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AN UPDATE ON MONEY SERVICES BUSINESSES UNDER BANK SECRECY AND USA PATRIOT REGULATION

HEARING

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

ON

MONEY SERVICES BUSINESSES UNDER BANK SECRECY ACT AND USA PATRIOT ACT REGULATIONS, FOCUSING ON FEDERAL AND STATE EFFORTS IN THE ANTI-MONEY LAUNDERING AREA

APRIL 26, 2005

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C O N T E N T S

TUESDAY, APRIL 26, 2005

WITNESSES

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

AN UPDATE ON MONEY SERVICES BUSINESSES UNDER BANK SECRECY AND USA PATRIOT REGULATION

TUESDAY, APRIL 26, 2005

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The Committee met at 10:05 a.m., in room SD–538, Dirksen Senate Office Building, Senator Richard C. Shelby (Chairman of the Committee) presiding.

OPENING STATEMENT OF CHAIRMAN RICHARD SHELBY

Chairman SHELBY. This hearing will come to order.

This morning, the Committee will hear testimony from representatives of the banking and money services industries, as well as from the Government agencies that regulate them, on the rapidly growing problem of what for lack of a better term we will call "the unbanking of MSB's."

Money services businesses, MSB's as we call them, include wire transmitters, check cashers, sellers and redeemers of money orders, and currency exchangers. MSB's are a large and vital part of the global economy. It is estimated that the international market for remittances by itself is as much as $80 billion per year. That is money generally earned in developed countries by foreign nationals that is wired home to family members in less developed countries. It is a large and important component of those countries' economies and has helped hundreds of thousands if not millions of otherwise desperately poor families to earn vitally needed currency.

Even more than within the formal banking system, however, MSB's are vulnerable to abuse by criminals and terrorist organizations. It is now well-known of course that much of the money that supported the terrorists that carried out the horrible attacks of September 11, 2001 was wired to them from the Persian Gulf, especially the Emirate of Dubai. It is not only al Qaeda though that moves cash around by way of money transmitters. The *Times of London* reported on April 3 of this year that Hezbollah has continually provided funding to Palestinian terrorist organizations by way of money transmitters. The *Times* quotes a captured member of the Palestinian Islamic Jihad as stating with respect to Hezbollah's support for Palestinian terrorist groups, "They would send Islamic Jihad money in amounts of something like $4,000," said the 27-year-old leader of that organization. "It is easy. They just use Western Union."

It is not just terrorists. Drug traffickers too routinely exploit the vast MSB world to move the proceeds of their criminal activity. Exactly one year ago a DEA-led organized crime drug enforcement task force in Texas concluded a major investigation, Operation Candy Box. It involved the use of wire transfer services to launder and move money. Concurrently, an FBI-led investigation also in Texas and dubbed Operation Foreign Exchange resulted in the filing of 6 criminal complaints charging 7 individuals with money laundering and violations of the Bank Secrecy Act.

Enhanced scrutiny and oversight of MSB's was then, and remains, fully warranted. Unfortunately, the very nature of many MSB's, in effect their global reach, ease, and reliability, has increased perceptions of them as high risk by the banks with whom they have to maintain accounts in order to do business. Banks in turn have been dumping or unbanking their MSB accounts, and they are doing this in a major way. MSB's, a vital component of the global financial system, are at risk of being driven out of business, or more ominously, underground.

That brings us to the subject of today's hearing, the latest in the Banking Committee's ongoing examination of money laundering and terror financing. How do we regulate MSB's sufficient to ensure that they are not abused by criminals and terrorists? How do the MSB's police themselves in conformity with antimoney laundering and Bank Secrecy Act statutes and regulations? How do banks regain the level of confidence in the first two questions to feel comfortable banking MSB's? It is the Committee's hope that the witnesses testifying here this morning will help us to understand the scale of the problem and what to do about it.

Our first panel is composed of representatives of U.S. Government agencies responsible for regulating money services businesses and for enforcing the Bank Secrecy Act. They include: William Fox, Director of the Financial Crimes Enforcement Network, who has details of the newly released interagency guidance on providing banking services to MSB's; Kevin Brown, Commissioner of Small Business and Self-Employment Division, Internal Revenue Service; Julie Williams, Acting Comptroller of the Currency; and a representative of State banking supervisors, Diane Taylor, Superintendent of Banks, New York State Banking Department. Ms. Taylor's testimony is particularly important both for the role the States play in licensing MSB's and for the vast number of MSB's that operate in her State.

Our second panel will include: John Byrne, Director, Center for Regulatory Compliance, American Bankers Association; Gerald Goldman, General Counsel, Financial Service Centers of America; Daniel Landsman, Executive Director, National Money Transmitters Association; and Dan O'Malley, Vice President for the Americas MoneyGram International.

We welcome all of you today and we look forward to your testimony.

Senator Johnson, do you have an opening statement?

STATEMENT OF SENATOR TIM JOHNSON

Senator JOHNSON. Yes, I do. Thank you, Chairman Shelby for holding this important hearing today. I am pleased that the Bank-

ing Committee is exercising its important oversight function to determine whether the Bank Secrecy Act and the USA PATRIOT Act are working properly to deter and detect money laundering and terrorist financing activity.

Following the attacks of September 11 we recognized that the war on terrorism needs to be fought on many fronts. While extreme ideology fuels terrorist activity, terrorists would be unable to implement their plans without financial resources. I can think of few Committee responsibilities more important than helping to ensure our financial services infrastructure is not used in this manner.

Today's hearing focuses on whether antimoney laundering legislation is having unintended negative consequences on money services businesses, and by extension, on low-income communities that have come to rely on nonbank financial services sector. The lessons that we learn from today's hearing will, I hope, inform future legislative and regulatory action as we work to balance important national security priorities with the capacities of industry and regulators to implement the law.

As Ranking Member Sarbanes pointed out in a hearing last June, one of the biggest problems we have seen with the Bank Secrecy Act is that no one seems to be directly accountable for its enforcement. My colleague from Maryland noted that those with BSA enforcement responsibility range from Treasury to FinCEN to the Federal banking regulators, to the FBI, to the Bureau of Immigration and Customs Enforcement, to the Drug Enforcement Administration, and to the IRS.

I am hopeful that the witnesses today will have some good news to share about progress in BSA enforcement coordination. However, I remain concerned that the BSA and other laws that we have crafted are not being implemented in a fashion that maximizes their effectiveness. For example, Mr. Fox has noted in his testimony that we have seen a dramatic rise in defensive filing of suspicious activity reports, which clearly undermines the usefulness of SAR's as a tool for law enforcement. As a matter of fact, in the *American Banker* just today, an article indicates that the debate over why banks are filing more suspicious activity reports than ever has turned into a war of letters among bankers, regulators, and even Members of Congress. Bankers are complaining that the Agency's zero tolerance policy for violations has given banks no choice but to flood the agencies with so-called "defensive filings." Regulators have responded that hefty fines handed down by the Justice Department have led to a surge in filings, and the article goes on about the concern we have here in this respect.

In addition, I share the concern of my colleagues that so many depository institutions have discontinued essential banking services for money remitters and other money services businesses. We need to look carefully at what regulatory resources have been dedicated to helping regulated entities understand how to continue serving this important sector.

Clearly, we are making progress on the war on terror, and I would like to express my profound appreciation to those of you here today who have committed yourselves to the safety and the integrity of our Nation's financial sector. We will not be successful in

protecting our system without a strong partnership between and among the regulators and the regulated entities.

I look forward to hearing from enforcement officials as to what steps they have taken to ensure that policy decisions made in Washington are actually being communicated to regional and local examiners. I cannot tell you how many times I have heard concerns about the time it takes for guidance to trickle down to the field, and similar concerns about the consistency in training levels for field agents and examiner.

Likewise, I would like to hear from the financial service witnesses, what steps they have taken to implement the law and where they would benefit from more guidance.

Mr. Chairman, I am confident that we will continue to improve our antimoney laundering enforcement efforts, but we clearly have a long road ahead of us to work out some of the unintended consequences that have been reported in recent months.

Mr. Chairman, I regret that I will not be able to stay for the entire length of this hearing because of conflicting obligations that I have, but I look forward to the testimony. My staff is here, and we look forward to working with you on ways to address this issue. Thank you.

Chairman SHELBY. Senator Stabenow.

STATEMENT OF SENATOR DEBBIE STABENOW

Senator STABENOW. Thank you, Mr. Chairman, and I would first ask that my opening statement be put in the record.

Chairman SHELBY. Without objection it will be so ordered.

Senator STABENOW. And I would just welcome our witnesses here today. I was very pleased to work on the provisions of money laundering when we passed the USA PATRIOT Act and to sponsor a couple of the provisions that in fact have become law. I am anxious to hear from you about how it is going and any unintended consequences that we need to be addressing right now. We do know that these provisions have had some positive, intended effect, but we certainly want to make sure that we are looking with a critical eye at whatever we need to do to strengthen or to change provisions in order to make sure that they are more effective.

So thank you, Mr. Chairman.

Chairman SHELBY. Thank you, Senator.

Ms. Williams, we will start with you. All of your written testimony will be made part of the record in its entirety, so you proceed as you wish.

STATEMENT OF JULIE L. WILLIAMS
ACTING COMPTROLLER OF THE CURRENCY

Ms. WILLIAMS. Chairman Shelby, Senator Johnson, and Senator Stabenow, I appreciate the opportunity to appear before you today to discuss implementation of the Bank Secrecy Act in the context of money services businesses. We very much appreciate your leadership, your interest, and that of the Committee as a whole in this vital area.

"Money services businesses," or MSB's, is an umbrella term that encompasses many different types of financial services providers. Estimates of the numbers of MSB's run into the hundreds of thou-

sands, ranging from *Fortune* 500 companies with numerous outlets worldwide to independent convenience stores that offer check-cashing services. Reportedly, millions of Americans depend on MSB's to satisfy most of their financial services needs.

But because they may handle large volumes of cash, MSB's can pose significant risks. While most MSB's have never been tainted by money laundering, some have been conduits for illicit activity. We have even seen cases in which money launders established MSB's to disburse and effectively launder their excess cash to unsuspecting customers.

Today, MSB's are governed by an uneven system of licensure and regulation. Some States do not require any MSB's to obtain licenses; some only license certain segments of the MSB industry. Others, as Superintendent Taylor can tell you, have comprehensive licensing standards and oversight. And, as of last year, apparently a substantial percentage of MSB's had not registered with FinCEN as Federal law requires.

Thus, banks that maintain relationships with MSB's face multiple challenges. In general, at a minimum, they must apply their customer identification program requirements, confirm FinCEN registration, confirm compliance with State or local licensing requirements, confirm agent status if applicable, and conduct a basic risk assessment to determine the level of risk associated with the account, and thus the level of diligence that is going to be required for the relationship. Depending upon the nature of a bank's business with MSB's, fulfilling these responsibilities can involve significant bank resources.

Compounding the challenge, we recognize that guidance on key issues provided by Federal regulators has been in need of clarification in important respects. This was especially true in the case of unregistered MSB's where clarity was needed as to whether banks are expected to file SAR's, close accounts, or take some other action upon discovery that an MSB customer has not complied with applicable registration and licensing requirements.

Finally, in addition to these costs, risks, and uncertainties, it is a reality that banks feel that they are subject to substantial compliance and reputation risk, including from sources beyond banking regulators, if they are perceived to misstep on BSA issues. It is not surprising, given these factors, that some banks have determined that the risks were not worth it, and chose to terminate their accounts with MSB's.

In closing, I would like to stress several points. First, the OCC does not expect banks to be de facto supervisors of their MSB customers. A bank's role and responsibility are to development of systems and controls that effectively identify suspicious transactions, and to implement those systems in a risk-based manner. Banks should not be expected to be policemen of their MSB customers.

Second, except in unusual cases, and those generally involve an enforcement matter, the OCC does not require national banks to close the accounts of an MSB customer or any other customer.

Third, the OCC expects banks that service MSB's to apply the requirements of the BSA on a risk-assessed basis, just as they do with other accountholders. Not all MSB's represent the same level

of risk, and banks should treat MSB's according to each MSB's risk profile.

I also want to emphasize that the OCC is constantly striving to improve the quality of our BSA examinations and the quality and clarity of the guidance that we provide to national banks. Our track record of BSA enforcement actions reflects judicious use of our enforcement authority. We absolutely do not have a "zero tolerance" approach where any and every BSA deficiency warrants a formal enforcement action, but we will absolutely take action where action is warranted.

With respect to improving BSA guidance, the OCC, together with FinCEN and the other banking agencies, recently issued an Interagency Policy Statement touching on several key issues. FinCEN and the agencies today are issuing Interagency Interpretive Guidance on Providing Banking Services to MSB's, which should clarify several key issues where uncertainties have existed. I will defer to Director Fox to describe that guidance in detail. I would also like to take this opportunity to applaud him for all of his efforts to foster coordination and collaboration between FinCEN and the Federal banking agencies.

Last, in concert with FinCEN and the other Federal banking agencies, we will soon be producing a revised uniform interagency BSA examination handbook.

Mr. Chairman and Members of the Committee, thank you again for your leadership in this area. We strongly share the Committee's goal of preventing and detecting criminal acts that involve misuse of our Nation's financial institutions. We also share the concern that it is important that MSB's have access to financial services, but those relationships also must be consistent with the antimoney laundering and antiterrorism financing laws of this country.

We stand ready to work with Congress, FinCEN, and the other Federal banking agencies, and the banking industry, to achieve these goals.

Thank you.

Chairman SHELBY. We will next hear from Mr. Brown, Internal Revenue Service.

STATEMENT OF KEVIN BROWN, COMMISSIONER, SMALL BUSINESS/SELF-EMPLOYED DIVISION, INTERNAL REVENUE SERVICE

Mr. BROWN. Good morning, Mr. Chairman and distinguished Members of the Committee. I appreciate the opportunity to be here today to discuss the Internal Revenue Service's efforts involving the Bank Secrecy Act and to update you on the progress we have made since last September.

The IRS addresses both the civil and criminal aspects of money laundering. On the civil side, the Department of the Treasury has delegated to the IRS responsibility for ensuring compliance with the BSA for nonbanking financial institutions such as money service businesses, casinos, and certain credit unions.

The IRS's Criminal Investigation Division is responsible for the criminal enforcement of BSA violations and money laundering statutes related to tax crimes. In October 2004, the IRS's Small Business/Self-Employed Division officially established the Office of

Fraud BSA which reports directly to the Commissioner of the Small Business/Self-Employed Division. The Director, an IRS executive, has end-to-end accountability for compliance with BSA including policy formation, operations, BSA data management, and all field activities.

The Office of Fraud BSA is staffed by approximately 300 field examiners located nationwide. These examiners are overseen by 31 group managers and supported by 8 analysts throughout the country. Our hiring plans call for us to have some 325 field examiners on board by the end of fiscal year 2005. We also plan to hire an additional 60 BSA examiners in fiscal year 2006 for a 2-year combined increase of 28 percent.

In contrast to years past, all of our BSA examiners and their managers devote 100 percent of their time to examinations of BSA related cases. In carrying out our responsibilities under the Bank Secrecy Act, the IRS works in close partnership with FinCEN, law enforcement agencies, and the States. Together, we are identifying MSB's, raising awareness of BSA obligations, and improving oversight and enforcement by targeting examination resources toward high risk elements of the industry.

Most recently we finalized, as of yesterday in fact, a Memorandum of Understanding with FinCEN that provides for the routine exchange of BSA compliance information. Moreover, the IRS and FinCEN recently reached agreement with the Conference of State Bank Supervisors on our model Federal/State Memorandum of Understanding. And I am pleased to report that just last week Superintendent Diana Taylor signed the agreement on behalf of New York State, the first State to do so.

In the near future, we expect that additional States will sign the MOU which provides the IRS and the States the opportunity to leverage resources for examinations, outreach, and training.

When I appeared before this Committee in September 2004, I outlined several areas where we could enhance our BSA examination program. I am pleased to have this opportunity to update the Committee on our progress. This fiscal year, we are examining more than 3,500 individual MSB's. We also are conducting examinations of several larger MSB's at the entities' corporate headquarters level. These centralized examinations give us the potential to impact the compliance behavior of a much larger number of MSB's. For example, there are about 29,000 MSB's related to the 5 corporate entities currently under examination.

The IRS is also employing for the first time an examination technique known as a saturation audit. Specifically, we are conducting simultaneous examinations of all MSB's located within particular zip codes in two cities which were identified as high risk areas in coordination with other law enforcement agencies. This saturation approach allows our BSA examiners to identify individuals with unusual patterns of financial activity which fall below the reporting threshold. In addition, we are exploring two new methods for identifying BSA workload.

The first approach, which is being tested by our classifiers, uses a risk-based scoring system to pinpoint which cases in the potential universe are most in need of examination. In the second related effort, we are researching the feasibility of using currency banking

and retrieval system data to create an automated national workload identification and selection system to designate the universe of potential Title 31 cases.

In conclusion, the fight against money laundering and terrorist financing are top priorities for the Internal Revenue Service. We are increasing our commitment to the BSA program and we will continue to coordinate our efforts closely with FinCEN.

Mr. Chairman, I thank you for this opportunity to appear before this distinguished Committee and I will be happy to answer any questions you and the other Members of the Committee may have.

Chairman SHELBY. Thank you.

Mr. Fox.

STATEMENT OF WILLIAM J. FOX
DIRECTOR, FINANCIAL CRIMES ENFORCEMENT NETWORK,
U.S. DEPARTMENT OF THE TREASURY

Mr. FOX. Thank you, Mr. Chairman and distinguished Members of this Committee, I very much appreciate the opportunity to appear before you again to discuss the money services business sector. We very much appreciate the leadership, support, and guidance you have offered us on these and other issues relating to the administration and implementation of the Bank Secrecy Act. Your commitment to understand and publicly discuss the issues facing the money services business sector is critical not only to the safety of our financial system, but also indeed to our Nation's security.

I prepared a longer written statement that I ask be we are submitted for the record, and I will keep these remarks short.

Mr. Chairman, if you would not mind I would like to take a second to acknowledge the colleagues who are with me on the panel today. I am honored to be here today with Julie Williams, Kevin Brown, and Diana Taylor, and I am pleased to tell you, sir, that these leaders and their agencies have been incredibly diligent and cooperative on these issues. The importance of our good working relationship and our working relationship with the other regulators who have a stake in the Bank Secrecy Act cannot be overstated. In fact, if we are to be successful in achieving the goals of the Bank Secrecy Act, we must speak with one voice on these issues. The confusion resulting from different or disparate messages has obvious and serious ramifications.

Mr. Chairman, I believe it is fair to say that the Bank Secrecy Act regulatory climate has changed significantly since the last time I appeared before you. Industry compliance remains a contradiction. We continue to see significant compliance failures of the most basic type, while at the same time most financial institutions are demonstrating an extraordinary commitment of resources and effort to comply.

I have, in my written statement, outlined why we believe this change has resulted in, among other things, the widespread termination of banking services for money services businesses, which is a significant reason we are all here today.

I would like to take a moment to explain what we are doing to address the problem. Earlier this year, when we recognized that account termination for money services businesses was becoming a significant problem, we held a public fact-finding meeting to elicit

information from money services businesses and banks as to why these account relationships were being terminated. The meeting confirmed that money services businesses of all types and sizes are losing their bank accounts at an alarming rate, even when those money services businesses appear to be complying with the Bank Secrecy Act and State-based regulatory requirements.

We also heard a lot of confusion from banking organizations about what is required under the regulatory regime. In essence, we heard quite clearly that we needed to act quickly to clarify the Bank Secrecy Act requirements.

On March 30, 2005, along with the Federal banking agencies, we took the first step toward addressing these issues by issuing a joint statement on providing banking services to money services businesses. This statement calmed the waters and asserted clearly that we do not intend to make banking organizations the de facto regulators of the money services businesses industry.

Today, I am very pleased to announce that we have taken the next important step and are issuing, jointly with the Federal banking agencies, interpretative guidance that clarifies the requirements of the Bank Secrecy Act for banking organizations that bank money services businesses. The guidance confirms that banking organizations have the flexibility to provide banking services to a wide range of money services businesses and still maintain compliance with the Bank Secrecy Act. The guidance also makes clear that not all money services businesses pose the same level of risk, and banks should tailor their due diligence accordingly. This guidance outlines the due diligence needed in fairly specific detail to better assist banks in assessing and minimizing that risk.

But the banks are only part of the equation. Today we are also issuing guidance to the money services businesses industry that outlines the information and documentation that money services businesses should be prepared to provide to banks when opening or maintaining an account. Significantly, this guidance stresses that the failure to take such basic steps as registering with us or complying with State licensing requirements may result not only in some form of Government action, but the loss of access to a bank account as well.

We remain committed to ensuring that those money services businesses that comply with the law have appropriate access to banking services and look forward to continuing to work with industry leaders to make compliance a very top priority.

Mr. Chairman, the guidance we issue today is only a beginning. We are not so naïve as to believe that this guidance will solve all issues or that it will repair all relationships between the money services businesses and banking organizations. We are, however, committed to continue to work with the Federal banking agencies, our State counterparts, and the IRS to do everything we can as responsible and responsive regulators. We still have a long way to go, sir, and we have a lot of work to do, but this is a significant step.

There are two other important developments I would like to mention. We have recently executed an information sharing agreement with the IRS, as Kevin has told you just a moment ago. Today, we also have just signed an information sharing agreement with the State of New York Banking Department. These agreements mark

important steps in our efforts at FinCEN to secure information sharing agreements with those regulators that examine for Bank Secrecy Act compliance. These agreements are modeled on our agreements with the Federal banking agencies. Not only do we benefit by learning more about what their examinations are finding, but we also have a better mechanism for providing support to their examination effort.

I wanted to make special mention of Ms. Taylor and her staff, as well as John Ryan of the Conference of State Bank Supervisors, who were instrumental in helping us and the IRS develop model agreements for sharing information with the States. Our goal is to have an information-sharing agreement with all States that examine financial institutions for Bank Secrecy Act compliance.

We understand that we must move with all the possible speed we can muster and that when we move, we have to get it right. September 11 has taught us that the information is now central to the security of the Nation, and the simple fact is that information is what the Bank Secrecy Act is all about. Information sharing and cooperation among regulators is key, but without a real partnership with the financial industry in which the Government shares real information, we will not succeed.

The Bank Secrecy Act regulatory regime should be directed at safeguarding the financial industry from the threats posed by money laundering and illicit finance, and it should be directed at providing the Government with the right information; relevant, robust, and actionable information that would be highly useful to law enforcement and others.

The best, if not, only way to achieve these goals is to work in a closer, more collaborative way with the financial industry. I am convinced that the vast majority of our financial industry members are committed to this partnership. Our goal is to do all we can to ensure that the Government lives up to our side of the bargain.

Mr. Chairman, Members of the Committee, the importance of your personal and direct support of these efforts cannot be overstated. Your oversight will ensure that we meet the challenges that we are facing. I know how critical it is that we do so, and we hope you know how committed we are to meeting those challenges.

Thank you very much.

Chairman SHELBY. Thank you, Mr. Fox.

Ms. Taylor.

STATEMENT OF DIANA L. TAYLOR
NEW YORK STATE SUPERINTENDENT OF BANKS

Ms. TAYLOR. Thank you, Mr. Chairman and Members of the Committee, for inviting me back to continue this very important dialogue, and I particularly want to thank you for recognizing that State regulators are an important part of a solution to the issues we are confronting today.

You are doing all of us a great service by holding these hearings, especially at a time when MSB's are having difficulty finding banks through which they can transact their businesses.

We all know what the problems are. One of the goals of regulators of legal and compliance systems is to reduce the risk factors and vulnerabilities of our regulated industries as much as possible,

while at the same time allowing legitimate businesses to be conducted. I want to spend these few minutes talking about the incredible progress we have made toward resolving some of these problems and to point out some of the challenges that still remain.

At your hearing last September, we talked about the IRS and FinCEN working together with the States as bank and MSB regulators to coordinate examination and enforcement efforts and share BSA information and training resources. I am so pleased that, as you have heard, as a direct result of that hearing, that as of this morning, I have signed on behalf of New York memoranda of understanding with both FinCEN and the IRS, covering both bank and MSB examination information.

The CSBS, its member States, FinCEN, the IRS, and the Federal banking regulatory agencies deserve great praise for doing an immense amount of work in a very short time, turning this idea of coordinated information sharing and action into an unprecedented reality. This is truly ground-breaking cooperation that will make a difference, particularly with regard to training and education.

In my written testimony, I talk about needing resources to raise the standard. This is exactly what I meant. I am proud to have been part of it and I pledge to do my best to help convince all 50 States to sign onto the MOU's as well.

Another huge step was announced today by FinCEN regarding their anxiously anticipated guidance about how banks should look at MSB's, who is responsible for doing what, delineating as clearly as possible the banks' role with regard to working with MSB's. We will do everything we can to make sure that all of our regulated entities understand this guidance as fully as possible. It may not be the U.S. Constitution or the Bill of Rights, but in some sectors of this economy it carries as much weight, as I am sure you will hear in the next panel.

Of course there is still work to be done, but we have set ourselves on a very positive course. We should all be very proud.

But I have two continuing concerns, which given our track record to date, I think we should be able to tackle. The first has to do with what many perceive as overzealous prosecution, which has been a major reason banks are rapidly distancing themselves from MSB's.

It is clear that an understanding must be reached between U.S. prosecutors and financial services regulators as to where the jurisdictional line is drawn between them. It is my hope that the Department of Justice, with input from the regulators, can provide direction and consistency to the U.S. Attorneys in this regard.

The second issue that I hope to see clarified in the near future has to do with the OCC's preemption of State licensing requirements, which triggers supervision and examination. Under the current OCC rules, operating subsidiaries of nationally chartered banks, including MSB's, may ignore any State licensing or other regulatory requirements.

I think it is important under these circumstances that a means be crafted to establish national standards regarding these entities, along with a very clear understanding of who is responsible for what in this area.

In closing, we have made a great start toward reaching our goal of a rational and comprehensive approach to difficulties and com-

plexities surrounding the relationship between banks and MSB's and the regulatory and legal structure that necessarily frames the issue.

The MOU's will help keep us on the same track. The guidance should serve to give comfort to the banks. Now if we can just crack the issue of setting national standards, we will not have so much further to go.

Thank you again, Mr. Chairman, for allowing me to share the New York view of where we are, what the challenges are, and what we need to do about them. In holding this hearing you have performed a valuable service for us all.

Thank you.

Chairman SHELBY. Thank you, Ms. Taylor.

Mr. Brown, I will direct the first question to you. Today's *Washington Post* reports that half of Maryland's 120 money transmitters used by immigrants to physically carry cash across the border and operating without license was shut down by State regulators. Is the manner in which half of this State's particular MSB sector operating without a license reflective of the limited resources of the IRS to identify these entities?

Mr. BROWN. I think it certainly highlights the need for increased coordination between both the States, FinCEN and the Internal Revenue Service. The Memorandum of Understanding that was entered into this morning——

Chairman SHELBY. That help?

Mr. BROWN. —will have a dramatic impact. I mean we cannot touch them all by ourselves. Superintendent Taylor cannot touch them all by herself in New York State. Between us, we can avoid duplication of efforts, and really leverage our resources. And also, the other thing the Memorandum of Understanding allows us to do effectively is to emulate best practices. There are techniques that New York State is employing that we think would be of great benefit to us, that we are going to imitate and perform.

Chairman SHELBY. Mr. Brown, I understand that the IRS Small Business/Self-Employed Division, which you are in charge of, has an 80 percent no-finding rate when examining money services businesses and non-MSB, nonbank financial institutions like casinos. Could you explain for the Committee this morning the significance of that statistic. Does it mean, for example, that 20 percent of the examined businesses are failing to comply with antimoney laundering and Bank Secrecy Act requirements? Is 80 percent too high a number, indicating a potentially flawed examination process, or what is it?

Mr. BROWN. Well, it could be a mixture of many things. The first thing is that you would have to determine whether or not we are examining the right entities. You would like to hope that they are all compliant, but I do not think that our agents would tell you that is the case, that they are all 100 percent compliant.

I think there is a gradation here.

Chairman SHELBY. But there are a lot of them, are there not?

Mr. BROWN. There are an awful lot of them. We estimate there are 200,000. Bill might be able to give you a more precise number, roughly 200,000 MSB's in this country. It is a tremendous number. It is a tremendous number to cover. We have to make sure we are

making the examinations count, that we are examining the right groups, this will help. The coordination with the States is just extremely important here so we do not duplicate efforts.

Chairman SHELBY. Ms. Williams, embassy account, perhaps an analogy here. Do you think that the current spate of MSB account closures is analogous to the situation where embassy customers, whose accounts on average were not a huge profit maker, as we know, or a compliance risk, had no place to go immediately following the shock of the Riggs and the termination of its embassy business. But subsequently events quieted down and embassy business found a home somewhere. Or is the MSB problem a much deeper-rooted problem?

Ms. WILLIAMS. Mr. Chairman, I think that the MSB problem is a complex problem that has certain parallels to the embassy banking situation.

As I described in my opening statement, there are several factors that intersect. One is just the effort required of the bank in maintaining a certain type of account. Second is the existence of areas that may warrant clarification from regulators about the regulators' expectations of diligence and oversight and certain actions on the part of the bank. Those two intersect because if there is uncertainty about what the regulators' expectations are, the banks may perceive their burden or what they may think they need to do as being more than what the regulators' view is. The bank's assessment of what they need to do and the drain on their resources will be factored into their decision about whether they maintain the account.

The third issue is, of course, whether there are reputation and compliance risks that are extraneous to what bank regulators do that can impact the banks if they maintain this type of account.

Chairman SHELBY. Ms. Taylor, it is my understanding that the Conference of State Bank Supervisors, along with FinCEN and IRS, we have just talked about, have completed the Memorandum of Understanding that Mr. Brown referenced, which you challenged the IRS to complete at last September's hearing. This MOU will facilitate, as Mr. Brown has said, the sharing of BSA related information among the States, Federal regulators, and enforcement agencies.

Would you like to comment on the process by which the MOU was negotiated? Does the MOU represent a compromise that reflects agreement at the levels you envisioned, or does it come up short in any area? For example, is there a plan to coordinate exams of MSB's with the IRS for BSA compliance?

Ms. TAYLOR. Yes. Thank you, Mr. Chairman. I am very happy with the process.

Chairman SHELBY. He raised that here, you will recall.

Ms. TAYLOR. I do recall that, and thank you very much, and I think that it was in large part due to your comments in that area, that the impetus was given to all involved to be very cooperative in this. And I must say that I am extremely happy with the outcome and the process that has gone through. We were very much involved.

The first thing that had to happen was for the Federal agencies to come to an agreement among themselves, which was no easy

task. And then we were involved after that. The structure that we have come up with I think is a very good one. There is a basic agreement and then each State will craft its own side letter, which goes with the agreement, which they will be able to sign because obviously every State's requirements are different. Because every State has its own set of laws, what we are hoping to do over the next couple of months is to help those States craft agreements that will allow them to participate in this effort. But I am extremely happy with how it has come out, and we will see how it works.

Chairman SHELBY. Thank you.

Senator Allard.

STATEMENT OF SENATOR WAYNE ALLARD

Senator ALLARD. Thank you, Mr. Chairman. I have a statement I would like to ask unanimous consent to get in the record.

Chairman SHELBY. Without objection, it will be made part of the record.

Senator ALLARD. And the first question is for Ms. Williams. In your testimony, you explained that the cost of opening and maintaining the money services businesses accounts are further compounded with a huge number of unregistered and unlicensed MSB's. Could you please elaborate on those difficulties that exist within the apparently uneven regulatory framework between the State and Federal laws requiring registration and licensing, and how do you think this might be alleviated?

Ms. WILLIAMS. I think the challenge that banks face is the complex set of issues presented by their relationships with money services businesses. One aspect of the question of what is expected of banks when they enter into, open, and maintain an account relationship with a money services business is the registered or unregistered status of the money services business.

One of the issues that the interagency guidance that is being issued today helps to clarify is the agencies' expectations as to what banks should do if they determine that they have a money services business customer that is not registered, and that is file a SAR.

Senator ALLARD. SAR stands for what?

Ms. WILLIAMS. Suspicious activity report, sir.

Second, there is no automatic or absolute requirement to close that MSB account simply because the bank is filing a SAR because the MSB is unregistered.

These are areas where I think there may have been lack of uniform, clear guidance coming from all of the banking agencies and FinCEN, and they are a very important part of the clarifications in the interagency guidance that we have put out today.

Senator ALLARD. Would other members on the panel care to comment on that question and her response? Mr. Fox.

Mr. FOX. Senator, if may—thank you. I think it is very important because, again, from our perspective, we have to stabilize this situation and ensure that money services businesses, as a very important financial sector in this country, have banking services. From my perspective, I think it is even more important because if money services businesses lose their banking relationships, in many respects, we lose a lot of transparency in that entire sector. If those

industries go underground, if you will, or go to a point where we cannot see them, they pose significant danger in my view.

And therefore, I think it is in all of our interest, not only economic interest but also certainly from our perspective of financial crime and terrorist financing interests, to ensure that money services businesses: Comply with the law, and particularly at its most basic level; and are afforded banking services and are brought into the transparent financial system, if you will, so that we can ensure appropriate transparency for this sector. The sector provides incredible services to a part of our country that desperately need those services, and I think it is very important that they are brought into that transparent, rationalized part of the sector.

Senator ALLARD. While you have been speaking, you know, "money services business" is really a broad term.

Mr. FOX. It is.

Senator ALLARD. Could you give us a number of examples of the type of businesses those might be?

Mr. FOX. Sure. It can be currency dealers, people who exchange currencies, exchangers——

Senator ALLARD. Such as?

Mr. FOX. Thomas Cook. You see Thomas Cook at the airports. People who exchange currency or deal with currency, check cashiers, it can be everything from an actual large check casher in Manhattan to the local grocery store if the grocery store meets that particular threshold; issuers of travelers checks, money orders, or stored value products.

Senator ALLARD. So let me get something straight here on grocery stores. If a business comes in and writes a check for over $10,000, does that inadvertently throw them into any kind of reporting posture?

Mr. FOX. No, sir. I hope I get this right, it is essentially if you have individuals who come in with their payroll checks, for example, and cash them at a grocery store. So there is a $1,000 a day threshold per person that throws them into that milieu.

Senator ALLARD. I just wanted to make sure that was clear.

Mr. FOX. Yes, sir.

Senator ALLARD. Give me some more examples.

Mr. FOX. Sure. Sellers and redeemers of traveler's checks, money orders, or stored value products, the products that, you see like the American Express cards that you can now store value and then take it abroad and use almost like a credit card. But it is not a credit line, it is actually a stored value product. And then certainly one of the largest parts of the sector are money transmitters or remitters, people who wire monies from point to point, MoneyGram, whom you will hear from later today.

Senator ALLARD. Can I get back to the credit card again?

Mr. FOX. Certainly.

Senator ALLARD. If this amount that is set aside is at the $10,000 threshold or more, how is that treated for reporting purposes? I mean you could go over and cash a number of—maybe it is $30,000, they cash two $15,000—or let us put maybe 6 or 7 charges of $5,000 or less, but they would be under the $10,000 threshold. Does that trigger anything?

Mr. FOX. Yes. It is not credit card companies, per se, sir. Senator, it is a product that actually looks like a credit card, maybe acts like a credit card, but contains value stored. In other words, I would come into American Express, hand them money, and they would store that money on the credit card.

Senator ALLARD. I understand. It is a cash deal.

Mr. FOX. It is like having cash but with the safety of——

Senator ALLARD. Like a debit.

Mr. FOX. Exactly, yes, sir, except you are not accessing an account. The value is in the card.

Senator ALLARD. But you could take a debit card overseas.

Mr. FOX. Yes, certainly you can.

Senator ALLARD. And is it counted as a cash transaction over there, or would they have a debit number?

Mr. FOX. Yes, it all depends——

Senator ALLARD. And a PIN number and all that or not?

Mr. FOX. It all depends on the regime——

Senator ALLARD. What is available.

Mr. FOX. Right. It all depends on the regime overseas.

Senator ALLARD. My question being: Can you have a series of transactions that would occur independently and equal a transfer of $10,000, but it is not reported that way because they are smaller transactions?

Mr. FOX. We call that structuring, sir.

Senator ALLARD. And that does happen? Is that a problem?

Mr. FOX. It is. It is an indication I think, not necessarily proof, but an indication that there may be structuring and we look at that very carefully. There is a currency transaction reporting requirement.

Senator ALLARD. I see. That is my question.

Mr. FOX. The threshold is $10,000 under the Bank Secrecy Act. Clearly, we have very strong rules about structuring transactions to avoid that reporting requirement. That is a Federal crime, and we believe it is an indicator of illicit activity, or can be.

Senator ALLARD. So all of those smaller transactions get lumped together and it does raise a flag as far as you are concerned.

Mr. FOX. Yes, sir.

Senator ALLARD. Very good, continue.

Mr. FOX. These are essentially the groups of people who are regulated as money services businesses under our regime, under the Bank Secrecy Act.

So just to recap, you have currency dealers and exchangers, check cashers, issuers of traveler checks, money orders, or these stored value cards, sellers or redeemers of those products, and then money transmitters. And money transmitters and check cashers are the two largest.

Senator ALLARD. Any other comments as far as my original question to Ms. Williams; the rest of the panel want to comment?

Mr. Chairman, my time has expired.

Chairman SHELBY. Thank you.

Are you saying that most of these nontraditional bank services serve a legitimate need; is that correct?

Mr. FOX. Yes, sir.

Chairman SHELBY. And if they are driven underground they go for other forms of money and it generally costs more, and it would be hard to regulate; is that correct?

Mr. FOX. That is my view, Mr. Chairman, yes.

Chairman SHELBY. Ms. Williams, could you at the Comptroller's Office, for example, as a regulator of national banks, let the banks know that you want them in business like this, you want them to be able to make legitimate loans to these operating companies, rather than let it dry up?

Ms. WILLIAMS. Mr. Chairman, what we have reiterated in a variety of contexts, represented most recently by the interagency guidance that was issued today, is the importance of money services businesses in the economy, and what we expect banks to do, and what MSB's are expected to do in order to foster an environment where banks can have relationships with these types of businesses. MSB's are very important overall in the financial economy of this country.

For completely separate and distinct reasons, we have also been trying to educate the banks that we supervise about opportunities to enhance the type of financial services that they provide to the underbanked and unbanked, to provide this type of service to a broader array of customers. It is a very important aspect of our financial system.

Chairman SHELBY. This system, nontraditional banking service, it will not go away. It is just a question of will it go underground, will the cost of the money go up if it is illegitimate money.

Ms. WILLIAMS. Mr. Chairman, we agree with you completely. It is not going to go away.

Chairman SHELBY. And if it is underground money, illegitimate money, it is going to cost more generally, is it not?

Ms. WILLIAMS. That tends to be the case.

Chairman SHELBY. That will be passed on to the people who can least afford it, the ones that use a nontraditional banking system; is that right, Mr. Brown?

Mr. BROWN. It is, and those organizations tend not to be insured or bonded, so you are placing the money at risk for the very people who cannot afford to have the money at risk.

Chairman SHELBY. How real is the threat here? Is it that real to drive them underground? If they cut off the banking legitimate money, that will drive them underground, will it not?

Ms. WILLIAMS. I think the threat is real.

Chairman SHELBY. Mr. Fox.

Mr. FOX. Absolutely, Mr. Chairman, absolutely.

Chairman SHELBY. You think you are going to be able to handle it?

Mr. FOX. Well, sir, we sure are trying. I will tell you, I think that it is in many ways like turning an oil tanker in some respects, because financial institutions, banking organizations in particular, are not irrationally concerned about their reputation risk, the risk to their reputation and their regulatory risk. And I think there has been a lot of misperception about what risk is posed by this sector. There are clearly parts of the money services sector that are risky and that bear watching and that bear careful scrutiny by a banking institution and certainly by regulators.

But I think the thing that we have to do and we have begun, there are really four things, Mr. Chairman. I think the first is guidance. We have to color in the gray, if you will, where there is some misperceptions, there are some misunderstandings about what is required.

Chairman SHELBY. Would the memorandum coming out today, will that deal with account openings, maintenance, and guidance?

Mr. FOX. Yes, sir. I think the good part about this guidance, the thing that we are proud of—and again, my compliments to all around—is that it is specific and it does talk about a number of indicators, so it should give banking organizations some comfort.

Chairman SHELBY. Ms. Williams, a cursory review of the guidance reveals a type of "hold harmless" clause for banks that manage risks associated with all accounts. It is my understanding that it instructs that banking organizations will not be held responsible for their customers' compliance with the Bank Secrecy Act and other applicable Federal and State laws and regulations.

At what point, if any, does a bank become responsible for the acts of the customers' compliance with the Bank Secrecy Act if it does at all?

Ms. WILLIAMS. Mr. Chairman, I think this is one of the fundamental points here.

Chairman SHELBY. Central to all of this, is it not?

Ms. WILLIAMS. It is very fundamental. It is fundamental to some of the concerns that the banking organizations have, and that is that banks are not designed to be the policemen of the conduct of their customers.

Chairman SHELBY. If you put that burden on them, you are putting a heck of a burden on the banking system period, are you not?

Ms. WILLIAMS. That is an enormous burden; it is an enormous risk; and it is a substantial deterrent. If there is any uncertainty as to our expectations there, it is a substantial deterrent to banking institutions' willingness to take on these relationships.

Chairman SHELBY. Mr. Fox, when you last testified before us, you told the Banking Committee that FinCEN was recommissioning the Coopers & Lybrand study to get a better sense of the size, composition, and nature of the industry, as well as the potential for growth in the industry's component segments. As far as we know the study is still in progress. Is FinCEN still in the learning curve there?

Mr. FOX. We are, Mr. Chairman. But I think we have to do some other things beyond studying.

Chairman SHELBY. You have to do something.

Mr. FOX. Yes. The Coopers & Lybrand study will help. It is commissioned and it is in progress, and it will be helpful when it is finished.

Chairman SHELBY. You cannot study it forever though, can you?

Mr. FOX. No, you cannot, sir. We do have registration information that we receive, and we should be reviewing that—I mean that registration information is given to us for a reason and it can provide us with information so that we can begin to assess what this industry is really all about. We can assess the risks associated with that industry, and then working with Kevin and his people over at the IRS, and actually pinpoint where we should be directing our ef-

forts on both compliance and law enforcement. I mean we should be helping our law enforcement colleagues with this effort as well.

So we are embarking on, trying to find out how we can look at the registration requirement, make sure we are getting what we need there, and if we are not, we will engage in rulemaking and get it. We are going to take that information and actually get busy with it, that and other information and start to make a difference here I think.

Chairman SHELBY. The percentage would be what I will just be using here. If 99 percent, 99 point something percent of all the transactions in the nonbank system, if they were, "legitimate"—I do not know if that is right, that figure might be too high, I do not know. It might not. Let us say it is 99 percent, because there are billions and billions of dollars moving. You do not want to kill the industry off because the industry would be deemed legitimate for a good purpose for people who generally do not have bank accounts. Is that correct, Mr. Brown?

Mr. BROWN. Yes, it is. That is exactly correct.

Chairman SHELBY. Will the Memorandum of Understanding, the guidance that you are putting up, will that make anyone feel more confident about keeping accounts open and so forth?

Mr. BROWN. We certainly hope so, Mr. Chairman, and if it does not, we will get busy and do what we need to get it done. We certainly hope that will be the case.

Chairman SHELBY. Ms. Taylor, in your testimony you say that you strongly believe that if MSB's are in compliance with BSA and AML, as interpreted by FinCEN, that this should be sufficient compliance standard for the banks, the regulators, and criminal law enforcement authorities. How do we avoid the Riggs problem where a financial institution fails to report and the regulator fails to detect or take sufficient examination and enforcement action upon first discovering compliance problems?

Ms. TAYLOR. I am very glad you brought that up, Mr. Chairman. One of the things that I wanted to say in addition to the discussion which has taken place here about the banks is that——

Chairman SHELBY. In other words, what oversight is there of your department examiners in New York?

Ms. TAYLOR. The other side of this equation is the MSB's themselves, and what kind of oversight we have of them, which is why it is so important that not only they be registered to do business with FinCEN and OFAC, but also licensed by the States. And we are making our examination and supervision procedures even more rigorous.

For instance, when a potential licensee comes to us to ask for a license to do business in the State, we require several things of them. First, we require that they have policies and procedures in place, and internal controls designed to ensure compliance with BSA and AML requirements. Second, they actually have a compliance officer who is competent in this area to ensure the day-to-day compliance. Third, we require education and/or training programs of the appropriate personnel. And we also, as time goes on, require an independent review to monitor and maintain an adequate program. And that is for licensing.

After they are licensed, this triggers our examination procedures, and we have an acronym that we use which is FILMS, and we go through various components of that, and we look at them every year or so, each one, to make sure that they are complying with all of their requirements. We are hoping that with those requirements and with our examination we will be able to catch any failures or systemic failures within that institution, and punish the perpetrators accordingly.

Chairman SHELBY. Ms. Williams, do you have a comment?

Ms. WILLIAMS. I was going to jump in if you had not asked me to.

One thing I noted in my opening statement is that we are absolutely committed to doing a good job with BSA examination and, where necessary, enforcement, and to improving what we do where it needs to be improved. We have put in place a number of new measures, and there are new systems within the OCC that are coming on stream that will help us to monitor emerging issues in this area throughout the national banking system and to monitor our follow-up on those issues to make sure that it is timely. They will also help us to risk assess the factors associated with different institutions to make sure that we are able to focus our resources quickly on those areas and those institutions that present the highest risk so that we can follow up appropriately and promptly.

Chairman SHELBY. Mr. Brown, your division of Internal Revenue Service is responsible for enforcing BSA compliance with respect to the estimated 160,000 money services businesses in the United States. That is a lot of people and a lot of firms. Despite this responsibility, it is my understanding that the IRS, Internal Revenue Service, has only about 325 people assigned to this mission with another 60 or so scheduled to be added. Even with these additional examiners, it is highly questionable whether IRS will have the resources—and that is important that you have the resources—to do your job, to ensure that the MSB compliance—you know, there is compliance there. Nobody expects you to say anything here today in contravention of OMB dictates. I know this. I am also an appropriator, as you know.

[Laughter.]

But it would be very helpful for the Committee here today, and perhaps to the Appropriations Committee, to have some sense of the gap between your requirements, which are vast, your responsibilities, and your resources. Do you feel comfortable to talk about that a little bit?

Mr. BROWN. Sure. I certainly feel a little more comfortable about our reach, given the Memorandum of Understanding we have entered into with the States. I mean that certainly leverages the resources that are available nationwide.

Chairman SHELBY. The first thing we can do is put the mandate on you, responsibility, and provide no resources.

Mr. BROWN. No, it is true. I do not think there is anyone in Washington who would tell you they would not like more resources, but I have been around long enough to know that bodies are not the answer to everything. There are a number of things we can do internally. We need to select our work in a better organized fashion to make sure that the examinations count. We have some new

audit techniques, one that was selected, one that was recommended to us by FinCEN about doing centralized examinations that we think is going to prove very beneficial. The sharing of the information, as I mentioned, with the States should help quite a bit.

There is one area of concern. I mean we are talking—and Bill can address this further—but insurance companies and dealers in precious metals will soon fall under this rubric, and there are roughly 1,500 insurance companies and 40,000 jewelers who will fall under the auspices of the Bank Secrecy Act reporting requirements soon, and it is an area of concern for me and for those at the IRS.

Chairman SHELBY. It is also of cost, is it not, of cost of compliance for the banks, with all these businesses that we need to weigh as we go through this, do we not?

Mr. BROWN. There are costs on both sides. There are costs in the industry and there are costs in the Government.

Chairman SHELBY. It is.

Mr. Fox, I have a couple of questions for you. As you are very aware, this Committee has been extremely concerned about preservation of appropriate levels of privacy with respect to personal information. The ChoicePoint case, in fact, was the subject of a recent Committee hearing. It is because of this concern that I feel compelled to raise this issue of the recent GAO report describing the vulnerability of the Bank Secrecy Act data and personal tax information, Mr. Brown, with IRS, to unwarranted intrusion by thousands of employees without a legitimate need to know. The information susceptible to abuse includes Social Security and driver's license numbers.

Could you address, Mr. Fox, this concern, including in your comments the status of the BSA Direct Program which I understand should help alleviate the problem hopefully?

Mr. Brown, this is also an IRS problem and I would like for you to comment on it after Mr. Fox.

Mr. FOX. I will tell you, Mr. Chairman, we too are concerned, as I know the IRS is concerned about—and Mr. Brown will address that—the GAO's findings. I will tell you that we are working very closely with——

Chairman SHELBY. People are concerned.

Mr. FOX. No, no, no. Yes, sir. And we are working very closely with the IRS to ensure that this data is kept safely and securely.

We are pleased that the BSA Direct Project is on track for delivery this fall and that it will alleviate the problem eventually. I think that it is a very important project for this Agency. As you know, sir, you have personally supported that project, and we would not be where we are today if not for your personal support both in this Committee and in the Appropriations Committee.

I will tell you that I have seen the first iteration of this system, and I am impressed with it. It is going to get a lot better between now and this fall, and eventually the responsibility for collecting, housing, and disseminating Bank Secrecy Act data will lie with the Financial Crimes Enforcement Network, sir. I think that is where it belongs because then you and the American people can hold us accountable for it in a way that we should be held accountable for it. It is very sensitive information, it is very important, and we are

working very closely with the IRS on this transition from Detroit to BSA Direct. So it is going pretty well right now, and I think it will resolve the issue at least as far as BSA information goes.

Chairman SHELBY. Mr. Fox, Section 6302 of the Intelligence Reform and Terrorism Prevention Act of 2004 directs the establishment of a system for collecting data on cross-border transfers. Some of us, while certainly sympathetic with Treasury's requirement for information on such transactions remains skeptical of the plan's feasibility, the determination of which is a prerequisite for the plan's implementation.

There are already complaints out there that you cannot process what you have. How will you ensure that you are not the recipient of a volume of information of dubious value, while the feasibility study is only in its initial stages, could you provide the Committee some sense what you have learned to date and where you are going?

Mr. FOX. Thank you, Mr. Chairman. First of all, if you do not mind, I would take issue with those that say that we cannot process what we do have. I think we are doing that pretty well and——

Chairman SHELBY. You should answer that. This is a proper forum.

Mr. FOX. I think we do that pretty well, and I think we are going to get much better at that with BSA Direct, so I think that is an exciting part about being at the Financial Crimes Enforcement Network now.

Sir, I too share your skepticism about the feasibility of the cross-border wire transfer issue, and that is exactly why we have formed a group at FinCEN to study the feasibility of actually doing this. We will soon involve—in fact, we have already reached out to the Federal Reserve Board, which has a very big stake in these issues, to bring them into that working group, and we will bring other members of the Government in as well. We are going to brief the industry on where we are, on May 18 at the Bank Secrecy Act Advisory Group, and we will eventually include, or it is our intent to include, in that working group people with other interests such as privacy interests because I think we owe that in our feasibility report to the Secretary.

It is more than just can we build the box? We can build the box, sir, but it is really about, is this a feasible way to do it?

Chairman SHELBY. It has to be a good box though, does it not?

Mr. FOX. It does, sir, it does, but it can be built. I am certain of that.

If I could leave you with two things. First of all, we know this data is incredibly valuable. My Agency just finished, some might call it a tome, on fund transfers for law enforcement, to train them in how to exploit and use this data to their benefit and mutual end. I think your staffs may have it. It is not a public document.

We understand acutely how valuable this information is, particularly on issues relating to illicit finance and terrorist financing. The September 11 Commission found that, I believe, and certainly our counterparts in Canada and Australia, who received this information already, will verify that. Frankly, the wire information is every bit as valuable as suspicious activity reporting.

That being said, we recognize that there are huge logistical issues. The United States, when you compare the United States banking system with Canada or with Australia, it is not even a comparison. You are talking about apples and oranges really. So we understand that there are huge logistical issues with this.

We also are acutely aware of the privacy concerns and the policy issues that revolve around reporting of this data, because this would be the reporting of data that is not necessarily suspicious. It is actually more akin to our currency transaction reporting that currently exists. You are reporting data if it meets a certain criteria, assuming we get to that point where we would require it.

What I want to leave you with, sir, is that we are taking this feasibility study very seriously and intend to issue a first class report to the Secretary, and I am absolutely certain the Secretary will be working with this Committee, as will we. We are very pleased to work with this Committee and other Members of Congress to deal with these issues. I think they are incredibly difficult issues, but I also think it is very important because the information that is in those wires, those cross-border wires in particular, sir, can really make a difference, and that is why I think it is important to do this and do it well.

My deadline—not anyone else's—to our group, is to try to have this thing wrapped up by the end of the year. I think if we are going to meet the requirements of the statute, that is what we need to do. Then the Secretary can assess hopefully from that report the feasibility, and we can report back to the Congress. I am absolutely certain we will be working with your staffs and with you, sir, on these issues. They are incredibly big issues and I think important ones to fully vet.

Chairman SHELBY. Thank you, Mr. Fox.

Senator Sarbanes.

STATEMENT OF SENATOR PAUL S. SARBANES

Senator SARBANES. Thank you very much, Mr. Chairman.

I want to welcome the panel and I apologize. I was not able to be here at the outset, but there are two other hearings I have had to pay attention to this morning.

I want to ask first a somewhat related matter, but it does not go directly to what you deal with. We held a hearing here on remittances. Dr. Manuel Orozco, a leading researcher on remittances at the Inter-American dialogue, told the Committee that remittances from the United States to Latin America had grown substantially, at that point to an estimated $20 billion. That is in 2001. The estimates now are $30 billion or in excess of $30 billion. Back when the figure was $20 billion he estimated between 15 to 20 percent, $3 to $4 billion of the $20 billion was being lost in exchange rate fees and other transaction costs which are often hidden from the sender of the remittances, which would lead one to suspect at least that the abusive practices are taking place in the remittance market. We know that many of the people sending remittances tend to be relatively low-wage earners with modest formal education, or little experience in dealing with complex financial matters. And of course, the remittances are not covered by Federal consumer protection laws, including the disclosure of fees.

In the course of addressing this issue—this is not directly your jurisdiction—but have you encountered this situation? I would like to hear from each of you if you have a take on this situation.

Mr. FOX. Senator, I can only tell you that I know anecdotally that remittance systems do, or at least on occasion, have been—it has been alleged that remittance systems have charged on occasion exorbitant fees on the back-end depending on clients and that thing. I am really not an expert in it. I can only tell you that anecdotally we have heard that from time to time.

Ms. TAYLOR. I would like to address that, Mr. Senator, thank you. One of the things that we do in New York State is time and time again impress upon people or try to impress upon people the importance of using a licensed money transmitter as opposed to an unlicensed money transmitter. From licensed transmitters we require various disclosures. We require them to post the exchange rates for the countries they are transmitting money to, and we require them to disclose the fees that they are charging. I think a lot of these abuses happen in the unlicensed sector, but in the licensed sector we require these disclosures and we examine the companies to make sure that the disclosures are being followed. And then it is a competitive market. People can go from transmitter to transmitter if they are so inclined, to shop around and find the best rate. But anecdotally, we have also heard those stories.

Ms. WILLIAMS. Senator, I do not claim to be an expert on remittances, but at the OCC we have looked at this area. We have a study on remittances that we did just a few months ago. One of the things that the study did surface is that the entry of banks into the remittance business seems to be viewed as a factor which is bringing down the costs overall, reducing the fees in connection with remittances. There are other regulatory issues from the bank perspective that are present in connection with banks being involved in remittance businesses. We highlight some of the issues in connection with having customers involved in that line of business in the study that we did.

We also note that in connection with banks' obligations under the Community Reinvestment Act, where a bank itself may be providing low-cost services including remittance services in a community, that is something that would be favorably considered for CRA purposes. So there are a number of issues that the remittance business presents for banks either engaged in it directly or servicing those businesses that we do touch on in the study that we did recently.

Senator SARBANES. Well, the Chairman and I have requested the GAO to study this very issue, and we expect the report to come in sometime in the next few months, but I think it is a very important issue, and there is a considerable concern that people are really being skimmed off pretty heavily in terms of these remittances. And I think it is an issue we need to address. That is not today's issue.

Today's *Washington Post* describes unlicensed money remitters in Maryland, and the steps taken by State regulators to try to address them. FinCEN constantly tell us that it has this large collection or multi-use database. Do you try to project, to identify unlicensed remitters? I mean if the States have a licensing requirement, why

would it not behoove us to try to move out of the business unlicensed remitters at least as an important beginning step? That is not to suggest that licensed remitters are not engaged in some bad practices, but first of all, the unlicensed remitters are not meeting the standards that the States have set, which are often designed to provide important protections to their customers, and protections that may also bear on money laundering questions.

Mr. Fox.

Mr. FOX. Yes, Senator, I could not agree more. And we will embark on that. We have today entered into a Memorandum of Understanding with the New York Banking Superintendent and the New York Banking Agency.

Senator SARBANES. Yes, we are very pleased to hear that. In fact, had you not done so, I would have expected that to be a major focus.

[Laughter.]

That is always the benefit of hearings.

[Laughter.]

Mr. FOX. It is amazing how that works.

I will tell you, sir, it is our intent to do that with every State that will sign on with us. We think that this will have a very good effect—I could not agree with you more. I think it is not just the State licensing requirement, Senator, it is the Federal registration requirement as well. We have to make sure that money services businesses are meeting their very most basic requirements under the law. That is to register with the Federal Government if they are required to do so, and then to be licensed under a State regime if they are required to do so.

It seems to me that we need to study that and we need to work with our counterparts in the States collaboratively to ensure that at least those sectors are meeting that very basic requirement.

I would love to tell you, sir, that we have already done that. We have not. But I can tell you that it is the plan. I mean it is part of what we are trying to do with the States in leveraging their abilities to get a handle on this industry.

Senator SARBANES. Ms. Taylor.

Ms. TAYLOR. Thank Mr. Senator. First you have to find the unlicensed money transmitters and check cashers, for that matter, and in New York, as a high-intensity financial crimes area designation, we have formed a very close partnership with law enforcement, local law enforcement including the NYPD and the DA and the FBI, Secret Service, a lot of other law enforcement agencies. One of the big things that we are concentrating on is tracking down unlicensed money transmitters. As a matter of fact, I think it was 3 weeks ago at this point, we closed one down. It was called Vietnam Service, Inc. It was transferring millions of dollars a year from the New York City area to Vietnam. And we found them, and we closed them down. So that was an example of how we can work together with law enforcement.

But you have to find them first.

Senator SARBANES. The New York State Banking Department I know has been very active in this area. What would you suggest to the Committee are other important steps that could be taken that have not yet been taken to get at this problem? I know if I

had asked that question 24, 48 hours ago, there would have been this Memorandum of Understanding, but at least the memorandum is behind. We will see how it is carried out and implemented. But what other measures?

Ms. TAYLOR. I think that keeping the pressure on all of us to continue the good work that we have been doing with these memoranda, and carrying them through to fruition is something that is very valuable.

Also in my oral remarks I mentioned two areas. One, which is the perceived over-zealousness in some cases, in the law enforcement area with U.S. Attorneys and putting pressure on the Justice Department to create some uniform way of dealing with that across the country would be one thing I think we need to reach an understanding between the U.S. prosecutors and the financial services regulators as to where the lines of jurisdiction are what is considered to be criminal behavior and what should be dealt with in a regulatory way.

The second issue I brought up is that I hope, in light of the OCC's preemption of State licensing requirements for operating subsidiaries of national banks, that there is some uniform national level of regulation for these industries.

Ms. WILLIAMS. Senator, could I just say something? That is the second mention of the OCC preemption position in this context this morning. That is not an issue here. It has not been an issue. It will not be an issue.

Ms. TAYLOR. Anecdotally, I know of several money transmitters who are proactively trying to become operating subsidiaries of nationally chartered banks, and the reason given is that they will not need a State license under those circumstances.

Ms. WILLIAMS. They should not look to the national banking system as a safe haven.

Senator SARBANES. Well, we are pleased to hear that, although the OCC has created a lot of problems on the preemption issue. We just had a decision in Maryland in the Federal Court with respect to prepayment penalties, and of course the OCC has taken a position that those are preempted. I am in very sharp disagreement with you on that. I think it is a departure. The ruling you made is in departure from past practice, and it cripples the States from providing consumer protections in an area which does not substantially impede the operations of the national bank. But the OCC is—at least you are not extending it into this area, but you have created a lot of problems in other areas, and significantly diminished the consumer protections.

Mr. Chairman, I see the red light is on. I have just one other question I want to put to Mr. Fox if I may?

Chairman SHELBY. You go right ahead.

Senator SARBANES. It has been 3½ years since we enacted the USA PATRIOT Act with a title dealing with the money laundering issue. Section 312, which dealt with correspondent accounts, was a major part of Title 3. The full implementing regulations have not yet been issued, as I understand it.

Mr. FOX. That is correct, Senator.

Senator SARBANES. And you are the administrator of the Bank Security Act. When will these regulations be issued?

Three-and-a-half years seems like a long time.

Mr. FOX. It is a long time.

Senator SARBANES. Yes, it is. It is almost two-thirds of a Senate term.

[Laughter.]

Just to use a benchmark.

Chairman SHELBY. It is.

Mr. FOX. It is a long time. The matter is under significant policy discussion at the Department of the Treasury. I can tell you it is my view that we are close, and it is our hope that those regulations will be issued very soon. I think they need to be issued. We need to implement that statute fully, and we are working hard to make sure that we get it done. But there is no excuse, Senator, it has been a long time, I agree.

Senator SARBANES. Does the Chairman need to schedule another hearing? I mean scheduling the hearing seems to have gotten action on the Memorandum of Understanding.

Chairman SHELBY. We will talk about it, Senator.

[Laughter.]

Senator SARBANES. Do we need to do that?

Chairman SHELBY. We will, absolutely, the Members.

Senator SARBANES. Thank you, Mr. Chairman.

Chairman SHELBY. Senator Carper.

STATEMENT OF SENATOR THOMAS R. CARPER

Senator CARPER. Thank you, Mr. Chairman.

To our witnesses, thanks very much for joining us today. I have a couple of questions I would like to ask, and it may have been asked but I am just going to ask it again. Forgive me if it is repetitive. Do you feel that you need any additional authority to regulate the money services businesses to ensure that it is used for its correct purposes? I do not care who starts off with this, but I would like to hear from all of you.

Ms. WILLIAMS. Senator, speaking about regulation of the banking industry, I think that we have sufficient statutory and regulatory tools.

Senator CARPER. Okay. Ms. Taylor.

Ms. TAYLOR. In New York State, I think we also have sufficient statutory and regulatory tools at our disposal.

Senator CARPER. How about Mr. Fox?

Mr. FOX. Senator, thank you. I agree. I think that the tools are there. You have given us the tools. We need to implement them fully and make sure they are the right ones, but I think they are there.

Senator CARPER. I cannot see your last name. What is your last name? Mr. Brown.

Mr. BROWN. I agree as well, Senator.

Senator CARPER. All right, thank you.

A follow up question. Do you feel that you need additional resources from Congress or from some other source in order to carry out your mission?

Ms. WILLIAMS. I think that we have sufficient resources to do the job that we need to do.

Ms. TAYLOR. We always feel that we need additional resources. That is a State issue.

[Laughter.]

Senator CARPER. But there is not much we can do about that, is there?

Ms. TAYLOR. I think that from the Federal level, one of the things that has happened which is extremely helpful, is that we have been given access to examination and training materials by our sister agencies at the Federal level, for which we thank you very much.

Senator CARPER. Are there other things we can be doing? That is a good example.

Ms. TAYLOR. I think that is a very good example, and that is I think how we can be helped the most. It is the most useful help that we could get.

Senator CARPER. Mr Fox.

Mr. FOX. Senator, thank you again. Yes, you can always use more resources. What we are really focused on though is frankly sometimes—I think Commissioner Brown said it best earlier—you may not have been here—is that often times bodies are not the answer. I think the important thing is really figuring out what we can do with the bodies that we have in making sure that we have those bodies working on the real issues of the day. So that is what we are very much focused on, but thank you for the question.

Senator CARPER. Mr. Brown, did you really say that?

[Laughter.]

Mr. BROWN. I did say that. To be fair, we are adding 28 percent in terms of examiners over the course of the next year. We are going to augment——

Senator CARPER. I am sorry. Say that again.

Mr. BROWN. We are going to augment our front line examining workforce——

Senator CARPER. I heard 28 percent I thought. Say your whole sentence over.

Mr. BROWN. Yes. We are going to add 28 percent more examiners over the course of the next year, so I am concerned about the resource commitment here, but I echo Bill's remarks in that we also have an obligation to the taxpaying public and to the Congress to make sure we are using those resources wisely, to make sure we are examining the right institutions, to make sure that we are looking for the right things, to try different techniques, to make sure we are not duplicating efforts with the States. If Superintendent Taylor has touched someone in New York State, that should suffice. We do not need to have redundancy there. I think there are a lot of things we can do short of just adding bodies to this program to enhance it.

Senator CARPER. Let me come back to you, Mr. Fox, if I could. I understand that FinCEN held a public hearing. My guess is you have a lot of them. But one to discuss the money services business. And if you have already shared some insights from that, I apologize. I just missed that. But if you could just share with us some of the concerns that might have been raised at that meeting, and any ideas that you all may have in response to the concerns that were raised.

Mr. FOX. Certainly, Senator. Actually, we do not hold that many public hearings, and I think this one was such a success we might change that orientation. I think public hearings are important. It is amazing what one learns in those fora.

I will tell you that from the perspective of money services businesses what we heard was very clear, that they were losing banking account relationships at an alarming rate, and that causes us great concerns, not only because that sector being unbanked causes pinches, if you will. The money services sector is a very important sector for a large portion of our population, often the people who are unbanked, who do not have banking accounts. From our perspective at FinCEN, it is incredibly important that those money services businesses maintain accounts because we want them to be in the transparent financial system. The worst thing that can happen, I think, is to see those businesses lose that transparency and go underground.

So we heard that clearly from the money services businesses.

From the banking organizations, we heard a frustration and a concern about their reputation risk and regulatory risk for banking this sector. I think that concern is based in large measure on some misperceptions about the sector, which we recognize. If we took one thing from that hearing, the thing that we knew, we had to do it very quickly, is to go out with joint guidance to both sectors and color in the gray, if you will, to make sure that people understand better what actually is required.

We believe that if banking organizations and the money services sector better understand what is required under the Bank Secrecy Act, that this will calm the water.

And we have announced that guidance today, both with our colleagues in the Federal banking agencies, and then we, FinCEN, are issuing it to the money services sector. So we hope that this effort will calm the waters and resolve at least the majority of this problem. If it does not, sir, we will get busy and we will work until it does.

Senator CARPER. All right. Anybody else have anything else you want to add before I kick it back to the Chairman?

Mr. Chairman, thanks so much. And thanks to all of you.

Chairman SHELBY. Thank you.

I thank all of you on the first panel. I know it has been long, but we appreciate your participation. Thank you very much.

Our second panel, Mr. John Byrne, Director, Center for Regulatory Compliance, American Bankers Association; Mr. Gerald Goldman, General Counsel, Financial Service Centers of America, Inc.; Mr. Dan O'Malley, a Vice President for the Americas, MoneyGram International; and Mr. David Landsman, Executive Director of the National Money Transmitters Association.

Mr. Byrne, we will start with you, but all of your written testimony will be made part of the record. We are going to have a vote on the floor in a few minutes, but we can finish the panel and then have a break and come back for questions. Your written testimony will be made part of the record in its entirety, all of you, so sum up quickly what you want to say.

STATEMENT OF JOHN J. BYRNE
DIRECTOR, CENTER FOR REGULATORY COMPLIANCE
AMERICAN BANKERS ASSOCIATION

Mr. BYRNE. Thank you, Mr. Chairman and Members of the Committee. ABA appreciates this opportunity to discuss how the financial industry is addressing compliance with the USA PATRIOT Act, as well as all the laws covering antimoney laundering.

At this Committee's request we will focus specifically on how these challenges have impacted the banking industry's relationships with money services businesses. We offer the following three observations and recommendations.

One, banks have been existing relationships with MSB's due to the severe lack of guidance as to what constitutes an acceptable due diligence program. Immediate direction is essential. Today's announcement by FinCEN and the Federal banking agencies will greatly assists banks in making determination on obtaining and maintaining business relationships. I would also say, Mr. Chairman, we should avoid the urge to be skeptical and really commend the agencies for working so quickly after the March 8 meeting to come up with this guidance, an interagency guidance, which again, we believe will be vastly helpful in determining what we need to do with MSB's to continue those relationships.

Two, the lack of direction in the MSB area is emblematic of the overall problem with Bank Secrecy Act oversight, the labeling of an entity as "high risk" without accompanying guidance on how to mitigate that risk, and more importantly, second-guessing by examiners.

And three, until the financial sector receives assistance in the form of, one, guidance, two, clear examples of what constitutes suspicious activity, and three, ensuring that appropriate deference is given to bankers that decline to file suspicious reports, the volume of SAR's will continue to skyrocket.

As indicated in the letter for invitation for today's hearing, in dealing with MSB's there is a need to have, "a consistent and equal policy." Again, today's interpretive guidance is a welcome response to that charge. The industry certainly understands and appreciates the need to analyze the levels of risk involved with maintaining MSB relationships. The problem, however, is how much analysis is sufficient? At times banks will appropriately exit relationships due to the risks inherent with a particular MSB. At other times, banks want to continue these valued relationships. We know the importance of providing all segments of society with banking services. For some, remittances are an essential financial product and MSB's frequently provide that service.

If the environment does not change these important services will continue to be severely hampered by regulatory excess. Again, we wrote this statement last week. We really appreciate today's statement because I think today's interagency guidance will really go a long way toward helping.

I just want to make two quick points. The one reason to remedy this problem I think can be summed up—which is in my written statement—with a community banker, who on March 8 said the following: "One of the common types of small businesses in our community is the small grocery store or convenience store. These are

the businesses that often serve the immigrant and less advantaged community. These businesses are the connecting point for many in our society to the economic system. They are legitimate businesses serving a genuine need. Under the current regulatory scheme, we can no longer serve them."

Mr. Chairman, in the interest of time, let me make one final point. The agencies will also be issuing at the end of June interagency procedures on examining banks for Bank Secrecy Act compliance. We believe that will go, again, a tremendous long way toward giving us some direction, some road map as to what is considered adequate compliance.

Today, we do not have that. Today, we have problems in the field where examiners unfortunately are not getting the correct interpretations from Washington, not because Washington has not been giving them, by the way, because for some reason they feel a need to find minor problems. They feel a need to tell bankers to eliminate accounts. They tell bankers that they are going to cite them for failure to file suspicious reports. This June document will be like this MSB guidance, it will be tremendously helpful.

What we would ask the Committee though is to make sure that the document gets rolled out around the country, that there are regional meetings with the examiners and the bankers so that we can ask the appropriate questions as to what is between the lines of the document. If we do that, I think you will get less and less complaints from the industry about exam problems.

Finally, Mr. Chairman, we commend the Treasury Department, the banking agencies, and FinCEN for their recent efforts to ensure a workable and efficient process. ABA will continue our support for these efforts.

Thank you. We would be happy to answer any questions.

Chairman SHELBY. Mr. Goldman.

STATEMENT OF GERALD GOLDMAN, GENERAL COUNSEL, FINANCIAL SERVICE CENTERS OF AMERICA, INC.

Mr. GOLDMAN. Thank you, Mr. Chairman. FiSCA represents more than 5,000 neighborhood financial service providers serving——

Chairman SHELBY. Did you say 5,000?

Mr. GOLDMAN. Yes, 5,000.

Chairman SHELBY. Okay.

Mr. GOLDMAN. Serving hundreds of thousands of customers, both banked and unbanked.

The recent statement by Treasury Secretary Snow, Acting Comptroller Williams, and FinCEN Director Fox, acknowledge that check cashers play a vital role in the national economy and are a key component of a healthy financial sector, and it is important that they have access to banking services.

This is music to our ears. We have waited to hear this shift in focus for a long time. We commend FinCEN and the Federal banking agencies for their issuance today of MSB guidelines. It is a first step and we look forward to commenting after further study.

However, I must tell you that we are skeptical. We are not certain that guidelines will be enough to undo the damage done to our banking relationships. The key to finding a solution to bank dis-

continuance will require a real direct action between the regulators, the banks, and the MSB's. They cannot just be talking to themselves.

According to *American Banker,* 50 percent of banks that have been serving our industry, check cashing industry, have recently stopped. This is a staggering number. It took us 50 years to nurture these relationships and in one fell swoop they were ended or damaged. The example of JP Morgan Chase, which served our industry for 50 years, during that time they said they had one loss in 50 years in this industry. Yet recently our 50-year-old friend notified all 500 of its licensed check cashers that it was terminating their accounts. Chase, including Bank One, Am South, Citibank, Fleet, Sovereign, Sun National, Bank of America, and others, have indiscriminately terminated the accounts of thousands of check cashing locations.

What if the banks announced that they would no longer provide services to Members of Congress? Could they do it? Yes. Banks could cut Members of Congress as a group out of the banking system, and essentially that is what they are doing to our industry. The irony is that banks do not make serving our customers the priority that we do, yet they have the power to stop us from serving them. It makes no sense. It is not fair.

The question is, why is this happening? Our industry is sound. It is stable. It is responsible and profitable. We do not operate underground. We are licensed and regulated in 38 States and are regulated by the BSA and USA PATRIOT Act.

According to FinCEN itself, check cashers—and this is for past 4 years—check cashers, "have set the standard for financial services industry in the fight against money laundering, financial crimes, and terrorism." That is an irony. While we were setting the standard, our banking relationships were being terminated.

Among the reasons cited are: One, OCC designation of check cashers is high risk for money laundering. I do not think that has changed.

The high cost and administrative burden of compliance and pressure from regulators. No industry should be subject to the awesome power of blanket termination at will. Until this very issue of blanket termination at will is addressed, the overreaction and the indiscriminate use of power by some will continue to prevail. We would like to see this Committee really tackle not only the injustice that has occurred, but also to define the responsibilities of banks in serving MSB's based upon the merits of the individual MSB so that access to the banking system will be available to all, particularly the unbanked.

We need to stop the bleeding.

We have five items that we would like to suggest.

One, set definite standards, develop definite standards before agencies can assign the label "high risk" on an industry, and only after appropriate due process; two, Congress should consider passing a "Banking Services Continuation Act" that would permit banks to discontinue the accounts of MSB's only after the customer has failed to meet its compliance standards; three, a group should be created—and possibly through legislation—by the Secretary of the Treasury, made up of regulators, banks, check cashers and

money transmitters, with the sole purpose of ensuring access to banking services; four, give CRA credit to banks that serve MSB's in neighborhoods that serve low and moderate income consumers; and five, there should be more transparency in the bank examination process to ensure that regulatory directives do not punish the law abiding, as we are, but only the law breakers.

Thank you, Mr. Chairman.

Chairman SHELBY. Go ahead.

STATEMENT OF DAN O'MALLEY
VICE PRESIDENT OF THE AMERICAS,
MONEYGRAM INTERNATIONAL, INC.

Mr. O'MALLEY. Mr. Chairman, Senator Allard, MoneyGram International is a payment services company conducting businesses in 170 countries through more than 79,000 locations. I am pleased to testify about our compliance program and the problems MSB's are having with bank accounts.

MoneyGram was founded in 1940 under the name Traveler's Express, a money order company. Over the years it has grown to be a leading international payment services company that offers services through a network of agent locations that include banks, supermarkets, and many small, independently owned mom-and-pop convenience stores, which along with many check cashers are the MoneyGram agents experiencing the majority of the banking problems.

MoneyGram offers consumers three primary services, the MoneyGram money transfer service, Traveler's Express money orders, and check processing for financial institutions. These services are closely regulated and licensed by the various State banking departments.

MoneyGram also has a comprehensive compliance program that is fully compliant with that Bank Secrecy Act and the USA PATRIOT Act. The compliance program is built around three main components: Training employees and agents, monitoring transactions, and reporting suspicious activity. My written testimony describes in detail MoneyGram's compliance program which exceeds or at minimum meets the current regulation in many ways and many areas.

Now, I would like to address the problems that many MSB's and their agents are experiencing with bank accounts. For MoneyGram agents it appears that the small mom-and-pop shops and check cashers are the ones who are being targeted for account closings. These businesses are being told by banks, which they have had relationships with for years, that they now must choose to either close their account or cease conducting any kind of MSB activity.

When they ask their bankers why, they are frequently told that the bank's regulators have informed them that MSB's are high risk and the bank is advised to avoid doing business with such entities.

In order to help our agents MoneyGram has been negotiating with banks around the country to offer special accounts. In some situations we have negotiated a master MoneyGram account with subaccounts for our agents. While this may sound like the ideal solution, it is not. It is far more costly for MoneyGram and it is far less convenient for our agents. In order to retain some agents,

MoneyGram is now paying for armored car services to collect the agent's funds, which adds even more costs to conducting business, and is even more inconvenient.

MoneyGram would like to offer two suggestions on how the bank accounts issue might be addressed, and how compliance with the USA PATRIOT Act might be improved. The two are somewhat tied together since improving USA PATRIOT Act compliance will help banks and their regulators gain confidence in MSB's.

With regard to the bank account issue MoneyGram believes part of the problem stems from the fact that banks and their regulators do not understand the existing State licensing regime that applies to MSB's. That is why MoneyGram recommends the Committee consider legislation that would establish a dual-chartering system for MSB's, analogous to what banks and credit unions enjoy.

The establishment of a primary Federal regulator may significantly reduce the concerns and misperceptions about the oversight of the industry, as Mr. Goldman referenced. Too often MoneyGram has heard from banks, regulators, and law enforcement officials, as well as in the press, that MSB's are largely unregulated. This is not true, but it is a perception that simply will not go away. A primary Federal regulator would instill greater confidence by banks, their regulators, and the public in MSB's.

MoneyGram would also like to offer a recommendation that would add clarity to the USA PATRIOT Act requirements. One requirement is that MSB's conduct a periodic review of their compliance program. For banks and licensed MSB's such a requirement is appropriate, but for thousands of mom-and-pop convenience stores that sell money orders or money transfers only as an agent, this requirement is largely unintelligible. These businesses need greater direction from FinCEN as to what constitutes an adequate review and who can conduct the review.

For example, a simple one-page form could be developed that the owner of the business would be required to complete on an annual basis confirming compliance with the USA PATRIOT Act. It will also help those businesses better demonstrate to their bankers that they are aware of their compliance obligations.

In conclusion, I want to thank you, Mr. Chairman and Senator Allard, for the honor of presenting testimony on behalf of MoneyGram International. We at MoneyGram are proud of our company's strong efforts in our vigilance in antimoney laundering and the prevention of terrorist financing, and we remain dedicated, and again, vigilant to working with regulators and law enforcement officials to defeat the attempts by criminals to use any of our services for illegal actions.

Thank you.

Chairman SHELBY. Mr. Landsman.

STATEMENT OF DAVID LANDSMAN, EXECUTIVE DIRECTOR THE NATIONAL MONEY TRANSMITTERS ASSOCIATION, INC.

Mr. LANDSMAN. Mr. Chairman, we appreciate the opportunity the Committee has given us today to have our grievances on this subject heard.

We are also grateful to New York Superintendent of Banking, Diana Taylor, for meeting with us last month on this issue.

FinCEN has worked hard with the Federal bank regulators to publish guidelines. For this we are also grateful and we applaud the stance they have taken. They are doing what they can to fix the problem and correct this injustice, an injustice that has ominous implications for other industries untouched by this problem as yet.

Yet relief will not come soon enough for many of us. If nothing is done, and done quickly, many licensed remittance companies will lose their last bank account in 3 days, and probably breathe their last.

In the March 30 joint statement, FinCEN publicly acknowledged for the first time that there may have been a misperception of the requirements of the Bank Secrecy Act and the erroneous view that money service businesses present a uniform and highly unacceptable risk of money laundering or other illicit activity. This is an understatement.

Clarification of best practices will help, but most of these guidelines have already been in the public domain for years, available to us and the banks.

Now regulators are properly alarmed at the idea that two entire licensed industries, money transmitters and check cashers, can be so red-flagged as to make it impossible for even the best of them to get an account anywhere.

That the acceleration of these closings has coincided with the accelerating rate of bank prosecutions, fines, enforcement actions, and scandals is no accident. The more heat that is brought on the regulators by Congress, the more they will crack down on the banking industry. The more heat that is brought on the banking industry, the less it can afford to appear to be associated with those who look even slightly suspicious to some eyes.

In most cases, these closings have occurred not because of any actual problem in our history or deficiency in our compliance programs, but simply because we are in a business designated "high risk" by Federal banking regulators. Banks no longer feel they can do enough due diligence on us no matter how much time and money is spent. They do not feel secure, nor do they feel they can ever satisfy the probing questions of their examiners in this regard.

We seek a national money transmitters act that will require a national money transmitters license, not to deal with safety and soundness, but with antimoney laundering requirements. The purpose of this new license would not be to add more regulatory burdens, but to ensure uniform and universal application of our antimoney laundering laws, eliminate duplicative exams, and provide a certification that banks may rely on. We seek a broad, clear national definition of money transfer and when a money transfer license is required, even application of the licensing requirement, respect for the license itself, and meaningful punishment for those who willfully refuse to get a license.

The banks are not wrong to be fearful of our accounts, but the greatest risk they face with our accounts is getting into serious trouble with their regulators.

We are not looking for leniency. To the contrary, we licensed MSB's welcome stringent regulation and we demand vigorous enforcement. At no time have we thought that the problem was due

to regulations that were too stringent. To the contrary, closing accounts is a total abdication of responsibility. All we are asking for is a level playing field and a fair chance.

What may have started out as legitimate money laundering concern on the part of Government and banks has turned into nothing less than a denial of civil rights, not only to the community-based businesses we represent, but also to the broader public they serve.

Money is the lifeblood of our business and banks control the pipeline. Access to a bank account is the access to life. It is a public accommodation working under public charter, and should not be unreasonably denied to any class of people.

The challenge of a free society in the war on drugs and money laundering and the war on terror is to separate and stop the tainted money while letting the good money through, and especially to separate the flows of migrant worker remittances from the flows of nefarious schemes. The only way to do that is to encourage a vital, transparent, nonbank sector.

Thank you.

Chairman SHELBY. I thank all of you. We have a vote on the floor. We are going to come back, and I have a number of questions. We will be in recess until we can come back. I would say 10 to 12 minutes. Thank you.

[Recess.]

Chairman SHELBY. The hearing will come to order.

Mr. O'Malley, in your testimony you explained that MoneyGram believes that part of the account termination problem stems from the fact that banks and their regulators do not understand the existing State licensing regime that applies to MSB's. Thus, you propose that Congress should consider legislation to establish a dual chartering system for MSB's similar to what banks and credit unions already enjoy. Under this plan an MSB that operates in only one or a couple of States could choose to be State-chartered while others could seek a Federal charter, have an option if they wanted. You conclude that the establishment of a primary Federal regulator would instill greater confidence by banks and their regulators while significantly reducing the misperceptions about the oversight of the industry.

Do you think that such new legislation to provide for State or Federal MSB charters, optional charter, and a primary Federal regulator would benefit only the three or four largest MSB's by eliminating so much of the State regulation currently imposed on the category of MSB and not have much impact on the rest of the industry? Other than the new Federal regulator what else can be done to ease the jitters in the banking community, in your opinion?

Mr. O'MALLEY. To answer the first part of your question, the dual chartering, I think the critical part there is making sure that we do not end up with additional regulatory bodies on top so that we do not layer that.

Chairman SHELBY. That costs money, doesn't it?

Mr. O'MALLEY. That costs money and it also may add to the problem by creating further misperceptions or lack of focus on what we should be working with.

The critical piece there is, will it benefit a couple of the major players? Certainly it will. But it would also benefit all of the cus-

tomers that are associated with those major players. For example, a larger retailer that works across State lines has to comply with those State regulatory bodies as well, and we have a difficult time trying to explain and provide consistency across State levels because of all the reasons and issues you have heard on both panels today.

The second part of the question on the following up for other things that could also add value there, I think was the furthering of your question. I think the misperception that is created today is because what ends up being translated out of the OCC or out of the banking regulatory bodies, it ends up being pushed out and the banks specifically are unaware of exactly what that means. I think the guidance that was presented today, Memorandum of Understanding, goes a long way, but to some degree we are sitting looking for what does that guidance and what will it actually provide? So it potentially helps assist with the problem, but again, until it gets translated to the furthest extent of the banking channels many people still have issues with, how do I comply with that? It is much easier just to say, do not bank MSB's.

Chairman SHELBY. Mr. Goldman, in your testimony you proposed to have Congress enact a banking service continuation act that would permit banks to discontinue MSB accounts only after it could be shown that the customer has failed to meet its statutory and regulatory antimoney laundering obligations, or for legitimate business reasons unrelated to the cost of compliance. What other industry has such protections that you know of?

Mr. GOLDMAN. I cannot think of any.

Mr. LANDSMAN. What other industry needs it?

Chairman SHELBY. That might be a good question.

Mr. GOLDMAN. I think here you have a very unusual relationship between the banks and the industry that we represent. We rely solely on them for our business, so we have to find a way to ameliorate what is happening so that we can continue to provide services.

Chairman SHELBY. They also could be a competitor of yours, could they not?

Mr. GOLDMAN. That is absolutely true. In fact, some of them are. Some of them do own check cashing businesses, believe it or not.

Chairman SHELBY. Mr. Landsman, in your testimony you proposed that Congress should enact a national money transmitters act that would give money transmitters a license based on antimoney laundering requirements. How exactly would this help and should it be MSB industrywide? Do you want to elaborate on that a little?

Mr. LANDSMAN. Yes, I do believe it should be industrywide. I do not believe the States are ever going to give up their right to regulate, and therefore my concept is not quite a dual regulatory scheme in the sense that you meant it where an MSB could choose which one he wanted.

Chairman SHELBY. Is it like an optional charter?

Mr. LANDSMAN. Yes. It would not be like that. Everybody would have to have this. The States have traditionally left the antimoney laundering problems to the Federal Government. The States are not experts. The States do not write the laws on antimoney laundering. They have enough on their hands to enforce the safety and

soundness aspects of their license. In a like manner, the Federal Government is having enough trouble enforcing the antimoney laundering parts of their charge, of their mandate, so it would make sense to divide the duties and get the Federal Government more involved.

Right now, what we have, as a FinCEN registration, is basically a two-page form. I am not sure, beyond identifying who is an MSB, what good that does anybody. I know that we have a very small cadre of examiners and trainers. We need to train the whole country and examine the whole country. We do not need to examine every 200,000 of those MSB's, but we do need to examine the larger ones, and everybody needs to know what the rules are. That is why I think it should be Federal.

Chairman SHELBY. MoneyGram's global profile. According to your prepared remarks, MoneyGram offers money transfer services at 79,000 locations in 170 countries in addition to its 60,000 U.S. locations. You note with only 1,800 employees and over 100,000 locations it is easy to see why MoneyGram relies on your agents to sell its services. So that is 79,000 foreign locations and 1,800 employees worldwide. It is my understanding, of the 1,800 employees only 36 are responsible for ensuring compliance industrywide with U.S. antimoney laundering and Bank Secrecy Act laws and regulations.

Is that a sufficient number of compliance officers to ensure compliance throughout the MoneyGram empire, and can you provide some description of how those 36 people function on a daily basis? In other words, give us some idea of how you work.

Mr. O'MALLEY. First let me clarify. The 79,000 locations is in total for our wire transfer services, so there is some mix for some of our money order products. But if you are looking on global basis——

Chairman SHELBY. It means you are doing well. That is not a bad——

Mr. O'MALLEY. It means we are doing well. I wish it were larger and that would be a good thing. But I just want to make sure we get the numbers correct.

So if you are focusing back on how do we manage compliance and the number of people, the 36 people, not unlike what we heard from the first panel, as far as resources, we would all be looking for and trying to manage toward more resources. But in the end I agree with the previous statement, that people do not always solve that problem.

We have a stringent compliance and regulatory program across our business, from the training of our employees up front, from the CEO down to the person that handles the last call from our customers. So we are supporting across a vast of individuals from our sales people to our compliance people that are in the street, specifically for compliance, but we manage compliance throughout our organization and across all 1,800 employees. It is one of the critical measures and activity that is a requirement of our employment for our organization is a training program on compliance.

Having said that, managing across the other expectations of our product base we also have a monitoring program that our systems are constantly monitoring for compliance, antimoney laundering,

structuring, go across the gamut of activities from a compliance perspective and from an antimoney laundering perspective. So we have very large resources dedicated from a dollar and a computer perspective, managing and pushing that information out to our strict compliance people. But we are vigilant across our agent base to do the exact same thing.

Chairman SHELBY. The question of risk is at the center of issue of whether banks should open and maintain accounts for MSB's. In your prepared remarks, Mr. Landsman, you address the specter of racism and civil rights violations should MSB's be denied access to banks without a certain level of due process. The implication being that MSB's associated with certain ethnic groups are targeted for discriminatory treatment. A rational assessment of risk has to entail a degree of geographic targeting. Wire transfer companies sending a large percentage of transactions to the Middle East or South Asia, for example, could be expected I think to draw more scrutiny than is the case with other regions. I think that is just commonsense.

Could each of you provide an assessment of how you assess risk? Is there an ethnic or geographic dimension? What makes one line of business riskier than other?

Mr. Byrne, we will start with you.

Mr. BYRNE. The cornerstones of the problem, Senator, has been the fact that——

Chairman SHELBY. Let's talk about it banks.

Mr. BYRNE. The agencies are pushing risk assessment and risk-based focus regarding antimoney laundering. So we have to make up that goal by putting in place programs to assess risk. What are the risks——

Chairman SHELBY. You are doing that is, assessing risk, in dealing with MSB's.

Mr. BYRNE. Right. You do look at geography, you do look at the products. Are they more complicated than basic products? The wire transfer business or transmission business, if they are sent to certain parts of the world where historically there have been risks, we have to increase our due diligence.

I should say, today's document by the Agency though spells out what is considered low risk and high risk, and when you hit high risk then it would be that time to ask the MSB for more information. We think that is the way to go. Before today it was not clear that the risk we did was enough and the second guessing continue. So from our perspective, you look at geography, you look at products, and you certainly look at jurisdictions where the funds go.

Chairman SHELBY. Are there geographic regions that are assumed or scientifically determined to be higher risk than others?

Mr. Byrne? Geographic outside of the United States?

Chairman SHELBY. Yes.

Mr. BYRNE. Just based on previous statements by our Government and others, the noncooperative country list that we have seen from FATIF, certainly again the Middle East has been an area where we have to spend more time and energy.

Chairman SHELBY. It is where a lot of terrorists have come from.

Mr. BYRNE. Exactly. So from that perspective we have to—it does not mean we do not do business. It simply means our due diligence has to be increased.

Chairman SHELBY. Do licensed MSB's catering predominantly to higher risk regions automatically disqualify them for consideration?

Mr. BYRNE. No.

Chairman SHELBY. In other words, they could be totally legitimate and doing a service for people in the Middle East, could they not, and be clean as they could be?

Mr. BYRNE. Absolutely. Before today, some banks certainly would opt to say, there is too much risk there. We are not sure how to mitigate the risk. I think after today's announcement they know that they should continue those relationships as they feel that they have done enough to ask the MSB, are you licensed, are you registered? What are your antimoney laundering programs? If we do those things that should be no reason to close down the account simply because they transfer money to the Middle East.

Chairman SHELBY. Mr. Goldman.

Mr. GOLDMAN. I think there are two items I would like to mention with respect to assessing risk for at least the industry that I represent. Number one, I think it is fair to look at the record and the record will indicate that in the last 5 years the number of indiscretions and violations in our industry is nominal.

Chairman SHELBY. Very small, is it not, considering everything?

Mr. GOLDMAN. Nominal. Therefore, the designation of high risk makes no sense. It is just somebody in some department decided that we were high risk and put us on a list. When I addressed that question 4 years ago to the then-Director of FinCEN his response to me was that your industry is no greater risk than any other business for money laundering violations. So here we are 5 years later, tabbed as high risk, with nominal violations and the Director of FinCEN having said that we should not even be designated as high risk. The result of that was the jitteriness of banks and the loss of the service of banks.

Chairman SHELBY. Do you have any comment, Mr. Landsman?

Mr. LANDSMAN. My only comment was that trying to do a risk-based management of a bank or a country or of a law enforcement program, the trouble you might run into is racial profiling. I think your question was quite right, and Mr. Byrne knows better than I do, but if I were a banker I would want to avoid anybody sending money to the Middle East. It used to be that Latin America was considered high risk because of the drugs but the Middle East has trumped that.

So the logic is, if you only have a certain number of policemen, of course you are going to send them to the high intensity crime areas first. But that does not mean that you should write laws and write policies that make different standards for different kinds of people.

Chairman SHELBY. Mr. O'Malley, do you have a comment?

Mr. O'MALLEY. I do. In understanding this business I think it is important to understand the corridor activity. Not unlike you or I, the concentration of individuals that like to do business with people that look like them, speak like them, culturally have similarities is

very important to the overall industry. It is not every part of it but it is somewhat a part of the industry.

I think from MoneyGram's perspective, we look at every single transaction of runs through an OFAC review. We run our agents through the OFAC review as well. Criminal and credit checks and background checks that are making sure that we have the highest quality of business partners that we are doing business with and doing transactions. Mr. Byrne mentioned the Middle East. Certainly, we look to make sure we understand who we are doing business with. But that is across all segments and all ethnicities.

Chairman SHELBY. Mr. Goldman, according to the Financial Services Centers of America, members of your organization process 180 million checks a year worth $55 billion. As general counsel, do you have data on how many of those transactions involve fraudulent activity or were used to launder money? Out of all the legitimate—you said it was nominal.

Mr. GOLDMAN. Fraud and antimoney laundering are two different areas. We do get checks that are fraudulent so that is a major problem, particularly now with modern day technology. But with respect to check cashing related to money laundering it is nominal.

Chairman SHELBY. I used one of your services and wanted to send $5,000 to someone in Damascus, would that be suspicious? Is that a higher amount than you normally send?

Mr. GOLDMAN. I have to rely on——

Mr. LANDSMAN. Nobody I know is sending money to Damascus.

Chairman SHELBY. Mr. O'Malley, could you——

Mr. LANDSMAN. Somebody is doing it, but I do not know who they are.

Mr. O'MALLEY. To your point, the activity of transactions in any particular segment, we run through the BSA activities behind suspicious activity reports and our agents do the same thing. So we are monitoring and running through compliance activities through our systems to make sure that we are focusing on any particular transaction, but we would be looking for suspicious activity across any send to any received transaction.

Chairman SHELBY. Who uses the services of your member businesses? Is there a demographic or professional profile of some kind that is apparent? How are know-your-customer requirements met by the 5,000 member service providers that comprise the Financial Service Centers of America? How much of your membership has been denied banking sentences to date?

Mr. GOLDMAN. I would say, as I said in an ABA random survey, half of the banks that served us have recently determined not to serve us. So we have lost half the industry. I think that at this point in New York alone I know that there are 40 companies that have not been able to find other banks. The only thing that happened in New York was—we are now in New York with 660 locations in the State of New York alone, are being served primarily by one bank. It is a State bank. If that bank decides to go, there is nothing left. So we are on the edge of the potential for disaster.

Chairman SHELBY. Uniformity of regulation. Some of you were here earlier when we asked the Government panel, we agree uniformity is necessary in MSB and bank regulation. Should that di-

rection be provided at the Federal or State level? And is there any effort within the industry to set an internal set of standards?

Mr. LANDSMAN. We were going to do it recently but then we decided to wait until today, what I received today. We will be studying that——

Chairman SHELBY. Seeing what——

Mr. LANDSMAN. Yes. We are going to try to move into training. After we succeed in training and getting good at training we are going to try to move into certification. Certification of the outside compliance monitors who review these MSB's is essential because a bank needs to be able to rely—if you go into any other business sector you will ask somebody for a CPA report because we rely on CPA's—with some problem in some cases; Enron, something like that. But we do need people to be certified to review, and it is a specialty. You cannot just take any CPA and rely on that.

The banks need to able to feel that they are not just delegating out the responsibility and they will be criticized for it, but that they can rely on somebody else doing a review. It is required by Section 352 of the USA PATRIOT Act that we have these outside reviews anyway. We are doing that.

Chairman SHELBY. Do you have any comment?

Mr. O'MALLEY. We work with other partners in our industry in looking at where we can try to standardize or offer suggestions for standardization. At the same point, we are very encouraged at looking at the guidance that was released today. I would also state that I think it would be helpful if we had better input into those types of guidance in advance of them actually being released. I think the industry itself can help in making sure that they are practiceable activities as opposed to a guidance that may not be able to be put into practice.

Chairman SHELBY. Mr. Goldman.

Mr. GOLDMAN. We proudly have a substantial national compliance program, both in terms of books, documents, videos, teaching programs which have all, again, been commended as exemplary by FinCEN itself, which again goes to the point, we have no significant record of violations, we have a significant record of compliance, uniform compliance and compliance with the Bank Secrecy Act and yet we are still high risk and still suffering from the loss of our banking relationships.

Chairman SHELBY. Mr. Byrne, do you have any comment?

Mr. BYRNE. Senator, I would say the key, I believe, is still making sure that the examiners that examine banks around the country get this in their hands so that when they are assessing whether or not we have done enough to do due diligence with the MSB's that they will be guided by this rather than their own perceptions of what is and is not high risk.

I would just add that on March 30 we did a national telephone conference with about 2,000 bankers to talk about the value both of remittances and, more importantly, dealing with MSB's in this environment. So we really believe it should be up to the bank, not up to——

Chairman SHELBY. What was the response of that conference?

Mr. BYRNE. It was very positive. They were anticipating today's announcement, but we believe that outreach will continue from our

end, and certainly the people on this panel here will work with us to see if we cannot try to get through this level of confusion, to let them make their decisions based on pure Government direction that we did not have before.

Chairman SHELBY. A lot of us do not want you to be the unintended victim of what we are trying to do to combat terrorist financing, money laundering, because you are legitimate businesses. And if you are legitimate businesses, you want to stay in business, you want to have access to capital, and you want to comply with the regulations and the law, because if you do not, you will not be here long anyway, would you?

Mr. O'MALLEY. That is correct.

Chairman SHELBY. Gentlemen, we thank you for your testimony, and your patience, especially with the break today.

The hearing is adjourned.

[Whereupon, at 12:39 p.m., the hearing was adjourned.]

[Prepared statements, response to written questions, and additional material supplied for the record follow:]

PREPARED STATEMENT OF SENATOR DEBBIE STABENOW

Good morning, Chairman Shelby, Ranking Member Sarbanes, and witnesses. Combating money laundering in the aftermath of September 11 has proven to be critical. We have long seen money laundering associated with illegal activities such as drug trafficking. These activities pose on-going serious challenges to our country, but now we must also look at the fight against money laundering as one to ensure our basic national security.

Our task since September 11 has not been a simple one. However, this Committee acted swiftly and aggressively after the attacks to address terrorist financing.

I am proud to have been an active participant in that debate by insisting that we authorize Treasury regulations to ensure that client funds moving through a financial institution's administrative accounts do not move anonymously, but are marked with the client name.

We now have an ongoing responsibility to examine the implementation of legislation to combat money laundering. I am very anxious to hear the testimony of our witnesses about the promulgation of regulations related to combating money laundering. I also welcome their insight into what Congress can further do to help combat terrorist financing.

The free movement of money across borders, unnoticed and untracked is so critical to the work of terrorists. By acting quickly to cut off the supply of money, we limit their ability to act. This is key. As I have said in this Committee before, in this new era, economic warfare will be one of our strongest weapons against terrorism. It is an irony that terrorists who would destroy our way of life need our institutions in order to thrive.

Mr. Chairman, the problem of money laundering is a daunting and complex one. Money laundering is nothing more than the use of our legitimate economic infrastructure to support and strengthen illegal activities. It is done by those who have no respect for the law, who have no respect for our democratic institutions, and by those who have no respect for the common values that we all share.

Money is such a fundamental tool of this international cabal of terrorists. It sustains them. It paid for the flight training of those who hijacked the planes on September 11 and it pays for the explosives that are killing our soldiers in Iraq nearly everyday. By acting quickly to cut off the supply of money, we limit their ability to act.

Clearly, we need to address this issue. But, we must be mindful that the very institutions that we must more heavily regulate—nonbank money remitters, for instance—are the very money centers that vast portions of our constituents rely on everyday to live.

So, we must be circumspect when looking at regulations which may have the unintended consequence of limiting access of law abiding citizens to these money centers.

As we continue to strengthen our response to terrorism, I look forward to hearing the testimony of the witnesses today and specifically how they are implementing regulations to

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PREPARED STATEMENT OF SENATOR WAYNE ALLARD

I would like to thank Chairman Shelby for holding this hearing to examine more closely money services business compliance with the Bank Secrecy Act and USA PATRIOT Regulation.

Title III of the USA PATRIOT Act significantly expanded antimoney laundering efforts in the United States, requiring specific changes to the policies and procedures of many financial institutions.

These changes, however, have apparently caused a significant amount of confusion for regulators and industry, and are adversely impacting money services businesses.

A lack of guidance by regulators and the banks' fear of increased liability have hampered the ability of many unbanked Americans to send funds to relatives within the United States or overseas.

This Committee held a hearing last September to examine the Federal Government's policies to enforce the Bank Secrecy Act and antimoney laundering provisions of the USA PATRIOT Act.

I appreciate the Chairman's thorough examination of the antimoney laundering provisions of the Bank Secrecy Act and the USA PATRIOT Act, because it is only with an appropriate regulatory framework that this country will be able to effectively curb the financing of terrorism.

I look forward to hearing from the banking regulators today about the compliance guidance they will issue to industry so that money services businesses and other financial institutions will be able to comply with antimoney laundering laws.

I also look forward to hearing from the industry about their recommendations for improving compliance and interpretation in a difficult regulatory environment.

I would like to thank our witnesses agreeing to appear before the Committee today. I look forward to your testimony.

PREPARED STATEMENT OF JULIE L. WILLIAMS

ACTING COMPTROLLER OF THE CURRENCY

APRIL 26, 2005

Introduction

Chairman Shelby, Ranking Member Sarbanes, Members of the Committee, I appreciate the opportunity to appear before you today to discuss issues arising in our nation's antimoney laundering efforts in the context of money services businesses (MSB's). My testimony will focus on the nature of money laundering risks posed by MSB's, MSBs' loss of access to banking services, and the OCC's position concerning banks' relationships with MSB's. We very much appreciate your leadership, and that of the Committee, in this vital area.

Money Services Businesses

A "money services business" is an umbrella term encompassing many different types of financial service providers. MSB's are defined broadly in the BSA regulations to include: (1) currency dealers or exchangers; (2) check cashers; (3) issuers of traveler's checks, money orders, or stored value; (4) sellers or redeemers of traveler's checks, money orders, or stored value; and (5) money transmitters. According to a 1997 study by Coopers & Lybrand that was commissioned by FinCEN, and is currently in the process of being updated, it was estimated that there were over 200,000 MSB's operating in the United States providing financial services involving approximately $200 billion annually. Of these MSB's, approximately 40,000 were outlets of the U.S. Postal Service, which sell money orders. This 1997 study also estimated that check cashers and money transmitters would grow at a rate of at least 11 percent per year. The MSB industry is extremely broad and very diverse, ranging from *Fortune* 500 companies with numerous outlets worldwide, to small independent "mom-and-pop" convenience stores offering check cashing or other financial services.

As the regulator of national banks, the OCC has long been committed to ensuring that all Americans have fair access to the banking system and financial services, and we recognize the positive role that MSB's can play in this process. MSB's provide financial services to segments of our society that do not have accounts with mainstream banks or for other reasons do not feel comfortable in a formal banking environment. MSB's generally offer convenience, neighborhood locations and a variety of financial services that appeal to these customers. Furthermore, some of the products and services offered by MSB's (for example, foreign remittance services) may not be available at the local neighborhood bank. According to industry trade group information, up to 40 million Americans do not have mainstream bank accounts and satisfy most of their financial needs using MSB's.

However, some MSB's can also present a heightened risk of money laundering or terrorist financing. These businesses generally engage in a high volume of cash transactions and usually offer several types of services, including check cashing, money transmission, currency exchange, money orders, traveler's checks, and stored value mechanisms. They engage in transactions with third party customers who are unknown to the bank and, as a result of this indirect relationship, the bank has neither verified the identities nor obtained first-hand knowledge of these customers. As a result, transactions involving such entities could have the effect of moving the placement stage of money laundering one step away from the bank.

OCC compliance examinations over the years have also noted situations where extraordinary amounts of cash were deposited at national banks by MSB's. In such situations, the OCC or the national bank filed a suspicious activity report (SAR) and reported the transactions to law enforcement. The OCC is also aware of situations where money launderers actually established MSB's (check cashers) to disburse and launder their excess cash to unsuspecting customers. Similar examples of money laundering through MSB's are noted by the Financial Action Task Force on Money Laundering in its Report on Money Laundering Typologies 2001–2002. The 2003 National Money Laundering Strategy, prepared jointly by the Department of the

Treasury and the Department of Justice, also specifically makes references to MSB's being used as conduits in various terrorist financing arrangements. For these reasons and others, the OCC has traditionally viewed MSB's as "high-risk" for money laundering.

State licensing, regulation and oversight of MSB's also varies. For example, some States require no licensing, some States license only certain segments of the money services businesses (for example, check cashers or money transmitters) while other States exercise strong regulatory oversight over all facets of the MSB industry. Furthermore, according to FinCEN, as of December 2004, only approximately 22,000 MSB's have registered with FinCEN as required by law. One could surmise from the 1997 study and its projections, that only about 10 percent of the over 200,000 MSB's that may be operating nationwide have complied with these registration requirements.

Notwithstanding the foregoing, not all MSB's are equally risky and most MSB's have never been tainted by or associated with money laundering. Some are nationally recognized and respected companies that have strong AML programs and are licensed and supervised, while others are small businesses such as local grocery stores whose products, services and customer base present little to no risk of money laundering or terrorist financing. The challenge for all of us is to ensure that banks recognize these differences and that we, as regulators, are clear about our supervisory expectations to the banking industry with respect to MSB accounts.

Loss of Access to Banking Services

The OCC is well aware of, and concerned about the problems that MSB's are experiencing in obtaining banking services. As with any business enterprise, a bank account is essential for the success of an MSB's business. The reasons for MSBs' loss of access to banking services are complex and derive from a multitude of factors, including concerns about regulatory scrutiny, uncertainty about regulatory expectations, the risks presented by some MSB accounts, and the costs and burdens associated with maintaining MSB accounts.

Given the sheer number and the variety of services offered by MSB's, the differences in risk profiles among MSB's can be profound. For example, a small grocer cashing checks as a convenience to its customers has a much different risk profile from a money remitter that cashes checks, sells money orders, and sends wire transfers to customers in high-risk geographies.

Banks must expend resources just to identify those MSB's that are high risk and those that are not. In general, at a minimum they must: (1) apply their customer identification program requirements; (2) confirm FinCEN registration, if required; (3) confirm compliance with State or local licensing requirements, if applicable; (4) confirm agent status, if applicable; and (5) conduct basic risk assessment to determine the level of risk associated with the account. If the MSB is categorized as high risk, additional resources must be expended by the bank to ensure that it is fulfilling its obligations under the Bank Secrecy Act (BSA).

It is easy to see from this process that the costs and resources that must be expended by a bank to open and maintain an MSB account, while complying with its obligations under the BSA, can be significant. As in all businesses, these additional costs are factored into the pricing of the products offered to MSB's, and certainly some banks have found that the costs are too high or that they are unable to transfer the costs to the MSB customer. Thus, due to market forces, some banks may simply decide to close the accounts or discontinue the business relationship.

These problems are further compounded by the huge number of unregistered and unlicensed MSB's, and the uneven regulatory scheme under which MSB's are supervised. Registration with FinCEN, if required, and compliance with any State-based licensing requirements represent the most basic of compliance obligations for MSB's, and an MSB operating in contravention of registration and licensing requirements would be violating Federal and possibly State laws. Nonetheless, there are tens of thousands of MSB's that are not registered with FinCEN, and there are a significant number of MSB's that are not licensed by the States.

Another factor is the lack of clear guidance on certain issues concerning supervisory expectations of banks that provide financial services to MSB's. This is especially true in the case of unregistered MSB's where clarity was needed as to whether banks are expected to file SAR's, close accounts, or take some other action upon discovery that its MSB customer has not complied with Federal or State licensing requirements. Similarly, we needed to clarify what minimal level of due diligence should be conducted on low-risk MSB's, or even the amount of due diligence expected of banks to conduct a risk assessment of their MSB customers. Additionally, the general characterization of MSB's as "high-risk" by regulators over the years at times failed to highlight the fact that the risk profiles of MSB's vary depending on

the circumstances of a particular MSB. Thus, incomplete or unclear guidance from regulators may have discouraged banks from doing business with certain MSB's even though most have never been tainted by or associated with money laundering.

Banks are also concerned about the risks of doing business with MSB's, including reputation risk. This may be due, at least in part, to several high-profile criminal cases brought against banks that have relationships with MSB's. For example, in January 2003, Banco Popular of Puerto Rico forfeited $21.6 million (the forfeiture to the Government satisfied a civil money penalty of like amount assessed by the Federal Reserve and FinCEN) and entered into a deferred prosecution agreement with the Justice Department in a case involving a single count of failing to file a SAR on an MSB customer in violation of the BSA.

In October 2003, Delta National Bank and Trust Company, which has its principal office in New York City, paid a $950,000 criminal fine and pled guilty to a criminal information charging the bank with one count of failure to file a SAR in connection with transactions involving two MSB accounts at the bank.

Finally, in March 2004, Hudson United Bank, a State-chartered bank which has its principal office in Mahwah, New Jersey, agreed to a $5 million fine to settle accusations by the Manhattan District Attorney's Office that one of its New York City branches failed to monitor certain MSB accounts as required by the BSA.

These and other cases have understandably caused considerable anxiety among bankers that have MSB accounts. In some cases, where a bank has been criminally investigated or prosecuted, the investigation began as an investigation of the MSB customer of the bank, and eventually led to the bank itself becoming a target of the investigation because it allegedly failed to properly administer the MSB account. Moreover, many bankers are concerned with what they characterize as the "criminalization" of the SAR process, and in light of the billions of transactions going through the U.S. banking system, at least one banker has analogized this process as running a railroad and being expected to monitor everyone who takes your train to see if their trip is legitimate.

Without question, the stakes in this area have been raised in part due to the risk of terrorist financing and national security concerns, consequently, the risk exposure of guessing wrong is very high. In the current environment, banks have become understandably highly risk-averse and may simply close the accounts of businesses that present more risk than they are willing to tolerate.

The OCC's Position Concerning Banks' Relationships with MSB's

To accomplish our supervisory responsibilities, the OCC conducts regular examinations of national banks and Federal branches and agencies of foreign banks in the United States. These examinations cover all aspects of the institution's operations, including compliance with the BSA. The OCC's examination procedures were developed in conjunction with the other Federal banking agencies, based on our experience in supervising and examining national banks in the area of BSA compliance. The procedures are risk-based, focusing our examination resources on high-risk banks and high-risk areas within banks. We continue to work to improve our supervision in this area and we will revise and adjust our procedures to keep pace with industry changes, technological developments and the increasing sophistication of money launderers and terrorist financers. In this regard, we are presently working with FinCEN and the other Federal banking agencies to issue a new, interagency BSA examination handbook by June 30 of this year. This is a major step toward interagency consistency in how we conduct our exams in this area.

We have also provided specific guidance on MSB's to our examiners and to national banks. Since September 1996, the OCC has had guidance in its BSA Handbook addressing nontraditional financial entities, including MSB's. Last year, in response to concerns about unregistered and unlicensed MSB's, the OCC issued Advisory Letter 2004–7, providing guidance to banks with respect to unregistered or unlicensed MSB customers. FinCEN and the Federal banking regulators are providing additional guidance to banks about MSB's and we will adjust our existing guidance to conform to this interagency guidance.

On several occasions in the last 6 months, the OCC has participated in various forums to better understand MSB issues and to educate the industry and our staff. For example, OCC representatives attended the March 8, 2005 hearing on MSB's hosted by FinCEN. Also, in March of this year, the OCC hosted a teleconference for the national banking industry in which we discussed a variety of BSA concerns, including MSB issues. Approximately 1,000 sites listened to the teleconference, mostly at national bank locations. These sites included between 4,000 and 5,000 listeners. We conducted the same teleconference for our examination staff in the week preceding the industry call.

As our knowledge and understanding of MSB's and their issues have continued to grow, our guidance has continued to evolve and develop. On March 30 of this year, the Federal banking agencies and FinCEN issued an Interagency Policy Statement to address our expectations regarding banking institutions' obligations under the BSA for MSB's. This Statement specifically states that the BSA does not require, and neither FinCEN nor the Federal banking agencies expect, banking associations to serve as the *de facto* regulator of the MSB industry. It provides that banking organizations that open or maintain accounts for MSB's should apply the requirements of the BSA on a risk-assessed basis, as they do for all customers, taking into account the products and services offered and the individual circumstances. Accordingly, a decision to accept or maintain an account with an MSB should be made by the banking institution's management, under standards and guidelines approved by its board of directors, and should be based on the banking institution's assessment of risks associated with the particular account and its capacity to manage those risks.

Along with FinCEN and the other Federal banking agencies, we also are issuing Interagency Interpretive Guidance on Providing Banking Services to MSB's to further clarify our expectations for banking organizations when providing banking services to MSB's. The guidance sets forth the minimum steps that a bank should take when providing banking services to MSB's, specific steps beyond minimum compliance obligations that should be taken by banking organizations to address higher risks, as well as due diligence, ongoing account monitoring, and examples of suspicious activity that may occur through MSB accounts. The guidance is intended to provide additional clarity regarding existing antimoney laundering program responsibilities but is not intended to create new requirements for banking organizations.

Concurrent with this guidance, FinCEN will issue guidance to MSB's to emphasize their BSA regulatory obligations and to notify them of the type of information that they may be expected to produce to a banking organization in the course of opening or maintaining an account relationship. We are hopeful that this guidance will further clarify our expectations regarding banks' relationships with their MSB customers. The OCC will continue to work with FinCEN and the other Federal banking agencies to provide guidance to the banking industry that is clear and consistent, and we commend the efforts of Director Fox for the leadership he has shown in addressing this important issue. His efforts to foster interagency collaboration and cooperation have been extraordinary.

The BSA has been the focus of regulatory, Congressional, and media attention for much of the last year. Clearly, these are very important issues to the banking industry, the OCC, and the United States. This emphasis and attention on BSA has prompted the industry to feel that the regulators have adopted a "zero tolerance" approach to BSA/AML supervision and enforcement—that any deficiency in a bank's BSA processes equates to a violation triggering a cease-and-desist order. At the OCC we take this assertion seriously—because it is flat wrong. Perhaps it arose in response to monetary fines related to money laundering and to enforcement actions by the bank regulators, yet the actual number of actions is less than what one might think, given the level of concerns raised. For example, the OCC fined two banks for BSA violations in the past 12 months. During the fourth quarter of 2004, we conducted 368 examinations at which BSA compliance was reviewed, and cited four banks for violations of our BSA compliance program requirement. Overall, in 2004, we issued eleven cease-and-desist orders concerning BSA—less than 1 percent of our population of national banks.

The intense focus on BSA compliance has led to other misperceptions about the OCC's policies and practices relating to MSB accounts at national banks. In concluding, let me set the record straight on several key points: First and foremost, the OCC does not supervise MSB's and does not expect national banks to supervise their MSB customers. Rather, it is our job to assess the systems and controls that banks employ to comply with the BSA, and it is the banks' job then to develop and successfully implement such systems and controls.

Second, the OCC, does not, as a matter of policy, require any national bank to close the accounts of an MSB or any other customer (except in the context of administrative enforcement actions, where due process protections apply). The determination of whether to open, close, or maintain an account is a business decision made by the bank following its own assessment of the risks presented, in accordance with policies and procedures approved by the bank's board.

Third, the OCC expects banking organizations that open and maintain accounts for money services businesses to apply the requirements of the BSA, as they do with all accountholders, on a risk-assessed basis. We recognize that, depending upon the circumstances of a particular MSB, the risks presented are not the same and it is

essential that banking organizations neither define nor treat all MSB's as posing the same level of risk. Banks need to calibrate the level of due diligence that they apply to MSB's, and it is entirely appropriate to conduct a lower level of diligence for those MSB's that present lower levels of risk.

Moreover, we absolutely are not saying that because a particular type of business or product is high-risk, that a national bank should not be involved with it. We absolutely are saying, however, that national banks must have systems commensurate with—and adequate to identify, monitor, manage, and control—those risks. A crucial question today may well be whether a bank has or is willing to incur the cost to have such a system of due diligence and controls sufficient to reduce the bank's risk to a level that satisfies the regulatory standards that apply *and* is within the bank's own risk appetite.

Conclusion

Mr. Chairman, Senator Sarbanes, and Members of the Committee, the OCC salutes your leadership in this vital area and strongly shares the Committee's goal of preventing and detecting money laundering, terrorist financing, and other criminal acts and the misuse of our Nation's financial institutions. We also believe that important objectives are achieved when MSB's have access to banking services, consistent with the goals of the antimoney laundering and terrorist financing laws. We stand ready to work with Congress, FinCEN, the other financial institutions regulatory agencies, and the banking industry to achieve these goals.

PREPARED STATEMENT OF KEVIN BROWN

COMMISSIONER, SMALL BUSINESS/SELF-EMPLOYED DIVISION
INTERNAL REVENUE SERVICE

APRIL 26, 2005

Good morning, Mr. Chairman and distinguished Members of the Committee. I appreciate the opportunity to be here today to discuss the Internal Revenue Service's (IRS) efforts involving the Bank Secrecy Act (BSA) and to update you on the progress we have made since last September.

IRS Enforcement

Under the leadership of Commissioner Everson, we have strengthened the focus on enforcement at the IRS, while maintaining appropriate service to taxpayers. We have four enforcement priorities, which are to:

- Discourage and deter noncompliance, with emphasis on corrosive activity by corporations, high-income individual taxpayers, and other contributors to the tax gap;
- Assure that attorneys, accountants, and other tax practitioners adhere to professional standards and follow the law;
- Detect and deter domestic and offshore-based tax and financial criminal activity; and,
- Discourage and deter noncompliance within tax-exempt and Government entities and misuse of such entities by third parties for tax avoidance.

Detecting and investigating money laundering activity is an important part of tax compliance for the IRS. In addition, the failure to file Forms 8300 and criminal violations of the BSA, including the structuring of deposits to avoid currency transaction reporting requirements, often have a direct link to both tax evasion and money laundering. In some cases, because the schemes are sophisticated and because we may not be able to obtain evidence from some foreign countries, it is almost impossible to conduct traditional tax investigations. In these circumstances, money-laundering violations frequently are the only possible means to detect tax evaders.

Money laundering not only is used by domestic and international criminal enterprises to conceal the illegal, untaxed proceeds of narcotics trafficking, arms trafficking, extortion, public corruption, terrorist financing, and other criminal activities; but it is also an essential element of many tax evasion schemes. With the globalization of the world economy and financial systems, many tax evaders exploit domestic and international funds transfer methods to hide untaxed income. These schemes often involve the same methods to hide money from illegal sources and to hide unreported income. Both activities generally use nominees, currency, wire transfers, multiple bank accounts, and international "tax havens" to avoid detection.

Money laundering is the financial side of virtually all crime for profit. To enjoy the fruits of their crime, criminals must find a way to insert the illicit proceeds of that activity into the stream of legitimate commerce in order to provide the resources necessary for criminal organizations to conduct their ongoing affairs.

As part of its core tax administration mission, the IRS addresses both the civil and criminal aspects of money laundering. On the civil side, the Department of the Treasury has delegated to the IRS responsibility for ensuring compliance with the BSA for all nonbanking financial institutions not otherwise subject to examination by another Federal functional regulator, including money service businesses (MSB's), casinos, and certain credit unions. Under this delegation, the IRS is responsible for three elements of compliance—(i) the identification of MSB's, (ii) educational outreach to all these types of organizations, and (iii) the examination of those entities suspected of noncompliance.

IRS' Criminal Investigation (CI) Division is responsible for the criminal enforcement of BSA violations and money laundering statutes related to tax crimes. CI uses the BSA and money laundering statutes to detect, investigate, and prosecute criminal conduct related to tax administration, such as abusive schemes, offshore tax evasion, and corporate fraud. CI also investigates the nonfiling of Forms 8300 and criminal violations of the BSA, including the structuring of deposits to avoid currency transaction reporting requirements, which frequently have a direct link to both tax evasion and money laundering.

BSA Program in IRS' Small Business/Self-Employed (SB/SE) Division

In October 2004, SB/SE officially established a new organization, the Office of Fraud/BSA, which reports directly to the Commissioner of SB/SE. The director, an IRS executive, has end-to-end accountability for compliance with BSA including policy formation, operations, and BSA data management. The director's operational responsibility includes line authority over all field activities, as well as the data management.

The Office of Fraud/BSA consists of four territories, with approximately 300 field examiners located in 33 field offices nationwide. In addition to this field operation, which is managed by 31 group managers, technical BSA staffing also includes eight headquarters analysts located throughout the country. Our hiring plans call for us to have between 320 and 325 field examiners on board by the end of fiscal year 2005. In addition, we plan to hire an additional 60 BSA examiners in fiscal year 2006.

As new examiners are brought on board, they receive specialized BSA training, including the identification of noncompliant MSB's, detection of structuring, and identification of transactions going to OFAC (Office of Foreign Asset Control) blocked countries. We also provide continuing professional education training classes for our BSA examiners in topics such as: (i) Audit Techniques for Anti-Money Laundering (AML) Compliance Examinations; (ii) Civil Penalties/Referrals to FinCEN; (iii) Disclosure; (iv) Currency Banking and Retrieval System (CBRS) Analysis; and, (v) Foreign Bank and Financial Account Reports (FBAR). To further support the development and identification of criminal activities (fraud) during BSA examinations, we also provided fraud training for our BSA examiners and Title 31 training to our Fraud Technical Advisors (FTA's). As a result of this cross-training, our FTA's and BSA examiners can work together more effectively and ensure that the cases we refer to our Criminal Investigation Division are thoroughly developed.

All of our BSA examiners and their managers devote 100 percent of their time to examinations of BSA-related cases. This contrasts with years past, when the BSA examiners were required to spend a substantial portion of their time on unrelated work, such as traditional income tax audits. Additional support personnel (28 employees) provide assistance to the examiners, including workload identification. Working in close collaboration with Treasury's Financial Crimes Enforcement Network (FinCEN), the IRS also conducts community outreach to ensure that MSB's are aware of their requirements under the BSA.

Bank Secrecy Act Data

The IRS currently has responsibility for processing and warehousing all BSA documents into CBRS at the IRS Detroit Computing Center. However, FinCEN will assume this role in the future upon completion and implementation of a new system, BSA Direct, which will replace CBRS. BSA documents include FBAR's, Currency Transaction Reports (CTR's),[1] Forms 8300 (Report of Cash Payments Over $10,000 Received in a Trade or Business), CMIR's,[2] and Suspicious Activity Reports

[1] CTR's include FinCEN Form 104 and FinCEN Form 103 (filed by casinos).
[2] Report of International Transportation of Currency or Monetary Instruments.

(SAR's).[3] Managing the BSA data involves three separate but related functions that include: (i) collecting and inputting BSA data from reporting institutions; (ii) housing and controlling access to the BSA data after it is entered into the central database; and (iii) supporting the IRS and other law enforcement query systems to mine BSA data in support of law enforcement investigations. Currently, CBRS has approximately 144 million BSA documents on file. All documents entered into the CBRS (approximately 15 million annually) are made available, at FinCEN's direction, to other law enforcement agencies (Federal, State, local, and international) and regulatory agencies, in addition to the IRS. It bears noting that the IRS is one of the largest users of CBRS data.

We are aware that the U.S. Government Accountability Office (GAO) recently discovered security weaknesses at the Detroit Computing Center. We are mindful of those problems, and, in a recent letter to GAO, Acting Deputy Secretary Havens outlined the steps that we are taking to resolve those problems.

Usefulness of Bank Secrecy Act Data

The combined currency information in CBRS is very important for tax administration and law enforcement. The information provides a paper trail or roadmap for investigations of financial crimes and illegal activities, including tax evasion, embezzlement, and money laundering. The detailed information in these currency reports routinely is used by IRS CI special agents and Assistant U.S. Attorneys to successfully pursue investigations and prosecutions.

In civil matters, the IRS uses the CBRS database to identify cases for potential examination. For example, in many of our offshore trust schemes a search of CTR's can produce a wealth of information. IRS field examiners also access BSA documents to assist in on-going examinations. The CBRS database is used to assist in case building prior to beginning an examination.

The IRS CI Division has increased its emphasis on BSA responsibilities significantly, with particular focus on improving the effectiveness and efficiency of Suspicious Activity Report (SAR) Review Teams. CI now hosts 64 SAR Review Teams located throughout its 33 Criminal Investigation field offices. This expansion allows each team to focus specifically on SAR's filed in its geographic area. Over 300 law enforcement agencies participate in some manner in the review of SAR's, and IRS has at least 100 special agents and 36 investigative analysts assigned, either full or part-time, to these SAR Review Teams. CI routinely reviews between 12,000 and 15,000 SAR's per month and uses data mining tools to assist teams in efficiently analyzing the ever increasing number of SAR's being filed. Training on the use of these tools is ongoing. In June, CI will host a national meeting to train teams on a recordkeeping program and policy changes designed to improve the efficiency of SAR Review Teams.

IRS Coordination with FinCEN

In carrying out our responsibilities under the Bank Secrecy Act, we are engaged in a close partnership with FinCEN. Most recently, we have worked with FinCEN's newly established Office of Compliance to finalize an information sharing agreement that provides for the routine exchange of BSA compliance information, including information concerning financial institutions identified as having significant BSA compliance deficiencies or violations. These exchanges, spelled out in a Memorandum of Understanding (MOU), are intended to help FinCEN in fulfilling its role as administrator of the BSA and to assist the IRS in conducting examinations of certain financial institutions to assess BSA compliance. The IRS and FinCEN expect this MOU will improve and enhance the level of interagency cooperation and enable both organizations to maximize their resources as they identify, deter, and interdict terrorist financing and money laundering. I am happy to report that IRS and FinCEN signed the MOU yesterday, with plans for immediate implementation.

IRS Headquarters senior analysts from both SB/SE and CI participate in several working groups involving Treasury and other agencies. As members of the Informal Value Transfer System Working Group, we are working with representatives of FinCEN, the Federal Bureau of Investigation (FBI), Immigration and Customs Enforcement (ICE), and the Drug Enforcement Administration (DEA) in an effort to identify unregistered MSB's. The working group was assembled to develop procedures relative to investigative intelligence gathering and outreach efforts to MSB's across the country.

IRS also is a member of the Money Laundering Threat Assessment working group, as is FinCEN. The focus of this group is to identify money laundering threats

[3] SAR's are filed by financial institutions to report suspicious activity.

throughout the United States through investigations conducted by all law enforcement agencies.

The IRS assigns senior analysts to act as liaisons to FinCEN in both civil and criminal matters. Key areas of coordination include:

- Conducting joint monthly meetings to discuss BSA issues, trends, andexamination results;
- Establishing examination priorities;
- Using data-driven analysis to assist in the risk-based identification of cases as well as to identify geographic locations of potential noncompliance;
- Improving the quality of referrals for enforcement;
- Having FinCEN participate in IRS BSA training classes and managers' meetings;
- Incorporating feedback from FinCEN on IRS outreach materials; and,
- Establishing production schedules at DCC for new forms and form revisions.

Since fiscal year 2003, funding from FinCEN has allowed the IRS to add 82 additional full-time employees (FTE's) to its BSA program.

Recent Accomplishments

Since I appeared before this Committee in September 2004, we have made considerable progress at the IRS in enhancing the operation of our BSA program:

- MSB Audits—Our goal for MSB examinations is to close more than 3,500 cases during fiscal year 2005, or about 1.8 percent of the estimated 200,000 MSB's. With 3,200 examinations in progress or closed as of March 31, 2005, we fully expect to meet this target. The principal issues we are finding with MSB's include:
- Lack of sufficient recordkeeping;
- Lack of an AML compliance program or one that is not tailored to the entity's risk;
- Failure to identify and investigate suspicious activity, or to identify structuring; and,
- Nonfiling of CTR's.

As advocated by FinCEN, we also are conducting examinations of some larger MSB's at the entity's corporate headquarters level. Five of these examinations are underway, with plans to begin additional examinations later in 2005. Through this centralized approach we are able to work with the businesses to identify their agents with the highest risk of noncompliance and then use our examination resources accordingly. The result is more carefully focused examinations for the MSB's and improved use of our resources. In particular, these centralized examinations give us the potential to impact the compliance behavior of a much larger number of MSB's. For example, there are 29,000 MSB's related to the five corporate entities now under examination.

The IRS also is employing for the first time, an examination technique known as a "saturation audit." Specifically, we are conducting simultaneous examinations of all MSB's located within particular ZIP Codes in two cities, which were selected in coordination with other law enforcement agencies. In addition to examining the MSB's for BSA compliance, this saturation approach allows our BSA examiners to identify individuals with unusual patterns of financial activity which fall below the reporting threshold. Upon completion of these two pilot examinations, we will analyze the results and determine whether to initiate similar examinations in additional cities.

- Increased Coordination with the States—Since the last hearing in September 2004, we have obtained the concurrence of the Conference of State Bank Supervisors (CSBS) on our model Fed/State MOU. This past month, IRS and FinCEN conducted joint presentations to CSBS districts to promote the MOU, which provides both the IRS and the participating State the opportunity to leverage resources for examinations, outreach, and training. CSBS also is assisting us as we "market" this MOU to the States. I am pleased to tell you that just last week New York State signed the MOU—the first State to do so. We expect that additional States will sign the MOU in the near future.
- Centralized Case Selection—We are moving the responsibility for identifying BSA workload and building these cases from the general IRS Examination program to the Fraud/BSA organization. This newly created operation will incorporate leads from the field and CI, as well as CBRS analysis, and is on track to be fully operational by October 1, 2005. We expect that this approach will ensure consistency in risk-based case selection and result in improved case selection and results.
- Improved Workload Identification—We are exploring two new methods for identifying BSA workload. The first uses a risk-based scoring system based on criteria such as BSA workload priorities, prior compliance history, and BSA reports filed.

It is intended to give our classifiers additional information to pinpoint which cases in the potential universe are most in need of examination. The criteria used to select a particular case for examination are included in the case file so that the group manager and the examiner know why the case was selected. Our classifiers in the Western Territory for BSA are using this methodology currently to select all of its BSA cases and will be evaluating the results. If this scoring system proves successful for classifying cases, we plan to implement it nationwide in October 2005, when we have our centralized workload selection unit in place.

In the second related effort, we are researching the feasibility of using CBRS data to create an automated national workload identification and selection system for Title 31 cases. The first phase of the project—documenting current workload selection practices and translating these into rule-based selection factors—is complete. The second phase, which entails combining the selection factors into formulas that will be run against the CBRS, is just getting under way. In the third phase, we will be testing the effectiveness of the selection formulas in identifying appropriate BSA workload, and making any necessary adjustments. If this technique is successful in identifying the universe of potential cases, we will begin employing the new methodology early in 2006—most likely in tandem with the classification method descried above.

- Reengineering—To increase the effectiveness and efficiency of our BSA examiners, we are reengineering the examination process. We have developed standardized workpapers for BSA examinations that delineate clearly the audit steps the examiner must complete to ensure that the recordkeeping and reporting requirements of the entity under examination are being met. The workpapers also provide guidance on evaluating the entity's AML compliance program to determine if it is commensurate with the risk that the entity could be used as a vehicle for money laundering or terrorist financing.

Other aspects of the BSA reengineering include managerial review meetings with the examiner after the initial interview with the entity, and a requirement to set a mutual commitment date for the completion of the examination which will be shared with the entity and the manager.

We anticipate that we will begin training our employees in June 2005 on the use of standardized workpapers to document their cases, as well as the other requirements of the reengineered examination process. All of the standardized documents will be available on the examiners' computers.

- Better Education and Outreach—The national strategy for education and outreach related to antimoney laundering (AML) was designed in conjunction with FinCEN, SB/SE, and CI to increase compliance of MSB's and casinos with the BSA and is carried out by SB/SE's Taxpayer Education and Communication (TEC) Division. Our BSA outreach specialists are located in the six top HIFCA (High Risk Money Laundering and Related Financial Crimes Areas)—Miami, New York, Chicago, Houston, San Francisco, and Los Angeles. They work frequently with MSB trade associations to reach large numbers of stakeholders. Since October 2004, the TEC BSA specialists have contacted 158 new entities in an effort to establish relationships for AML/BSA outreach. They also have participated in 80 AML outreach events where they interacted with more than 8,000 individuals. In March 2005, Tax Talk Today featured a presentation for practitioners, payroll professionals, and financial planners on BSA. The viewership of this live, Internet program cosponsored by IRS has grown to almost 55,000 registered sites.
- Streamlined Quality Review—IRS also is in the process of implementing a centralized closed case review process which is intended to identify compliance trends and training needs for particular programs, including BSA.

Conclusion

As I stated earlier in this testimony, the fight against money laundering and terrorist financing are top priorities for the Internal Revenue Service. We are prepared to increase our commitment to the BSA Program, and we will continue to coordinate our efforts closely with FinCEN.

Mr. Chairman, I thank you for this opportunity to appear before this distinguished Committee and I will be happy to answer any questions you and the other Members of the Committee may have.

PREPARED STATEMENT OF WILLIAM J. FOX

DIRECTOR, FINANCIAL CRIMES ENFORCEMENT NETWORK

U.S. DEPARTMENT OF THE TREASURY

APRIL 26, 2005

Chairman Shelby, Senator Sarbanes, and distinguished Members of the Committee, I appreciate the opportunity to appear before you again to discuss the programs the Financial Crimes Enforcement Network is implementing under the Bank Secrecy Act, as amended, relating to the money services business sector. We very much appreciate the support and policy guidance you and Members of this Committee have offered to us. Your leadership and commitment to understand and publicly discuss the issues facing the money services business sector is critical not only to the safety of our financial system, but also to our Nation's security.

I am honored to be here today with Acting Comptroller Julie Williams from the Office of the Comptroller of the Currency; Commissioner Kevin Brown of the Small Business/Self-Employed Division of the Internal Revenue Service; and, Superintendent Diana Taylor from the State of New York Banking Department. All of these officials lead agencies that play critical roles in implementing a rational Bank Secrecy Act regulatory regime on the money services business sector. I am pleased to advise this Committee that we have continued to build on our very good working relationship with each of these agencies, as well as with other Federal and State regulatory agencies that share our efforts. The importance of our working relationship with these and other agencies cannot be overstated. In fact, if we are to be successful in achieving the goals of the Bank Secrecy Act, we must ensure that the government—policymakers, regulators, and law enforcement—speaks with one voice on these issues. The confusion resulting from different messages has serious ramifications, which can be devastating. The need for such close coordination to meet the challenges under the Bank Secrecy Act is particularly acute with respect to the money services business industry.

When I appeared before you last June, I outlined a plan for establishing more aggressive and coordinated administration of the regulatory implementation of the Bank Secrecy Act. In September, I updated you on that plan. Since that time, we have made extensive progress in the following areas:

- We have executed agreements with the five Federal banking agencies and the Internal Revenue Service to provide information to us in both specific and aggregate fashion to give us a better understanding of the overall level of Bank Secrecy Act compliance in the industry. This understanding will enable us to better oversee the various sectors in the financial industry we regulate and administer the Bank Secrecy Act. In each of those agreements, we have committed our direct involvement and support to those regulators in helping them discharge their regulatory obligations. We are currently working hard to get similar agreements with the Securities and Exchange Commission and the Commodity Futures Trading Commission.
- Working closely with the Conference of State Bank Supervisors, we have developed a model information-sharing agreement that we will seek to execute with all States that regulate banks, money services businesses, and other types of financial institutions for compliance with the Bank Secrecy Act or similar antimoney laundering requirements. This agreement is patterned after the agreement we have executed with the Federal banking agencies and the Internal Revenue Service. In fact, I am pleased to tell you that the first State banking regulator with whom we have executed the model agreement is the State of New York Banking Department. These agreements will, in my view, take our oversight and administration of these programs to the next level. We will have a much clearer picture of the various financial industries we regulate, including money services businesses; our collective actions and concerns can be better coordinated; and we will better leverage information and resources as a result of these agreements.
- Our new Office of Compliance, established last year with the support of the Congress and the Department of the Treasury, particularly this Committee, is well on its way to full staffing. This office will be devoted solely to overseeing the implementation of the Bank Secrecy Act regulatory regime by the regulators with delegated examination authority. We are in the process of staffing the 18 positions provided by the Congress and purchasing the desks, computers, and other equipment needed to support them. Several of these individuals have already reported for duty.
- As I committed to you last June, we have established a new Office of Regulatory Support in our Analytics Division, thereby devoting for the first time in the history of the Financial Crimes Enforcement Network, a significant part of our ana-

lytic muscle to our regulatory programs. We now have devoted over one quarter of our analysts solely to this mission. Among other things, these analysts are being used to identify compliance weaknesses in the reporting submitted by regulated industries as well as trends, patterns and threats. The analysts are and will continue to assist our Office of Compliance and the other delegated supervisory regulators to be smarter about their programs for Bank Secrecy Act compliance.

- Finally, we have established a secure web site that will form the platform for much deeper information sharing under the authority of Section 314(a) of the USA PATRIOT Act. Section 314(a) contemplated a "two-way" conversation between the Government and private sector on relevant issues relating to money laundering, terrorism and other illicit finance. Soon, we will begin providing information to the financial industry—on both a macro and micro level—that will help them assess the risks related to their business lines and customers, which will enable them to better discharge their responsibilities under the Bank Secrecy Act.

When I appeared before this Committee last September, my statement provided an overview of money services businesses and outlined the challenges we collectively face to ensure a healthy, yet safe and transparent sector. Because that is already part of the Committee's developing record on these issues, I will not repeat that information here today. Instead, my testimony will focus on several specific issues of concern that have arisen since last fall regarding money services businesses. I will also set out for you what we have accomplished, as well as the issues that we believe still need to be addressed.

It is fair to say that the Bank Secrecy Act regulatory climate has changed dramatically since I appeared before you last September. One result of this change has been an increase in what we call the "defensive filing" of suspicious activity reports. We believe this climate change has also caused many institutions to reassess the risks associated with large portions of their customer base. This reassessment of risk is not a bad thing; in fact, many in the financial industry have told us that the heightened scrutiny on Bank Secrecy Act compliance has caused their institutions to "know" their customers better. However, the reassessment of risk has also led many institutions to conclude that certain customers pose too much risk for the institution to continue to maintain an account relationship. These institutions have begun to terminate their "risky" account relationships and the money services businesses sector is an industry sector that has suffered the wide-spread termination of banking services. Unfortunately, we are concerned that often decisions to terminate account relationships may be based upon fear and confusion, or on a misperception of the level of risk posed by money services businesses.

Once we recognized that account termination was becoming a wide-spread problem, and at the direction of Secretary Snow, we and the Bank Secrecy Act Advisory Group's Non-Bank Financial Institutions and Examinations subcommittees held a public fact-finding meeting to elicit the perspectives of money services businesses and banks why these account relationships were being terminated. The meeting, held on March 8 of this year, confirmed that money services businesses of all types and sizes are losing their bank accounts at an alarming rate, even when those money services businesses appeared to be complying with the Bank Secrecy Act and State-based regulatory requirements. We also heard an unprecedented level of concern among small and large banking institutions alike that opening or maintaining accounts for money services businesses will be too costly, pose too great a threat of reputational risk, or will continue to subject them to heightened regulatory scrutiny from examiners. These concerns are exacerbated by the perceived risks presented by money services business accounts, and the costs and burdens associated with maintaining such accounts, the perception that banks are being evaluated against regulatory standards that have not been explained, misperceptions about the requirements of the Bank Secrecy Act, and the erroneous view that money services businesses present a uniform and unacceptably high risk of money laundering or other illicit activity.

Individual decisions to terminate account relationships, when compounded across the U.S. banking system, have the potential to result in a serious restriction in available banking services to an entire market segment. The money services business industry provides valuable financial services, especially to individuals who may not have ready access to the formal banking sector. It is long-standing Treasury policy that a transparent, well regulated money services business sector is vital to the health of the world's economy. It is important that money services businesses that comply with the requirements of the Bank Secrecy Act and applicable State laws remain within the formal financial sector, subject to appropriate antimoney laundering controls. Equally as important is ensuring that the money services business industry maintain the same level of transparency, including the implementation of

a full range of antimoney laundering controls as required by law, as do other financial institutions. If account relationships are terminated on a wide-spread basis, we believe many of these businesses could go "underground." This potential loss of transparency would, in our view, significantly damage our collective efforts to protect the U.S. financial system from money laundering and other financial crime—including terrorist financing. Clearly, resolving this issue is critical to our achieving the goals of the Bank Secrecy Act.

As my colleagues in the regulatory agencies and I are well aware, financial industry members across the spectrum are genuinely concerned about the heightened levels of scrutiny placed upon their institutions. Unfortunately, we continue to see institutions with very basic compliance failures that have a significant impact, while at the same time, we see institutions across the spectrum working harder than ever to ensure compliance with this regulatory regime. These institutions perceive a significant regulatory and reputation risk being placed upon their institutions by examiners, prosecutors, and the press. This perception is not irrational. Institutions are trying hard to determine what it takes to comply with the Bank Secrecy Act regulatory regime in this time of heightened scrutiny.

Based upon what we learned at the March 8 meeting, and in discussing these issues with other Federal regulators, we have developed and are implementing a three-point plan for addressing these issues:

Guidance—Develop Guidance Jointly with the Federal Banking Agencies to Outline with Specificity Bank Secrecy Act Compliance Expectations when Banks Maintain Accounts For Money Services Businesses

On March 30, 2005, the Federal banking agencies and we took the first step toward addressing these issues by issuing a Joint Statement on Providing Banking Services to Money Services Businesses. The purpose of the Joint Statement was to assert clearly that the Bank Secrecy Act does not require, and neither the Federal banking agencies nor we expect, banking institutions to serve as de facto regulators of the money services business industry. The Joint Statement also made it clear that banking organizations that open or maintain accounts for money services businesses are expected to apply the requirements of the Bank Secrecy Act to money services business customers on a risk-assessed basis, as they would for any other customer, taking into account the products and services offered and the individual circumstances.

This was just a first step. In the Joint Statement, we pledged to issue further, more specific guidance that would outline further our collective compliance expectations for both banking institutions and money services businesses. We believe this guidance will help clarify the Bank Secrecy Act requirements and supervisory expectations as applied to accounts opened or maintained for money services businesses. We are not so naïve as to believe that this guidance will solve all issues, nor that it will repair all relationships between money services businesses and banking organizations. We are, however, committed to continue to work with the Federal banking agencies and our other Federal and State partners to do everything we can as responsible and responsive regulators, to issue guidance, clarify expectations, and answer questions.

Education—Provide to the Banking Industry and Bank Examiners Enhanced Education on the Operation of the Variety of Products and Services Offered by Money Services Businesses and the Range of Risks that Each May Pose

We will build on the significant steps that the Federal banking agencies and we have taken toward establishing the framework and mechanism for providing educational outreach. For example, we are working together with the Federal banking agencies to develop a unified set of examination procedures for Bank Secrecy Act compliance, which will include a section devoted to money services businesses. Moreover, we have already begun joint examiner training through a partnership with the Federal Financial Institutions Examination Council that will provide a forum to provide training on the money services business industry. Finally, at the Financial Crimes Enforcement Network, we are developing a series of free training seminars for industry, regulators, and law enforcement that will undertake many of the issues that are currently vexing all interested parties.

Regulation—Strengthen The Existing Federal Regulatory And Examination Regime For Money Service Businesses, Including Coordinating With State Regulators To Better Ensure Consistency And Leverage Examination Resources

We will continue to evaluate and modify, if necessary, the existing Bank Secrecy Act regulatory requirements relating to money services businesses. This is an im-

portant exercise not just for money services businesses, but for all regulatory requirements. Our regulatory regime is not and cannot become static. We must be willing to change course when required to ensure the goals of the Bank Secrecy Act are being met. We have started this effort for money services businesses. For example, after consulting with law enforcement, we recently proposed to revise, simplify, and shorten the money services businesses suspicious activity form. This action will enhance the industry's ease of completing the form while still obtaining critical information needed by law enforcement. We will reexamine our registration requirement for money services businesses and ensure that it is achieving the purpose intended in the law; that is, to identify the universe of lawfully operating money services businesses so law enforcement can focus on those businesses that are operating outside the bounds of the law. We will also take a hard at our definitions about what is a money services business and ensure we have not captured entities that pose little or no money laundering or illicit finance risk.

We will continue to work closely with our colleagues at the Internal Revenue Service, to enhance the examination regime through the development of revised Bank Secrecy Act examination procedures, information sharing and examination targeting. Additionally, as I noted previously, we have worked and will continue to work closely with the Conference of State Bank Supervisors and State regulators on these issues. Executing individual agreements with State banking agencies will ensure better coordination and synergy with state-based examiners to better leverage some of the good work and resources of those agencies.

We also will continue to work to develop indicators that can be used by law enforcement and financial institutions to help identify unlicensed and unregistered money services businesses. By providing law enforcement, banks and other financial institutions with indicia of illicit activity, they will be better able to help us identify money services businesses that choose to operate outside the regulatory regime. It remains vital that we strike the appropriate balance between education and outreach to those businesses that remain ignorant of the regulatory requirements, and aggressive criminal enforcement of those businesses operating underground.

Perhaps the best outcome of the events of late has been the express recognition of the need for all the stakeholders in the Bank Secrecy Act arena to work more closely together to reach our collective goals in a consistent manner. We are working closer with the regulatory agencies that have delegated examination authority for the Bank Secrecy Act than ever before. Not only are we issuing joint guidance and developing uniform examination procedures, but we also are sharing information in a deeper and broader way, as well as developing synergies to the benefit of the regulatory regime as a whole. We are also working more closely with law enforcement. We have formed an interagency working group that brings together regulators and law enforcement to work together to identify and address money services businesses that may not be complying with the law and regulations. Finally, we are setting the stage by building platforms, systems and technologies such as BSA Direct that will allow us to leverage information in a way that we never have before.

We understand that we must move with all possible speed we can muster and that when we move we must get it right. September 11 raised the stakes. The old paradigm of a Nation being able to defend its citizens from outside threats with walls and military might—a paradigm that has been with the world since Rome—have vanished on that terribly brilliant day three and a half years ago. That day proved a terrible new reality we all face: The threat to our Nation's security can come from within; from people living next door to us, shopping at the same supermarkets, getting gas at the same gas stations, receiving cash from the same ATM's, and taking the same flight.

This threat demands a different way of looking at things—a different way of protecting our citizenry. No longer can citizens be passive about the defense of our country. The Government cannot do it alone. What we know about this new reality is that information is now central to the security of the Nation. And the simple fact is that information is what the Bank Secrecy Act regulatory regime is all about. This regulatory regime should be directed at safeguarding the financial industry from the threats posed by money laundering and illicit finance and it should be directed at providing the Government with the right information; relevant, robust and actionable information that will be highly useful to law enforcement and others. It is my view that best way to achieve these goals is to work in a closer, more collaborative way with the financial industry. This regime demands a partnership and an on-going dialogue between the Government and the financial industry if it is ever going to realize its true potential. I am convinced that the vast majority of our financial industry members are committed to this partnership. Our goal is to do all we can to ensure that the Government lives up to its side of the bargain.

Mr. Chairman, Senator Sarbanes, distinguished Members of the Committee, the importance of your personal and direct support of these efforts cannot be overstated. Your oversight will ensure that we meet the challenges that we are facing. I know how critical it is that we do so and we hope you know how committed we are to meeting those challenges. Thank you.

PREPARED STATEMENT OF DIANA L. TAYLOR

NEW YORK STATE SUPERINTENDENT OF BANKS

APRIL 26, 2005

Introduction

Good morning Chairman Shelby and Ranking Member Sarbanes, I am Diana Taylor, Superintendent of Banks for the State of New York and a Member of the Board of Directors for the Conference of State Bank Supervisors.

Thank you for holding this hearing on an issue that is of great interest to those of us who oversee the financial services industry at the State level, and who are very concerned about the sometimes conflicting priorities of regulation, law enforcement, and the ability of necessary businesses to operate. This has become a very serious concern as issues of financial crimes, especially money laundering, figure so prominently today.

Seven months ago, this Committee brought the issue of compliance with the Bank Secrecy Act and antimoney laundering provisions of the law (BSA/AML) in the Money Services Businesses (MSB's) to the Nation's attention with its initial oversight hearing. I testified at that hearing and I thank you for this opportunity to continue the discussion.

Who We Are

The New York State Banking Department is the regulator for more than 3,400 financial institutions and financial service firms in New York State. This number includes State-chartered banking institutions, the vast majority of U.S. offices of international banking institutions, all of New York State's money transmitters, check cashers, mortgage brokers, mortgage bankers, and budget planners. The aggregate assets of the companies and institutions supervised by the Banking Department are nearly $2 trillion.

Relevant to today's hearing, the Department is responsible for licensing, supervising, examining, and regulating the check cashing and money transmitting businesses which operate in New York State.

We currently license 213 check cashers with 964 locations, employing 4,000 people. In 2003, in New York State alone, licensed check cashers cashed more than 36.4 million checks with an aggregate face value of some $14.9 billion.

Nationwide, according to the trade group representing check cashers, this sector comprises some 11,000 neighborhood locations, which cash upward of 180 million checks annually with an aggregate face value of more than $55 billion.

Beyond the check cashers, there are 72 licensed money transmitters operating in New York through approximately 28,000 agents in New York State, employing more than 63,000 people. In 2004, these licensed money transmitters processed more than 90 million travelers checks, money orders, official checks issued on behalf of banks and remittances with an aggregate face value of over $101 billion in New York alone.

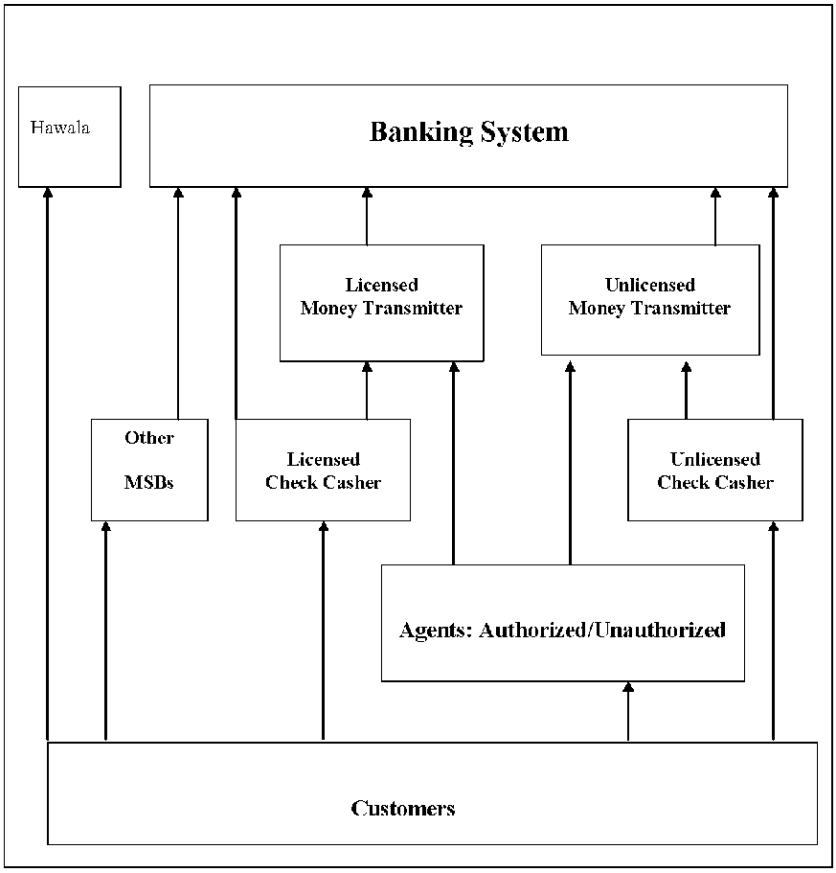
These figures represent just one State. I do not have comparable nationwide figures, but a quick extrapolation would indicate that check cashers and money transmitters constitute a *very* large presence which serves a very large market. Check cashers and money transmitters need banks to conduct their business. This is how they move money. Thus, the banks become portals into our financial system. It goes without saying that the scope of the task of overseeing this large and growing sector of the financial services industry is enormous.

MSB's fill a real need by providing financial services in areas where there are very few if any bank branches. These are typically very low income areas. MSB's exist in immigrant and minority communities where people have varying levels of comfort with the banking system for a broad range of reasons, from cultural to educational to personal preference. MSB's provide an alternative to banks—they are easy to access, and they are convenient in terms of cost, proximity to their markets and hours of operation. In addition, an MSB location may provide a wide variety of other services. One might ask why banks are not providing these services, but that is outside the scope of today's discussion.

We need to keep this industry viable. There are thousands of people for whom check cashers and money transmitters are the sole means of access to their cash, and the sole means of moving that cash. Many are immigrants who make use of this system to send money back to families and loved ones in their countries of origin. A significant portion of the economies of many third world countries are dependent upon these resources.

The MSB Industry

The following chart diagrams how the MSB industry interfaces with the banks and with its customers.



As with any financial service business, MSB's have particular risk factors, or vulnerabilities. One of the goals of law, regulation, and compliance systems is to reduce those factors as much as possible, while at the same time allowing legitimate business to be conducted.

The first vulnerability to consider with MSB's is the customer base. We have to acknowledge that there will always be those who are looking for ways to exploit MSB's, and indeed the financial system, for the purpose of laundering funds and other illegal activities. Second, legitimate customers and businesses are vulnerable to the practices of unlicensed or unregistered MSB's, or unauthorized agents as may be applicable, where they are not afforded the same level of consumer protection as with a licensed MSB.

Third, licensed MSB's are open to reputational risk or guilt by association as a result of the activities of those unlicensed MSB's.

Regulation and Supervision of MSB's—New York State's Top-Down Approach

State regulators are a very important component in the effort to reduce the risks and vulnerabilities of this industry. Many States are actively involved in ensuring compliance with BSA/AML requirements. At least 45 States are now reviewing financial institutions for BSA compliance. A growing number of States are also examining for BSA in money services businesses.

In New York, we are empowered to enforce the provisions of the USA PATRIOT and Bank Secrecy Acts through our supervisory powers over MSB's. We are in the process of significantly enhancing our ability to carry out our responsibility to ensure that MSB's are sound, that they are obeying the law and that customers are protected.

We hope that by strengthening our regulation and examination processes and personnel, banks will develop a sufficient level of confidence that New York State licensed MSB's are operated in a safe and sound—and legitimate—manner.

In general terms, we look at safety and soundness of all institutions we regulate banks and nonbanks—with an eye to the preservation of our monetary system as a whole, as well as providing consumer protection.

For MSB's in particular, our licensing criteria include, but are not limited to, character and fitness standards; safety and soundness standards as may be evidenced by net worth, liquidity and bonding requirements; and compliance, inclusive of BSA/AML standards, for example policies and procedures which are in place and being followed effectively, and a designated compliance officer experienced in the field.

For us, BSA/AML standards are pertinent from the moment an applicant seeks permission to open a money services business in New York State. We require, among other information, an Anti-Money Laundering Compliance Manual, and an affidavit indicating compliance with the USA PATRIOT Act, inclusive of the four requirements for an effective antimoney laundering compliance program:

- First, policies, procedures and internal controls designed to ensurecompliance with BSA/AML requirements;
- Second, a compliance officer responsible for day-to-day compliance with the BSA/AML and a compliance program;
- Third, education and/or training of appropriate personnel; and
- Fourth, an independent review to monitor and maintain an adequate program.

At a minimum, the first three points must be in place prior to our issuing a license. This allows the Department to assess the BSA/AML knowledge base of the applicant and ensure—from the very beginning—that the compliance program is adequate.

The subsequent examination process allows the Department to test the implementation of the compliance program presented during the application process.

The core BSA/AML examination program that we use for both banks and MSB's is the same as that used for banks by the Federal agencies. Although a standardized examination program is available, it is a flexible format that may be tailored to the risk profile of a given licensee. In addition, all sources of information available are used to determine a licensee risk profile, for example Cash Transaction Reports and Suspicious Activity Reports filed with FinCEN. In the field, transaction testing is performed using a variety of sampling techniques.

Supervision of Licensed MSB's

There are many similarities in how we look at banks and at MSB's as businesses. Because they differ in that MSB's are not depository institutions, we have come up with a slightly different protocol. While we (along with the Federal Reserve Board) use the CAMELS system for banks, we have developed an assessment protocol known as FILMS for MSB's.

- F—is for Financial Condition. Our examiners look at balance sheets, levels of permissible investment, level and quality of capital, the quality and quantity of earnings, trends and stability and they analyze liquidity, profitability and leverage.
- I—is for Internal Controls and Auditing. How effective are the MSB's controls and overall internal control environment?
- L—is for Legal and Regulatory Compliance. This is critical—how good is the business at adhering to applicable State and Federal laws and regulations? How effective is compliance and can management spot and correct any compliance issues or gaps? Is the BSA/AML program effective or deficient?
- M—is for Management. Examiners look at the overall performance and the licensee's ability to identify, measure, and monitor risks. Succession plans are also important as is responsiveness to recommendations by auditors and supervisors.

- S—is for Systems and Technology. An important part of the exam, particularly for money transmitters, is the IT audit, testing the management, development, and support of information systems.

Law Enforcement—Bottom-Up Approach

We have found that law enforcement agencies and their bottom-up approach dovetails very well with our top-down method of regulation and supervision of the MSB industry. Law enforcement can identify information at the street level in terms of the type of suspicious activity, including hawalas, or patterns of activity that may be flowing through both licensees or unlicensed entities. Partnering with law enforcement for information sharing and coordination provides a solid basis to identify inappropriate or unlicensed activity and assists in targeting where this activity might be taking place.

In New York State, we have formed a very successful in partnership with law enforcement and we have been effective in shutting down unlicensed MSB's, and licensed MSB's who may be conducting illegal activities. For example, most recently, on March 24, 2005, through the cooperative effort of the Department and the FDIC, the Manhattan District Attorney announced the indictment of an unlicensed money transmitter known as Vietnam Service, Inc. and its owners on charges of moving almost $25 million to Vietnam in the last 3 years.

The Challenge

BSA/AML concerns have overshadowed the MSB industry to the point where very few banks will do business with them. This does not necessarily mean these businesses will disappear—the demand for their services is very strong. It does mean that they will have to find alternative means to move money. This result would defeat the intent of the law. Imagine the crisis this would engender: Planes and trucks loaded with cash traversing borders. Following the money under circumstances such as these would be made even more difficult.

One of New York's largest banks, which has historically represented the majority of the market for MSB's, sent discontinuance letters to two dozen wire transfer businesses just last month, citing compliance burdens associated with servicing these firms. These businesses, and others, have come to us asking us to intervene. They have been experiencing profound difficulty in interesting any other banks in working with them. We are very worried that many of these transmitters may have no alternative but to shut down their businesses, leaving thousands of legitimate customers in the lurch.

This problem of banks being reluctant to open accounts for MSB's stems in large part from their concerns over the lack of regulatory and supervisory guidance in the area of BSA/AML which creates uncertainty in the market. There has been a history of deferred prosecutorial agreements and very large penalties being extracted from institutions for what is arguably not criminal behavior. In addition, regulators have told them this is a high risk area of business. Many banks have decided the cost of setting up the compliance systems and uncertainty about their own role with regard to regulation. Moreover, the fear of monetary penalties and loss of reputation at best and the fear of prosecution by law enforcement agencies at worst is just not worth it.

The Solutions, Next Steps

Now that these problems have been recognized, and defined, there are several steps that should be taken to resolve these issues. Each one of these elements is important. They range from clarification of the law, to working together cooperatively, to making sure examiners are trained appropriately and the industry is educated as to what is required, to the need more uniformity of standards across the country.

Guidance

First and most important, FinCEN and the Federal banking supervisors recently announced that guidance on BSA/AML compliance would be issued soon. This is very welcome news and promises a strong step in the direction of providing more clarity to the banks as to their BSA/AML requirements with respect to MSB customers. This guidance will assist banks in determining the measures they should undertake. One very important issue that was made clear is that banks are not expected to become or act as MSB regulators.

One issue that I hope to see clarified in the forthcoming guidance has to do with the OCC preemption of State depository and lending laws. Under the current OCC rules, operating subsidiaries of nationally chartered banks, including MSB's, may ignore any State licensing or other regulatory requirement. I think it is important under these circumstances that a means be crafted to establish national standards

regarding these entities, along with a very clear understanding of who is responsible for what in this area.

Coordination Among Regulatory Agencies

I am so pleased to report that since that initial hearing last September we have all made significant progress toward a plan to achieve a coordinated approach through communications. I especially want to thank this Committee for recognizing that the State regulators are an important part of the solution. Over the last few months, the Conference of State Bank Supervisors (CSBS) has worked diligently with all of the States, our Federal bank regulatory counterparts, FinCEN and the IRS to produce two model Memoranda Of Understanding (MOU's) setting forth procedures for the exchange of certain BSA information between the States and FinCEN and the IRS, respectively. In addition, these efforts resulted in the creation of a model side letter agreement between the States and the Federal banking agencies to facilitate sharing by the State and Federal banking regulators of jointly held BSA examination material with FinCEN and the IRS.

In return, the States will receive analytical tools from FinCEN that will maximize resources and highlight areas and businesses with higher risk for money laundering. The agreement with the IRS will allow for examination-sharing to reduce duplicative efforts and establish an ongoing working relationship.

This is an unprecedented cooperative agreement. We have all recognized that no one of us can be effective in this area without the others. Each one of us has resources needed by the others to do their jobs effectively.

Both FinCEN and the IRS have been exceptionally cooperative in outreach efforts to answer all State questions about the agreements, and as a regulator who is keenly concerned about the MSB's enjoying a viable and visible future, I am deeply grateful for this.

Throughout the process of developing these agreements, CSBS has worked with other organizations of state MSB regulators, including the Money Transmitters Regulatory Association (MTRA). The information-sharing agreement templates are designed to be signed by any State regulator with jurisdiction over those entities that fall within the purview of BSA/AML issues.

In March, the CSBS Board of Directors endorsed the information-sharing agreements and strongly urged all State banking departments to join as signatories on the MOU's. CSBS is distributing the information sharing agreements to the State banking departments.

On behalf of New York, I have signed the MOU's with the IRS and FinCEN. Our goal is to obtain signatures from all 50 States to cement this relationship with both FinCEN and the IRS. Not only will these agreements provide additional information to the regulators, but also the more information FinCEN receives and is able to analyze, the better the guidance from State and Federal regulators will be.

These MOU's highlight the recognition by FinCEN and the IRS of the vital role that States play in BSA/AML supervision and enforcement for both banks and MSB's. These MOU's provide the mechanism for increased communication and enforcement, leading to more effective compliance for banks and MSB's. Also, importantly, the MOU's provide for the sharing of training and examination and other program materials, addressing resource issues at both the State and Federal levels.

Coordination with Law Enforcement

Addressing the banks' fear of prosecution is a challenge. Some prosecutors seem to be of the opinion that all instances of criminal behavior can be and should be prevented. I am in absolute agreement that criminal behavior, especially in the area of BSA/AML issues is serious, and must be punished appropriately. However, there is no system in the world that is going to catch every single case immediately, if ever. This is not to say we should not try, but we must be realistic about it or we will render inoperable a system which has served us all very well. Regulatory matters such as BSA/AML compliance failures are being criminalized and weaknesses, deficiencies and mistakes are being prosecuted in ways which I think are counterproductive.

I believe it is more constructive for us to work with banks, in a supervisory mode, to build strong compliance with BSA/AML. The powerful supervisory tools of administrative action and enforcement sanctions can be used toward this end.

But, in order to do this, we as regulators, the banks and the users of the financial system need to know what the rules are, which is why FinCEN's guidance is so critical.

Our supervisory and regulatory powers can be very helpful to law enforcement in weeding out and prosecuting violators of the law. It is we the regulators who can require these entities to have effective BSA/AML compliance programs in place; it

is we the regulators who examine and detect noncompliance with BSA/AML; issue enforcement actions to correct and penalize violations; and it is we the regulators who oversee compliance with corrective actions. It is law enforcement that prosecutes criminal behavior when regulators are ignored, or not doing their jobs.

I strongly believe that if MSB's are in compliance with BSA/AML as interpreted by FinCEN, that this should be a sufficient compliance standard for the banks, their regulators and criminal law enforcement authorities. I do not believe that banks or their principal management should be subject to criminal prosecution if the appropriate regulator has determined the compliance standards of the banks are sufficient under the law and I believe that criminal prosecution should only extend to a bank or any bank personnel that is knowingly violating BSA/AML standards for criminal purposes.

The real lesson of this discussion is that to have a real and lasting effect on illegal activity in this area, it is essential that the agencies involved in the regulatory, investigative and enforcement frameworks for MSB's proactively cooperate with each other. To that end, we have formed a working group in New York State which includes representatives from State and Federal Homeland Security, the NYS Department of Criminal Justice Services, the New York County District Attorney's office, the FBI, IRS, ICE, and the NYPD. As a designated High Intensity Financial Crime Area, (HIFCA) we have a template for this level of cooperation. No one agency can combat this illegal activity on its own.

Examiner Training

Another part of the solution is rigorous examiner training. Because MSB's are not banks, they require a different examiner perspective than the one used in bank examination. Certain organizations, such as the MTRA, do offer industry-specific examination training. This could be useful for States with a less specific protocol than New York's. In my testimony last fall, I suggested that the Federal Government might play a roll in funding training for State bank examiners to ensure a uniformly high level of competence.

Continuous BSA/AML training programs for the general examination staff is essential. We take advantage of external training resources when available but we also have developed our own training programs in-house that are based upon our regulatory and supervisory requirements, industry best practices and real life examination experiences. In addition, we have specialists for internal controls, BSA/AML compliance and systems technology. Special training is needed in each of these areas.

In developing a national standard, it is key that these training opportunities and resources can be effectively shared among the States. This may be accomplished by sharing training programs and examination manuals that may be available for MSB's. Hands-on examination experience can be obtained through joint or coordinated examinations as evidenced through the efforts of the MTRA. In addition, the CSBS is currently working on plans for a BSA examiner "boot camp" training program that will be offered nationwide later this year. Federal assistance in these areas would be very valuable.

Industry Education

Education must not be restricted to the regulators. Both the MSB and banking industries need to be thoroughly knowledgeable concerning BSA regulatory and supervisory standards.

I firmly believe that it is the regulator's job to ensure that the entities—all the entities—under its purview fully understand what is expected of them through the exam process and in day-to-day behavior. This is, for many people, where we experience the disconnect, or misconnection, between law enforcement and regulators. Our job is to help banks and MSB's understand what the law is, what the regulations do, and ensure they have the systems set up to comply, which will help avoid prosecution which can harm the reputation of an entire industry and close down a business.

We continue to work with the MSB industry to "raise the bar" of supervisory standards and communicate those standards and our supervisory expectations. The banking industry must be informed of our standards for MSB's and what they should expect from their MSB customers in terms of compliance, for example licensing, FinCEN registration and compliance programs. Something as simple as the requirement by banks that any MSB opening an account prove that they are licensed and registered would go a long way. This question has not always been asked.

We are planning a conference to take place at the end of this quarter to which we will invite both MSB and banking industry participants to discuss the regulation and supervision of MSB's. This conference will include regulators as well as rep-

resentatives of law enforcement who will explain how they view the industry and will give us all an idea of what they consider to be behavior that could be subject to criminal prosecution.

The Need for More Consistency Nationwide

I have described my Department's approach to MSB supervision and mentioned a need to push for national consistency in our approach to monitoring the MSB's and their relationship to the banking industry. As you may know, across the country, supervision and regulation of this industry as a whole remains uneven.

On the bright side, this is an area that the State regulators collectively have worked on and will continue to work on by sharing best practices either on a one-on-one, State-to-State basis or through organizations such as the MTRA.

To ensure that both banks and MSB's know what is expected of them we need to create more than a rulebook—we need a uniform supervisory system, we need all States to adopt stringent safety and soundness requirements if they have not already done so. We are working through CSBS and other organizations of State regulators of MSB's to make that happen.

Conclusion

There are serious regulatory challenges posed by the MSB's. These companies deliver services that are necessary for many legitimate customers, most of whom are low income, immigrant populations. We must devise a system that allows them to operate while at the same time assuring that our laws and regulations are obeyed. We have made a great start toward reaching this goal through a clearer understanding of the law, through cooperation by and among all the regulatory agencies involved, and through all of our cooperation with law enforcement and vice versa. But we still have a long way to go.

Thank you again, Mr. Chairman for allowing me to share the New York view of where we are, what the challenges are and what we need to do about them. In holding this hearing, you have performed a valuable service for us all.

PREPARED STATEMENT OF JOHN J. BYRNE

DIRECTOR, CENTER FOR REGULATORY COMPLIANCE, AMERICAN BANKERS ASSOCIATION

APRIL 26, 2005

Mr. Chairman and Members of the Committee, I am John Byrne, Director of the Center for Regulatory Compliance with the American Bankers Association (ABA). ABA appreciates this opportunity to discuss how the financial industry is addressing compliance with the USA PATRIOT Act as well as with all laws covering antimoney laundering (AML) obligations in this current regulatory environment. At the Committee's request, we will focus on how these challenges have impacted the banking industry's relationships with money services businesses (MSB's).

ABA, on behalf of the more than two million men and women who work in the Nation's banks, brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership—which includes community, regional, and money center banks and holding companies, as well as savings associations, trust companies, and savings banks—makes ABA the largest banking trade association in the country.

ABA and our members continue to work closely with our Government partners in the challenging area of detecting and reporting the myriad of financial crimes that involve money laundering and terrorist financing. Despite our mutual support for cooperation, there are a number of concerns regarding how to achieve compliance. These problems can best be seen in the immediate issue of MSB's.

We offer the following three observations:

- Banks are exiting relationships with MSB's due to the severe lack of guidance as to what constitutes an acceptable due diligence program. Immediate direction is essential;
- The lack of direction in the MSB area is emblematic of the overall problem with Bank Secrecy Act (BSA) oversight—the labeling of an entity as "high risk" without accompanying guidance on how to mitigate that risk; and,
- Until the financial sector receives assistance in the form of guidance and clear examples of what constitutes suspicious activity, the volume of suspicious activity reports (SAR's) will continue to skyrocket.

In order to address these issues, ABA recommends a series of steps similar to the themes in our January 20 joint letter sent together with the 50 State banking asso-

ciations to all Federal banking agencies, the Department of the Treasury, and the Financial Crimes Enforcement Network (FinCEN). The letter is attached,* but I would like to restate its three main points:

- There is a need for joint industry/Government training of bankers and examiners on BSA/AML obligations and procedures that are expected in June;
- A BSA staff commentary, a list of answers to frequently asked questions, and/or centralized regulatory guidance to achieve consistency in BSA/ AML interpretations in areas such as implementing proper risk assessment is needed; and,
- The establishment of a Bank Secrecy Act Advisory Group (BSAAG) subcommittee to look at the variety of issues arising from the SAR process, particularly the problem of defensive filing, is called for.

While the Federal banking agencies have responded to our letter with a strong statement for the need for consistency in applying the requirements of the BSA, the current actions of examiners suggest that the policy of consistency has not yet been fully implemented.

Industry Efforts in Addressing AML/BSA/SAR Challenges

Mr. Chairman, ABA has worked together with the Government to provide assistance to the industry on the ongoing challenges regarding compliance with the many requirements of BSA. Among other things, ABA holds an annual conference with the American Bar Association on money laundering enforcement, produces a weekly electronic newsletter on money laundering and terrorist financing issues, offers online training on BSA compliance requirements, and has a standing committee of more than 80 bankers who have AML responsibilities in their institutions. In addition, we have provided telephone seminars on important issues such as the one we address today, the banking of MSB's in the current confusing environment, and compliance with Section 326 of the USA PATRIOT Act. We plan to address the expected interagency BSA/AML examination procedures later this summer. The industry's commitment to deterring money laundering continues unabated, and we have trained hundreds of thousands of bankers since the passage of the Money Laundering Control Act in 1986.[1]

In addition to this training, ABA has been collecting examples from our membership on problems with BSA examination oversight. It is clear that communication to examiners on how to implement BSA oversight has been mixed at best, despite the good intentions of the agency representatives in Washington and around the nation. The hearing today focuses on the area where that lack of consistent communication has been the most profound—working with MSB's.

MSB's and Banks: Direction on Compliance is Confusing

As indicated in the letter of invitation for today's hearing, in dealing with MSB's, there is a need to have a "consistent and equal policy used to prevent potential abuse of the financial system while at the same time enabling that system to provide sound access to its services." In order to achieve that goal, the current state of confusion must end.

The industry certainly understands and appreciates the need to analyze the levels of risk involved with maintaining MSB relationships. The problem, however, is how much analysis is sufficient. At times, banks will appropriately exit relationships due to the risk inherent with a particular MSB. At other times, banks want to continue valued relationships. We know the importance of providing all segments of society with banking services. For some, remittances are an essential financial product and MSB's frequently provide the service.

Remittance flows are an important and stable source of funds for many countries and constitute a substantial part of financial inflows for countries with a large migrant labor force working abroad.

Officially recorded remittances received by developing countries are estimated to have exceeded $93 billion in 2003. They are now second only to foreign direct investment (around $133 billion) as a source of external finance for developing countries. In 36 out of 153 developing countries, remittances were larger than all capital flows, public and private.

Remittance flows go through both formal and informal remittance systems. Because of the importance of such flows to recipient countries, governments have made significant efforts in recent years to remove impediments and increase such flows.

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*Held in Committee files.

[1] A 2003 survey by ABA Banking Journal and Banker Systems Inc. found that Bank Secrecy/ AML/OFAC was the number one compliance area in terms of cost in the banking industry. It is also interesting to note that in banks under $5 billion in assets, 75.6 percent of the employees said that compliance was not their only job.

At the same time, however, there has been heightened concern about the potential for remittance systems, particularly those operating outside of the formal banking system, to be used as vehicles for money laundering and the financing of terrorism.

It is believed that the risk of misuse of remittance systems would be reduced if transfers were channeled through remittance systems that are subject to regulation by governments.

To address the risks, a two-prong approach is evolving—one prong involves efforts by governments to encourage the use of formal systems (such as banks) by lowering the cost and increasing the access of users and recipients to the formal financial sector. Such efforts should concentrate on the reduction of artificial barriers such as unnecessary regulatory standards that impose costs ultimately borne by consumers.

The second prong includes initiatives by governments to implement antimoney laundering standards for entities such as MSB's. These initiatives are progressing in the United States and, as we have heard from other witnesses, the MSB regulatory infrastructure is robust and effective.

An underlying challenge is that there exists in most countries a large pool of "unbanked" individuals. Such individuals are often accustomed to using both formal (and regulated) financial institutions and very informal (unregulated) financial services providers. Economic and social incentives that move this group toward "underground" financial services providers ultimately harm the interests of the unbanked, of law-abiding financial services providers, and of the general public. Moreover, the underground financial services providers may service law-abiding unbanked persons as well as criminals. Thus, governmental actions that discourage the unbanked from entering depository institutions may have the effect of also making antimoney laundering goals far more difficult to achieve. Therefore, it is the view of ABA that the current MSB-bank regulatory environment must change in order to advance the goals of reducing money laundering and combating terrorist financing.

If the environment does not change, the important services offered by MSB's will continue to be severely hampered by regulatory excess. While the Federal banking agencies issued an interagency policy statement on March 30, the promised guidance (not yet released as of this writing) supplementing the statement must be specific and be clearly communicated to the examiners.

The Current Regulatory Confusion is Having a Dramatic Negative Effect

On March 8, I had the opportunity to co-chair a meeting of BSAAG on the MSB problem. For eight hours we heard 44 witnesses discuss dramatic examples of lost business, economic failures, and rampant regulatory confusion. The theme of confusion was echoed by all of the banks. For example, Alex Sanchez, head of the Florida Bankers Association told us:

> Financial institutions are closing legitimate accounts. Particularly in the area of money services businesses or MSB's, financial institutions feel compelled to close their accounts. Most of these are the accounts of perfectly legitimate businesses. Many of them in Florida are businesses run by small entrepreneurs. They are gas stations, convenience stores, and grocery stores. They serve as a place where paychecks can be cashed. Some of them serve as agents of regulated money transmitters. These accounts are closed not because there is any evidence that they are engaged in improper activity, but because they fit into a regulatory profile.

The Florida Bankers Association also surveyed its members and found that 58 percent have curtailed activities with MSB's and 83 percent experienced the change of attitude or approach of examiners conducting examinations in this area.

Another banker emphasized the value of small MSB's:

> One of the common types of small businesses in our community is the small grocery store or convenience store. These are the businesses that often serve the immigrant and less advantaged community. These businesses are the connecting point for many in our society to the economic system. They are legitimate businesses serving a genuine need. Under the current regulatory scheme, we can no longer serve them.

Finally, the problem was best illustrated by a recent agency training session on BSA that used a slide featuring the following text:

> Two Important Things to Remember about MSB's:
>
> • May be high risk for money laundering;
> • Play a vital role in the financial services of the United States.

Mr. Chairman, this statement sends the ultimate mixed message.

FinCEN and the Federal banking agencies are to be commended for working toward a guidance to address this policy morass. We urge the agencies to act swiftly

and immediately inform the examiners to adjust their review of how banks work with MSB's. As we finally improve this situation with MSB oversight, it is time to move to address overall BSA examination inconsistency.

Uniform USA PATRIOT Act/BSA/AML Examination Procedures Are Needed

ABA has previously emphasized that the banking agencies need to reach agreement on how the financial services industry will be examined for compliance under the USA PATRIOT Act and the other AML requirements. As we indicated at the time, "too often, institutions of the same approximate size, in the same geographic area and offering the same financial products are treated differently for compliance purposes. This should not continue."

There is formal movement to coordination of examination procedures by the agencies but the process is not complete and there are some outstanding issues. We will discuss one glaring problem—assessment of the adequacy of SAR programs, later in this testimony.

While we repeat our 2003 and 2004 calls for Congress to ask the regulatory agencies to report on efforts in this area, ABA has seen a commitment to consistency in 2005. For example, not only has FinCEN Director Fox expressed public support for uniform assessments, but he has also directed BSAAG to form a subcommittee on examination issues. This subcommittee, co-chaired by ABA and the Federal Reserve Board, has met several times to discuss the pending interagency examination procedures and we are meeting again on April 29.

Mr. Chairman, uniform exam procedures will assist with the industry concerns about examination inconsistency and the continued threat of "zero tolerance" by some examiners. However, we strongly urge Congress to ensure that all banking agencies engage in industry outreach when the AML exam procedures are made public.

Lack of SAR Guidance Results in Unnecessary Filings

With the increased number of entities required to file SAR's, as well as the heightened scrutiny by regulators on SAR policies and programs, it is essential for the regulatory agencies, law enforcement, and FinCEN to assist SAR filers with issues as they arise. This need is particularly obvious in the area of terrorist financing. This crime is difficult, if not impossible, to discern as it often appears as a normal transaction. We have learned from many Government experts that the financing of terrorist activities often can occur in fairly low dollar amounts and with basic financial products (for example retail checking accounts). Guidance in this area is essential if there is to be effective and accurate industry reporting. The bottom line is that terrorist financing can only be deterred by Government intelligence.

For money laundering and other financial crimes, Government advisories and other publications are a critical source for recognizing trends and typologies. As the industry emphasizes in the April 2005 issue of the interagency-authored publication, *SAR Activity Review,* there are a number of examples of activities that represent reported financial crimes. This information is extremely useful for training purposes. As the private sector co-chair of the *SAR Activity Review,* I can assure you ABA supports the efforts of FinCEN and the participating agencies in crafting a publication that provides necessary statistical feedback to the SAR filing community. The *SAR Activity Review* has provided a variety of examples of the characteristics of such diverse suspicious activity as identity theft, bank fraud, and computer intrusion.

We are pleased that the 2004 edition of the *SAR Activity Review* provided for the first time the summary characterization of all of the suspicious activity categories. This summary should assist filers in advancing their understanding of the reporting requirements.

As stated above, there are several problems affecting banks in the AML exam process related to SAR's. ABA has previously mentioned the many examples of examiner criticisms received by our members in reviews of their SAR programs. Whether it has been criticism of the number of SAR's that the institution has flied or the "second-guessing" by examiners as to why a SAR was not filed, this situation demands immediate attention.

In addition, banks have been reacting to the recent concerns echoed by the Federal banking agencies that threatened prosecutions for BSA regulatory matters is also adding to the increase in SAR filings. As the agencies emphasized in their April 18 letter to ABA and the State banking associations, the Federal banking agencies and FinCEN are working with the Department of Justice to better define the "appropriate role for criminal prosecutions of banks under the BSA."

We applaud these efforts and hope they succeed in ensuring that regulatory problems do not turn into criminal actions.

Moreover, regulatory scrutiny of SAR filings (and the recent civil penalties assessed against banks for SAR deficiencies) has caused many institutions to file SAR's as a purely defensive tactic (the "when in doubt, file" syndrome) to stave off unwarranted criticism or "second guessing" of an institution's suspicious activity determinations. As FinCEN Director Bill Fox stated so eloquently in the April SAR Activity Review:

> While the volume of filings alone may not reveal a problem, it fuels our concern that financial institutions are becoming increasingly convinced that the key to avoiding regulatory and criminal scrutiny under the Bank Secrecy Act to file more reports, regardless of whether the conduct or transaction identified is suspicious. These "defensive filings" populate our database with reports that have little value, degrade the valuable reports in the database and implicate privacy concerns.

We would like to commend Mr. Fox for addressing our third recommendation and creating a BSAAG subcommittee on SAR issues. We hope and expect that the subcommittee will tackle the issue of SAR confusion head on.

Mr. Chairman, our members share the concerns expressed by Mr. Fox but there are no other options to defensive SAR filings without improved examiner training. Our hope is that the examination procedures and a mechanism for receiving interpretations on SAR issues will result in returning suspicious activity reports to their original place—forms filed only after careful analysis and investigations with no second-guessing by regulators.

Conclusion

Mr. Chairman and Members of the Committee, ABA has been in the forefront of the industry efforts to develop a strong public-private partnership in the areas of money laundering and now terrorist financing. This partnership has achieved much success but we know that more can be accomplished. We commend the Treasury Department, banking agencies, and FinCEN for their recent efforts to ensure a workable and efficient process. ABA will continue our support for these efforts.

Thank you. I would be happy to answer any questions.

PREPARED STATEMENT OF GERALD GOLDMAN

GENERAL COUNSEL, FINANCIAL SERVICE CENTERS OF AMERICA, INC.

APRIL 26, 2005

Mr. Chairman, Members of the Committee, my name is Gerald Goldman. I serve as General Counsel to the Financial Service Centers of America, also known as FiSCA. I thank you for the opportunity to appear today to present our views on the relationship of money services businesses and banks in the current environment of examinations and enforcement actions. Those view will provide the experience of check cashers, as one segment of the MSB industry, with the phenomenon that we call "bank discontinuance." In simple terms, bank discontinuance is the indiscriminate termination by banks of the accounts of all of the members of an industry.

FiSCA is a national trade association that represents more than 5,000 neighborhood financial service providers throughout the United States. Our members provide nontraditional financial services including check cashing, money orders, wire transfers, and utility bill payment services. We serve hundreds of thousands of customers, banked and unbanked, who use us for the advantages that we provide: Convenient access, service, and the ability to obtain instant liquidity. The most common service that we provide is a place for hard-working people to cash their paychecks; a necessary service that they cannot always obtain at a bank, or choose not to.

Our industry is also transitioning into one that provides customers with a portal to traditional financial services. We do this in partnership with certain banks and credit unions, through Point of Banking facilities. In fact, in the next 2 weeks, our industry will unveil a revolutionary national savings program for the unbanked. Perhaps our most important trait as an industry is that we evolve to meet the needs of our customers, instead of requiring our customers to fit into a predetermined model of what they need.

The value that our members provide to our customers and our role as a key component of a healthy financial sector has been recently recognized by public officials. For example, on February 10, 2005, U.S. Treasury Secretary John Snow stated that money services businesses are a key component of a *healthy* financial sector and ". . . it is very important that they have access to banking services."

On March 11, 2005, Julie L. Williams, the Acting Comptroller of the Currency, said:

> MSB's play a vital role in the national economy, providing financial services to individuals who are not otherwise part of the mainstream financial system

and

> [i]t is absolutely not OCC's intent that national banks should be forced to sever their relationships with money service businesses.

In a letter dated October 13, 2004, to Congresswoman Carolyn Maloney, former Comptroller John Hawke said:

> I would also like to make it clear that the OCC recognizes the important role that check cashers and similar money services businesses (MSB's) play in providing financial services to segments of our society that do not have access to the banking system. Check cashers generally offer convenience, neighborhood locations, and a variety of financial services that appeal to certain consumers.

We also were for a long time recognized as good customers by our banks, and we worked hard to nurture the banking relationships that we had. Witness the statement of JP Morgan Chase Vice President Peter Grassl, who, a mere year or so ago, said:

> The Chase and predecessor banks have been servicing the check cashing industry in New York State for close to 50 years. In the 90's, we started servicing check cashers in our neighboring states of New Jersey and Connecticut, and we are now the leading bank serving the industry in the tristate area. We're looking to expand our business to Philadelphia and also to Texas. We've developed a mutually beneficial relationship with the industry over these years.
> Over the last 20 years, we've had only one loss and that's a pretty good record. Obviously our experience over the years has been favorable. We wouldn't stay in it if it weren't.

Nevertheless, just 6 months ago, our 50-year old friend, JP Morgan Chase, notified its 500 licensed check casher customers that it had made a general business decision to: " . . . no longer maintain credit relationships with or provide other financial accommodations or services to check cashing businesses."

In addition to Chase, over the past several years scores of banks, including Bank One, Am South, Citibank, Fleet Bank, Chamber One, Sovereign, Sun National, Bank of America and others, have indiscriminately terminated the accounts of thousands of check cashing locations and financial service centers.

The results of a recent survey conducted by the *American Banker* reported that 70 percent of banks do not lend to check cashers or that there are none in their market area. Of the remaining 30 percent of the banks that responded, 50 percent said that they had "recently stopped" lending to check cashers. This is a staggering number and has caused thousands of check cashers to scramble to find new banks among an already limited number. Apart from the check cashers, the ones most directly impacted are the hundreds of thousands of customers that they serve.

What has essentially happened can best be described by an exemplified hypothetical which might bring this matter close to home, your home. What if the banks in the United States announced that they would no longer provide banking services to Members of Congress and that they were doing it for business reasons. Could they do it? Yes. Banks could cut Members of Congress out of the banking system and essentially that is what they are doing to our industry.

The irony is: Banks do not make serving our customers the priority that we do. Yet, they have the power to stop us from serving them. It makes no sense and it is not fair.

The question is, "why is this happening?" The facts should point otherwise. Our industry is financially sound, it is stable, it is responsible, and it is profitable for banks as well as ourselves. We use our own money, we pay our bills, and we do not go bankrupt. In surveys of customers, we have even higher satisfaction ratings from our customers than most banks do from their customers.

Our industry is not one that operates underground. Our businesses are licensed and regulated in 38 States, in many instances by the same agencies that regulate banks. We are regulated under the Bank Secrecy Act and the USA PATRIOT Act, including the requirement that we register with the Internal Revenue Service as MSB's. And, we have an exemplary record of compliance with Federal and State antimoney laundering laws. In fact, James Sloan the former Director of FinCEN, stated that check cashers "have set the standard for the financial services industry in the fight against money laundering, financial crimes and terrorism."

Among the reasons that we can identify for banks discontinuing check cashers is the designation by the OCC in Advisory Letter 2000–3, of check cashers as businesses that are a "high risk" for money laundering. AL 2000–3 was followed by the Comptroller's Handbook, released in September 2000, addressing BSA Anti-Money Laundering. In its Handbook, the OCC advised its examiners that certain types of businesses, including nontraditional financial entities such as check cashing facilities, *could* be a potential source of money laundering. Interestingly, also included among the list of high-risk businesses were professional service providers, such as lawyers, accountants, and investment brokers. What followed since 2000 was not a spate of terminations of the accounts of lawyers and accountants, but a rash of terminations of the accounts of check cashers and other nontraditional financial entities. This knee-jerk reaction has occurred despite the fact that many regulators, including former FinCEN Director Sloan, have publicly stated that, in his view, the check cashing industry is no more a risk than any other business.

Following the release of AL 2000–3, we warned the regulators that the unintended result of the "high risk" designation would be the indiscriminate termination of bank accounts. I myself, as a charter member of FinCEN's Bank Secrecy Act Advisory Group, started beating the drum in November 2000 and repeated the warning many times thereafter. Our warnings fell on deaf ears, but our predictions came true; and the bleeding has continued for 4 years.

So again we ask "why is this happening?" There is no better evidence than the statements of banks themselves. For example, in a January 3, 2005 letter from Sun National Bank, which terminated all of its check casher clients, we were told:

> . . . the Bank Secrecy Act and its required due diligence program are intended to control money laundering activities . . . these relatively new and expanded regulatory requirements place an administrative burden on national banks far beyond the anticipated scope. Consequently, Sun National Bank has made a decision that we will no longer be able to service this type of business.

A similar sentiment was expressed in a letter to the Federal Reserve Board, written by Fleet Bank Vice President Jonathan Fine, who wrote:

> In making its determination, FleetBoston weighed the costs associated with implementing and maintaining the additional control systems necessary to monitor its relationships with service providers to ensure the legitimacy of transactions being processed, the legal and enterprise risks associated with maintaining such relationships, and the benefits of maintaining such relationships. On this basis alone, FleetBoston determined that the risk and cost associated with having service providers as customers out-weighed the benefits.

These letters are examples of letters that we have received from banks throughout the United States.

Finally, after the damage was done, former Comptroller Hawke, in a letter to Congresswoman Carolyn Maloney dated October 13, 2004, said:

> Absent extraordinary circumstances, the OCC will not direct or encourage any national bank to open, close, or refuse a particular account or relationship.

Just 6 months earlier, OCC Commissioner Hawke, appearing before the House Financial Institutions Subcommittee, had stated:

> . . . I would say that we've done nothing that should have resulted in banks dropping check cashers as a class, and I think that's one of the things that has to be looked at on a case-by-case basis.

The irony is that all of this discontinuance activity is done in the name of fighting terrorists and money laundering, both goals that we all support. However, the activity has had the unintended effect of punishing law abiding business owners and the customers that they serve. Where are the bad guys? It is the good guys who are being penalized. What we have is overkill imposed by regulators, and adopted by banks.

Most recently, a parade of public officials, including FinCEN Director William Fox, have been decrying bank discontinuance. On March 8, 2005, FinCEN conducted a hearing at which representatives of MSB's were permitted to testify on the extent of this problem.

Following the Hearing, on March 30, 2005, FinCEN, the Federal Reserve, FDIC, the National Credit Union Administration, the OCC, and OTS, issued a Joint Statement, in which it was officially recognized that:

> Money services businesses are losing access to banking services as a result of concerns about regulatory scrutiny, the risks presented by money services business accounts, and the costs and burdens associated with maintaining such accounts.

The Statement went on to say that the concern of banks:

> . . . may stem, in part, from a misperception of the requirements of the Bank Secrecy Act, and the erroneous view that money services businesses present a uniform and unacceptably high risk of money laundering or other illicit activity.

We do wish to commend FinCEN and the Federal banking agencies for their recent efforts to respond to the bank discontinuance problem. FinCEN has also promised to issue a Guidance on account relationships with money services businesses that will clarify the Bank Secrecy Act requirements and supervisory expectations for the accounts of money services businesses. We remain skeptical, however, as to the effects of the Guidance, unless it aids in retaining and bringing banks back to our segment of the market.

And we are not certain that even a successful clarification of compliance requirements will undo the damage done to our banking relationships. We see no evidence of banks coming forward since FinCEN's Joint Statement.

No industry, including Congress, should be subject to the awesome power of blanket termination at will. Until this issue of blanket termination at will is addressed, the mistakes made and the arrogance of power of some will continue to prevail. We would like to see this Committee really tackle not only the injustice that has occurred, but also to define the responsibilities of banks in serving MSB's based upon the merits of the individual MSB, so that access to the banking system will be available to all, particularly to the unbanked.

When we were invited to speak here today, we were asked to help in finding solutions to this problem. During the FinCEN hearing, we proposed one immediate solution, but that solution was designed merely to preserve the *status quo,* to stop the bleeding. We proposed that FinCEN and the Federal banking agencies immediately issue a statement encouraging a voluntary moratorium on the blanket discontinuance by banks of MSB accounts. We repeat that call today, and ask this Committee to consider expressing support for this interim solution.

We also stand ready with ideas, borne from the ingenuity that comes from entrepreneurial minds, to assist in finding concrete, long term solutions to this problem. Among our thoughts are the following:

- Definite standards should be developed before agencies can assign the label "high risk" to an industry;
- The labeling of an industry as "high risk" should be done only after appropriate due process, including fact finding hearings with the right of the targeted industry to be heard;
- Congress should consider passing a "Banking Services Continuation Act" that would permit banks to discontinue the accounts of MSB's only after it could be shown that the customer has failed to meet its statutory and regulatory antimoney laundering obligations, or for legitimate business reasons unrelated to the costs of compliance;
- A group should be created by the Secretary of the Treasury, made up of representatives of the Federal banking agencies, banks, check cashers, and money transmitters, with the sole purpose of ensuring access to banking services;
- CRA Credit should be given to banks that serve MSB's in neighborhoods that serve low- and moderate-income consumers; and
- There should be more transparency in the bank examination process, so that all can be assured that regulatory directives that are designed to ensure the safety of our financial system, and to keep it free from terrorist and other unlawful financing, do not punish the law-abiding, but only the law breakers.

In sum, there must be a process created so no group can be denied access, directly or indirectly, to the Nation's financial system, of which banks are the trustees.

We once again thank you, Mr. Chairman, and the entire Committee, for the opportunity to appear before you today and present the views of our industry.

PREPARED STATEMENT OF DAN O'MALLEY

VICE PRESIDENT OF THE AMERICAS, MONEYGRAM INTERNATIONAL, INC.

APRIL 26, 2005

Good morning Mr. Chairman and Members of the Committee, my name is Dan O'Malley, and I am Vice President of the Americas for MoneyGram International. MoneyGram is an international payment services company conducting business in more than 170 countries, through more than 79,000 locations. In the United States, MoneyGram is licensed and regulated as a money transmitter by each State's bank-

ing department. In addition, MoneyGram fully complies with the antimoney laundering laws promulgated by the Bank Secrecy Act and the USA PATRIOT Act, and is registered with the Treasury Department as a money services business. Today, I am pleased to have the opportunity to provide background information on my company, discuss MoneyGram's antimoney laundering compliance program, and offer a few comments on the recent problems that members of the money services business [1] industry are experiencing with maintaining and establishing bank accounts. I should also mention that I am joined today by Tom Haider, MoneyGram's Chief Compliance Officer and Vice President of Government Affairs, who can also assist in answering any of your questions.

Company Background

MoneyGram was founded in 1940 under the name Travelers Express as a money order company in Minneapolis, MN. Over the years, the company has grown to be a leading international payment services company that remains headquartered in Minneapolis, but which now has major operations centers in Denver, CO, and Miami, FL, with international offices in London, Hong Kong, Dubai, Moscow, Frankfurt, and Johannesburg. Just last summer, MoneyGram became a publicly traded company and is now listed on the NYSE. The company employs nearly 1,800 people worldwide, and offers its money transfer service through more than 79,000 locations in 170 countries, and its money orders at 60,000 locations throughout the United States. With only 1,800 employees worldwide, and over 100,000 locations worldwide, it is easy to see that MoneyGram is a company that must rely on agents to sell its services. The agents who sell MoneyGram's services include banks, credit unions, supermarkets, convenience stores, and many other retail locations. MoneyGram's services are sold through such well-known businesses as Wal-Mart, Albertsons, CVS Pharmacy, US Bank, and many small, independently owned "mom-and-pop" convenience and corner grocery stores. These "mom-and-pop" locations, along with many check casher outlets, are the MoneyGram agents that are experiencing the majority of the banking relationship problems, which I will address in greater detail later in my testimony.

MoneyGram offers consumers three primary services. First is the MoneyGram money transfer service that provides consumers an affordable, reliable, and convenient means to send money across the country or around the world in a matter of minutes. MoneyGram conducts its money transfer service through a network of "agents" which enable consumers to send money from one MoneyGram agent to another. The way it works is that a consumer walks into a MoneyGram location and tells the merchant how much money they wish to send, and where and to whom they want the money sent. After the sender pays for the transaction they are given a transaction number (similar to a PIN) that the sender then relays to their recipient, generally by way of a phone call. The recipient can then go to any MoneyGram location, and with proper identification and the transaction number, collect the money that was sent. This entire process can be completed in a matter of minutes. For example, if a sender was in a MoneyGram location in Chicago they could be on their cell phone with their recipient who was in a MoneyGram location in Paris. As soon as the sender receives the transaction number they could tell it to the recipient who could then go to the counter and pick up the funds in the local currency. It is a fast, safe, and reliable service that is used mainly by workers to send money home to their friends and family, and the average amount of a MoneyGram money transfer is less than $300. In addition to its regular money transfer service, MoneyGram also offers an emergency bill payment service called Express Payment. This service is offered at all MoneyGram locations in the United States. Express Payment allows consumers to manage the payment of their bills by paying them on the exact due date. It also provides billers with the assurance of a guaranteed payment in those situations where a consumer may have become delinquent and is required to make an immediate payment in order to avoid a collection proceeding.

Our company started as Travelers Express, a money order issuer, and today it is the Nation's largest issuer of money orders. While most consumers pay their bills with a check, there remain millions of consumers who pay their regular monthly bills with money orders, which are often less expensive and more convenient than a personal checking account. Travelers Express money orders are sold in many of the same locations that sell MoneyGram money transfers throughout the United States, and the average face amount of a Travelers Express money order is approximately $150. Finally, MoneyGram provides check-processing services for several

[1] Money services businesses "MSB's" are defined in 31 CFR 103.11uu, and include money transmitters, money order issuers and sellers, check cashers, travelers check issuers and sellers, and stored value providers.

thousand banks and credit unions in the United States. This service processes "official checks" which consist of cashiers', tellers', and other bank checks that are most commonly associated with mortgage closings and other large transactions.

It is important to note that the services provided by MoneyGram are closely regulated, and that the company is licensed by State banking departments as a money transmitter and an issuer of money orders. The State banking departments impose many of the same requirements on money services businesses that they impose on State-chartered banks, such as audited financial statements, investment restrictions, surety bonds, and on-site safety and soundness exams. In a typical year, MoneyGram will submit more than 600 licensing reports to its various State regulators, and undergo about 10 on-site exams that can last from a few days to several weeks. Thus, even though there is no Federal regulator for money services businesses, licensed companies like MoneyGram are well regulated by the States.

Anti-Money Laundering Compliance Program

Shifting gears slightly, I would now like to focus on antimoney laundering compliance. While I cannot speak for the entire money services business industry, I can address the issue as it relates to MoneyGram, and by analogy to other responsible money services businesses. MoneyGram has a comprehensive antimoney laundering compliance program that has been in place for many years, even before such programs were mandated by the USA PATRIOT Act. Likewise, MoneyGram was voluntarily filing Suspicious Activity Reports with the IRS long before such reporting was mandated for money service businesses. At MoneyGram, we are very proud of our compliance efforts and I would like to note that in 1996 MoneyGram's subsidiary, Travelers Express, was given a $100,000 reward by the IRS for its help in cracking a major money laundering ring. We have since continued to make significant investments in our compliance and antimoney laundering programs.

MoneyGram's antimoney laundering compliance program is built around three main components: Training; monitoring; and reporting. From a training perspective, MoneyGram trains and tests all of its employees, from the CEO to the clerk in the mailroom, on key aspects of the antimoney laundering laws. The satisfactory completion of this training and testing is a condition of employment. In addition, MoneyGram takes steps to ensure all agents who sell its services are trained on antimoney laundering laws so that they understand their duties under the law. In order to facilitate the training process, MoneyGram employs bilingual staff to ensure accurate communication of the requirements, and to respond to any questions raised by the agents.

Before authorizing any agent to conduct transactions on its behalf, MoneyGram first conducts its own investigation of the entity to be certain that its owners and management are of a reputable character. This process, which MoneyGram calls its "Know Your Agent" program, involves credit checks, criminal background reviews, data mining, and OFAC screening. MoneyGram will not conduct business with any individual or entity that fails to meet its background investigation standards. This means that MoneyGram walks away from potential business opportunities, but MoneyGram would rather forego some business than put its own reputation in jeopardy by affiliating itself with disreputable parties.

Once an agent is trained and begins to sell MoneyGram's services, the MoneyGram compliance team closely monitors the agents' activities and will terminate the relationship with any agent who fails to fully comply with their antimoney laundering obligations. The "monitoring" component of MoneyGram's antimoney laundering compliance program is built around sophisticated computer programs that search for unusual patterns that may indicate structuring or other forms of suspicious activity. In addition to using computer programs, MoneyGram's compliance team physically reviews millions of transactions every year in an effort to detect possible money laundering or terrorist financing. The compliance team also reviews the names of every MoneyGram money transfer "sender" and "receiver" against the OFAC database to guard against doing business with sanctioned individuals. These monitoring efforts lead to the third component of MoneyGram's compliance program, which is "reporting."

MoneyGram files thousands of Suspicious Activity Reports, but they only represent a small fraction of the millions of transactions the company conducts. These reports range in size from transactions involving several hundred dollars to transactions involving tens of thousands of dollars. In most situations the suspicious activity involves structured transactions in which the money launderer moved from one agent to another conducting relatively small transactions at each agent so that no individual agent would notice anything suspicious. However, MoneyGram's systems are designed to detect such activity and it is then reported to the IRS. Over the years, MoneyGram has continued to invest heavily in its antimoney laundering

compliance efforts through additional compliance staff located around the world; with enhanced computer systems to analyze transaction activity and to comply with OFAC; and, by enhancing training programs for its agents and employees. These efforts are expensive, and in many cases they go beyond what is required by law. Thus, there should be no doubt that MoneyGram takes its antimoney laundering obligations very seriously—not just because it is the law, but also because MoneyGram values its reputation as a good corporate citizen.

MoneyGram is also well aware of the discussion that is currently taking place in legislative and regulatory circles regarding the filing of Suspicious Activity Reports, and agrees with many of the sentiments expressed by FinCEN and other organizations that the defensive filing of Suspicious Activity Reports poses a potential serious problem for the law enforcement community. That is one reason why MoneyGram was pleased to see the announcement from FinCEN on April 18, 2005, that it intends to streamline the SAR form used by money services businesses. MoneyGram welcomes the opportunity to provide FinCEN with comments on the proposed changes, and believes that a streamlined form will be a great benefit to MoneyGram and the thousands of agents who use the form.

Bank Account Concerns

Now I would like to address the problems that many money services businesses and their agents are experiencing in opening and maintaining bank accounts. In the past year this has become a serious problem for many MoneyGram agents, as well as many other Money Services Businesses. In most instances for MoneyGram, it appears that the small "mom-and-pop" shops and check cashers are the ones who are being targeted for account closings. These businesses are often being told by banks with which they have had relationships for years that they now must choose to either close their account, or cease conducting any kind of money services business. When they ask their bankers "why?" they are frequently told that the bank's regulator has informed them that money services businesses are high-risk entities and the bank is advised to avoid doing business with such entities.

At MoneyGram we have heard from dozens of agents in New York, Illinois, Virginia, Florida, California, and other States that this situation is forcing them to consider no longer serving as an agent. In some cases, our agents have sought accounts at other banks only to be told the same story. These agents are frightened and unwilling to provoke their banks upon whom they depend for their financial needs. After all, for most of our agents the sale of money orders or money transfers is only a small portion of their business; it is just another product they offer to their customers, like milk or bread.

In order to help our agents, MoneyGram has begun negotiating with banks around the country to offer special accounts. In some situations, we have negotiated a master MoneyGram account with sub-accounts for our agents. While this may sound like the ideal solution, it is not. It is far more costly for MoneyGram and it is far less convenient for our agents. In some cases, agents have refused this arrangement because they cannot afford to be away from their store to travel to new banks across town when they were used to their old bank that might have been across the street. Thus, in order to retain some agents, MoneyGram is now paying for armored car service to collect the funds from these agents, which adds even more costs to conducting the business. These added costs present a difficult challenge to MoneyGram as we strive to maintain our value proposition to our customers in a rising cost environment. I fear too often that is the point that gets lost in all of the discussion regarding banking relationships and compliance requirements. We simply forget that all of these issues cost money and, in turn, lead to higher costs for consumers.

MoneyGram itself has not had banks threaten to close its accounts, but in the course of the past year, every major bank that MoneyGram does business with has requested in-person meetings with MoneyGram's compliance team to verify the quality of MoneyGram's antimoney laundering compliance program. While this is not a terrible hardship, it demonstrates the pressure that banks are under from their regulators. For instead of focusing their compliance resources on true risks, the banks are merely duplicating the efforts of the State banking departments and other regulators who are already reviewing MoneyGram's compliance program.

MoneyGram was very gratified that FinCEN took the lead in holding an informational meeting on this subject on March 8, 2005. This meeting was a critical first step in getting the problem out in the open, but the real challenge will be getting the regulatory examiners in the field to change their practice of recommending to banks that they stop conducting business with money services businesses. Likewise, MoneyGram was also pleased with the Joint Statement on Providing Banking Services to money services businesses that was issued on March 30, 2005, by the Federal

Banking Agencies. That Statement correctly identified a major source of the problem to be the misperception regarding the compliance and regulatory requirements that apply to money services businesses. That misperception is one of the driving factors that has caused banks to believe they must take on the duty of "regulating" money services businesses, and since most do not want such an additional duty, they find it far easier to simply terminate those accounts.

So what can be done about this problem? The March 30 Statement said that FinCEN and the Federal banking agencies would soon issue guidance for banks on their account relationships with money services businesses, and that FinCEN would issue concurrent guidance for Money Service Businesses on their compliance obligations. MoneyGram is solidly behind the issuance of such guidance, with one minor caveat. That is that the guidance does not impose new compliance obligations on money services businesses. As the March 30th Statement noted, money services businesses are already subject to the Bank Secrecy Act and related antimoney laundering laws. It would be a great injustice to money services businesses if the final outcome were to impose even more regulatory requirements on them, at the same time that many in Government are calling for a reduction in the regulatory burdens imposed on banks. Instead, there needs to be a balancing of the requirements imposed on both banks and money services businesses so that neither industry is handicapped or forced to spend even more resources on the spiraling costs associated with compliance.

We hope that the Guidance for banks and money services businesses will focus on key elements of an effective compliance program, including:

- that the money services business is licensed in all jurisdictions where it conducts business (some Internet and card based money transmitters claim the licensing laws do not apply to them, or they establish themselves in one of the few States that does not license money transmission);
- if the entity is an agent, that it only serve as an agent for licensed money services businesses;
- that the entity have a written compliance program;
- that the entity train its employees on antimoney laundering compliance; and,
- that the entity have an effective OFAC screening program (once again, many Internet and card based money transmitters are not conducting OFAC screening on the recipients of funds, but only on U.S. "senders.")

Recommendations

MoneyGram appreciates the opportunity to offer the Committee a few suggestions on how the bank account issue might be addressed, and how compliance with the USA PATRIOT Act might be improved. The two are somewhat tied together, since improving USA PATRIOT Act compliance will help banks and their regulators gain confidence in the money services business industry. With regard to the bank account issue, MoneyGram believes part of the problem stems from the fact that banks and their regulators do not understand the existing State licensing regime that applies to money services businesses. That is why MoneyGram recommends that the Committee consider legislation that would establish a dual chartering system for money services businesses analogous to what banks and credit unions enjoy. Under such a system, a money services business that only operates in one or a few States could opt to be State chartered, while others could choose a Federal charter. The establishment of a primary Federal regulator may significantly reduce the concerns and misperceptions about the oversight of the industry. Too often MoneyGram has heard from banks, lawmakers, and law enforcement officials, as well as in the press, that money services businesses are largely unregulated. As we have already noted, that is not true, but it is a perception that simply will not go away. A primary Federal regulator would instill greater confidence by banks, their regulators, and the public in money services businesses.

A Federal regulator could also help to close the loophole that some unscrupulous operators try to use to avoid any licensing requirements. Today, 35 States license money transmission. However, these tend to be the biggest States and the ones where most money transmission occurs, so responsible money transmitters are licensed and regulated. Nonetheless, some operators have been known to establish themselves in one of the States that does not require licensing, and then only conduct business in licensed States via the Internet or by phone in order to avoid a physical presence in those States. Similarly, some operators claim that since they only move their money through banks they do not have to be licensed. This is one of the more convoluted arguments since all money transmitters must use banks in order to move money from one location to another; it is only couriers who actually transport currency.

Of course, any new Federal regulator would need to be separate from the State regulators. MoneyGram would not support merely adding an additional regulator to the process if it meant that it was now subject to all of the State regulators and a new Federal regulator. After all, one of the biggest challenges for MoneyGram and other nationwide money transmitters is the lack of uniformity among the State licensing laws. The requirements imposed on MoneyGram and its agents in one State will often differ significantly from those imposed in a bordering State. These conflicting regulatory requirements impose a heavy burden for companies like MoneyGram that offer their services throughout the country, as opposed to small transmitters that may only operate in one or two States. Thus, the option of a dual chartering system for money services businesses could prove to have a beneficial impact on the money services industry's overall image, as well as easing the regulatory burdens for the members of the industry.

MoneyGram would also like to offer a recommendation that would add clarity to the USA PATRIOT Act requirements. One of those requirements is that money services businesses (as well as all other entities subject to the Act) conduct a periodic review of their compliance program. For banks and licensed money services businesses, such a requirement is appropriate, but for the thousands of "mom-and-pop" convenience stores that sell money orders or money transfers as an agent for a licensed money services business, this requirement is nearly unintelligible. These businesses need greater direction from FinCEN as to what constitutes an adequate "review" and who can conduct the review. For example, a simple one page form could be developed that the owner of the business would be required to complete on an annual basis confirming the adoption of a compliance program, that the business trains employees, and that it has designated a responsible individual as its compliance officer. The form could also require verification that the business is aware of its duty to file Suspicious Activity Reports and Currency Transaction Reports. It could also pose several questions to confirm that the business fully understands the concepts of structuring and suspicious activity, and what to do when such situations are encountered. This type of direction from FinCEN is badly needed by the money services business industry and its agents. It will also help those businesses better demonstrate to their bankers that they are fully compliant with the Bank Secrecy Act and the USA PATRIOT Act. MoneyGram has the greatest respect for FinCEN, and has a long history of working in a positive relationship with that organization. Going forward, MoneyGram would welcome the opportunity to continue to work with FinCEN on any changes to the regulations implementing the USA PATRIOT Act, as well as the regulatory guidance for the money services business industry.

Conclusion

In conclusion, I want to thank you, Mr. Chairman and Members of the Committee, for the honor of having the opportunity to present testimony on behalf of MoneyGram International. We at MoneyGram are proud of our company's strong efforts at antimoney laundering and the prevention of terrorist financing, and we remain dedicated to working with regulators and law enforcement officials to defeat the attempts by criminals to use any of our services for illegal purposes. We think there are proactive measures that the banking regulators can take to resolve the problems that many money services businesses are experiencing with establishing and maintaining bank accounts, and we believe Congress can also provide a solution with the establishment of a Federal regulator for money services businesses. Finally, we believe the majority of the USA PATRIOT Act as it applies to money services businesses is workable, but some minor refinements of the requirements by FinCEN will greatly assist money services businesses in complying with the periodic review requirement. Thank you again.

PREPARED STATEMENT OF DAVID LANDSMAN

EXECUTIVE DIRECTOR, THE NATIONAL MONEY TRANSMITTERS ASSOCIATION, INC.

APRIL 26, 2005

We appreciate the opportunity the Committee has given us today to have our grievances on this subject heard. We are also grateful to New York Superintendent of Banking Diana Taylor, for meeting with us last month on this issue.

FinCEN is now working hard with Federal bank regulators to publish guidelines as soon as possible. For this we are also grateful, and we applaud the stance they have taken. They are doing what they can to fix the problem and correct this injus-

tice, an injustice that has ominous implications for other industries untouched by this problem as yet.

Yet relief will not come soon enough for many of us. If nothing is done, and done quickly, many licensed remittance companies will lose their last bank account in 3 days, and probably breathe their last.

In the March 30 Joint Statement, FinCEN publicly acknowledged for the first time that there may have been ". . . a misperception of the requirements of the Bank Secrecy Act, and the erroneous view that money service businesses present a uniform and highly unacceptable risk of money laundering or other illicit activity." This is an understatement.

Further clarification of minimal best practices will help, as a first step, but most of these guidelines have been in the public domain for years, available to us and the banks. For our part, many of us have been early adopters of these best practices, even before the regulations were finalized for MSB's, out of concern for self-preservation. But many bankers are still not aware of their own State's license requirements.

Now, regulators are properly alarmed at the idea that two entire licensed industries—money transmitters and check cashers—can be so red-flagged as to make it impossible for even the best of them to get an account anywhere.

The main reason for these closings is a fundamental misunderstanding of licensed remittance companies, compliance, money laundering and the law, by both the banks and the Federal regulators. (State regulators have traditionally left antimoney laundering initiatives to the Federal Government.)

Who We Are

We are licensed to engage in the money transfer business by the State banking departments in the States where we operate. The money transfer services we provide are vital to our customers and their beneficiaries and the economies of the many countries that receive these remittance flows. We provide outstanding service at affordable prices for the large number of immigrants who send money home to these countries. We provide employment and income for our agents and the neighborhoods they serve.

We comply with all State and Federal regulations, and are committed to using best industry practices to detect and prevent money laundering through our facilities. We are committed to knowing our agents, our employees, our correspondents, and our customers. We are committed to using adequate computer systems and internal controls, appropriate to the nature and volume of business we are doing and the type of customers being served.

We are committed to fulfilling our recordkeeping and reporting requirements under the Bank Secrecy Act, and our obligations under state and Federal antimoney laundering statutes. We comply with the applicable provisions of Title III of the USA PATRIOT Act. We are committed to OFAC SDN-screening and we cooperate with law enforcement whenever called upon. Our training and supervision of employees and agents are both constant and close.

We are audited not only by the states and the IRS Title 31 examiners, but by our independent (usually external) compliance reviewers which are required by Section 352 of the USA PATRIOT Act. Licensed money transmitters take identification at lower transaction thresholds than banks, and we do it every time a customer comes to our window. Proportionately, we file more SAR's than do banks themselves.

Our databases of remittances are available upon request, as are the due diligence folders we maintain on our agents. This would easily satisfy any bank's CIP obligations under Section 326 of the USA PATRIOT Act, and 31 CFR 103.121.

What is Happening?

What we are seeing now is the culmination of 20-odd years of various arms of the Federal Government demonizing all nonbank financial institutions as hotbeds of money laundering, not making any distinction between licensed and nonlicensed entities. This has led to the irony that those most compliant, sometimes have the roughest time. This is a trend that will not be easy to reverse.

Since we domestic licensed transmitters have to do much more than register with FinCEN as MSB's, we understandably resent being routinely classified with unlicensed transmitters who range from the ignorant but innocent, to the willfully sinister, and everything in between.

Instead of speaking of Informal Value Transfer Systems, let us be more specific: In the money transmission industry there are licensed and unlicensed money transmitters. That is all. Licensed money transmission is not only permissible and beneficial, but it is also altogether necessary and irreplaceable. It is to be regulated and

monitored, yes, but it is also to be encouraged and protected. The alternative will drive the underground economy further underground.

The closing of our accounts goes back at least 10 years, although in those early days, no reason was given; the letters simply cited the bank's right to terminate any relationship at will. Now, the letters are more explicit. Now, there can be no doubt what the reason is. Back then, it was just an account here and there; no alarm was raised. No one would have listened. We kept a low profile. But an account could usually be had somewhere.

Over the years, with the continued closings and continued bank mergers, our accounts became concentrated in fewer and fewer banks. So when the last few banks went in rapid succession, things got very dire, very quickly. Even banks that were committed to our markets realized they had not only regulators, but also prosecutors threatening criminal charges to worry about. That tipped the scale for even the most courageous bank.

For a time it seemed every week we heard of another major bank closing licensed MSB accounts, and those that did not deny those accounts before, merged with those that do. This situation has undermined public confidence in licensed financial institutions.

That this acceleration has coincided with the accelerating rate of bank prosecutions, fines, enforcement actions and scandals, is no accident. The more heat that is brought on the regulators by Congress, the more they will "crack down" on the banking industry. The more heat that is brought on the banking industry, the less it can afford to appear to be associated with those who look even slightly suspicious to some eyes.

No one has done a scientific survey, but I have collected closing letters and can relay some anecdotal evidence. New York is the epicenter of the problem: The problem started earliest in New York and New York is the hardest hit today. The problem spread along the Eastern seaboard, then migrated to the West Coast. The middle section of the country is now catching up. This pattern roughly tracks examination trends, which recently have had significantly enhanced AML components added. Our agents, if they handle too much cash, are also having trouble finding and maintaining bank accounts.

The movement of money which is the lifeblood of our business, relies on banks that enjoy a public charter. We need bank accounts to collect money from our agents, and to wire that money to our correspondents abroad. Yet we are the only sector in the country that is routinely denied bank accounts, most times without even being given a chance to demonstrate compliance.

Regulators do a difficult job and enforce the law in good faith. They are beginning to appreciate the critical role we play in meeting the financial needs of the Nation and the world. But the perception of risk they have fostered on the part of the banks has reached such a level that banks feel they have no choice but to close our accounts.

Regulators will tell you that they never told banks to close all MSB accounts. They will tell you that no regulator ever tried to persuade or dissuade a bank from taking on a particular customer or type of customer. Yet banks continue to feel pressure to close our accounts due to lack of guidance and reassurance.

From the moment it became acceptable, even advisable, to cure a bank's own compliance deficiencies by closing our accounts, the pattern was set that we be treated as pariahs, even scapegoats, with no recourse, and no chance of appeal.

Bankers, influenced by regulators, deemed it logical and a good solution to sidestep the problem in this manner. It was as if a doctor, finding a certain disease distasteful or intractable, decided to ignore it, and just stop treating those patients that had it. The more challenged a bank is found to be in their own compliance programs, the more likely it is that they will be pressured to close our accounts. This is beyond dispute, and is totally unjust.

Are We Risky Customers?

Much to the contrary, no adverse regulatory action has ever befallen a bank because of a licensed MSB account, unless it was because the bank forgot to ask to see a license.

Government controls tightening slowly over the last few decades, always starting with the banks and only coming to nonbanks years later, have predictably driven some bad customers to nonbanks, and attracted some bad elements into the money transfer business itself, causing legitimate licensees to be unfairly marked with a stigma we do not deserve, a presumption of guilt.

In most cases, closings have occurred, not because of any actual problem in our history or deficiency in our compliance programs, but simply because we are in a business designated "high-risk" by Federal banking regulators. Banks no longer feel

they can do enough due diligence on us no matter how much time and money is spent. They do not feel secure, nor do they feel they can satisfy the probing questions of their examiners in this regard.

If some members of our industry have had compliance problems, they are lessons dearly learned and frankly, are dwarfed by comparison to the compliance problems the banks themselves have had.

Image vs. Reality

We do not consider our money laundering risk to be as great as has been portrayed: We take in money an average of $300 at a time from consumers; most of us do employment verification for any sum over $5,000; we are licensed, we are domestic, and we are held fully responsible for any misdeeds by our agents. Despite all this, we are routinely classified together with any type of informal transmitter you can name: Wholesale, foreign, or unlicensed, it does not matter—we are tarred with the same brush.

If the respect afforded the State money transfer license needs to be upgraded and standardized, then let us look at that. But all that should be necessary is proof of licensure, some initial due diligence and some affordable monitoring.

The banks are not wrong to be fearful of our accounts. The greatest risk they face with our accounts, is getting into serious trouble with their regulators for having "too many" MSB accounts.

No financial institution should refuse to consider, nor unreasonably deny, account facilities to another class of lawful business, as is happening right now to the licensed remittance industry. Since we have been categorized as "high risk," the presumption of guilt is so strong, that we are not even given a chance to demonstrate our compliance programs.

We and banks need a roadmap to an affordable due diligence process and the message needs to go forth that it is okay to have licensed remittance companies as customers, and that no discrimination shall be tolerated. The only message that has reached the banking community so far, is that MSB accounts, licensed or not, are to be feared as risky and expensive to maintain.

This problem can no longer be seen as the occasional result of prudent business practices on the part of banks. The problem is pervasive. Whether it is the direct consequence of compliance guidance the banks have been given, or the lack thereof, or because the guidance and our industry have been misunderstood and taken to irrational extremes, no longer matters. Something must be done to correct the current trend.

Considering that no bank has ever gotten into trouble for having a licensed remittance company as a client, as long as they remembered to do a few simple things, one wonders where our "risky" reputation came from? It is clear as day that this is a regulator-caused problem, and therefore needs a regulatory about-face to solve it.

What Can Be Done About It?

We seek a National Money Transmitters Act that will require a national money transmitter's license not to deal with safety and soundness, but with antimoney laundering requirements. The purpose of this new license would not be to add more regulatory burdens, but to ensure uniform and universal application of our antimoney laundering laws, eliminate duplicative exams, and provide a certification that banks may rely on.

We seek a broad, clear, national definition of money transfer and when a money transfer license is required, even application of the licensing requirement, respect for the license itself, and meaningful punishment for those who willfully refuse to get a license.

With this license, any bank should be required to give the account applicant a fair evaluation and, if there is a rejection on AML grounds, the bank should be compelled to give a specific reason. The applicant should then be given the chance to cure and reapply, or a chance to appeal the decision to FinCEN.

It is time for FinCEN, the functional regulators, and Congress, to insist that licensed MSB's not be unreasonably denied access to banking facilities. Not just for our sake, but for everyone's, it is time to change the course we are on.

Treasury has long spoken about how important the remittance business is to world economic stability and why remittances are an important public policy issue, but has seldom made mention of licensed-remittance companies in this connection. The movement to bank the unbanked, which includes poor people in general, as well as immigrants, is a laudable goal, which we support.

But there seems to be a myth that banks are really the preferred way to send money, both from a customer perspective and a public policy perspective. In fact we,

the licensed MSB's, are the Government's best ally in the fight against money laundering, and the best guarantee of competitive conditions, favorable to the consumer. We are the last channel with any hope of vetting those other "unrecorded" customers, or preventing their number from growing. The worthy goal of thwarting money laundering must not be allowed to hurt the innocent, and that is what is happening today.

No financial institution can be required to guarantee that no tainted funds ever pass through its facilities. Such a guarantee would be impossible. What is required is that we and the banks, build systems that are adequate to the nature and volume of customer activity and take reasonable steps to detect and prevent money laundering.

This is no longer just a company problem, nor even just an industry problem, but a pervasive societal problem and one that involves national security, consumer protection, humanitarian needs, and global economic stability.

It is distressing to me that, in some circumstances, smaller licensees are likely to be "priced" out of the market, in various ways, by both banks and government. We do not believe anyone would consciously intend this result either. Small licensees who can demonstrate good compliance should not be overburdened with fee upon fee for multiple, expensive audits.

All of these effects are predictable consequences of the present trend, and we have been well alerted to the problem so, if we do nothing at this critical time, history will not judge our motivations so kindly.

Clarification and Guidelines are Not Enough

Banks themselves are clamoring for clarification, and FinCEN has pledged to give it. But in this topsy-turvy atmosphere, sometimes "clarification" can have negative consequences. In June 2004, the OCC came out with its Advisory Letter 2004–7 which contained a few simple steps for opening an MSB account.[1]

Those guidelines looked simple enough to me, in fact, they looked like what a bank should do on all business customers of a certain size. Yet, it was enough to prompt most banks to close some more accounts. In fact, some closing letters quote AL 2004–7 verbatim and cite it as the reason the account is being closed.

The letter simply advised caution with MSB's, especially when doing business with unlicensed or foreign MSB's. Although we fall into neither of these sub-categories, no such distinction was made in the minds of bankers or examiners. It was all one more big red flag on MSB's in general, to them.

No wonder regulators will not admit a causal connection: Who would take responsibility for such a non-sequitur?

The country of highest money laundering volume is the United States, and the preferred and predominant financial institution home for such monies is the U.S. bank itself. The whole premise of "high-risk" is relative. A proportional comparison of the laundering done through licensed MSB's with that done through banks, makes the negative reputation we have all the more unjust.

We are not looking for leniency. To the contrary, we licensed MSB's welcome stringent regulation and we demand vigorous enforcement. At no time have we thought that the problem was due to regulations that were too stringent. To the contrary, closing accounts is a total abdication of and a running away from, responsibility. All we are asking for is a level playing field and a fair chance.

Section 311 of the USA PATRIOT Act anticipated this problem and tried to prevent it by ordering Treasury to consider ". . . whether the imposition of any particular . . . measure would create a significant competitive disadvantage . . . cost or burden associated with compliance, for financial institutions . . . licensed in the

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[1] "National banks should perform careful due diligence of the accounts of MSB's to control money laundering and reputation risks. For example, banks should verify registration and licensing status, and consider visiting customers at their place of business and implementing monitoring procedures to identify and report suspicious activity. As part of their due diligence programs, banks should also consider obtaining and reviewing the following on the MSB:

- Financial information, including primary lines of business and major customers, and local reputation;
- The MSB's antimoney laundering policies, procedures and controls;
- Third-party references and information from verification services;
- Information on owners of the MSB;
- The MSB's license, including any restrictions;
- Consideration of the purpose, source of funds to open the account, and expected activity.

MSB's who have registered with FinCEN receive letters of acknowledgement from the Internal Revenue Service, Detroit Computing Center (DCC). A bank may rely on the DCC correspondence as verification that the MSB has properly registered with FinCEN and may ask its MSB customers to provide a copy of this form."—From OCC AL 2004–7.

United States . . . any significant adverse systemic impact on the international payment . . . system, or on legitimate business activities involving a particular jurisdiction, institution, or class of transactions; and . . . the effect of the action on United States national security and foreign policy."

If "clarification" works to some degree, it will be nice. It will help to see the number of account closings go down and the number of account openings go up, but this is not the whole story. We will never achieve true transparency until we have the right to know exactly why we have been rejected by any particular bank, and given a chance to cure the problem and reapply, or given a chance to appeal to a higher authority . . . . until then, there will be no due process for us, even when everything gets "clarified;" to the nth degree.

The primary way we separate the good guys from the bad guys, ever since the BSA was passed in 1970, is to ask the customer for identification. That, and explaining any deviations from expected activity, are the essence of compliance for any financial institution. Without us around, the majority of senders will never get asked for identification. We will have our own Government-induced parallel market where no identification will ever be requested and no records are kept.

From the moment no distinction was made between licensed and unlicensed MSB's, and nothing was known about what tests we go through and how good we are, we were in for trouble as an industry. From the moment it became okay, even recommended, to deal with a bank's own compliance deficiencies by closing all its MSB accounts, we were in for trouble as a nation.

We look forward to working with all parties toward a day when good compliance comes with viable procedures, by definition, without presumption of guilt and, if those procedures are not followed, that the right party gets educated and then leaned on, if necessary—when our legitimate reactions to crime, or terror threats or bank scandals, no longer cast undue suspicion on innocent parties, or encumber legitimate commerce.

Our shared obligation as financial institutions is not to guarantee that tainted money will never pass through our facilities. What is required is that we design and maintain systems and procedures that are reasonably designed to prevent, impede, and/or report money laundering, in proportion to the size of our operation and type of risks posed by the customer.

Are Civil Rights and Anti-Trust Laws Being Violated?

If decisions continue to be made behind closed doors and banks continue to reject certain licensed customers without giving specific, rational reasons, and that rejected customer has no right to even try to improve or to appeal the bank's decision, we will be right back where we started. Remember, we are going for transparency here, not just a one-way mirror.

If even one person is terminated for subjective reasons, it is one person too many. If two entire licensed industries—check cashers and money transmitters—can be treated this way, imagine how much worse is the plight of the everyman with no such credentials.

For example, the last big bank I know of in the business is starting to close accounts selectively. So far, the only closings I have heard of is a small Muslim licensee in New Jersey, and a one-shop Florida licensee, who is mono-lingual Spanish. Selectively, indeed. How often will compliance concerns coincide with other sorts of profiling?

It is true: Banks can take or refuse any customer they wish. Hotels and restaurants in the South used to have that right, too.

There is no such thing right now as a civil right to a bank account, even though bank accounts are as necessary as air to us, and we are being denied it in most cases not because of any transgression, but because of who we are. While overt racism may not be visible on the surface, the societal consequences are to the detriment of immigrants and minorities.

What may have started out as legitimate money laundering concern on the part of government and banks, has turned into nothing less than a denial of civil rights, not only to the community-based businesses we represent, but to the broader public they serve.

We have been told that this situation does not meet the legal definition of discrimination, nor does it rise to the level of an antitrust violation. But one need only look around to see that the transmitters losing their accounts are the smaller, independently owned money transfer businesses. These businesses also just happen to be ethnically owned and serve ethnic communities.

Discrimination can never be adequately judged on a case-by-case, alone, and in a vacuum. Only after time, in the aggregate, and by comparison to the way others

are treated, can one say whether discrimination is taking place. We believe it clearly has and is.

Money is the lifeblood of our business. Banks control the pipeline. Access to a bank account is access to life. It is a public accommodation, working under public charter, and should not be unreasonably denied to any class of people.

Treasury wants to see the cost of remittances reduced, yet fails to emphasize that we licensees are the reason costs have come down in the first place. This thriving competition must be maintained.

The bulk of remittance flows is not going through banks nor through large transmitters, but through small and mid-size companies. Just as small business collectively accounts for most of our economy and for most economic growth, so do we "smaller" transmitters, collectively, account for the bulk of recorded international migrant worker family remittances.

The banks, and even the larger transmitters, have only relatively recently "discovered" our markets. Previously, service through those channels was poor and expensive, or nonexistent. The competition that has improved these conditions was provided by us. Now, picking up the scent of profit, and with prodding from Government itself, those same banks slowly but surely are shutting us off from the facilities they control with an iron grip, even as they position themselves to take on our customers, if they can.

Government has discouraged banks from banking us because of alleged compliance concerns, and simultaneously cajoled the banks into offering our services, on consumerist grounds. Yet anyone who is truly interested in keeping costs down for the remitting consumer, and anyone who cares about containing money laundering, should be a big booster of our industry. Surely our Government did not mean to foster and further reinforce what may well become a de facto monopoly of these services by the banking sector.

While overt monopolistic behavior may not be visible, the result is anticompetitive and unjust in the extreme. Racism and monopolistic behavior are seldom overt, but they are nonetheless real, very painful, and unbecoming of a free society.

Why Are These Closings Wrong?

Most banks stopped doing business with nonaccountholders a long time ago. This was a convenient way to encourage people to open accounts, assure some kind of paper trail for AML purposes, focus on their core business, and avoid having the teller lines clogged up with nonaccountholders. But some people could not afford the accounts.

The unbanked, the undocumented, the poor, those who did not speak English, would have to find somewhere else to go. It was okay to lose those "other" customers, because the banks regarded them as unprofitable, anyway. And there were no laws saying that banks had to offer any particular service to any particular person. There still are not any such laws. Thank God for check cashers and licensed remittance companies.

Treasury itself has repeatedly asserted the national and world importance of cheap, efficient remittance flows. We independent licensed remittance companies are responsible for the lion's share of those flows, and will be for the foreseeable future. We are the best way to document, vet and control those flows for AML, safety and soundness, and consumer protection reasons. Were we to disappear tomorrow, most of our senders would not flock to banks but rather, would simply go underground.

We hope the Senate looks carefully into our plea, and gives it the same intelligent, proactive attention that we are required to give our compliance obligations. We do our best to comply. Now, we need your help to survive. Please fight for us.

Our strongest argument is on compliance grounds. The challenge of a free society in the age of terror, is to separate the good money from the bad, without impeding the flow of commerce or stepping on civil rights. In this particular case, I believe the pendulum has swung too far in one direction.

The challenge of a free society in the war on drugs and money laundering and the war on terror, is to separate and stop the tainted money, while letting the good money through and, especially, to separate the flows of migrant worker remittances, from the flows of nefarious schemes. The only way to do that is to encourage a vital, transparent nonbank sector. To do this, we need practical and rational measures, as opposed to impractical and irrational, knee-jerk responses.

The guidelines will be a great start, but banks will not restore our accounts until the field examiners have shown they really get the message that it is not appropriate nor required nor even a good idea for a bank to shun an entire industry because the compliance challenge is perceived to be difficult.

RESPONSE TO A WRITTEN QUESTION OF SENATOR SHELBY FROM KEVIN BROWN

Q.1. *The New York Times*, on April 26, 2005, described "a surge in schemes involving sophisticated counterfeiting of . . . United States postal money orders." According to the article, "[s]ales of postal money orders [although] declining, from 233 million money orders in 2000 to 188 million last year. . . brought in about $230 million in fees. . ."

As you have noted in prior testimony before the Committee, the Postal Service is an MSB subject to the BSA. The volume of money order sales reported by the Treasury may make the Postal Service one of the Nation's largest MSB's. Does the IRS have authority to audit compliance by the Postal Service with the BSA? Has the Postal Service been subject to an examination of BSA compliance, either by the IRS or any other agency? What were the results of each such examination? Does the Postal Service file suspicious activity reports with FinCEN? Has the quasi-government status of the Postal Service caused any BSA examination or enforcement issues or problems? What has been the compliance history of the Postal Service, under the BSA, as an MSB?

A.1. In accordance with Treasury Directive 15–41, dated December 1, 1992, the IRS has not conducted a BSA examination/audit of the Postal Service. See *http://www.treas.gov/reqs/td15–41.htm.* As a result of the Directive, the IRS is not aware of any BSA examinations, or other BSA related compliance and enforcement issues relevant to the Postal Service.

The Postal Service does file suspicious activity reports. They have filed over 99,000 SAR's since January 1, 2002 when sellers, issuers and redeemers of money orders were required to file SAR's.

Financial Crimes Enforcement Network
Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
National Credit Union Administration
Office of the Comptroller of the Currency
Office of Thrift Supervision

EMBARGOED until 10:00 a.m., April 26, 2005

Guidance and Advisory Issued on Banking Services for Money Services Businesses Operating in the United States

The Financial Crimes Enforcement Network (FinCEN), along with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision (collectively, the "Federal Banking Agencies"), today issued interpretive guidance designed to clarify the requirements for, and assist banking organizations in, appropriately assessing and minimizing risks posed by providing banking services to money services businesses.

FinCEN also has issued a concurrent advisory to money services businesses to emphasize their Bank Secrecy Act regulatory obligations and to notify them of the types of information that they will be expected to provide to a banking organization in the course of opening or maintaining account relationships.

While recognizing the importance and diversity of services provided by money services businesses, the guidance to banking organizations specifies that FinCEN and the Federal Banking Agencies expect banking organizations that open and maintain accounts for money services businesses to apply the requirements of the Bank Secrecy Act, as they do with all accountholders, on a risk-assessed basis. Registration with FinCEN, if required, and compliance with any state licensing requirements represent the most basic of compliance obligations for money services businesses.

Based on existing Bank Secrecy Act requirements applicable to banking organizations, the minimum compliance expectations associated with opening and maintaining accounts for money services businesses are:

- Apply the banking organization's Customer Identification Program;
- Confirm FinCEN registration, if required;
- Confirm compliance with state or local licensing requirements, if applicable;
- Confirm agent status, if applicable; and
- Conduct basic risk assessment to determine the level of risk associated with the account.

Through the interpretive guidance, FinCEN and the Federal Banking Agencies confirm that banking organizations have the flexibility to provide banking services to a wide range of money services businesses while remaining in compliance with the Bank Secrecy Act. While banking organizations are expected to manage risk associated with all accounts, including money services business accounts, banking organizations are not required to ensure their customers' compliance with all applicable federal and state laws and regulations.

The guidance contains examples that may be indicative of lower and higher risk within money services business accounts to assist banking organizations in identifying the risks posed by a money services business customer and in reporting known or suspected violations of law or suspicious transactions relevant to possible violations of law or regulation.

In addition, the guidance addresses the recurring question of the obligation of a banking organization to file a suspicious activity report on a money services business that has failed to register with FinCEN, if required to do so, or failed to obtain a license under applicable state law, if required. The guidance states that a banking organization should file a suspicious activity report if it becomes aware that a customer is operating in violation of the registration or state licensing requirements. This approach is consistent with long-standing practices of FinCEN and the Federal Banking Agencies under which banking organizations file suspicious activity reports on known or suspected violations of law or regulation.

The concurrently issued FinCEN advisory to money services businesses emphasizes the importance of compliance with Bank Secrecy Act regulatory requirements by money services businesses. The advisory is designed to assist money services businesses by outlining the types of information that they should have and be prepared to provide to a banking organization in the course of opening or maintaining account relationships. The advisory also makes clear that money services businesses that fail to comply with the most basic requirements of the Bank Secrecy Act, such as registration with FinCEN if required, will be subject to regulatory and law enforcement scrutiny, and that continued non-compliance will likely result in the loss of banking services.

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