



TEXAS DEPARTMENT OF BANKING

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SUPERVISORY MEMORANDUM – 1041

DATE: November 24, 2015

TO: Money Services Business License Holders

FROM: Charles G. Cooper, Banking Commissioner

SUBJECT: Examination Policy for Domestic MSBs that Conduct Business from a Non-traditional Office Location

Background and Purpose

An increasing number of money services businesses (MSBs) operate exclusively through a website or mobile application, allowing consumers to use their services irrespective of where the company is located. Because these MSBs do not conduct their business with their customers in a traditional face-to-face manner, some are choosing not to operate out of conventional brick-and-mortar locations nor to maintain a traditional corporate headquarters. Instead, some are choosing to conduct business from a residence or they are choosing to operate their businesses entirely remotely.

While the Texas Department of Banking (Department) accepts non-traditional business locations for licensing purposes, the Department is unable to conduct examinations at such locations. This supervisory memorandum outlines the policy of the Department with regard to domestic MSBs that conduct their business from non-traditional office locations. This memorandum addresses where the Department will conduct examinations, in accordance with the Department's statutory duties, when a domestic MSB does not have a conventional office.

Statement of Policy

Pursuant to Texas Finance Code § 151.601, MSB license holders shall provide, and the Department shall have full and complete access to, all records the Department may reasonably require to conduct a complete examination, and the records must be provided at the location and in the format specified by the Department. For most MSBs, the corporate office is specified by the Department as the location where examinations will be conducted. However, for those domestic MSBs operating out of a location other than a corporate office — such as a private residence — or that operate entirely on a virtual or remote basis, another mutually acceptable location must be specified for examinations.

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In selecting an alternate and mutually acceptable location for an examination, the MSB must select a commercial location, such as an office building, hotel or other location where a private space — like a conference room — can be reserved. A home office or a public retail location, such as a coffee shop, will not be an acceptable location. The location may be in the home state of the MSB or in the home state of the examiners, keeping in mind that the MSB shall pay all costs reasonably incurred in connection with its examinations. *See* Texas Finance Code § 151.601(d) and 7 Texas Administrative Code § 33.27(h).

The examination location must be private, so that examiners and MSB employees can discuss information without risk of exposing information made confidential under state and federal law. It is also important that the space is private so that there are minimal distractions while the examination is taking place. If the MSB operates out of a shared office space, an examination may be conducted at that location if the MSB has access to a conference room or other private space within the shared space; however, the examination cannot be conducted in the shared area itself. In addition, the MSB must provide a space that is large enough to accommodate all participating examiners.

Beyond the size and site of the examination location, the MSB must also provide for at least one employee to be physically present to assist with the examination. The employee must be knowledgeable about the MSB's business operations and computer systems. The employee need not sit in the room with the examiners for the entire period of the examination, but must remain close by and be available to answer questions or retrieve records as requested. Arrangements must also be made for the MSB's computer systems to be available during the examination, such that the MSB employee and examiners have real-time access to the MSB's programs and platforms in the same manner as if they were in the MSB's office itself. Such access will necessitate a space with a VPN connection or internet access and where the MSB can set up its own computer that interfaces with its own systems. It is also recommended but not required that a copier and a printer are available at the location so that records can be provided to examiners on paper as needed. Finally, the MSB must be able to facilitate meetings with officers, managers and/or employees, either at the location of the examination or via telephone or video conference meetings.

Conclusion

The Department must conduct examinations of its MSB license holders in locations that are safe and secure. While home and virtual offices are acceptable for conducting business, they are not acceptable for conducting examinations. In those instances where a traditional office location is not available, the Department and MSBs must find alternate and mutually acceptable locations for examinations. The Department believes the policy set out above will ensure that examinations are conducted in a safe and complete manner, to the benefit of both the MSB and the Department.