



ATMIA Advocacy Update – July 2019

IAD (Independent ATM Deployer) bank account closure concerns now extending to business operating accounts. Past account closures involved cash settlement accounts held by IADs; almost exclusively. In recent months, however, we are seeing a growing number of ordinary business operating accounts – payroll, loan payments, operating expenses, etc. – also being closed. In some cases, this new trend is even impacting ATM businesses that outsource all their cash services, which means that they don't even have a cash settlement account.

Another area of concern was highlighted by ATMIA's [2019 Cash Settlement Account Closure Survey](#), which found that respondent IADs were often told that they are classified as an MSB (Money Services Business) – a type of business the prospective bank does not accept. Of those who were given a reason for their account closure, that was the most common – 29% of respondents. However, owning/operating an ATM clearly falls outside of the FinCEN/FDIC [definition of an MSB](#).

ATMIA USA executive director, David Tente, and EFTA president and CEO, Kurt Helwig, **met with the OCC, FDIC, and CFPB to discuss these issues** on June 13th. These three agencies, along with the NCUA (National Credit Union Administration) are the primary contributors to the FFIEC Bank Examination Manual. In each meeting, David noted that the current FFIEC manual has been in use for quite some time. However, the harsh and inaccurate language used to describe independent ATM operators did not seem to have any negative impact on IADs until after the launch of Operation Choke Point in 2013. And that impact lingers on.

The FDIC was aware that updates to the bank examination manual were in progress, but did not seem to be aware of our industry's concern for several segments of its language. In particular, the accuracy of the segment below is questionable.

As a result, many privately owned ATMs have been involved in, or are susceptible to, money laundering schemes, identity theft, outright theft of the ATM currency, and fraud. Consequently, privately owned ATMs and their ISOs pose increased risk and should be treated accordingly by banks doing business with them.

David pointed out that financial institution ATMs are also at risk for fraud and physical attacks. In fact, since bank ATMs tend to generate greater transaction volume and contain more cash, an argument could be made that they are even more attractive targets.

The OCC indicated that revision of the FFIEC Bank Examination Manual is already underway. They expect that changes will be complete within the next few weeks, allowing for release of a new version of

the manual by year-end. The FDIC was not willing to confirm that schedule and stated, "These inter-agency things take time." It is not clear how actively CFPB staff will participate in the manual revision process, but they will be weighing in on any changes.

Everyone we met with exhibited some level of **surprise that ATM operators are being categorized as MSBs** by many banks. The FinCEN definition of a Money Services Business is quite clear and succinct.

The term "money services business" includes any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the following capacities:

- (1) Currency dealer or exchanger.
- (2) Check casher.
- (3) Issuer of traveler's checks, money orders or stored value.
- (4) Seller or redeemer of traveler's checks, money orders or stored value.
- (5) Money transmitter.

Owning and operating an ATM that simply dispenses cash as part of a common withdrawal transaction does not fall within this definition. There is no way to know for certain what is causing these mischaracterizations. The FDIC has requested a copy of the ATMIA Account Closure Survey report to help them better understand the circumstances.

Our conversation with the CFPB about **fraud of the Reg E claims process** was also revisited with its new leadership. Although such fraud is "only" a \$20 million problem for the industry, it falls disproportionately on IADs. Some skepticism was expressed about the high rate of fraudulent claims (20 - 25%) identified by our research. A copy of that 2015 research was forwarded to the Deputy Assistant Director for further consideration. It appears doubtful that the consumer window for reporting claims will be reduced. But we remain hopeful that claim response times can be increased and some disincentive created that will reduce this ongoing problem.

Conclusions and next steps. In our view, all these meetings were very productive. We are confident that our conversations with the FDIC and CFPB have informed them of the critical need for changes to the bank examination manual language. And that we have further convinced the OCC of the same.

A final version of the suggested changes to the FFIEC manual has been forwarded to all parties for approval.

Other advocacy resources are available to all ATMIA members:

Sign up for legislative alerts from all 50 states by selecting 'Stateside' for one of your email preferences.

Interested in participating in the March 24 & 25, 2020 Washington, DC fly-In? Contact [David Tente](#).

A more [detailed definition](#) of Money Services Businesses, including the relative Federal Code is also available on the ATMIA website.

The [Operation Choke Point Resource Kit](#) is still available for more information and suggestions on how best to deal with it.

The “ATM Money Laundering Myth” cash cycles infographic is available for download from the [ATMIA Market Intelligence Library](#).

For more information about any of these resources or initiatives, contact [David Tente](#).

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