



DEPARTMENT OF THE TREASURY
FINANCIAL CRIMES ENFORCEMENT NETWORK

Memorandum of Understanding
between the
Financial Crimes Enforcement Network
and the
Consumer Financial Protection Bureau

This Memorandum of Understanding (the "MOU") is between the Financial Crimes Enforcement Network ("FinCEN"), a bureau within the U.S. Department of the Treasury, and the Bureau of Consumer Financial Protection (the "Agency"), a bureau within the Federal Reserve System established by the Consumer Financial Protection Act of 2010 ("CFP Act"), Pub. L. No. 111-203, Title X, 12 U.S.C. § 5481 et seq. This MOU states the terms under which the Agency participates in the program that FinCEN maintains to permit qualifying organizations to obtain direct electronic access to information collected pursuant to the reporting authority contained in the Bank Secrecy Act (the "BSA"), 31 U.S.C. § 5311 et seq. To the extent that FinCEN and the Agency have entered into previous direct electronic access agreements, this MOU supersedes such agreements. To the extent that FinCEN and the Agency have entered into previous agreements concerning matters other than direct electronic access, including but not limited to information sharing agreements, this MOU does not supersede and does not alter such other agreements.

1. BSA Information. This MOU concerns access to "BSA Information," which consists of the following information when the Agency obtains that information directly from the Currency and Banking Retrieval System or any successor to that system ("CBRS"), whether by examination of screen displays, download to an Agency computer, or otherwise:

(a) Information contained in reports filed with FinCEN pursuant to its authority under the BSA, including reports identified in the List of Accessible BSA Reports attached to this

MOU at Tab A (the "List"), as such List may be revised by FinCEN from time to time, or as otherwise provided by FinCEN in writing.

(b) Information concerning whether any particular person or transaction is named or referred to in any report filed under the BSA, including but not limited to reports covered by Section 1(a), and if so, information concerning the specific form or type of form in which such person or transaction is named or referred to. Whether the results of a query are a null set or identify specific individuals as being named in one or more reports in CBRS, the query results constitute BSA Information subject to this MOU.

2. Electronic Access to BSA Information; Limitations.

(a) Purpose of Queries. Authorized personnel of the Agency ("Authorized Agency Personnel"), solely on behalf of the Agency (including in the Agency's capacity as a participant in a multi-agency task force, if applicable) and not on the behalf of any other person (including without limitation any other federal, state or local agency), may make direct electronic queries to retrieve BSA Information from CBRS, and may use BSA Information obtained from any such queries, solely consistent with the Agency's legal authority and as required and appropriate for the exercise of the Agency's regulatory authority through investigations and proceedings relating to the following: enforcement or administration of statutes, rules or regulations that affect the financial activities of financial institutions or the integrity of financial markets. For the purposes of this limitation on use, the following words and phrases have the following meanings. A "financial institution" is a person or entity that is subject to the jurisdiction of the Agency, and is either identified in 31 CFR 1010.100(t) (formerly 31 C.F.R. 103.11(n)) or has specific obligations under an anti-money laundering program or customer identification program regulation of 31 CFR Chapter X (formerly Subpart I of 31 CFR Part 103). A "financial activity"

is an activity that causes a person or institution engaging in that activity to be a financial institution. A “financial market” includes a securities exchange or over-the-counter market within the meaning of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78a *et seq.*, and a contract market or derivatives transaction execution facility within the meaning of the Commodity Exchange Act, as amended, 7 U.S.C. 1 *et seq.* The “enforcement or administration of statutes, rules or regulations that affect the financial activities of financial institutions” includes the Agency’s exercise of its legal authority under the CFP Act relating to Federal consumer financial law, including the development and administration of an examination and supervision program for appropriate financial institutions.

(b) Search Limitations.

- i) In general, Authorized Agency Personnel will make best efforts to limit the BSA Information they obtain through a query to that BSA Information which is immediately useful in connection with the specific matter prompting the query. Best efforts in this context include, but are not limited to, the use of as much information as is reasonably available to Authorized Agency Personnel in framing and narrowing any query.
- ii) Authorized Agency Personnel, when making queries concerning specific persons or entities (each a “Subject”), will make best efforts to avoid the retrieval of information not relating to the Subject.
- iii) Authorized Agency Personnel will make best efforts to obtain and maintain only that BSA Information which is of value in connection with the specific matter prompting the query through which the BSA Information was obtained. The Agency will promptly destroy all documents or summaries that it has obtained or generated which

contain BSA Information that is (A) known to have been obtained in error, or (B) duplicative of BSA Information already obtained by the Agency and reasonably accessible to the Agency.

- iv) In addition to the limitations contained elsewhere in this Section 2(b), the Agency will not use BSA Information to develop or contribute to any database not under the control of FinCEN that Agency personnel will be able to search as an alternative to making subsequent direct electronic queries to retrieve BSA Information from CBRS. If the Agency discovers that such a database exists and that it contains BSA Information, the Agency will immediately inform FinCEN and destroy all BSA Information contained in the database. Notwithstanding the foregoing, the Agency may create and maintain an "Agency Database" as that term is defined in the Bulk Download and BSA Database Maintenance Addendum ("Addendum") of even date herewith entered into by FinCEN and the Agency, subject to the terms of the Addendum.

(c) FinCEN Search Targeting Resources. FinCEN will use its best efforts to make available to the Agency, from time to time, either on FinCEN's own initiative or in response to requests from the Agency, analytical tools and BSA Information reviews (collectively "Analytical Materials") intended to help Authorized Agency Personnel use CBRS efficiently, maximize the value of BSA Information they obtain through queries, and minimize obtaining BSA Information of little or no value in connection with the specific matters prompting queries. The Agency will ensure that Authorized Agency Personnel (i) are promptly made aware of the Agency's receipt of Analytical Materials and (ii) use Analytical Materials to the fullest extent possible in making queries and evaluating BSA Information.

(d) Discretionary Conditions of Access. In addition to the terms, conditions and limitations stated elsewhere in this MOU, FinCEN may, if in its discretion FinCEN determines it to be appropriate, impose one or more conditions of access to CBRS, including but not limited to possible requirements that Authorized Agency Personnel (i) enter into individual user agreements acknowledging the terms and conditions under which they can obtain access to CBRS, and/or (ii) begin queries of BSA Information pursuant to this MOU with the full completion of CBRS computer access screens (the "Access Screens") for the relevant data file, before obtaining access to BSA Information. If any condition of access is imposed, no information may be retrieved from any data file hereunder unless such condition of access has been complied with.

(e) Continuing Representation and Warranty. Each query under this MOU, including if applicable completion of any Access Screen in connection with such query, shall be deemed to constitute a continuing representation and warranty by the Agency that the request for retrieval or use complies with, and any use of retrieved or analyzed information will comply with, the terms of this MOU.

(f) Disclaimer of Liability. FinCEN will make all reasonable efforts to make BSA Information available to the Agency upon the Agency's request, consistent with the terms of this MOU. However, FinCEN expressly disclaims any liability for any consequence of the non-availability of BSA Information through CBRS for whatever reason.

3. Redissemination of BSA Information. No BSA Information may be disseminated to any person outside the Agency except consistent with the provisions of the Re-Dissemination Guidelines for Bank Secrecy Act Information attached to this MOU at Tab B (the "Guidelines"), as such Guidelines may be revised by FinCEN from time to time or as otherwise provided by

FinCEN in writing. The provisions of this section also apply to information relating to specific investigations and examinations and to statistical or other information referencing or revealing BSA Information.

4. Information about Inquiries of the Agency. FinCEN may maintain as part of its internal databases information concerning queries made by Authorized Agency Personnel, including without limitation (i) information contained on the Access Screens completed by Authorized Agency Personnel hereunder, if applicable, and (ii) a record of the information in the relevant data files searched, retrieved, or both, by such Authorized Agency Personnel.

5. Networking. FinCEN seeks to facilitate networking among regulatory agencies that may be investigating the same matters. If the Subject of a query under this MOU has been or subsequently becomes the Subject of another query to FinCEN by another agency, FinCEN at its discretion and without obtaining prior permission may concurrently notify the agencies making the two queries concerning the match of information about the two queries, provided that (i) such concurrent notification will involve only the name of the Subject queried, sufficient additional information about the Subject to demonstrate the fact of the match, and information about relevant officials to contact at the two agencies, and (ii) no concurrent notification of a match will be made in a particular case to the extent that the Access Screen completed by either relevant agency with respect to that case is specifically marked to indicate the agency's decision not to permit concurrent notification due to the sensitive nature of the query involved. As the financial intelligence unit ("FIU") of the United States and the representative of the United States to the Egmont Group, an organization of national FIUs committed to the exchange of information relevant to anti-money laundering and counter-terrorist financing investigations, FinCEN may also, at its discretion but subject to provisions (i) and (ii) of the previous sentence,

concurrently notify the Agency and any foreign FIU when there is a match of information between a query by the Agency and a query by the foreign FIU.

6. Reports; Audit Trail; Compliance Inspections.

(a) Upon FinCEN's request, appropriate officials of the Agency will supply FinCEN with a report or reports of (i) the status or results of investigations or examinations relating to inquiries made hereunder, including investigations by law enforcement agencies based on referrals from the Agency in connection with such inquiries, (ii) any dissemination of BSA Information, and (iii) such other information, including statistical information, about the Agency's use of BSA Information hereunder as FinCEN may reasonably request, provided, however, that the Agency may delay providing information concerning any specific investigation or examination until such time after the final resolution of that case as the Agency in the reasonable exercise of its discretion deems appropriate. Each such report shall include a description of the status of any investigation or prosecution involved and the contribution, if any, that BSA Information made to the framing or success of the matter.

(b) The Agency may also make reports to FinCEN, at its option or at the request of FinCEN, to assist FinCEN in understanding and analyzing the value of BSA Information.

(c) The Agency shall ensure that an audit trail is maintained with respect to its compliance with this MOU. Such audit trail shall include a written record of the purpose for which any query was conducted, provided that a contemporaneous investigative or examination file relating to a Subject will satisfy the requirement to prepare such a written record. All records maintained in compliance with this paragraph shall be made available to FinCEN upon request for purposes of conducting inspections to evaluate compliance with the terms of this MOU.

(d) To ensure the Agency's compliance with the terms of this MOU, FinCEN may arrange for the conduct of onsite and/or electronic inspections of the Agency's electronic retrieval of information hereunder.

7. Security.

(a) The Agency agrees to follow the steps outlined in the Security Plan attached to this MOU at Tab C, as such Security Plan may be amended by FinCEN from time to time. The Agency will supply FinCEN with the names of all Authorized Agency Personnel, together with any additional identifying information for such individuals as FinCEN shall require, for the purposes of controlling and monitoring access to BSA Information and observance of the terms of this MOU. All Authorized Agency Personnel shall have been the subject of a satisfactory background investigation completed in accordance with the Agency's policies. At FinCEN's discretion, Authorized Agency Personnel may not be eligible for access to CBRS until after they have been trained by FinCEN concerning the use of CBRS, the data files containing BSA Information, and compliance with the terms of this MOU.

(b) The Agency shall notify FinCEN immediately upon its revocation of access privileges of Authorized Agency Personnel under this MOU , including but not limited to (i) revocations of access privileges associated with routine personnel actions such as retirement or other changes in employment status, and (ii) revocations of access privileges associated with non-routine disciplinary action.

(c) The Agency shall notify FinCEN immediately if the Agency (i) imposes sanctions upon any Authorized Agency Personnel or (ii) discovers any unauthorized use of or access to BSA Information, whether by Authorized Agency Personnel or otherwise.

8. Training. FinCEN will train, as resources permit, Authorized Agency Personnel in the use of CBRS, the data files containing BSA Information, and compliance with the terms of this MOU.

9. Control of Records; Open Information and Privacy Laws. Information obtained from any data file pursuant to this MOU in the custody of the Agency will be deemed to constitute a record under the control of FinCEN for purposes of (i) the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, (ii) the Privacy Act, 5 U.S.C. § 552a, (iii) any other laws, regulations and policies applicable to the sources, use, disclosure, or dissemination of BSA Information in the custody of the Agency (collectively, "Other Open Information and Privacy Laws"), and (iv) any requests or demands for BSA Information made to the Agency, whether or not such requests or demands are made consistent with FOIA, the Privacy Act, or Other Open Information and Privacy Laws. The Agency represents that it does not know of any Other Open Information and Privacy Laws in effect on the date of this MOU that grant any right of access to BSA Information in the custody of the Agency on the part of any person that is greater than the rights granted to such persons under FOIA, the Privacy Act, and this MOU. The Agency will inform FinCEN within ten (10) business days after the Agency becomes aware of the possibility that any new or existing Other Open Information and Privacy Laws will grant any such greater right of access. The Agency will notify FinCEN's Office of Chief Counsel if the Agency is served with a subpoena or other request for BSA Information obtained by the Agency hereunder.

10. Costs. The Agency is responsible for costs to the Agency that may arise in connection with its compliance with this MOU, its use of BSA Information consistent with this MOU, and its receipt of training as contemplated by this MOU, including but not limited to travel expenses of Authorized Agency Personnel for the purpose of receiving training. FinCEN

imposes no charges for access of Authorized Agency Personnel to BSA Information hereunder and no charges with respect to the travel expenses of FinCEN personnel for the purposes of exercising FinCEN's inspection rights or providing training as contemplated by this MOU. Notwithstanding anything to the contrary in this MOU, FinCEN retains the right to condition access to BSA Information after some future date on payment by the Agency of a fee that reflects equitable cost-sharing arrangements between FinCEN and the Agency.

11. Authority to Sign; Effective Date; Termination. The persons identified below as signing on behalf of FinCEN and the Agency have the authority to commit FinCEN and the Agency to the undertakings contained in this MOU for the period during which this MOU is effective. This MOU shall become effective as of the first Monday immediately following the date on which it is signed on behalf of FinCEN (the "Effective Date"). This MOU may be terminated by either party upon written notice to the other, effective 30 days from the date that notice of termination is sent (the "Termination Date"). The Agency's access rights to BSA Information under this MOU will terminate on the Termination Date. FinCEN reserves the right without notice to suspend the Agency's access to data files containing BSA Information if, in FinCEN's discretion, such suspension is necessary for reasons of security or for failure to observe the terms of this MOU. Any such suspension does not constitute notice of termination of this MOU.

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Accepted and agreed to:

FINANCIAL CRIMES ENFORCEMENT NETWORK

By:


REFERRED TO TREASURY-FINCEN

James H. Freis, Jr.
Director

Date: June 3, 2011

The Department of the Treasury, acting on behalf of
THE CONSUMER FINANCIAL PROTECTION BUREAU

By:


George W. Madison
General Counsel
Department of the Treasury

Date:

Attachments:

- Tab A: List of Accessible BSA Reports
- Tab B: Redissemination Guidelines
- Tab C: Security Plan