



**U.S. Immigration
and Customs
Enforcement**

*Office of the Principal Legal Advisor
Customs Enforcement Law Division*
U.S. Department of Homeland Security
425 I Street, NW, Room 6100
Washington, DC 20536

Via Facsimile (340) 776-1639

February 10, 2004

Tom Bolt, Esq.
Chair Study Committee- Uniform Money Services Act
National Conference of Commissioners on Uniform State Laws
211 East Ontario Street, Suite 1300
Chicago, IL 60611

Dear Mr. Bolt

On January 5, 2004 you requested comments on revising the Uniform Money Services Act. We have processed your request and provide the attached comments. However, please be advised that these comments **do NOT** constitute official United States government endorsement of your activities.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Ayman Rizkalla
Associate Legal Advisor

cc: S/A David Eoff

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With regard to NCCUSL's request for comments on the proposed revision of the Uniform Money Services Act, Financial Investigations Division is providing the following information

I. Relationship between UMSA and federal Anti-Terrorism/Anti-Money Laundering Initiatives

We would note that while the federal government does not directly regulate Money Service Businesses, ICE does investigate violations of 18 U.S.C. § 1960 – Operating an unlicensed/unregistered money remitter. We have numerous successful prosecutions in many judicial districts, this giving teeth to the licensing and registration requirements. We agree that the states are properly situated to be the principal regulators of MSBs.

II. Possible revision to USMA relating to federal anti-terrorism initiatives:

- A. We would support the NCCUSL's effort to refine the definition of money transmission to include both informal funds transfer systems (IFTS) and informal value transfer systems (IVTS), if possible. The first is broadly defined as those transfers of funds, both international and domestic, that occur outside conventional financial systems. The second is broadly defined as transfers of value, i.e. merchandise, services or intangibles, for the purpose of achieving a related delivery of funds in another place, outside of conventional regulatory controls. We would support making IFTS/IVTS more transparent and more subject to regulation, for the purpose of driving illicit funds into the open and closing the systems to criminals and/or terrorists.
- B. We agree with proposals that make it more difficult for criminals to operate and/or use MSBs, while allowing legitimate users and operators to function in a reasonable regulatory environment. To that end, we consider all of the listed amendments appropriate, except that we see no need, based on investigative experience, to lower the reporting threshold below \$3,000 (\$2,000 for suspicious transfers). Also, we recognize that it is common business practice for some licensees, such as Western Union, to employ numerous agents under their "umbrellas."

III. Amendments to balance the needs of MSB of smaller size and limited scope:

As detailed above, ICE would agree with amendments that would increase the transparency of MSB operations and drive illicit funds into the open. To the extent that smaller MSBs are operating without a license only because of the size or scope of their businesses, these proposals would increase transparency and allow for a lawful way for them to operate.

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In response to the NCCUSL study on revising the UMSA laws, the ICE Cyber Crimes Center (C3) was asked to provide comment on Internet payment and fund transfer companies, and how they may relate to revisions in the UMSA aimed at enhancing anti and counter-terrorism measures. C3 will first provide comments on several direct questions/issues were raised regarding Internet aspects. There are however several other issues that may or may not have been raised that C3 believes should be considered regarding Internet payment and fund transfer systems that may have implications on the UMSA, or at least should be studied further for applicability.

First, regarding the state of licensing for Internet funds transfer companies and a home state model. Although it is true that these companies may not have a physical presence in all the states, the nature of the medium in which they operate, namely the Internet, allows them to do business in all 53 states and territories, as well as internationally. A home state model acting as a universal standard would appear to adequately address the issue of providing the necessary information on the operators, as well as preventing the creation of "financial haven" states that would make one state more attractive than another due to less stringent licensing requirements. In reference to this applying to Internet payment providers, it is C3's opinion that in many cases these payment providers act in an almost identical manner as transfer companies. The payment company acts as an intermediary between a seller and a buyer of merchandise and manipulates the payment of funds between users bank accounts or credit cards. There is no requirement however for any payment for goods to take place. A user of one of the these type systems, Paypal for example, can simply direct a transfer of a certain amount of their funds to be transferred to bank account, credit card, or Paypal account of another user. Therefore, the committee should explore if there is or should be any defined difference between Internet payment and transfer systems.

C3 has several other issues that it believes should be brought into the discussion regarding Internet money services.

I. The issue of identifying the users/customers, and transactions taking place on the systems.

Many on-line Internet financial systems, including banks and wire companies, have a wide variety of methods to identify their customers ranging from no verification to extensive verification. Without the proper verification of who their customers are, the reporting requirements regarding transactions and the intelligence obtained are of dubious value.

II. Payment/Transfer systems using or based on other than currency.

Many on-line payment and money transfer systems use gold or other commodities rather than currency. In some ways analogous to an electronic "Hawala." These systems operate like normal banks and payment/transfer systems, but utilize other standards of value other than currency that are designed to be readily converted back into currency.

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III. The proper tracking and record of on-line transactions

To properly track and record an Internet money transaction it is important that the Internet specific information relating to the transaction be recorded, especially the IP address of the customer. While the identity of the customer may be in question, the IP address can be used to identify the country of origin, the Internet provider of the customer, and ultimately the true identity of the customer. Internet information should be identified as a required record to be kept by any banking or financial transfer or payment service that offers services via the Internet.