

MEMORANDUM OF UNDERSTANDING

Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
National Credit Union Administration
U.S. Department of the Treasury, Financial Crimes Enforcement Network
U.S. Department of the Treasury, Office of the Comptroller of the Currency
U.S. Department of the Treasury, Office of Thrift Supervision

I. Background

A. Purpose.

This Memorandum of Understanding (“MOU”) sets forth procedures for the exchange of certain information among the Board of Governors of the Federal Reserve System (the “Board”), the Federal Deposit Insurance Corporation (the “FDIC”), the National Credit Union Administration (the “NCUA”), the Office of the Comptroller of the Currency (the “OCC”), the Office of Thrift Supervision (the “OTS”) (collectively, the Federal Banking Agencies (“FBAs”)), and the Financial Crimes Enforcement Network (“FinCEN”), a bureau within the U.S. Department of the Treasury (collectively, the “Agencies”).

Information to be exchanged under this MOU includes information about FinCEN’s administration of the Bank Secrecy Act (“BSA”), Titles I and II of Pub. L. 91-508, as amended, codified at 12 U.S.C. § 1829b, 12 U.S.C. §§ 1951-1959, and 31 U.S.C. §§ 5311-5332; information relating to the FBAs’ policies and procedures for examination of BSA compliance; significant BSA compliance issues at banking organizations supervised by the FBAs; and analytical data based on or derived from information provided by the FBAs.

Exchanges of information pursuant to the terms of this MOU are intended by the Agencies to help FinCEN in fulfilling its role as administrator of the BSA and to assist the FBAs in fulfilling their role as banking organization supervisors. The Agencies intend for this MOU to further the purpose of the BSA by better ensuring compliance in the filing of reports and keeping of records that “have a high degree of usefulness in criminal, tax or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.”¹ Through this MOU, the Agencies intend to improve and enhance the level of interagency cooperation in the area of BSA examination and compliance. From the standpoint of policy, examination, and enforcement, this MOU will enable the Agencies to maximize their resources in discharging their statutory obligations. Ultimately, the collective goal of the Agencies is to enhance communication and coordination to help financial institutions identify, deter and interdict terrorist financing and money laundering.

Finally, by the effective use of the information exchanged under the provisions of this MOU, the Agencies will also seek to enhance the level of assistance and analysis that can be provided to the banking industry and to law enforcement in the area of BSA compliance.

¹ 31 U.S.C. § 5311.

B. Jurisdiction.

Each FBA has plenary examination and enforcement authority for the financial condition, safe and sound operation, and compliance with laws and regulations of the banking organizations it supervises.

Under delegated authority from the Secretary of the Treasury, FinCEN is the administrator of the BSA.² FinCEN has the authority under 31 U.S.C. § 5318(a)(3) to examine financial institutions for compliance with the BSA and regulations promulgated under the BSA at 31 C.F.R. Part 103, as well as to take enforcement actions for violations of the BSA and the implementing regulations under 31 U.S.C. §§ 5320-23. The Secretary has delegated BSA examination authority, but not enforcement authority, to each FBA with respect to banking organizations supervised by that FBA. The FBAs have separate authority pursuant to 12 U.S.C. §§ 1786 and 1818 to ensure that banking organizations comply with all laws and regulations, including the BSA. FinCEN's regulations specify that each agency that performs FinCEN's delegated examination authority shall make periodic reports to FinCEN.³

C. Assessment of MOU Operation.

The Agencies shall meet, no less often than annually, to discuss the operation of the MOU and to identify any issues or adjustments that may be required. During such meetings, FinCEN will provide an update on how the information provided by the FBAs under this MOU has been used or applied by FinCEN. The Agencies will also evaluate the effectiveness of the information sharing in meeting the goals outlined above.

II. Provision of Information to FinCEN by the FBAs

A. Annual Report. Each FBA shall provide the Director of FinCEN or the Director's designee with the following information on an annual basis by October 1 of each year. For the first such report, each FBA shall provide the information by November 15, 2004. Each FBA will provide a summary of its BSA examination program that includes:

- 1) Number of financial institutions the FBA examines for BSA compliance as of the date of the report;
- 2) Description of the FBA's BSA examination cycle(s);
- 3) Description of criteria used for determining timing and scope of BSA examinations;

² See Treasury Order 108-01, dated September 26, 2002. The Secretary is authorized to delegate such responsibilities to FinCEN pursuant to 31 U.S.C. § 310(b)(2)(I) and (J).

³ 31 C.F.R. § 103.56(e). While 31 C.F.R. § 103.56 refers specifically to the Assistant Secretary (Enforcement), under Section 8(c) of Treasury Order 108-01, dated September 26, 2002, the term "Assistant Secretary (Enforcement)" as used in the regulations, rules, instructions and forms issued or adopted for the administration and enforcement of the BSA, shall be held to mean the Director of FinCEN.

- 4) Description of BSA examination staffing and resources, including, if available, the number of full time equivalent employees devoted to BSA compliance;
- 5) Description of BSA training programs provided to examiners; and
- 6) Description of the extent to which the FBA coordinates with and relies on State banking regulatory agencies to conduct BSA examinations. Specific agreements with State examination agencies need not be provided, but will be available to FinCEN upon request.

B. Program Documents. To the extent FinCEN does not already have them, each FBA will provide copies of written program documents pertaining to BSA examination, or amendments thereto, when they become available. Program documents include:

- 1) BSA examination workprogram documents, including core or basic procedures, expanded procedures, procedures for areas to receive special scrutiny, and any other written procedures pertaining to BSA examinations;
- 2) Written guidance pertaining to BSA examinations, including relevant sections from manuals of examination policies, handbooks, policy statements, and any other written directives that represent the current examination policy of the FBA; and
- 3) Relevant sections from written instructions for preparing BSA-related comments and citing BSA violations in Reports of Examination.

C. Quarterly Reports. Within 45 days after the end of each calendar quarter, each FBA shall provide to FinCEN the following aggregate information:

- 1) Number of BSA examinations conducted⁴ within the agency's established BSA examination cycle, including examinations conducted by the FBA jointly with a State banking agency;
- 2) Number of BSA examinations conducted by a State banking agency and reviewed by the FBA under an established joint or alternate examination program where the examination is not conducted by the FBA jointly with a State banking agency;

⁴ For purposes of this MOU, an examination has been "conducted" once a final Report of Examination is issued to the subject financial institution, or once there is an interim written communication to the financial institution analogous to the issuance of a final Report of Examination.

- 3) Number of BSA examinations or visitations conducted outside the agency's established BSA examination cycle;
- 4) Number of banking organizations cited for BSA violations under either Title 12 or Title 31 of the United States Code;
- 5) Number and type of BSA violations cited under either Title 12 or Title 31 of the United States Code;
- 6) Number of enforcement actions by category taken to address BSA compliance under either Title 12 or Title 31 of the United States Code;
- 7) Number of terminated enforcement actions by category that addressed BSA compliance under either Title 12 or Title 31 of the United States Code; and
- 8) If available, list of banking organizations instructed to request currency transaction report backfiling determinations.

D. Special BSA Examination Project Information. Prior to a FBA conducting any special BSA examination initiative, the FBA shall notify FinCEN and provide FinCEN with written information regarding the special BSA examination initiative. Written information to be provided to FinCEN shall include, but is not limited to, a description of the scope of the special BSA examination initiative and the procedures and criteria used by the FBA to determine the scope. For purposes of this MOU, a "special BSA examination initiative" is defined as a special initiative designed to address identified or emerging risks on a national or regional basis. It also includes examinations conducted because of, or to address, serious anti-money laundering issues that could have a national systemic impact on the banking industry. Nothing in this paragraph shall affect the exercise of a FBA's examination authority with respect to institutions under its supervision.

E. Provision of Information Concerning Significant BSA Violations or Deficiencies. As set forth below, the FBAs will promptly notify FinCEN of significant BSA violations or deficiencies. For purposes of this MOU, a "significant BSA violation or deficiency" includes: a systemic or pervasive BSA compliance program deficiency; systemic or pervasive BSA reporting or recordkeeping violations; or a situation where a banking organization fails to respond to supervisory warnings concerning BSA compliance program deficiencies or systemic or pervasive recordkeeping or reporting violations, or continues a history of program, or systemic or pervasive recordkeeping or reporting deficiencies, even when such deficiencies or violations are dissimilar to those cited in prior Report(s) of Examination or supervisory correspondence. A significant BSA violation or deficiency also includes a non-technical, one-time BSA violation that demonstrates willful or reckless disregard for the requirements of the BSA, or that creates a substantial risk of money laundering or the financing of terrorism within the institution.

Each FBA shall provide FinCEN with information as follows:

- 1) When a FBA discovers a significant BSA violation or deficiency, the FBA will notify FinCEN as soon as practicable, but no later than 30 days after the FBA cites the organization, in a written communication, for a significant BSA violation or deficiency.
- 2) As soon as practicable, but no later than 30 days after completion, the FBA will provide to FinCEN portions of the Report(s) of Examination and other written materials relating to the significant BSA violation or deficiency.
- 3) To the extent that FinCEN is not already a party to the action, the FBA will notify FinCEN of public enforcement actions involving a significant BSA violation or deficiency as soon as practicable, but no later than 30 days after the FBA has decided to pursue the action. In all cases, the notification must occur before such action is made public. For all other enforcement actions involving a significant BSA violation or deficiency, the FBA will notify FinCEN of the action as soon as practicable, but no later than 30 days after taking the action.
- 4) Follow-up Information on Enforcement Actions. If an enforcement action involving a significant BSA violation or deficiency requires the banking organization subject to the action to take corrective measures, develop and implement an action plan, or submit progress reports to the FBA, the FBA will provide FinCEN with a quarterly assessment of those banking organizations that have failed to comply with such requirements. The FBA will provide to FinCEN copies of any relevant Report(s) of Examination related to such banking organizations if not otherwise provided. Copies of the Report(s) of Examination will be provided as soon as practicable, but not later than 30 days after completion. Upon request by FinCEN, the FBA will provide reports submitted by the banking organization in response to an enforcement action, as well as Report(s) of Examination related to follow up on actions involving a significant BSA violation or deficiency.
- 5) Resolution of Actions Involving a Significant BSA Violation or Deficiency. To the extent not otherwise known to FinCEN, the FBAs will notify FinCEN of the resolution of any action involving a significant BSA violation or deficiency as soon as practicable, but no later than 30 days after the resolution of the action, and provide any material relevant to the resolution. For purposes of this MOU, resolution is defined as termination of an action, or the issuance of a subsequent action.
- 6) Report(s) of Examination, Workpapers, and Supporting Documentation. Portions of the Report(s) of Examination relating to BSA examinations that are not provided under II.E.1) through 5) shall be available to FinCEN as soon as practicable upon FinCEN's written request, but no later than 15 days after such request. Workpapers and supporting documentation relating to BSA

examinations shall be available to FinCEN as soon as practicable upon FinCEN's written request, but no later than 45 days after such request.

F. **Format for Information.** The format for providing information to FinCEN may vary among the FBAs. Each FBA shall provide information under this MOU in a format that is mutually acceptable to FinCEN and the FBA. Where available, information provided to FinCEN under this MOU shall be provided in electronic format.

III. Provision of Information to the FBAs by FinCEN

A. **Quarterly Reports.** Within 75 days of the end of each calendar quarter, FinCEN shall provide to the FBAs a compilation that summarizes by FBA all the data provided to FinCEN by the FBAs for the previous calendar quarter under paragraph II.C of this MOU. Additionally, FinCEN will provide each FBA a report identifying those banking organizations subject to the FBA's supervision against which FinCEN is considering pursuing civil enforcement remedies under the BSA.

B. **FinCEN Enforcement Actions.**

- 1) When FinCEN learns of a significant BSA deficiency or violation within a banking organization pursuant to paragraph II.E. of this MOU, FinCEN will notify the FBA with supervisory authority over the banking organization whenever FinCEN determines that the imposition of civil enforcement remedies under the BSA may be warranted. Notification from FinCEN shall be made as soon as practicable, but no later than 30 days after the determination, and in any event before taking any public enforcement action.
- 2) FinCEN will notify a banking organization's FBA prior to taking an enforcement action against any banking organization.
- 3) A copy of correspondence relating to a pending or possible enforcement action sent by FinCEN to a banking organization shall be sent to the FBA that supervises such banking organization. Copies of correspondence received by FinCEN from a banking organization relating to a pending or possible enforcement action shall be forwarded to the FBA that supervises such banking organization to the extent the FBA has not received a copy.

C. **FinCEN Analytical Products.** The information provided by the FBAs pursuant to this MOU will further assist FinCEN, alone and in conjunction with the FBAs, in developing a variety of analytical products that identify common BSA compliance deficiencies, patterns and trends in BSA compliance, developments in money laundering and terrorist financing, and trends and best practices in BSA examination. Such products will also focus on assisting the banking organizations and other financial institutions in meeting their BSA compliance obligations. Accordingly, FinCEN will provide the FBAs, and, as appropriate, the industry, and the public with such analytical products to enhance the overall effectiveness of the Agencies' administration of the BSA.

D. Assistance in Identifying BSA Compliance Deficiencies within Banking Organizations. Using information provided pursuant to this MOU, as well as BSA data and other information, FinCEN will provide support to the FBAs in helping to identify banking organizations with possible BSA compliance deficiencies for the purpose of assisting the FBAs in utilizing their examination resources.

E. Public Reports by FinCEN. In the event that information (other than confidential supervisory information, which is subject to the restrictions in Section IV of this MOU) provided by the FBAs is included in any documents that are made public or disclosed to any Congressional entity, such documents shall be provided to the FBAs before they are released by FinCEN with as much notice as possible.

IV. Restrictions on Disclosure and Use of Confidential Supervisory Information Provided to FinCEN by FBAs

A. 1) Each FBA retains ownership of all information provided to FinCEN under this MOU. All confidential supervisory information provided by an FBA remains subject to that FBA's regulations governing the disclosure of confidential supervisory information. FinCEN will use information provided by the FBA under this MOU in accordance with the restrictions applicable to information shared by each FBA under that FBA's regulations.⁵ Except as provided in IV.A.2, FinCEN will make no public use of confidential supervisory information provided by an FBA under this MOU without the prior written approval of the FBA.

2) Confidential supervisory information provided by an FBA under this MOU may be used by FinCEN in investigative proceedings and, upon notice to the FBA, FinCEN may base factual findings in its enforcement orders on factual information it obtains as a result of its review of confidential supervisory information.

3) FinCEN will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of the information which is provided under this MOU and information derived therefrom.

4) FinCEN will notify the applicable FBA in writing of any legally enforceable demand for information provided by a FBA under this MOU, prior to complying with the demand. FinCEN will assert all such legal exemptions or privileges on the FBA's behalf as the FBA may request. Unless subject to a court order or other compulsory process, FinCEN may not grant any demand or request for the information without prior written notice to, and approval of, the FBA.

5) Each FBA expressly reserves all evidentiary privileges and immunities applicable to any information provided to FinCEN under this MOU.

⁵ The applicable regulations are found at: 12 C.F.R. Part 261 (Board); 12 C.F.R. Part 4 (OCC) ; 12 C.F.R. Part 309 (FDIC); 12 C.F.R. § 510.5 (OTS); and 12 C.F.R. Part 792 (NCUA).

B. Confidentiality Restrictions of State Financial Institution Supervisory Agencies. Disclosure to FinCEN of confidential supervisory information that is jointly held by a FBA and a state financial institution supervisory agency shall be subject to the state financial institution supervisory agency's approval. The Agencies shall use their best efforts to obtain the prospective approval of state financial institution supervisory agencies as necessary for all disclosures to FinCEN required under this MOU.

V. Restrictions on Disclosure and Use of Information Provided by FinCEN to FBAs

FinCEN analytic products typically incorporate information obtained from BSA reports, and may also be based on information from other sensitive sources, such as law enforcement. The FBAs agree that, unless advised in writing by FinCEN to the contrary, FinCEN analytic products received under this MOU shall not be publicly disclosed, nor disseminated beyond the recipient agency, without written authorization from FinCEN.

VI. Civil Enforcement

No provision of this MOU is intended to affect the Agencies' respective enforcement authority.

VII. Term of MOU

This MOU is effective upon signature and will remain in effect until amended, replaced or terminated by signed, mutual agreement of the Agencies.


The Agencies agree that amendments to the format and delivery of information required by this MOU may be done by the mutual agreement of staff of the Agencies.

This MOU may be executed in counterparts.

[REST OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, each of the parties hereto has caused this MOU to be executed by its duly authorized officer on the date indicated below.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM


By: Susan Schmidt Bies
Governor

Dated: September 20, 2004

FINANCIAL CRIMES
ENFORCEMENT NETWORK

By: William J. Fox
Director

Dated:

FEDERAL DEPOSIT INSURANCE
CORPORATION

By: Donald E. Powell
Chairman

Dated:

OFFICE OF THE COMPTROLLER OF
THE CURRENCY

By: John D. Hawke Jr.
Comptroller of the Currency

Dated:

NATIONAL CREDIT UNION
ADMINISTRATION

By: JoAnn M. Johnson
Chairman

Dated:

OFFICE OF THRIFT SUPERVISION

By: James E. Gilleran
Director

Dated:

IN WITNESS WHEREOF, each of the parties hereto has caused this MOU to be executed by its duly authorized officer on the date indicated below.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

By: Susan Schmidt Bies
Governor

Dated:

FEDERAL DEPOSIT INSURANCE
CORPORATION

By: Donald E. Powell
Chairman

Dated: Sept. 21, 2004

NATIONAL CREDIT UNION
ADMINISTRATION

By: JoAnn M. Johnson
Chairman

Dated:

FINANCIAL CRIMES
ENFORCEMENT NETWORK

By: William J. Fox
Director

Dated:

OFFICE OF THE COMPTROLLER OF
THE CURRENCY

By: John D. Hawke Jr.
Comptroller of the Currency

Dated:

OFFICE OF THRIFT SUPERVISION

By: James E. Gilleran
Director

Dated:

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

By: Susan Schmidt Bies
Governor

Dated:

FEDERAL DEPOSIT INSURANCE
CORPORATION

By: Donald E. Powell
Chairman

Dated:

NATIONAL CREDIT UNION
ADMINISTRATION

JoAnn M. Johnson

By: JoAnn M. Johnson
Chairman

Dated: 9-22-04

FINANCIAL CRIMES
ENFORCEMENT NETWORK

By: William J. Fox
Director

Dated:

OFFICE OF THE COMPTROLLER OF
THE CURRENCY

By: John D. Hawke Jr.
Comptroller of the Currency

Dated:

OFFICE OF THRIFT SUPERVISION

By: James E. Gilleran
Director

Dated:

IN WITNESS WHEREOF, each of the parties hereto has caused this MOU to be executed by its duly authorized officer on the date indicated below.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

By: Susan Schmidt Bies
Governor
Dated:

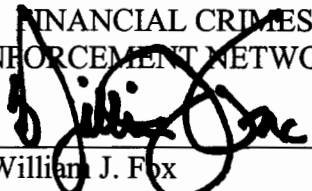
FEDERAL DEPOSIT INSURANCE
CORPORATION

By: Donald E. Powell
Chairman
Dated:

NATIONAL CREDIT UNION
ADMINISTRATION

By: JoAnn M. Johnson
Chairman
Dated:

FINANCIAL CRIMES
ENFORCEMENT NETWORK



By: William J. Fox
Director

Dated: **30-SEP-2004**

OFFICE OF THE COMPTROLLER OF
THE CURRENCY

By: John D. Hawke, Jr.
Comptroller of the Currency
Dated:

OFFICE OF THRIFT SUPERVISION

By: James E. Gilleran
Director
Dated:

IN WITNESS WHEREOF, each of the parties hereto has caused this MOU to be executed by its duly authorized officer on the date indicated below.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

By: Susan Schmidt Bies
Governor

Dated:

FEDERAL DEPOSIT INSURANCE
CORPORATION

By: Donald E. Powell
Chairman

Dated:

NATIONAL CREDIT UNION
ADMINISTRATION

By: JoAnn M. Johnson
Chairman

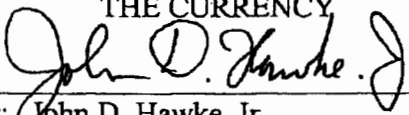
Dated:

FINANCIAL CRIMES
ENFORCEMENT NETWORK

By: William J. Fox
Director

Dated:

OFFICE OF THE COMPTROLLER OF
THE CURRENCY


By: John D. Hawke, Jr.
Comptroller of the Currency

Dated: *SEPTEMBER 22, 2004*

OFFICE OF THRIFT SUPERVISION

By: James E. Gilleran
Director

Dated:

IN WITNESS WHEREOF, each of the parties hereto has caused this MOU to be executed by its duly authorized officer on the date indicated below.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

By: Susan Schmidt Bies
Governor

Dated:

FEDERAL DEPOSIT INSURANCE
CORPORATION

By: Donald E. Powell
Chairman

Dated:

NATIONAL CREDIT UNION
ADMINISTRATION

By: JoAnn M. Johnson
Chairman

Dated:

FINANCIAL CRIMES
ENFORCEMENT NETWORK

By: William J. Fox
Director

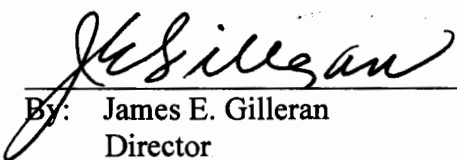
Dated:

OFFICE OF THE COMPTROLLER OF
THE CURRENCY

By: John D. Hawke Jr.
Comptroller of the Currency

Dated:

OFFICE OF THRIFT SUPERVISION

By:  James E. Gilleran
Director

Dated: 9/22/2004