

Supporting Statement
Registration of Money Services Business
OMB Control Number 1506-0013

1. Circumstances Necessitating Collection of Information

The collection of the information contained on Registration of Money Services Business (FinCEN Form 107) is authorized by statute (see 31 U.S.C. 5330) and required by regulation (see 31 CFR 1022.380). The regulation requires money services businesses to register with the Department of the Treasury.

Money services businesses as defined in 31 CFR 1010.100(ff) are subject to the registration requirement. The Registration of Money Services Business (FinCEN Form 107) is the form money services businesses use to comply with the registration requirement.

2. Method of Collection and use of data

The information contained on Form 107 is used by criminal investigators, as well as taxation and regulatory enforcement authorities, during the course of investigations that involve money laundering, tax violations, fraud and other financial crimes.

3. Use of Improved Information Technology to Reduce Burden

Effective July 1, 2011, this form was available for electronic filing through the FinCEN BSA E-Filing System.

4. Efforts to Identify Duplication

There is no similar information available; thus, there is no duplication.

5. Methods to Minimize Burden on Small Businesses or other Small Entities

This collection of information does not impact small entities.

6. Consequences to the Federal Government of not collecting the Information

A money services business must file Form 107 after the business is established. Were this collection to be reduced in frequency, the information collected would not be of use to law enforcement personnel.

7. Special Circumstances Requiring Data Collection Inconsistent with Guidelines

There are no special circumstances.

8. Consultation with Individuals Outside of the Agency on Availability of Data, Frequency of Collection, Clarity of Instructions and Forms, and Data Elements.

The Paperwork Reduction Act 60-day notice was published on October 6, 2011 (see 76 FR 62149). FinCEN received 9 comments in response to this notice. The comments and responses are summarized as follows:

1. Replacement of former captions with “Registrant” (Part I) and “Owner or Controlling Persons” (Part III)

A commenter noted that the captions for Items 3 and 6 of the proposed form differed from that used in previous versions of Form 107, Registration of Money Services Business (RMSB). A previous version of Form 107 captioned item 3 as “Legal Name of the Money Services Business” and Item 4 as “Doing Business As” while the proposed version substitutes “Individual’s last name, or entity’s legal name” for the former and “Alternate name” for the latter. The commenter stated that such revisions might be confusing to the registrant, and might also lead to inconsistencies in data from forms filed in previous years. The same concerns were cited for the re-named Item 20 of Part III, Owner or Controlling Person.

We appreciate that the commenting party seeks consistency and clarity from the data derived from Form 107. We share those objectives. However, we believe that the new captions will lead to greater understanding on the part of the individual completing the form by indicating that the correct response may be *either* a natural person or a business entity. This option was not made explicit with the previous wording. Additionally, we allow the registrant to indicate, in response to Item 6, that there may be another name by which the natural person is known and identifiable. Previously, we had limited the question to an alternative business name (“doing business as”).

Another consideration that we believe is served by the new captions is the ability to collect and analyze data across various FinCEN reports. We are in the process of reviewing and updating all reports and are attempting to standardize the information fields among them. Such uniformity and consistency will, we believe, lead to enhanced data integrity and reliability.

2. Request for addition of data field to capture residential mortgage registry identification number

One association commenting on the proposed changes to Form 107 requested that FinCEN consider partnering with the National Mortgage Licensing System (“NMLS”), a national registry dedicated to increased supervision of the residential mortgage market. The NMLS is expanding to allow States to register additional industries, including some Money Services Businesses, on the NMLS. The association recommended adding a data field to Form 107 to allow the party completing the form to enter its unique registry identification number. Ultimately, this information would facilitate regulatory investigations that might involve multiple states’ coordination.

We appreciate the benefits of this nationwide initiative to enhance regulatory oversight of the residential mortgage and other markets. We will continue to discuss and investigate ways in which we can serve as a useful bridge among information sources and work with systems such as NMLS for mutual benefit. We will not be adding any additional data fields to Form 107 at this time, however, we will consider the recommendation for future form revisions.

3. Reporting of multiple, similar prepaid programs (Item 38); and various matters raised by prepaid trade association

A trade association and an industry respondent recommended allowing the reporting of multiple, similar prepaid programs with a single, general description. We agree that the registrant will know the best way to assess the similarities among its programs and to offer a meaningful description. For that reason, we do not intend to mandate a particular format for providing a prepaid program listing; we trust that the industry respondent will reasonably aggregate similarly featured products into appropriate programs, and will report information accurately.

Additionally, the trade association comment offered several more comments and questions regarding the fields in which a prepaid program must be identified. First, the commenter asked whether an internal reference used by the prepaid provider or issuer when referring to the program is sufficient. We do not intend to mandate any format for labeling prepaid programs and leave such descriptions/labels to the discretion of the prepaid provider. Second, the trade association also asked whether having the same IIN used in different prepaid provider registrations or program lists was a problem. Having multiple programs using the same IIN is not a problem. As noted above, we intend to leave it to the discretion of the program provider how and when it is appropriate to delineate distinct prepaid programs. Third, the association requested clarification of which processors must be listed on the form where multiple processors, or sub-processors, may be used for a particular program. As is [now] clarified in the instructions, FinCEN seeks information on the **primary** transaction processor, i.e., the entity capable of reconstructing transactions (e.g., loads, re-loads, transfers, transaction sites, dollar amounts) and prepaid access activity generally. Only the primary transaction processor needs to be listed on the form.

The trade association requested clarification of whether person-to-person transfers within a prepaid program would be considered part of an informal value transfer system (IVTS). IVTS, as noted in the instructions to the form, “includes any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system.” Prepaid programs, insofar as they involve the conventional financial system, such as funds stored at banks, electronic funds transfer systems, bank to bank transfers, account settlement on commercial systems, or transaction processing by commercial vendors, are not considered IVTS whether they allow person-to-person transfers or not.

Finally, the trade association requested clarification regarding the number of U.S. agents selling prepaid access. Since the definition of seller of prepaid access includes reload locations, all reload locations must be included in the number of agents. While we recognize that this requirement may present some difficulties and could result in double counting in some cases, nevertheless the number of U.S. agents selling (including reloading) prepaid access must be reported. This

requirement, however, is only based on the best knowledge of the provider. Existing regulations do not require a provider to continually update this number, but only to report the best knowledge available at the time of filing.

4. (1) Include prepaid program exemptions; and (2) Eliminate “seller of prepaid access” where it might confuse the registrant

One commenter, a consulting firm, contrasted the breadth of the prepaid provider definition with the lack of corresponding information on the form describing the exceptions to the definition. The commenter recommended incorporating the program exclusions into the text on the form.

To address this issue, we will provide a computer link (Hotlink) on the FinCEN E-File website to the relevant information. Thus, when the individual is in the process of completing the form, the individual may use the link to obtain a document entitled “The following are not required to register,” which will display the exclusion language.

Two commenters stated that it is potentially confusing to include “seller of prepaid access” among the various MSB choices (see Item 36), when the language of the Prepaid Access Final Rule summary [76 FR 45403] specifically refers to the imposition of a registration requirement on “Providers only.” It was suggested that including Sellers of Prepaid Access among the various categories of MSBs is misleading to the registrant and that the option should be deleted. We are not prepared to make such a change at this time. We acknowledge that the registration requirement is uniquely imposed on providers, but FinCEN would like to identify all MSBs, including providers of prepaid access and others, required to register that engage in the sale of prepaid access. Given the instructions in the form, we would not expect registrants to check only the “h” box in Item 36. .

5. Addition of De-registration discussion to “Special Actions” section of Form 107

A commenter observed that the proposed form does not provide any instructions for a previously registered MSB to indicate its withdrawal from the regulated business activity. Specifically, the commenter wanted to know how a business entity “un-registers” as a money services business.

We believe that this commenter raises a very good point and have amended the instructions to Form 107 appropriately. “Special Actions” under the section of the instructions entitled “Where and When to Register” now includes a section on De-Registration of MSBs, along with a citation to the FinCEN website for detailed guidance.

6. (1) Eliminate “seller of prepaid access” from MSB activities (Item 36); (2) Clarify “seller of prepaid access” definition in General Instructions; and (3) Include prepaid program exclusions

This commenter, a trade association, raised two points previously raised by the consulting firm (above), specifically, the request to delete the “seller of prepaid access” from the MSB listing in Item

36, and the request to include the various prepaid program exclusions. Additionally, this commenter asked for clarity for the “seller of prepaid access” definition provided in the General Information – Who Must Register section of the instructions.

We have comprehensively addressed the first two comments raised by this trade association in our response to the consulting firm (above). However, we reviewed the definition for “seller of prepaid access” and agreed with the commenter’s observation. We have revised the wording to indicate more clearly and distinctly the two “prongs” under which a person will be deemed a seller under the rule.

7. Multiple comments, various aspects of Form 107 and the form instructions

This commenter presented a variety of comments and questions. In the aggregate, the commenter offered the following:

1. The need to reconsider FinCEN’s migration to electronic submission exclusively for required reports, including Form 107.
2. A request for the collection of additional information related to an MSB’s sending and receiving of wire transfers.
3. The ambiguity related to Item 1e of Part I, the “RMSB registration number.”
4. Part III, Owner or Controlling Person of Form 107 includes a reference to “a duly authorized owner...,” but the commenter notes that this term is not defined anywhere for the registrant.
5. The Specific Instructions, Item 34, includes the term “tribal lands.” The commenter questions whether this concept will be adequately understood by the average registrant.
6. Part VI, regarding the MSB documentation, states that the information collection “*may include,*” but the commenter believes it more appropriate to state “*must include, at a minimum.*”

We appreciate the thoroughness provided by this commenter’s review and we have incorporated a great many of the recommendations offered. In summary, for those which we are unable to address at this particular time, we offer the following explanations:

1. We understand that the migration to new technology will be more difficult for some of our regulated entities than it will be for others. To that end, we will continue to accept hard copy filing of Form 107 through March 2013. And, we will continue to monitor the success of mandated electronic filing over the coming months to assess where we can provide assistance.
2. At this time, we cannot request additional information related to wire transfers. We anticipate additional modifications to Form 107 in the near future, and we will consider the commenter’s suggestion at that time.
3. The RMSB registration number requirement has been removed from the form.
4. By using the term “duly authorized,” we refer to an individual with actual authority to conduct the transaction.

5. A concern was raised with the use of the term “tribal lands” as it is used in the form. This term is consistent with the use of the term tribal throughout the BSA regulations and refers to areas under the jurisdiction of an Indian Tribe within the United States.
6. Because the broad and diverse types of MSBs that encompass different industries do not share a standard set of criteria, we will not accept the commenter’s suggestion to indicate that the information listed is a mandatory minimum. We believe that the MSB status should be evaluated independently, on a case-by-case basis.

8. Part VII Authorized Signature/Signature of Agent for Service of Process

One commenter found problematic the requirement that the U.S. agent for service of process for a foreign located MSB sign the form and certify regarding matters of which it does not have direct knowledge or control in its role as agent for service of process. FinCEN acknowledges that the individual serving as an agent for service of process performs a significant role. We believe it is essential to hold the signing party to a high standard, whether that individual is serving as a representative of the business, or as simply an agent for the service of process. The agent has a duty to ensure that the information being provided to FinCEN under his signature is accurate and reliable. The language as proposed in the initial notice is retained.

9. Payments and Gifts

No payments or gifts were made to respondents.

10. Assurance of Confidentiality of Responses

Information collected on Form 107 is made available, in accordance with strict safeguards, to appropriate criminal law enforcement, regulatory, and taxation personnel solely in the official performance of their duties.

11. Justification of Sensitive Questions

No sensitive questions are asked.

12. Estimated Annual Hourly Burden

Frequency: As required.

Estimated Number of Respondents: 44,300.

Estimated Number of Annual Responses: 44,300.

Estimate of Burden: Reporting average of 30 minutes per response; record keeping average of 30 minutes per response for a total of 60 minutes.

Estimate of Total Annual Burden on Respondents 44,300 hours

Estimates were based on time taken to read the instructions and complete the form.

13. Estimated Annual Cost to Respondents for Hour Burdens

Not applicable

14. Estimated Annual Cost to the Federal Government

Not applicable

15. Reason for Change in Burden

The adjustments contained in item 12 stems from the increase in the number of registrations of money services businesses. The increase in the response rate is the result of FinCEN outreach efforts to the MSB community and the ability to electronically file the form.

16. Plans for Tabulation, Statistical Analysis, and Publication

This collection of information will not be published.

17. Request not to Display Expiration Date of OMB Control Number

To avoid having to reprint the form to show a new date, FinCEN is requesting permission not to display the OMB expiration date on Form 107.

18. Exceptions

There are no exceptions to the certification statement on OMB Form 83-1.