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Report to the Committee on Banking, Housing and Urban Affairs, U.S. Senate and the Committee on Banking and Finance, Services House of Representatives

GAO 15-115

MONEY LAUNDERING

State's New Perspective on Money Laundering: A Review of State Money Laundering Laws

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U.S. Department of Justice
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The Honorable Alfonse M. D'Amato
Chairman
The Honorable Paul S. Sarbanes
Ranking Minority Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Jim Leach
Chairman
The Honorable Henry B. Gonzalez
Ranking Minority Member
Committee on Banking and Financial Services
House of Representatives

The Bank Secrecy Act of 1970 (BSA), as amended, requires that financial institutions¹ maintain certain records and reports for criminal, tax, or regulatory proceedings, including investigations of money laundering. The Money Laundering Suppression Act of 1994 required us to determine whether additional recordkeeping requirements, such as making copies of cashier's checks retrievable by customer information, should be imposed on those financial institutions issuing cashier's checks. Specifically, for financial institutions issuing cashier's checks, we agreed with the Committees to (1) identify the current recordkeeping requirements and (2) determine the views of federal government and financial industry officials on the need for additional recordkeeping requirements.

To identify current recordkeeping requirements, we reviewed pertinent provisions of BSA and federal regulations for issuing and maintaining records for cashier's checks and other monetary instruments. To determine federal and industry officials' views, we discussed with Treasury, Federal Bureau of Investigation (FBI), federal financial regulatory agency, and financial industry officials (1) the usefulness of the currently required records and (2) the need for additional recordkeeping requirements. (App. I contains the details of our objectives, scope, and methodology.)

¹The Department of the Treasury regulations implementing BSA define the term "financial institution" to include banks, federally regulated securities brokers, currency exchange houses, funds transmitters, check cashing businesses, and persons subject to supervision by state or federal bank supervisory authority.

Background

Criminal enterprises generate enormous amounts of cash. To make them easier to conceal and transport, some criminal enterprises convert illicit cash proceeds into monetary instruments, such as traveler's checks, money orders, or cashier's checks. To combat this practice, Treasury, in implementing the requirements of BSA, requires financial institutions to report and maintain records of certain financial transactions. These reporting and recordkeeping requirements, which vary by the amount of the financial transaction, are intended to (1) assist law enforcement officials in criminal, tax, or regulatory investigations and proceedings and (2) help law enforcement officials identify suspicious and unusual financial transactions.

To further assist law enforcement officials in their efforts to combat money laundering, financial institutions are urged by Treasury and federal financial industry regulators to develop an effective know-your-customer program. Know-your-customer programs are designed to encourage employees of financial institutions to become familiar with the banking practices of their customers so that they can recognize transactions that are outside the normal course of a customer's business practices and report them as suspicious to the appropriate federal oversight agencies.

Results in Brief

Treasury regulations implementing the Bank Secrecy Act require financial institutions, when issuing or exchanging cashier's checks for currency, to (1) file a currency transaction report for financial transactions involving more than \$10,000 in currency, (2) capture and retain purchaser information for transactions of \$3,000 to \$10,000, (3) retain copies of cashier's checks for amounts over \$100, and (4) maintain a record of certain check transactions exceeding \$100. In addition, Treasury and the financial industry have been working together to place more emphasis on the need for financial institutions to (1) develop effective know-your-customer programs and (2) report suspicious financial transactions.

Federal regulators, financial industry officials and advisory groups, and law enforcement officials with whom we spoke or who had expressed their views in published documents agreed that current recordkeeping and reporting requirements—together with the development of effective know-your-customer programs and the reporting of suspicious financial transactions—are sufficient requirements for those financial institutions issuing cashier's checks. They agreed that imposing additional recordkeeping requirements, such as one that would specifically require

financial institutions to have systems to retrieve copies of cashier's checks by customer name or account number, would not add to the effectiveness of the current BSA recordkeeping requirements.

Current Recordkeeping Requirements for Cashier's Checks

In implementing BSA requirements, Treasury requires financial institutions to file a currency transaction report for each deposit, withdrawal, exchange of currency, or other payment or transfer by, through, or to financial institutions, that involves more than \$10,000 in currency. This requirement includes cashier's checks.

Because concern existed that money launderers were making financial transactions in amounts of \$10,000 or less to evade the BSA reporting requirements, Congress in 1988 amended the BSA to require financial institutions to capture, verify, and retain a record of the identity of the purchasers of cashier's checks and certain other monetary instruments for currency of \$3,000 or more. The Secretary of the Treasury also determined that it would be useful to criminal investigators to require banks to retain (1) either the original or a copy of certain checks, including cashier's checks, exceeding \$100 and (2) records prepared or received in the ordinary course of business that would be needed to reconstruct a customer's deposit account and to trace through the bank's processing system a check in excess of \$100 deposited in an account. Treasury requires that these records be retained for 5 years and be made readily available to the Secretary of the Treasury upon request.

In addition, after it had received inquiries from financial institutions about whether suspicious transactions should be reported and what information should be reported, the Department of the Treasury issued Administrative Ruling 88-1 on June 22, 1988. This ruling encouraged but did not require financial institutions to report transactions that might be "...relevant to a possible violation of the BSA or its regulations or indicative of money laundering or tax evasion" to the local office of the Internal Revenue Service's (IRS) Criminal Investigation Division (CID). Also in 1988, the Comptroller of the Currency Regulation 12 C.F.R. section 21.11 and corresponding regulations issued by the other bank regulatory agencies required financial institutions to report suspected money laundering and/or BSA violations and provide a copy of these reports to the local office of IRS' CID. A 1992 amendment to BSA prohibits financial institutions from

notifying persons involved in suspicious transactions that the transaction had been reported to IRS.²

Table 1 summarizes the current recordkeeping and reporting requirements for cashier's checks.

Table 1: Federal Recordkeeping and Reporting Requirements for Transactions Involving Cashier's Checks

Transaction amount	Type of requirement	Description
Over \$100	Recordkeeping and retention	Treasury requires financial institutions to retain (1) copies or originals of cashier's checks and (2) a record of transactions associated with deposit accounts that involved check transactions over \$100. These records and copies are to be retained for 5 years.
\$3,000-\$10,000	Recordkeeping and retention	In addition to the requirements noted above for transactions exceeding \$100, financial institutions are required to capture, verify, and retain information on the identity of the purchasers of cashier's checks for \$3,000 to \$10,000. These records are required to be retained for 5 years.
Over \$10,000	Currency transaction reporting	IRS Form 4789 is used to report to IRS transactions involving the physical transfer of currency in excess of \$10,000.
	Recordkeeping and retention	Same requirement as noted above for cashier's checks exceeding \$100.
Any amount	Suspicious transaction reporting	Financial institutions are encouraged by Treasury and required by financial industry regulators to report abnormal or suspicious transactions of any amount to IRS and the appropriate financial industry regulator. Various forms and methods of reporting are used.

Sources: GAO review of pertinent provisions of BSA and federal financial industry regulations and administrative rulings.

In 1990, Treasury developed a regulation to implement the 1988 amendment to BSA that required financial institutions to capture, verify, and retain information on the identity of purchasers of cashier's checks and other monetary instruments. After considering several alternative recordkeeping requirements, including a requirement that information be kept on copies of monetary instruments and be retrievable by copy, Treasury concluded that maintaining a log³ of the BSA-required information would be the most effective method of keeping the information.

Imposing a specific requirement that financial institutions maintain the BSA-required information on copies of monetary instruments was viewed as too burdensome because, according to Treasury officials, it would

²Our report on suspicious-transaction reporting discusses several methods that are currently used by financial institutions to report suspicious transactions. See *Money Laundering: Needed Improvements for Reporting Suspicious Transactions Are Planned* (GAO/GGD-95-156, May 30, 1995).

³A log is a means of recording information in one place to make the information more easily accessible.

require financial institutions to sift through thousands of documents located at various branches to comply with a Treasury request for purchaser information. Treasury also took into consideration that financial institutions keep different kinds of records for each type of monetary instrument and decided that a log would make the BSA information more easily accessible by both the financial institutions and the Treasury Department.

Treasury's August 1990 regulation requiring the log did not specify the form in which the log was to be maintained. In addition, the 1990 regulation allowed for but did not require that a separate log be maintained for each type of monetary instrument.⁴ Treasury anticipated that it would request copies of logs by date of issuance rather than by customer name, account number, or type of monetary instrument.

Subsequent to the institution of the log requirement, Treasury found that the BSA information that was being logged on the sale or exchange of cashier's checks for currency was seldom used by law enforcement officials and federal regulators to initiate or conduct money laundering investigations. Compliance with the log requirement was found to impose an expensive and time-consuming burden on the financial industry. As a result, in October 1994, Treasury rescinded the log requirement.⁵ Treasury now permits financial institutions to maintain the required BSA information in any format they choose, as long as the information can be readily retrieved at the request of the Secretary of the Treasury.

Views of Federal Regulatory, Financial Industry, and Law Enforcement Officials

Federal regulators, financial industry officials and advisory groups, and law enforcement officials with whom we spoke or who had expressed their views in published documents agreed that the rescinding of the log requirement that was associated with current BSA recordkeeping requirements and the renewal of emphasis on having financial institutions (1) develop effective know-your-customer programs and (2) report suspicious financial transactions, are sufficient requirements for financial institutions issuing cashier's checks. In addition, they agreed that imposing additional recordkeeping requirements, such as one that would specifically require financial institutions to retrieve copies of cashier's checks by customer name or account number, would not add to the effectiveness of the current BSA recordkeeping requirements.

⁴In addition to cashier's checks—bank checks, bank drafts, money orders, and traveler's checks were included in the scope of the log requirement.

⁵59 Fed. Reg. 52,250 (1994).

Previously Imposed Recordkeeping Log Requirement Was Not Beneficial

Federal regulators, financial industry officials and advisory groups, and law enforcement officials with whom we spoke or who had expressed their views in published documents supported Treasury's decision to rescind the log requirement for cashier's checks and other monetary instruments. Reasons cited included the time and effort it took to retrieve the required BSA information on specific purchasers, the limited usefulness of the data retrieved, and the expense associated with maintaining the data.

In 1993, Treasury formed a money laundering task force to consider ways to reduce the regulatory burden of complying with BSA while enhancing the utility of the information collected. In 1994, the task force concluded that the BSA information that financial institutions were required to maintain in logs had been infrequently requested and used by law enforcement officials. In addition, the task force and representatives of the financial services industry found that compliance with the log requirement imposed an expensive and time-consuming burden on financial institutions when weighed against more immediate leads in the hands of law enforcement officials, such as reports of suspicious transactions that were being sent directly to IRS.

Criminal investigators from IRS and the FBI said that, because of other leads and the ease of utilizing information obtained from direct reporting of suspicious criminal activities, including suspicious-transaction reports, the logged BSA data on the sale or exchange of monetary instruments were used infrequently. They said that the logged BSA information was used on a limited basis, primarily to build a stronger case against a suspect or for further investigation or research.

Representatives of financial institutions said that they found the log requirement to be costly and burdensome. To avoid the requirement, some financial institutions prohibited the direct sale of monetary instruments for cash to both deposit and nondeposit customers. Under this policy, customers were required to deposit cash into an account from which a financial institution could then issue a withdrawal to pay for the monetary instrument.⁶ Many bankers had indicated their preference for policies prohibiting the sale of monetary instruments for cash because this lessened the possibility of errors and omissions on the logs and eliminated the additional paperwork created by the log requirement.

⁶Treasury advised banks that such a policy did not violate BSA and that implementing such a policy was within the bank's discretion. However, Treasury did require the adoption of a written policy and formal written procedures for implementing it. Also, Treasury required that the policy apply to all deposit customers without exception.

The American Bankers Association estimated in October 1994 that the elimination of the log requirement could save the financial industry about \$1 million a year in compliance costs and ease the administrative burden on financial institutions.

Current Recordkeeping and Reporting Requirements Viewed As Sufficient

Federal regulators, financial industry officials and advisory groups, and law enforcement officials with whom we spoke or who had expressed their views in published documents agreed that increased emphasis is currently being placed on developing effective know-your-customer programs and suspicious-transaction reporting, that banks are required to retain copies of certain monetary instruments, and that financial institutions are required to obtain purchaser identifying information. They further agreed that these requirements are sufficient for assisting law enforcement officials in their efforts to detect and further investigate the use of monetary instruments to launder money.

Treasury consulted with a BSA advisory group⁷ composed of 30 representatives from the financial services industry, trades, businesses, and federal and state governments. Treasury concurred with the BSA advisory group's conclusion that financial institutions' resources could be more effectively used to assist law enforcement officials if more emphasis were placed on (1) developing effective know-your-customer programs and (2) reporting suspicious financial transactions to the appropriate regulatory agencies. The American Bankers Association also agreed with this conclusion.

Treasury and federal financial regulators have increased their efforts to alert financial institutions to be more aware that the institutions may be misused by criminals who engage in financial transactions to conceal illegal proceeds and avoid federal currency transaction reporting requirements. Financial institutions are being encouraged to become more familiar with the banking practices of their customers—commonly referred to as the know-your-customer program—so that transactions that are outside the norm can be readily identified and reported to appropriate regulatory agencies as suspicious.

Treasury expects to issue federal guidelines on developing know-your-customer programs and reporting suspicious transactions in 1995. In the absence of such guidelines, federal bank regulators and

⁷A 1992 amendment to BSA required Treasury to establish a BSA advisory group to advise the Secretary of the Treasury on how to modify reporting requirements to enhance law enforcement and inform the private sector on the uses of reported information.

financial industry groups have for some time provided guidance to their members either in writing or through seminars that address the importance of know-your-customer programs and suspicious-transaction reporting. These guidelines and seminars provided tips to financial institutions for detecting the use of cashier's checks and certain other monetary instruments to launder money.⁸ Appendix II provides information on guidance provided by the three major bank regulatory agencies and on money laundering seminars held by financial industry groups to inform their members.

Law enforcement officials responsible for combating money laundering activities with whom we spoke said that in light of the increased emphasis being placed on the development of know-your-customer programs and the reporting of suspicious transactions, no additional recordkeeping requirements are needed beyond those that are already in place. IRS and FBI criminal investigators said that they support the efforts of federal regulators to encourage financial institutions to place more emphasis on reporting suspicious transactions. These law enforcement officials said that current efforts to promote direct reporting of suspicious transactions would be more beneficial to them than searching through logs of information, because direct reporting would provide a more immediate and direct lead to criminal investigators. They also said that the increased emphasis on developing know-your-customer programs and reporting suspicious transactions, together with the ongoing requirement that financial institutions retain information on purchasers of monetary instruments, should improve law enforcement's ability to detect and further investigate the use of monetary instruments to launder money.

Conclusion

Federal regulators, financial industry and advisory groups, and federal law enforcement officials with whom we spoke or who had expressed their views in published documents agreed that current recordkeeping requirements for cashier's checks—together with the renewed emphasis being placed on the development of effective know-your-customer programs and suspicious-transaction reporting requirements—are sufficient means for assisting law enforcement officials in their efforts to combat the use of cashier's checks and certain other monetary instruments to launder money.

⁸Results from a 1990 American Bankers Association survey showed that 86 percent of the banking industry had established know-your-customer guidelines.

Agency Comments

In June 1995, we requested comments on a draft of this report from the Secretary of the Treasury or his designee, the Commissioner of IRS or her designee, and the American Bankers Association. In written responses, the Director of Treasury's Financial Crimes Enforcement Network, the IRS Assistant Commissioner of Criminal Investigations, and the Senior Federal Counsel on Government Relations and Retail Banking of the American Bankers Association all agreed with the information presented and the conclusion reached.

We are sending copies of this report to the Secretary of the Treasury, the Director of Treasury's Financial Crimes Enforcement Network, the Commissioner of Internal Revenue, the IRS Assistant Commissioner of Criminal Investigations, the Attorney General, the Chief of the FBI's Economic Crimes Unit, and other interested parties. We will also make copies available to others upon request.

This report was prepared under the direction and guidance of Chas. Michael Johnson, Evaluator-in-Charge. Please contact me at (202) 512-8777 if you have any questions concerning this report.



Laurie E. Ekstrand
Associate Director, Administration
of Justice Issues

Objectives, Scope, and Methodology

As agreed with the Committees, we limited the scope of our review to (1) identifying current recordkeeping requirements and (2) determining the views of federal government and financial industry officials on the need for additional recordkeeping requirements for financial institutions issuing cashier's checks.

To familiarize ourselves with how cashier's checks are issued and to identify recordkeeping and reporting requirements imposed on financial institutions issuing cashier's checks, we reviewed pertinent provisions of the Bank Secrecy Act, relevant federal rules and regulations, and published material such as financial and legal industry reports on BSA compliance. We also interviewed officials from the Department of the Treasury's Financial Crimes Enforcement Network and IRS' Criminal Investigation Division (CID) to obtain their views on the level of compliance with these requirements and the need for additional requirements.

We obtained the views of the Senior Federal Counsel on Government Relations and Retail Banking of the American Bankers Association on the cost and impact of current, previous, and proposed recordkeeping and reporting requirements for cashier's checks. We also discussed the use of these logs by law enforcement officials and obtained the American Bankers Association's views on whether additional recordkeeping and reporting requirements for cashier's checks are needed.

We met with law enforcement officials of IRS' CID and the FBI's Economic Crimes Unit to ascertain what problems, if any, they may have with current, previous, and proposed recordkeeping and reporting requirements. We also discussed whether improvements are needed to assist them in their efforts to combat the use of cashier's checks and other monetary instruments to launder money.

We consulted with officials from the Banking and Supervision units of the Federal Reserve Board (FRB), Office of the Comptroller of the Currency (OCC), and Federal Deposit Insurance Corporation (FDIC) in Washington, D.C., to obtain their views on current, previous, and proposed recordkeeping and reporting requirements and to identify efforts undertaken by the banking industry to ensure compliance with BSA and regulatory requirements. We discussed steps taken by these bank regulators to combat the use of cashier's checks and other monetary instruments to launder money and reviewed relevant agency documents relating to detecting and deterring money laundering.

Appendix I
Objectives, Scope, and Methodology

We could not address the extent to which cashier's checks have been involved in money laundering schemes because no statistical data existed.

We did our review in accordance with generally accepted government auditing standards from November 1994 through March 1995 at the Department of the Treasury in Washington, D.C.; at IRS' CID in Washington, D.C., and Alexandria, VA; at the FBI in Washington, D.C.; and at various financial and regulatory organizations in Washington, D.C.

Guidance Provided by Federal Bank Regulatory Agencies and Financial Industry Groups for Detecting the Use of Cashier's Checks to Launder Money

In the absence of standard know-your-customer guidelines from Treasury, federal bank regulators¹ have issued guidance that addresses the importance of developing effective controls to detect and report, among other things, the suspected use of cashier's checks to launder money. For example, OCC has periodically reissued a pamphlet to national banks entitled Money Laundering: A Banker's Guide to Avoiding Problems. In a June 1993 update of this pamphlet, OCC reemphasized that know-your-customer policies are a bank's most effective weapon against being used unwittingly to launder money. The OCC pamphlet stated that knowing your customers includes requiring appropriate identification and being alert to unusual or suspicious transactions, including those involving cashier's checks or other monetary instruments. The OCC pamphlet also highlighted suspicious activities that bank employees should look for and included a discussion of ways bank customers may attempt to avoid BSA reporting requirements.

In March 1991, FDIC provided guidance to state nonmember banks on reporting suspicious transactions. The guidance encouraged these banks to be alert to the possibility that they may be misused by persons who are intentionally attempting to evade the BSA reporting requirements or who are engaging in transactions that may involve money laundering.

In January 1995, FRB provided guidance to its member banks outlining the importance of know-your-customer programs and the detection and reporting of suspicious transactions. FRB guidance to its members emphasized that it is imperative that financial institutions adopt know-your-customer guidelines or procedures to ensure the immediate detection and identification of suspicious activity at the institution. FRB's January 1995 guidance noted that an integral part of an effective know-your-customer policy is to have comprehensive knowledge of the transactions carried out by a customer in order to be able to identify transactions that are inconsistent.

In addition, informative publications have been issued and various money laundering conferences and seminars have been held to discuss new developments and changes in the oversight of criminal activities to launder money. These efforts have involved federal regulators, law enforcement and financial industry groups, and trade associations. For example, the American Bankers Association, in conjunction with the American Bar Association's Criminal Justice Section, periodically holds

¹Federal bank regulators are responsible for, among other things, ensuring that financial institutions apprise federal law enforcement authorities of any violation or suspected violation of a criminal statute, including money laundering.

Appendix II
Guidance Provided by Federal Bank
Regulatory Agencies and Financial Industry
Groups for Detecting the Use of Cashier's
Checks to Launder Money

Money Laundering Enforcement Seminars to highlight Treasury initiatives in the money laundering area. An October 1994 seminar, sponsored by the American Bankers Association and the American Bar Association, addressed a proposal for mandatory suspicious-transaction reporting and the need for banks to develop know-your-customer programs. The seminar also included a discussion on the use of monetary instruments to launder money. The American Bankers Association estimated that it alone had trained 75,000 to 100,000 bankers in the past 8 years through these seminars.

The following are some examples highlighted in the guidance provided to financial institutions of activities that might be considered inconsistent with a customer's normal business activity:

- an account that shows frequent deposits of large bills for a business that generally does not deal in large amounts of cash;
- accounts with very large volumes of deposits in cashier's checks, money orders, and/or wire transfers when the nature of the account holder's business does not justify such activity; and
- deposits of numerous checks but rare withdrawals of currency for daily operations.

The following are some examples of other customer activities that may trigger suspicious-transaction reports:

- a reluctance on the part of the customer to produce identification or provide personal background information when opening an account or purchasing monetary instruments above a specified threshold,
- a customer's taking back part of the currency to reduce the purchase to below \$3,000 after becoming aware of the financial institution's recordkeeping requirement, and
- a customer's coming into the same institution on consecutive or near-consecutive business days to purchase cashier's checks in amounts of less than \$3,000.

Informant

The informant is a member of the Communist Party, USA, New York City, and is currently active in the party. He has been active in the party since 1945 and has held various positions, including Chairman of the Party in the area of [redacted]. He is currently a member of the [redacted] and is active in the [redacted].

Informant is a [redacted]

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