

MEMORANDUM

To: Drafting Committee and Observers
Uniform Money Services Business Act (formerly the Proposed Act on Non-depository Providers of Financial Services)

From: Anita Ramasastry, Reporter

Date: February 15, 2000

Re: Sixth Draft of Proposed Act

Please find attached the Sixth Draft of the Proposed Uniform Money Services Business Act ("UMSBA"). The Drafting Committee last met in Arlington, Virginia in October 1999. The changes in the Sixth Draft reflect comments and suggestions made during the October 1999 meeting. This memorandum sets forth the changes that have been made. Many of the changes included in the Sixth Draft are a refinement of previous drafting language to provide greater clarity rather than major policy changes.

A. Definitions

The following definitions have been amended to provide for greater clarity.

1. The term "money services business" has been shortened to "money services." Money services include money transmitters, check cashers and currency exchangers. The previous term, "money-services business," closely paralleled the federal definition included in recent registration rules promulgated by The Financial Crimes Enforcement Network of the United States Treasury. However, within the UMSBA the use of the word "business" has been confusing because of the separate use of the term "engage in the business." The UMSBA defines the phrase "engage in the business" to provide for a threshold to determine which entities should be licensed under the Act. However, inconsistencies in the use of "engage in the business" arose because of the reference to licensees that engage in money service business activity.
2. The definition of "check cashing" has been amended to specifically exclude entities that provide deferred-deposit services for a fee. Such services are often referred to as "pay-day loans" whereby a customer receives money in exchange for a check that will be submitted for collection at a specified time in the **future**. The check is often to be presented at the time of the customer's next pay period (hence the reference to "pay-day"). It is believed that such services do not constitute check cashing but are rather a related service often regulated by separate statute.

B. Simplification of Security Requirements

The security requirements set forth for money transmitters in Section 203 have been shortened and simplified. Previously, Section 203 made reference to letters of credit, cash, and other security devices. Additionally, Section 203 also stipulated certain

requirements with respect to letters of credit. The current Section 203 focuses on the requirements for surety bonds, which are the most common security device used by money transmitters. The state superintendent, however, is given the authority to accept other security devices.

C. Bracketing of Annual Renewal Report Provisions

The provisions of the UMSBA, which require licensees to file annual renewal reports (Sections 205(b), 304(b) and 404(b)), have been bracketed. States often use either an annual renewal report or annual examinations as a means of exercising regulatory oversight of a licensee. Thus, some states do not currently require annual reports and utilize annual examinations. Other states rely more on annual reports. The Drafting Committee decided, therefore, to bracket the annual renewal report requirement to make it optional. The examination provision has not been bracketed since Section 601 only provides authority for the superintendent to conduct examinations but does not require such examinations to take place annually. States will be free to choose whether they wish to make reporting part of their supervisory regime.

D. Changes to Enforcement Provisions

Section 801 provides the Superintendent with authority to seek a cease and desist order or begin other enforcement proceedings against a licensee. Section 801(a)(2) has been amended and language concerning the licensee's responsibility for the fraud, misrepresentation, deceit or gross negligence of an authorized delegate has been removed. Under the previous Section 801(a)(2), the licensee could have its license revoked based on misrepresentation or fraudulent acts by one of its authorized delegates.

Section 801(a)(3) has also been revised. The licensee may still have its license revoked should an authorized delegate violate either a money-laundering statute or any part of the UMSBA. This creates a degree of accountability on the part of the licensee for its delegates with respect to compliance with state and federal anti-money laundering measures and also with the requirements of this Act. However, it has been difficult for regulators to articulate a clearly defined standard as to what constitutes a "willful failure to supervise" an authorized delegate. Consequently, this language has been omitted.

Section 802 of the UMSBA provides the Superintendent with authority to seek a cease and desist order against an authorized delegate of the licensee. Section 802(a) has been revised to focus solely on the conduct of the authorized delegate. Previously, the superintendent was able to issue a cease and desist order against the licensee based on the conduct of a licensee's delegate. As noted in Section 801, under certain circumstances a licensee may lose its license or be subject to other action by the superintendent if a delegate engages in violations of the Act or of related money laundering statutes and regulations as a result of the licensee's willful misconduct or willful blindness. A new subsection (b) has been added to Section 802, which permits the superintendent to issue an order against a licensee requiring the licensee to cease providing services through a delegate if the delegate is already subject to a separate cease and desist order.

E. Cyberpayment Issues

At the October 1999 meeting, the Drafting Committee decided to ask a group of experts (academics, regulators and industry observers) to form a Working Group to examine “cyberpayments” issues. This group is headed by Drafting Committee member Commissioner Bion Gregory. The Working Group is currently examining the following issues:

1. What, if any new payment mechanisms might be included within the scope of the UMSBA? Possible entities that are being considered include on-line bill payment services and non-bank electronic currency providers.
2. To the extent that Internet-based payment mechanisms are included within the scope of the UMSBA, what jurisdictional concerns arise and how should the UMSBA deal with these issues?

The Working Group will make recommendations for consideration by the Drafting Committee at its March meeting.