purpose of evading the BSA reporting and recordkeeping requirements.

In our risk targeting, someone who had already been examined and had relatively few problems would not rise high enough to warrant another look as we still have more than 50 percent of the companies that have never been examined.”²⁸

Enforcement Actions

Committee staff also reviewed a limited sample, approximately 10 percent, of the final orders issued by the OFR for the period of fiscal year 2004-05 through 2006-07 that included CTR violations. A summary is provided below:

Selected Final Orders Reviewed (04-07)				
File	CTRs Not Filed	Total Value of CTRs	Fine Assessed	Total Check Volume
1	4	\$45,837	\$8,000	\$20,000,000
2	4	76,000	15,000	unknown
3	5	81,228	5,000	7,700,000
4	7	128,825	4,000	6,018,638
5	7	137,728	10,000	14,842,295
6	8	unknown	2,500	unknown
7	12	184,682	7,500	18,979,186
8	13	192,184	11,000	39,774,784
9	39	1,646, 837	4,000	10,575,543
10	42	unknown	4,500	9,425,480
11	54	unknown	15,000	13,442,858
12	75	unknown	25,000	20,329,799
13	80	unknown	Cease & Desist	unknown
14	296	unknown	100,000	38,592,967
15	331	Est. \$6 million	12,000	19,378,977
16	none	unknown	5,000	26,500,000

Some of the fines appear to be relatively low, given the magnitude of the CTR violations and other violations noted and the high dollar volume of MSB-related activity documented in the examination report. In addition, many of the fines do not appear to adequately recoup the administrative expenses incurred by the examiners, legal staff, and management associated with the preparation and issuance of the examination report and the final order.

It was noted in the records relating to file number 2, an additional CTR was filed for \$12,000 rather than the correct amount of \$130,500. The examination report also noted inconsistencies in the financial statements, inadequate records/unable to determine current net worth, and requested financial records not provided to

examiners. The examination report related to file number 9 also indicated that the licensee had failed to adopt an AML and maintain all required records. The licensee had cashed over \$2 million in checks from drywall contractors for a 2-month period. The licensee noted in file 13 was fined \$10,000 by the federal government for noncompliance. According to the OFR, the amount of the fine related to number 15 was not higher due to mitigating circumstances relating to the owner, such as the owner voluntarily communicating to the OFR that the CTRs had not been filed by an employee.

Committee staff asked the OFR to explain its statutory authority to defer or waive enforcement of noncompliance that is documented in the examination report or guidance letter. The OFR provided the following response:²⁹

Below are excerpts from the code which when read together establish that a formal enforcement action is not always appropriate/required and additionally some factors that the OFR needs to consider in making a determinations regarding the most appropriate resolution to any findings. The wording in 560.108(1) provides for administrative remedies as well as imposition of penalties.³⁰

560.112 Procedures for disciplinary actions.--

(1) The office may issue and serve upon any person a complaint stating charges whenever the office has reason to believe that such person has engaged in or is engaging in conduct described in s. 560.114.

560.108 Administrative enforcement guidelines. --

(1) In imposing any administrative remedy or penalty provided for in the code, the OFR shall take into account the appropriateness of the penalty with respect to the size of the financial resources and good faith of the person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

Due to limited staffing and funding, the OFR is generally unable to conduct follow-up examinations on all entities previously examined and issued guidance letters.

²⁸ Correspondence from the Office of Financial Regulation to Committee staff, August 22, 2007.

²⁹ Correspondence from the Office of Financial Regulation to committee staff, dated September 4, 2007.

³⁰Id.

In addition to the enforcement actions initiated by the Bureau of Money Transmitter Regulation, the Bureau of Financial Investigations conducts financial investigations of entities regulated within the OFR. In the last 5 fiscal years, the bureau initiated 52 administrative/civil actions and three criminal actions relating to ch. 560 activities.

Referrals by the OFR

According to the OFR, a referral resulting from examination or an investigation case is made when violations of law or administrative rules have been documented by evidence and the OFR seeks legal assistance in taking enforcement action. The OFR stated that “criminal referrals are frequently made to the State Attorney’s Office, the Office of Statewide Prosecution, and the United States Attorney’s Office.”³¹

Committee staff reviewed the disposition of referrals made to state and federal agencies during the last four fiscal years (2003-2004 through 2006-2007). During that period, the OFR indicated that a total of 11 referrals were made to one or more state or federal law enforcement agencies. The OFR referral rate as a percentage of the 429 closed examinations was approximately 2.6 percent. Currently, six of the eleven cases are active and the remaining five cases have been closed. The OFR counted or included joint investigations involving the OFR as referrals. Some of the referrals to state law enforcement were not formally documented.

The BSA’s record keeping and reporting requirements help create a financial trail that law enforcement and regulators can use to track criminals, their activities, and their assets. Significant findings related to CTRs and SARs may merit additional follow-up by state or federal law enforcement. Also, a referral to state law enforcement might be warranted if the results of an examination document that a check casher is engaging in a large volume of commercial check cashing for construction companies. However, if OFR does not make referrals in a timely manner or does not refer alleged criminal violations to law enforcement, the likelihood of finding and ultimately prosecuting such persons is greatly diminished. Coordination and sharing information with law enforcement provides a solid basis to identify criminal activity and assists in targeting where this activity might be occurring.

³¹ Correspondence from the Office of Financial Regulation to Committee staff, September 14, 2007.

Section 560.129, F.S., relating to confidentiality of records, provides that such confidentiality does not prevent or restrict the OFR from reporting any suspected criminal activity, with supporting documents and information, to appropriate law enforcement or prosecutorial agencies.

Recent Law Enforcement Efforts Related to MSB Activities

In 2006, FinCEN assessed a civil penalty in the amount of \$10,000 on Frosty Food Mart of Tampa, Florida (Frosty). Frosty was a MSB that had been providing check cashing, wire transfer, and money order services to its customers since 2004. Frosty failed to implement an anti-money laundering program with adequate controls reasonably designed to prevent the MSB from being used to facilitate money laundering. Frosty’s reckless disregard of the AML requirements led, in turn, to a failure to file 68 currency transaction reports (CTRs), as required by the BSA for cash transactions exceeding \$10,000, for a total of \$1,036,804 on single check cashing transactions for 25 customers.

Also in 2006, the Department of Treasury took action against Beach Bank, located in Miami, Florida. The bank failed to fully investigate the activity of three of its 40 money services business customers that collectively withdrew more than \$615 million in currency from the bank over an 18-month period in order to determine if it was suspicious. Ultimately, Beach Bank was assessed a civil penalty of \$800,000.³²

Insurance Fraud Involving Check Cashing Transactions

In 2006, the Department of Financial Services, Division of Insurance Fraud, together with the Broward County Sheriff’s Office, the Palm Beach County Sheriff’s Office, and the Office of Statewide Prosecutor arrested six men for racketeering and conspiracy to commit racketeering.³³ The men used shell corporations to hide uninsured construction workers, thereby avoiding the payment of state and federal taxes and workers’ compensation insurance premiums. The shell companies, which had no employees, were created and used to secure minimum workers’ compensation insurance coverage. Contractors engaged these shell companies because of their low bids, which

³² U.S. Department of Treasury Financial Crimes Enforcement Network v. Beach Bank, Number 2006-9.

³³ Multi-Agency Taskforce Announces Details of Operation Money Trail, Florida Department of Financial Services Press Release, February 13, 2006.

were due to the misrepresentation of workers' compensation premium. A contractor would write a check to the shell company and then representatives of the shell company would cash the check at a check cashing store. A local check cashing company would charge a fee for cashing the check. The shell company would also take a fee for providing the certificate of insurance to the contractor. The remaining cash would be given to the contractor who wrote the check. The construction day laborers were then paid in cash with the remaining funds. It is estimated that at least \$15 million was laundered through this scheme. Checks made out to the shell companies were cashed at Atlantic Check Cashing.

In October 2006, a federal grand jury indicted Pronto Cash of Florida (Pronto), located in multiple locations in Florida, for engaging in unlicensed money transmitting, willfully evading the filing of currency transaction reports, and defrauding the State of Florida and the United States. One of defendants was affiliated with construction companies that were shell companies, which provided their workers' compensation insurance certificates to construction companies in exchange for a percentage of the subcontractor's payroll, typically 8 percent. Pronto conspired with more than 10 corporations, many of which were "shell" companies, to provide workers' compensation insurance certificates to one or more construction subcontractors to use in obtaining construction jobs in exchange for a percentage of each of the subcontractor's payroll. Pronto's customers included construction subcontractors, who employed illegal or unauthorized alien labors.

2008 Statewide Grand Jury

In August 2007, the Supreme Court of Florida ordered the empanelment of a statewide grand jury to investigate various criminal offenses, including activities relating to check cashers. It is anticipated that the grand jury will issue its first interim report in December 2007.³⁴

RECOMMENDATIONS

The Legislature should consider the following options:

1. Create law enforcement positions within the Office of Financial Regulation, or as an alternative, transfer the money transmitter regulatory program to an agency with law enforcement staffing, such as the Department

of Financial Services. This type of staffing and expertise would greatly assist the program in aggressively investigating and prosecuting complex, criminal violations.

2. Provide additional staffing for the MSB program that would be dedicated to the examination of these entities. Currently, an estimated 50 percent of all licensees have never been examined due to limited staffing and resources.

3. Require MSBs to incur the costs of examinations, which would encourage entities to comply with the law and develop good business practices since the costs of an examination are influenced by the business practices of the entity. The current funding formula requires legitimate businesses to subsidize the regulation of businesses with unsound business practices since the licensing fee funds the examination program.

4. Revise registration criteria for check cashers by eliminating "incidental business" exception and at a minimum adopting the Federal registration requirements, which requires registration if an entity engages in transactions in excess of \$1,000 per person, per day. Presently, if the check cashing activity of an entity claims that the business does not exceed five percent of its total gross income, the entity is exempt from licensure requirements.

5. Impose greater scrutiny and regulation of check cashers that cash "business to business" checks in excess of a certain monetary threshold, such as \$10,000. This would include requiring the MSB to obtain a fingerprint of the person cashing the check, as well as a copy of the photographic identification presented to the MSB. These entities would also be subject to examinations on a periodic basis and additional reporting, such as SARs for every transaction that exceeds \$10,000. Due to the greater risk associated with these types of transactions, a pre-licensure examination of these entities should be required.

6. Limit the monetary amount of checks that can be cashed to \$10,000, per person per day, as an alternative for establishing a separate regulatory scheme for entities that cash commercial checks.

7. Revise s. 560.118(2), F.S., to address solvency and soundness concerns, to require all sellers of payment instruments to submit audited, financial statements. Currently, any seller of payment instruments that has a combined total of fewer than 50 employees and

³⁴ Supreme Court of Florida, Case No. SC07-1128. June 20, 2007.

vendors or has annual transactions of less than \$200,000 is exempt from this financial reporting requirement.

8. Require the OFR to report alleged criminal violations of law disclosed through the examination or investigation process to the appropriate regulatory agency, state attorney, or other prosecuting agency having jurisdiction with respect to such violation.

The OFR should also consider the following options to improve the effectiveness of the regulatory system for MSBs:

1. Strengthen examination and supervisory standards by applying more consistent safety and soundness protocols and documenting such standards.
2. Continue to evaluate its risk assessment approach for determining the examination process to provide greater prioritization to entities that have received significant adverse examination findings in the past and entities engaging in commercial checking.
3. Require the Financial Services Commission to adopt by rule standards or criteria for the issuance of guidance letters for “insignificant violations” and fines to ensure that significant violations of law by licensees are addressed in a consistent manner.
4. Encourage the OFR to participate in task forces and interagency training in the area of insurance fraud, which would assist the OFR in identifying and referring alleged fraud to the appropriate law enforcement agency for investigation and prosecution in a timely manner.