

FinCEN Notice 2011-3 Administrative Relief for Sellers and Providers of Prepaid Access

FinCEN is issuing this Notice to provide administrative relief to sellers and providers of prepaid access that would otherwise be subject to certain Bank Secrecy Act (“BSA”) requirements imposed by a final rule published on July 29, 2011 (the “Final Rule”).¹ As a result of this administrative relief, sellers of prepaid access will have until March 31, 2012 to comply with those requirements that are scheduled to go into effect beginning September 27, 2011. Providers of prepaid access will be required to comply with some, but not all, aspects of the Final Rule by September 27, 2011; for the remaining requirements, compliance is extended until March 31, 2012.² For both providers and sellers of prepaid access, FinCEN will not initiate any compliance matter or enforcement action prior to March 31, 2012 for violations of the Final Rule; nor will FinCEN assess any civil money penalties for violations of the Final Rule that occur prior to March 31, 2012.

Since the publication of the Final Rule, FinCEN has received industry comments offering compelling information regarding the compliance challenges faced by sellers of prepaid access in complying with the obligations under the Final Rule by September 27, 2011. This effective date coincides closely with the back-to-school season and the start of the holiday shopping season, when retail sales and consumer traffic are at their peak. In anticipation of the industry’s busiest time of the year, a “lockdown” or freeze is routinely imposed on IT systems to facilitate the successful transaction of a heavy volume of business. This lockdown effectively bars any further

¹ Bank Secrecy Act Regulations – Definitions and Other Regulations Relating to Prepaid Access, 76 FR 45403 (July 29, 2011). The BSA is codified in part at 31 U.S.C. 5311 – 5314 and 5316-5332. Rules implementing the BSA are codified at 31 CFR Chapter X. Specifically, the Final Rule: (1) renames “stored value” as “prepaid access,” defines that term, and eliminates other terms such as Issuer and Redeemer of Stored Value; (2) imposes anti-money laundering program, suspicious activity reporting, customer information and transaction recordkeeping requirements on both the seller and provider of prepaid access; (3) requires a provider of prepaid access to register with FinCEN; and (4) exempts certain categories of prepaid access products and services from regulation.

² This administrative relief effectively extends the compliance date for 31 CFR 1022.380 to March 31, 2012, notwithstanding the initial compliance date of January 29, 2012 included with the issuance of the Final Rule.

changes to system operations until the completion of the holiday season, approximately the end of January of the following calendar year. For many businesses, this lockdown has either already occurred or will occur very soon.

Providers of prepaid access may encounter some of the same difficulties as sellers of prepaid access. In addition to preparing their own systems for the new rule, providers of prepaid access may need to negotiate new agreements with their distributors and retailers in order to clarify the status of their products under the new rules. However, we believe that most providers are differently situated from those in the seller community. As reflected in the comments provided by the industry during the rulemaking process, we learned that some providers are currently capable of complying with the basic requirements to establish an AML program, report suspicious transactions and retain transaction records. We believe that many aspects of the Final Rule are already common business practices for providers and, consequently, that they will be able to comply with those aspects of the Final Rule which reflect common business practices by the original effective date of September 27, 2011.

Specifically, we expect that providers will be prepared to comply with the following by September 27, 2011:

- (1) 31 CFR 1022.210 (a) and (b): Development of an AML program that is risk-based and commensurate with the location, size and types of financial services offered;
- (2) 31 CFR 1022.320: Reporting of suspicious transactions; and
- (3) 31 CFR 1022.420: Maintenance of additional records by providers and sellers of prepaid access.

In light of these concerns, FinCEN believes that it is appropriate to extend the date by which sellers of prepaid access must comply with all provisions of the Final Rule and the date

by which providers of prepaid access must comply with the provisions of the Final Rule other than those listed above. Therefore, this Notice provides sellers with an extension of time until March 31, 2012 to comply with the Final Rule, and providers with an extension of time until March 31, 2012 to comply with all aspects of the Final Rule other than those specified above. For both providers and sellers of prepaid access, FinCEN will not initiate any compliance matter or enforcement action prior to March 31, 2012 for violations of the Final Rule; nor will FinCEN assess any civil money penalties for violations of the Final Rule that occur prior to March 31, 2012.

We expect that prepaid access sellers and providers will have adequate processes in place to comply with the Final Rule by March 31, 2012.

Dated: September 9, 2011

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