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REGULATION OF MONEY SERVICE BUSINESSES

HEARING

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
AND CONSUMER CREDIT

OF THE

COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES

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REGULATION OF MONEY SERVICE BUSINESSES

Wednesday, March 10, 2010

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
AND CONSUMER CREDIT,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:03 a.m., in room 2128, Rayburn House Office Building, Hon. Luis Gutierrez [chairman of the subcommittee] presiding.

Members present: Representatives Gutierrez, Maloney, Watt, Sherman, Waters, Hinojosa, Green, Miller of North Carolina, Scott, Ellison, Foster; Hensarling, Royce, Marchant, Lee, and Paulsen.

Ex officio present: Representative Bachus.

Also present: Representative Lynch.

Chairman GUTIERREZ. This hearing of the Subcommittee on Financial Institutions and Consumer Credit will come to order.

Good morning and thanks to all of the witnesses for agreeing to appear before the subcommittee today.

Today's hearing will examine how money service businesses are regulated under the current Federal and State system and examine proposed legislative reforms that have been introduced in this Congress.

We will be limiting opening statements to 10 minutes per side, but without objection, the record will be held open for all members' opening statements to be made a part of the record.

I yield myself 5 minutes. I ask unanimous consent to submit my opening statement for the record. Hearing no objections, it is so ordered.

Mr. Hensarling, you are recognized for 5 minutes.

Mr. HENSARLING. Thank you, Mr. Chairman. I certainly appreciate Chairman Gutierrez for holding this hearing on the money service businesses, the MSBs, and the positive role they can play in our financial sector, particularly for constituents without well established banking relationships.

We have tens of thousands of MSBs ranging from mom and pop convenience stores to large international market players. I think we recognize that for most of our constituents, they provide valuable financial services, providing a vast array of options for consumers to determine which best meets their individual financial needs.

Although the money service businesses are subject, as we know, to Federal registration and certain anti-money laundering provi-

sions, such as the Bank Secrecy Act, they are largely non-bank institutions that do not have a comprehensive Federal regulator, leaving State agencies to enforce State statutes governing their operations.

This decentralized system coupled with frankly the sheer number of MSBs in our economy today has raised certain questions about the effectiveness of their anti-money laundering provisions.

As a result, Federal financial regulators have proposed new compliance rules for institutions doing business with MSBs, and regardless of their intent, I believe this has had a perverse effect of leading some institutions to frankly just cut their ties with the money service businesses rather than deal with the increased obligations or scrutiny or indeed, potential increased liability.

FinCEN has correctly stated that, "An effective AL program requires sound risk management," a point which I wholeheartedly agree with, but we must also be cautious that in our pursuit of A&L compliance, we do not use such a heavy hand that we end up pushing currently monitored transactions underground into a shadowy world of illicit transactions.

What is ultimately the impact upon many low-income citizens, low-income neighborhoods, if we drive MSBs deeper into the non-banking sector, I think, is a relevant question for this subcommittee.

As I said before, we know that each and every regulation that has been imposed on our banking system seemingly made sense at the time, but our challenge is to constantly look at the cost of these regulations that are being imposed on our economy and our Nation, particularly at a time when so many of our fellow citizens remain unemployed in this recession.

It is important and incumbent upon us to recognize any unintended consequences that these regulations may cause.

That is why last year I was pleased to join with Ranking Member Bachus in co-sponsoring our colleague Carolyn Maloney's bill, H.R. 2893, which would establish a self-certification process for the money service businesses.

This year, Ranking Member Bachus has once again led the way on the MSB issue with his bill, H.R. 4331, the Money Services Business Compliance Facilitation Act, co-sponsored by our chairman, the gentleman from Illinois, Mr. Gutierrez.

Ranking Member Bachus' bill would establish the Office of Money Services Business Compliance within Treasury and empower the director of that office to recognize a self-regulatory organization for MSBs and their agents and avoid a burdensome regime that could potentially drive participants underground.

With that, I look forward, Mr. Chairman, to hearing the testimony of our witnesses today, and I yield back the balance of my time.

Mr. MILLER OF NORTH CAROLINA. [presiding] Thank you, Mr. Hensarling. The Chair now recognizes the gentleman from Georgia, Mr. Scott, for 2 minutes, or slightly more, if he would like.

Mr. SCOTT. Thank you, Mr. Chairman. Thanks to our witnesses for appearing before us today.

Money service businesses offer valuable financial services to the public, such as money transfers, money orders and check cashing.

These services, while often vital to the community, are regulated by the Internal Revenue Service in an attempt to impede any kind of abuse.

There are reports that persist, that MSBs operate in this country without the proper compliance and registration where appropriate.

My home State of Georgia is among 37 States that have some form of registration for MSBs. The MSB section of the Non-Depository Financial Institutions Division is responsible for supervising those who are licensed or registered to do business in Georgia as a check casher or a money transmitter.

The department is charged with the supervision and examination of their business affairs to ensure that they operate in compliance with State law and for the protection and interest of consumers who are served by these entities.

A comprehensive and effective registration and regulation system, perhaps resembling the one we have in Georgia, could very well provide a benefit on the Federal level in deterring money laundering or financial transactions that support terrorist activities.

I anticipate informative testimony from each of the witnesses this morning on this very important and timely topic, and I look forward to their suggestions on how we in Congress can act.

Thank you, Mr. Chairman.

Mr. MILLER OF NORTH CAROLINA. Thank you, Mr. Scott.

The ranking member of the full committee, the gentleman from Alabama, Mr. Bachus, is not actually a member of this subcommittee, but I ask unanimous consent that he be recognized for 4 minutes for an opening statement. Hearing no objection, Mr. Bachus is recognized for 4 minutes.

Mr. BACHUS. I appreciate that, Mr. Chairman, and I thank you for holding this important hearing about an issue that is long overdue for a fair and effective solution.

Money service businesses or MSBs offer a valuable service to consumers who may not have access to other financial service providers.

Among other functions, MSBs facilitate global payments and allow families to send funds back to their home countries. Unfortunately, regulation of money service businesses has not kept pace with the volume of their businesses.

Right now, MSB compliance is a complex patchwork of regulations which involves both Federal restrictions on money laundering and terrorist financing as well as State consumer protection mandates.

For tens of thousands of MSBs that exist, the Federal Government has fewer than 500 people on the regulatory beat.

Mr. Chairman, failure to devise an effective MSB regulatory regime has led to the situation where banks who offer account services to MSBs are forced to act as de facto regulators. After a series of regulatory actions in which some banks were fined heavily in connection with the accounts they offered MSBs, most banks felt they had no choice or they had to make a choice to either do their own on-site investigation of an MSB anti-money laundering compliance or live with the liability.

Consequently, most banks stopped offering accounts to MSBs. When banks discontinue account relationships with MSBs, the

MSB customers may seek financial services from the underground financial system, which could create greater money laundering risk and increase costs for MSB customers.

In response to shortcomings of the current regulation, Chairman Frank and I, along with Representatives Maloney, Gutierrez, Hensarling and Biggert have tried for several Congresses to craft commonsense MSB legislation.

The House has sent bills to the Senate twice only to have them ignored. Last December, I joined Representatives Gutierrez and Tiberi in introducing H.R. 4331, the Money Services Business Compliance Facilitation Act of 2009, which takes a similar approach to Ms. Maloney's bill.

H.R. 4331 is based on the underlying principle that given the right guidance and oversight, industries can self-regulate. The legislation would centralize MSB money laundering compliance in a small office at Treasury and authorize that office to recognize the self-regulatory organization. The organization would be similar to the private nonprofit financial industry regulatory authority or FINRA, that regulates about 170,000 brokers and their branches and more than 600,000 of their agents.

The bill would lead to the uniform registration and supervision of MSBs without creating a big, new Federal bureaucracy, and without preempting State safety and soundness and consumer laws.

Mr. Chairman, H.R. 4331 is a good solution to make thorough uniform and effective national registration and compliance for money laundering businesses a reality.

MSBs will appreciate legislation that gives banks the confidence to continue working with them and helps to disrupt funding channels used by crooks and terrorists.

Mr. Tiberi should be commended for his hard work on this issue and we look forward to working with the gentleman from Illinois and the gentlelady from New York and all other interested Members to make this effort a success.

I thank Mr. Hensarling for his work, and I yield back the balance of my time.

Mr. MILLER OF NORTH CAROLINA. Thank you, Mr. Bachus.

That completes the opening statements. We will have one panel this morning. Our panel consists of three witnesses: Mr. Joe Cachey, chief compliance officer for The Western Union Company; Mr. Scott McClain, deputy general counsel to the Financial Service Centers of America; and Ms. Deborah Thoren-Peden, a partner in the law firm of Pillsbury Winthrop Shaw Pittman LLP.

You will each have 5 minutes for your oral statements. Your written statements will be made a part of the record.

Mr. Cachey, you may begin.

STATEMENT OF JOE CACHEY, CHIEF COMPLIANCE OFFICER, THE WESTERN UNION COMPANY

Mr. CACHEY. Good morning, Mr. Chairman, and Ranking Member Hensarling.

My name is Joe Cachey. I am chief compliance officer for The Western Union Company. Western Union is a leader in global pay-

ment services with more than 410,000 agent locations in 200 countries and territories around the world.

In 2009, Western Union completed 296 million customer-to-customer transactions worldwide, moving $71 billion of principal between those customers and also performed 415 million business payments, or people sending money to a business.

Interestingly, the majority of Western Union's customers in the United States also have bank accounts and use our services ancillary to the services they would normally obtain at their branch bank and local bank.

Western Union applauds the committee's efforts to provide a more streamlined and efficient regulatory model for money service businesses. Western Union does not fully support H.R. 4331, but looks forward to working with the committee to improve the bill or future legislation to improve the regulatory structure of money service businesses.

Currently, MSBs like Western Union are licensed by States in which they do business. States are responsible for the day-to-day regulatory supervision and oversight of our businesses. Western Union itself is regulated by 48 States, the District of Columbia, and several of the United States territories offshore.

Moreover, MSBs are also subject to Federal laws such as the Bank Secrecy Act, the USA Patriot Act, and other relevant Federal laws, such as the sanctions programs administered by the Department of Treasury's Office of Foreign Assets Control.

With respect to its obligations under the BSA, Western Union is subject to regulatory oversight by FinCEN and as mentioned, is examined by the Internal Revenue Service.

Western Union has several concerns with H.R. 4331. MSBs are highly regulated and supervised by both State and Federal agencies. However, H.R. 4331 does not create uniform standards for safety and soundness.

Rather than preempting and providing uniform standards for companies, H.R. 4331 preserves State laws and State enforcement powers, leaving in place the current regulatory chaos that we experience and layers on top of that a new Federal regime which could potentially be in conflict with our State regulation.

We encourage the committee to consider creating a single regulator for MSBs. This license would grant the Federal Government greater oversight over the industry and its related issues and would provide the industry with more consistent guidance and regulation than it currently receives.

Federal oversight of compliance with the Bank Secrecy Act and the anti-money laundering laws will better serve the interests of the United States and the industry in battles against terrorism and illegal drugs.

This structure could provide for an optional Federal MSB license that companies could choose if they desire. The license would be issued and enforced by a Federal regulator responsible for all safety and soundness examinations and enforcement, as well as the examination and enforcement of all Federal money laundering and terrorist financing laws.

Western Union appreciates the committee's effort to take a first step towards modernization of the MSB regulations and looks for-

ward to working with the committee to improve H.R. 4331 or future legislation to achieve these important goals.

Thank you again for inviting me to testify. I look forward to answering any questions you may have.

[The prepared statement of Mr. Cachey can be found on page 35 of the appendix.]

Mr. MILLER OF NORTH CAROLINA. Thank you, Mr. Cachey. You used 4 of your 5 minutes. You set an excellent example not only for the witnesses, but for members of the committee.

Mr. McClain is recognized for 5 minutes.

STATEMENT OF SCOTT K. McCLAIN, DEPUTY GENERAL COUNSEL, FINANCIAL SERVICE CENTERS OF AMERICA (FiSCA)

Mr. MCCLAIN. Thank you. Chairman Miller, Ranking Member Hensarling, and esteemed members of the subcommittee, my name is Scott McClain. I serve as deputy general counsel to Financial Service Centers of America, also known as FiSCA.

On behalf of the FiSCA membership, we are grateful for this opportunity to discuss issues concerning the regulation of money services businesses.

FiSCA is a national trade association representing nearly 7,000 neighborhood financial service providers operating in the United States. Our membership serves millions of customers from all walks of life, including those with bank accounts as well as the "unbanked."

Our members, which we call "financial service centers" or "FSCs," provide a broad range of financial services and products, including check cashing, remittances, money order sales, and utility bill payments, to name just a few.

FSCs make up an economically significant industry that conducts more than 350 million transactions each year, providing over $100 billion in various products and services to over 30 million customers.

FSCs specialize in delivering retail financial services, offering convenient locations, extended hours of operation, and transparent and affordable transaction fees.

Our customers pay only for the services they use with no account maintenance fees, no minimum balance requirements, and no NSF fees.

We are proud of recent industry surveys showing that more than 90 percent of our customers rate the value and level of our services as "good to excellent."

Check cashers and other MSBs are dependent on access to depository and banking services for their very survival. Banks that service our industry, however, are faced with onerous regulatory burdens and are required to expend ever greater resources in maintaining customer compliance and monitoring systems. As a result, many banks have terminated their MSB customers, are refusing new accounts, or placing burdensome requirements on the accounts they maintain.

There is a dangerously small pool of banks willing or able to provide services to MSBs. As a result of these trends, check cashers and other MSBs are experiencing problems in locating and maintaining accounts, banking costs are increasing, and would-be entre-

preneurs in this area are experiencing barriers in opening new businesses.

Part of the current bank discontinuance problem stems from a misperception in the eyes of some regulators and bankers that check cashers are inadequately regulated.

Let me demonstrate how this is not accurate. At the State level, check cashers are regulated in most U.S. jurisdictions, typically by banking departments or other regulators.

State regulation typically includes licensing or registration requirements, mandatory recordkeeping, examinations, financial reporting, regulation of fees and consumer protections.

Virtually every State with any sizable check-casher industry has enacted legislation to regulate these businesses.

Moreover, all check transactions are subject to the Uniform Commercial Code adopted in all U.S. jurisdictions.

In addition, at the Federal level, as of 2001, MSBs have been required to register every 2 years with the U.S. Department of the Treasury. They must also implement anti-money laundering programs, including policies and procedures, compliance officers, employee training programs, and independent compliance examinations.

Like banks and other financial institutions, check cashers and other MSBs are subject to Bank Secrecy Act reporting requirements, including currency transaction reporting and suspicious activity reporting for certain types of transactions.

They are also required to maintain detailed records of monetary instrument sales and remittance activities at certain levels as mandated by the BSA.

MSB compliance is overseen by the Financial Crimes Enforcement Network with the examination function administered by the Internal Revenue Service. In a typical Title 31 audit, IRS examiners will go on-site to access the level of a check casher's compliance, including a review of all reporting and recordkeeping functions. The IRS examination process is rigorous.

In short, the perception that the check cashing industry is underregulated is simply not accurate.

FiSCA will continue to work with Members of Congress and this subcommittee to help ensure the availability of banking services to the industry.

One solution currently being considered is H.R. 2893, the Money Service Business Act of 2009, introduced last year by Representative Maloney and co-sponsored by Chairman Gutierrez, Ranking Member Hensarling, and Representative Biggert.

This proposed solution continues to have bipartisan support and industry support. We are grateful to the bill's sponsors for their continued efforts in this regard. We also appreciate the concern of Congress for this problem as demonstrated in H.R. 4331, the Money Services Business Compliance Facilitation Act of 2009, as introduced by Chairman Gutierrez and Ranking Member Bachus.

As a final point, although the MSB industry continues to experience significant problems in access to banking services, a number of depositories have seized on this as an opportunity. Many banks have found check cashers to be excellent, profitable customers

whose accounts can be efficiently and safely managed, and who can significantly add to the bank's bottom line.

FiSCA has developed written materials on banking MSBs and we will gladly work with any depositories who may want to take a second look at our industry.

In conclusion, FiSCA and its members are committed to working with the subcommittee and our industry partners to help ensure that MSBs continue to have access to banking services.

Again, we thank you for the opportunity to present these views.

[The prepared statement of Mr. McClain can be found on page 41 of the appendix.]

Mr. MILLER OF NORTH CAROLINA. Thank you, Mr. McClain.

Finally, Ms. Thoren-Peden is recognized for 5 minutes.

STATEMENT OF DEBORAH THOREN-PEDEN, PARTNER, PILLSBURY WINTHROP SHAW PITTMAN LLP

Ms. THOREN-PEDEN. Mr. Chairman, Ranking Member Hensarling, and members of the subcommittee, I am very honored to be here and thank you for inviting me.

My name is Deborah Thoren-Peden. I am a partner at the law firm of Pillsbury Winthrop. I am on the firm's financial institutions team, and I am chair of the privacy team. I am also co-chair of the firm's consumer and retail team.

Prior to joining the firm, I spent 10 years in-house at First Interstate Bank in the retail sector, where amongst other things I was the Bank Secrecy Act attorney. I have been doing Bank Secrecy Act and financial work and payment work since the early 1980's, so for almost 25 years.

I have also been general counsel and a senior executive officer and chief privacy officer of an Internet payment company, as well as general counsel of a financial subsidiary of another Internet company.

My practice includes representing many different sorts of companies in the payment space, ranging from money transmitters to check cashers, pre-paid card issuers, distributors, sellers, money order issuers, Travelers Checques, etc. I work with a broad range of people and companies, and in that regard, I have ended up working with most of the regulators in one way or another in this space throughout the country.

One certainly strong opinion that I have is I believe the MSB industry is already among the most heavily regulated industries. Right now, they have the State regulators in virtually every State in which they offer services and licenses are required. Those State regulators, by the way, are extremely diligent in their duties and their oversight. They care tremendously as to whether or not the people, the consumers, and companies in their States are properly protected, and they are very vigilant in terms of their oversight and examinations, and for certain of my clients, what that means is actually they will have State examiners in their offices for months, literally months, every year, because different State examiners come in.

Just to give you an idea, and this is by way of an example, I brought with me the Bank Secrecy Act and AML examination manual from FinCEN and the Department of the Treasury. This is just

one exam manual from one agency. As you can see, it is fairly robust.

The MSB industry has FinCEN oversight, and people at FinCEN care deeply about the industry. Also, OFAC has oversight in terms of whether or not there is compliance with the economic sanctions by the Office of Foreign Assets Control.

The IRS has the right under the Bank Secrecy Act to examine them. All the States have an examination right, and the Federal Trade Commission would have rights to oversee the non-bank financial institutions as well.

You have a large number of different entities already in place regulating these industries today.

One thing I know of significance to the committee, with which I wholeheartedly agree, is there does need to be more protection for the banks in terms of offering accounts to MSBs.

What has happened today is the risk of banking MSBs has been heightened, many of the banks very logically have chosen to not take the risk because the risk of their having problems or encountering problems later is very possible for them, so it does not make it sensible for them to do so.

I truly believe there needs to be some sort of a safe harbor enacted for the banks in terms of banking the MSBs, so that the banks cannot be gone after for an MSB's actions.

Additionally, I think the MSB industry, including the prepaid card industry, etc., needs to continue to be nurtured and supported because they offer extremely important financial services to millions of consumers in the United States, including the unbanked and the underbanked, which some estimate to be 10 to 15 percent of the population.

If there is more regulation and more oversight requirements that are particularly burdensome, you will find that some people currently offering services through convenient locations, perhaps some retailers by way of example, will pull out of the business because it is simply not worth it to them to risk having potential actions brought against them in exchange for offering the services through their locations.

In terms of even additional oversight, I think careful thought has to be given to what is going to be the impact of additional regulation, especially on some of the retailers, mom and pop stores, etc., that offer the products, because you may find the products are withdrawn from the marketplace, which I think is contrary to everyone's wishes.

I think one thing everyone can agree upon is no one wants these monies and transactions going underground. If they are not offered and available conveniently, they may go underground, and neither the industry, law enforcement or the regulators want that to happen.

Instead, I think we need to help nurture the industry. Thank you very much.

[The prepared statement of Ms. Thoren-Peden can be found on page 45 of the appendix.]

Mr. MILLER OF NORTH CAROLINA. Thank you. We will now have a series of questions from the members. Each member will have 5 minutes. I will begin by recognizing myself for 5 minutes.

Mr. Cachey, you rejected the Bachus/Gutierrez model, although you said you would be happy to continue to work with the committee on a proposal, but you did support instead an industry self-regulatory model, full Federal regulation of MSBs.

Do you have a notion of how big the price tag will be for the examiners it would take for the Federal Government to do it as opposed to an industry-based model with Federal supervision, which presumably either one will come out of fees charged to MSBs? Which do you think will be more expensive?

Mr. CACHEY. The proposal that we are contemplating would allow for an MSB to choose in or out to be federally licensed and regulated. The idea would be that if you had a smaller MSB that maybe did business in one State, they could continue to be licensed by that one State.

But if you had MSBs like Western Union or others that offer services throughout the country or maybe a significant region of the country, it might prove more efficient for them to opt-in to a Federal licensing scheme, thereby allowing entities where that is advantageous to do that, but not requiring the tens of thousands of smaller MSBs, what people commonly refer to as the mom and pop's, to have to deal with a Federal licensing scheme when it is not suitable to their business model.

Mr. MILLER OF NORTH CAROLINA. Ms. Thoren-Peden, you also proposed legislation for creating among other reasons an office within Treasury to ensure compliance with current regulations.

Is the current oversight of MSBs by FinCEN and the IRS and any of the relevant agencies sufficient that non-compliant MSBs are receiving the regulatory oversight that is needed?

Ms. THOREN-PEDEN. I certainly think that for MSBs that are licensed and are acting appropriately, the current regulatory structure is more than sufficient.

I think there may be some shops out there, probably smaller retailers, to be honest, who may engage in activities that they do not understand to be money services businesses directly. I think some of that has come about because of need, where there is need for additional services. People may offer the services without being fully aware of the legal requirements.

I do agree where you have entities that are operating in a context where they are subject to licensure and they have not been licensed, that is obviously a situation that needs to be addressed.

For anyone who is already licensed, I believe there is a significant amount of regulation out there already.

Mr. MILLER OF NORTH CAROLINA. Ms. Thoren-Peden, you described your clients who have an interest in this area. By way of explaining your interest and your expertise, are you representing any of those clients today?

Ms. THOREN-PEDEN. I am not.

Mr. MILLER OF NORTH CAROLINA. Is the point of view that you have expressed in any way at variance with the point of view of your clients?

Ms. THOREN-PEDEN. I have not spoken with my clients about what my testimony was today. I cannot really speak to that.

Mr. MILLER OF NORTH CAROLINA. The Chair now recognizes Mr. Marchant for 5 minutes. I yield back my time.

Mr. MARCHANT. Thank you, Mr. Chairman. Mr. McClain, you talk about the small and dwindling pool of banks that continue to provide account services to MSBs. What separates a bank willing to offer services from one that does not?

Mr. MCCLAIN. That is a very good question, Congressman. Currently, our industry is served by a handful of large national banks and I would say a broader base of smaller community banks and even some credit unions.

There is not really a bright line that will identify what will cause a bank or enable a bank to service our industry versus those that do not.

I think what we have seen, however, is a problem of perception. For banks that may otherwise be willing to service our industry, I think there is a concern or there has been a perception that check cashers and other forms of MSBs are high-risk accounts. I think if you look to the record of the industry, you will find that perception is not borne out.

The banks that do service our industry successfully, and I will add there really are some very fine banks, very fine financial institutions that service our industry, what they have been able to do is balance the costs and the risk associated—the regulatory risk, I should say—associated with banking MSBs with a profit structure.

They have been able to develop a specialty in this area, man appropriate compliance departments, and do so in a profitable manner.

The problem, I think, that we are faced with is that due to the regulatory structure, the burdens that banks that service this industry are faced with, it becomes unprofitable for them to service our industry.

Again, one solution that was being considered in connection with the MSB bill, H.R. 2893, was to alleviate banks of this role as being a de facto regulator for the customer, thereby making it more profitable for them to service our industry.

Mr. MARCHANT. In all instances now, the MSBs are regulated by the laws of the State in which they operate; is that correct?

Mr. MCCLAIN. Not all States, certainly the vast majority and certainly any States with any sizable check casher or MSB industry generally have very rigorous regulatory structures for our industry.

Mr. MARCHANT. Does the casa de cambio business fall into this?

Mr. MCCLAIN. No, that is generally south of the border, Mexican casa de cambios, that is not something we see here in the United States, or that is my understanding.

Mr. MARCHANT. There are quite a few in Houston. If that industry is located in a State, it has nothing to do with this money service business?

Mr. MCCLAIN. To the extent they are offering any product or service that falls within the definition of a "money service business," i.e., check cashing, money order sales, remittance activity as agents or principals, they would fall under the Bank Secrecy Act and they should be subject to regulation; absolutely.

Mr. MARCHANT. Ms. Thoren-Peden?

Ms. THOREN-PEDEN. Yes. The casa de cambios, basically currency exchange entities in essence, are subject to the Bank Secrecy Act. They are deemed to be money services businesses and are therefore

covered by the Bank Secrecy Act and anti-money laundering requirements.

Certainly, some States do license them and they are subject to licensure. In addition to that licensure, the moment they do anything else that triggers licensure in a State, they are also required to be licensed. I thought this information might be helpful.

Mr. MARCHANT. The proposal would create a national optional Federal charter for MSBs. Is that the essence of the bill? Mr. Cachey?

Mr. CACHEY. The essence of the bill, and I will paraphrase, but my understanding is to create an office in the Department of the Treasury to regulate money service businesses which will then have oversight over an SRO, which would be an industry organization that would self-regulate itself under the Federal laws, but would also leave in place the 48 State law schemes that also regulate the money services businesses.

Mr. MARCHANT. Would not an MSB have the ability or the right under this bill to not be regulated by this Federal entity?

Mr. CACHEY. I think right now that is unclear. Typically, the SROs that I am familiar with, and there are a number I am familiar with, even offshore for the industry, there are internal standards that are set for an entity to be able to join that SRO, and those types of details would need to be worked out.

With the tens of thousands of small money service businesses out there, it seems to me it would be difficult to make sure that many organizations can meet the type of standards that maybe some of the larger players in the industry would want to have to be comfortable and affiliated with those other organizations.

Mr. MILLER OF NORTH CAROLINA. The gentleman's time has expired. For the witnesses, you see the lights in front of you, if you see the time has expired during your answer, I am reluctant to cut you off or interrupt you, but if you would keep your answer succinct, and you may elaborate upon it later in writing.

Mr. Lynch has joined us. Like Mr. Bachus before him, he is not actually a member of this committee, but I ask unanimous consent that the gentleman from Massachusetts be allowed to sit with the subcommittee, and that he be allowed to ask questions in turn. Hearing no objection, it is so ordered.

Mr. Sherman is recognized for 5 minutes.

Mr. SHERMAN. Thank you. I will be brief.

People who purchase remittance services are often folks getting by on a very small amount of education and yet they are dealing with an international financial transaction, and they face three different charges. They face whatever charge is imposed upon the sender. There are sometimes charges imposed on the recipient, and then you have whatever currency conversion spread is being used.

What do we do or what do you suggest we do so that people will have simple and clear information and can pick the best service at the best price?

Mr. CACHEY. I guess I will address that, since we engage directly in remittances. We find our customers to be very financially savvy. Typically, if you interview a typical remittance customer, they can tell you what the price is and what exchange rate they are going to get with a number of services.

Additionally, anybody can walk up to a location for our service and many others, quite frankly, and just ask, what are you charging today, and what is the FX rate I am going to get if I send money overseas? That is freely shared with the customer because we think the customer should know that.

Western Union does not charge people to pick up money, so there is not a receiver fee, if you will.

Mr. SHERMAN. Do you have a consistent spread? I will define the spread as let's say one customer is sending dollars for pesos and the other customer is sending pesos for dollars. The difference that those two customers face as the spread, do you have a consistent spread day after day or are there sometimes when you walk in and the fee for service part is probably consistent but the amount you are losing on the currency transaction is different?

Mr. CACHEY. Depending on the currency, because some currencies are more volatile than others—

Mr. SHERMAN. What I am saying is day by day. You are sending money to Zimbabwe. You are going to face some additional charges.

Mr. CACHEY. Yes. Day by day. The spread stays consistent but it can change day by day.

Mr. SHERMAN. Is the difference between the number of dollars you will give for a peso and the number of pesos you will give for a dollar—you may have somebody in Mexico sending money north, is that difference the same every day?

Mr. CACHEY. I cannot answer that. I do not know.

Mr. SHERMAN. I will ask you to answer for the record and I yield back. Thank you.

Mr. MILLER OF NORTH CAROLINA. Thank you. The Chair now recognizes Mr. Royce of California for 5 minutes.

Mr. ROYCE. Ms. Thoren-Peden, if I could ask you a question, because in your testimony, you describe MSBs as being among the most heavily regulated businesses in the United States, and our other two witnesses in their testimony had commentary to that effect.

I am going to ask you based on a line of argument here that while this may be true, that in terms of effectiveness, the current regulatory structure overseeing MSBs could probably be improved.

Let me just see if you would concur with this. We have a number of recent studies, including some by the Treasury Inspector General, that found that the IRS could not be doing a complete job of ensuring Bank Secrecy Act compliance, and there are a couple of examples here.

One, if they tally the number of MSBs operating in the United States, they get an estimate—a lot of these are small and local outfits—they are somewhere between 40,000 and 160,000, and they say something less than 20,000 are actually registered at FinCEN.

Then they say due to the limited resources at the IRS, the enforcement of anti-money laundering and anti-terrorist financing oversight is largely left up to State regulators.

One of the arguments they cite is the IRS entering into memoranda of understanding with 40 States to facilitate the sharing of information that would come from examinations, and the fact that the IRS actually examines 3 percent of MBFIs.

When we look at the collection of various State regulators, there are 37 States that have some form of registration or regulation apparatus, and then as you look further into the level of sophistication and aptitude within those States, you see a very wide range, it is a very dramatic range in terms of the ability or expertise that is applied here.

Is there a segment of the MSB industry that is outside of the purview of strong anti-money laundering and anti-terrorist financed compliance, and in your view, how could we bring increased registration and increased compliance of these smaller MSBs?

Ms. THOREN-PEDEN. In terms of the MSB registration, there certainly are more sites in the United States that offer money services businesses, but I think the higher numbers refer to authorized delegates, also known as "agents."

If they are only acting as a money services business on behalf of someone else who is licensed and registered, there is no requirement for them to register at the Federal level, although there are separate recordkeeping requirements. I just wanted to mention that.

One thing that happens at the State regulatory level, and I believe 48 States as well as D.C. and other jurisdictions, actually have licensure for money transmittal purposes. There are very few States that do not have something in place.

Part of their examinations go into not only what is the licensee doing, how are they financially, how are they compliant with the anti-money laundering, how are they compliant with OFAC regulations, but they also as part of their examinations go out and look at the agent locations as well.

They do not look at every agent location. The same is true functionally for banks as well. If you have 10,000 branches in the United States, if there is an examination, quite logically the examination is of the entity itself and some of the branches. It is the same structure here.

In answer to your question, do I think that everything is examined to the nth degree, no, but I also think if you impose that sort of a structure where every authorized agent location, every delegate has to have an examination, you will find many people will no longer offer those services.

Mr. ROYCE. Let me explain the dilemma. We have come some way in terms of combatting terrorist financing, but the level of resilience and innovation among those who would contemplate terrorism is out there, and they are desperate to find funding mechanisms that operate under the radar and out of the mainstream financial system.

They understand their ability to carry out operations is directly tied to their fund raising. You saw recently in the paper here, we have an al-Qaeda leader, Shireen Mazari, who called funding, "the mainstay of Jihad."

As we look at reforming this portion of the non-traditional banking sector, I think transparency is the key to closing vulnerabilities. We need competent and consistent oversight that can address these apparent gaps and ensure anti-terrorist financing laws are properly enforced.

I thank you, Mr. Chairman.

Mr. MILLER OF NORTH CAROLINA. If you want to respond to that, you may do so in writing.

Ms. THOREN-PEDEN. Can I respond to that?

Mr. MILLER OF NORTH CAROLINA. In a sentence, but you may respond as fully as you like in writing for the record. You may respond in a sentence.

Mr. ROYCE. Mr. Chairman, on H.R. 4049, whether she thinks that would be helpful or not.

Mr. MILLER OF NORTH CAROLINA. When I said "a sentence," I meant in the Ernest Hemingway sense.

Ms. THOREN-PEDEN. I think the State banking regulators actually are very capable and they actually do an excellent job in terms of overseeing their licensees.

Mr. MILLER OF NORTH CAROLINA. Thank you. Mr. Frank would be a great deal less polite in his wielding of the gavel.

The gentlelady from California, Ms. Waters, is recognized for 5 minutes.

Ms. WATERS. Thank you very much. I would like to ask Western Union first, and maybe the other MSBs can answer.

When you have disasters in places like Haiti and Chile, and these tsunamis that have taken place in the last decade or so, you have a lot of transmitting of money. The relatives here in the United States are trying to give support to their relatives in those countries.

Do you have any policy that would reduce the amount that you charge to transmit when these disasters take place?

Mr. CACHEY. The simple answer is yes, both for the tsunami 2 years ago, I think, and most recently for Haiti. Western Union for a number of months after the disaster was sending money transfers for free for customers from the United States, France, and Canada into Haiti.

As well, the Western Union Foundation, which is the charitable arm of Western Union, I believe made $2.5 plus million available to other charitable activities and disaster recovery activities to Haiti.

Yes, these are our customers as well, because they are receiving funds through our dedicated service, so the people in Haiti are our customers as well as the people in the United States sending the money, and we understand they are in dire straits, so we do have programs to reduce or charge no fee at all, depending on the extent of the disaster.

Ms. WATERS. Is that true of Chile also?

Mr. CACHEY. Chili is less dependent on remittances than Haiti might be. I know we have made charitable contributions in one form or another. I am not personally familiar with what our reduction in fee structure was for that event though.

Ms. WATERS. Thank you. Mr. McClain?

Mr. MCCLAIN. Thank you. Our membership primarily provides retail financial services in the United States. We act as agents for Western Union. We did work with Western Union and our State associations and actually assisted to promote Western Union's activities in terms of discounted remittance fees for serving Haiti and we also did some of our own internal fund raising, but again, we

do not directly provide financial services in Haiti or other external jurisdictions.

Ms. WATERS. I have another question that I would like to ask, and that has to do with how you calculate the value of U.S. dollars, for example, if in fact one is transmitting $100 to Haiti and the exchange rate is $37.50, how do you do that? How do they get the full value of the $100 that is transmitted?

In the calculation, do you round up? Do you round down? How do you do that?

Mr. CACHEY. First, in Haiti, I believe it is a U.S. dollar payout because they want dollars in Haiti. There is no conversion for that particular portal of transactions. People sending a dollar from the United States, a dollar would be paid out in Haiti.

From a currency exchange standpoint, in jurisdictions where we do pay out in the local currency, Western Union states what the exchange rate is that we are offering and then explicitly tells the customer this is the amount of pesos, pounds, euro's, whatever the currency may be, that is going to be put into the hands of the customer receiving the money, so that the sender knows exactly how much money the receiver is going to have placed in their hands when they show up at our correspondent location in that jurisdiction.

Ms. WATERS. It may be a problem in that the currency of the receiving country may not have the kind of denominations, I guess, to be able to capture the partial percentage point or what have you.

It seems to me that could add up to a lot of money. Do you calculate how much that is and is that captured in your earnings report separately from the way you capture the other straight amounts that are transmitted?

Mr. MILLER OF NORTH CAROLINA. The witness may answer in a sentence with a maximum of two commas and no semicolons, and you may answer as fully as you like in writing for the record.

Mr. CACHEY. I will answer in writing with a period.

Mr. MILLER OF NORTH CAROLINA. All right. Mr. Hinojosa of Texas is recognized for 5 minutes.

Mr. HINOJOSA. Thank you, Mr. Chairman. I thank the panelists for coming to visit today and get us better informed.

I represent the 15th Congressional District in deep South Texas, along the Texas/Mexico Border. Hidalgo County is the largest county that I represent, and it is approximately 90 percent Hispanic.

It is also one of the poorest counties in the whole Nation and home to the poorest of the poor because we have so many colonias in that county. It contains the largest number of colonias, like I said, and they number something like 800.

I am concerned about the charges that are being charged by the check cashers and payday lenders, and many of my comments and questions will be directed towards that group.

This cash society makes it very difficult for the majority of my constituents to obtain non-predatory loans and forces them to rely on these check cashers and payday lenders for their financial transactions, and such transactions make it very difficult for them to obtain non-predatory loans and thereby prevents them from establishing credit, possibly purchasing a car or appliances. It is just

very difficult for them to be able to get into the mainstream of financial institutions.

In fact, payday loans over a period of time can result in my constituents paying up to 400 percent in interest if they do not pay the loans by the end of each month.

Over the years, I have worked with Chairman Frank, Subcommittee Chairman Gutierrez, and Subcommittee Chairwoman Maxine Waters to find ways to move our unbanked constituents and all the unbanked in the United States into the mainstream financial services.

Unfortunately, many of them remain unbanked, distrust banks and other mainstream financial services and entities, and continue to suffer at the hands of those folks I mentioned and predatory lenders.

The first question would be to Joe Cachey with Western Union. What can you do to help us get many of these unbanked into the financial services and the system that we have here in the United States so they can have more disposable income to be able to enjoy a better quality of life?

Mr. CACHEY. As I stated in my oral testimony, more than half of Western Union's customers in the United States are banked and really use Western Union as an asset, a cash management vehicle for services that banks may provide but which Western Union provides at a more convenient and speedier manner than a bank might.

Many people use our systems to make bill payments, for example, where they do not want to run the risk of bouncing a check and having to pay a $35 bounced check fee. Let's remember that last year, the U.S. banking industry made approximately $40 billion just on returned check fees.

A lot of people are banked and use our services to manage their cash flow to avoid the types of fees that banks charge people.

Mr. HINOJOSA. Joe, let me interrupt you because time will get away from us. You said half of them are banked. You had about $71 billion last year. That leaves another $35 billion of transactions that are by people who are unbanked. I did not hear you say what you could do, your company, to educate and to encourage people that I represent to use the financial services, and if you cannot answer the question, I would like to ask the lady if you have some services that would help us in my district.

Mr. MILLER OF NORTH CAROLINA. Time has gotten away from us. One sentence orally, and as full an explanation as you would like in writing for the record.

Ms. THOREN-PEDEN. Yes, sir. I think there are a number of prepaid products that have become available over the last couple of years that are offering many financial services to the unbanked and underbanked that hitherto were not readily available to them.

Many of them are priced at a level that is reasonable, and it can be very helpful. Some customers are able to establish long-term relationships with the underlying banks. That is usually at the option of the customer, but there are a number of prepaid products that have arrived in the marketplace over the last couple of years that I believe and have seen really do facilitate getting the unbanked and underbanked financial services.

Mr. HINOJOSA. Thank you.

Mr. MILLER OF NORTH CAROLINA. Thank you. That was a very long sentence. If any of you testify before the full committee, you will think I am a real sweetheart.

The Chair now recognizes for 5 minutes a leader on this issue who has introduced relevant legislation, the gentlelady from New York, Ms. Maloney.

Mrs. MALONEY. Thank you very much. As the chairman mentioned in his opening remarks, I have re-introduced my bill, the Money Services Business Act, which is identical to the legislation that unanimously passed the House of Representatives last year.

I am proud to sponsor this legislation and to have it co-sponsored by the ranking member of the Financial Services Committee as well as the chairman and ranking member of the Financial Institutions and Consumer Credit Subcommittee, Congressman Luis Gutierrez and Jeb Hensarling, and Representative Judy Biggert.

The Money Services Business Act addresses the critical problem of MSBs, money service businesses, being denied access to the banking system, and without a relationship, MSBs are unable to provide financial services to communities, making it difficult for millions of Americans to pay their bills, send money or cash checks.

Federal regulatory agencies recognizing the problem facing MSBs have sought to address this issue through agency guidance and regulatory changes with very little effect.

This bill establishes a mechanism that would allow MSBs to self-certify their compliance with the Bank Secrecy Act and anti-money laundering requirements, while allowing banks to make risk-based decisions about banking, particularly with MSBs.

My concern has been that if this issue is left unaddressed, the viability of MSBs will be compromised, potentially pushing many of these transactions underground and potentially untraceable to law enforcement.

This is something we all agree is not the result we are looking for, and I hope to have a discussion that can lead to the best possible conclusions.

I would like to ask Mr. McClain, as you know, my colleague, Mr. Gutierrez, has a bill that would recognize a self-regulatory organization that would be delegated rulemaking authority as well as enforcement.

Are there regulatory organizations that have been identified as capable of performing the self-regulatory function and how were they identified?

Mr. MCCLAIN. Thank you, Congresswoman Maloney. With respect to this industry, I am not aware of any self-regulatory organizations that would be able to have oversight over the very large and very diverse money service businesses industry.

We have, as you know, what I will term as "wholesalers" of financial services and products, such as Western Union and MoneyGram and others, and then we have at the level of our members, retailers of very basic financial services, check cashers, etc., that act as agents.

I cannot as we sit here today perceive what type of self-regulatory organization could have oversight over this whole universe of MSBs, but it is certainly an innovative and creative bill, and it

is something that I think deserves some serious consideration and we will continue to look at it and work with the committee.

Mrs. MALONEY. Do you believe this is a better approach to a self-certification process?

Mr. MCCLAIN. I think it is certainly a different approach. With respect to the self-certification process, the real focus and appeal of that proposed legislation is the fact that it would relieve banks of being in the role as de facto regulators of their MSB customers, so it is a very different bill. It is not contrary to the self-regulatory organization proposal. Again, I think it attacks the issue or the problem from a different perspective.

Mrs. MALONEY. I would like to ask Mr. Cachey and Ms. Thoren-Peden, I know you both testified you do not believe that additional regulatory oversight is appropriate, and I am curious whether you view a self-certification process as additional regulatory oversight.

I do agree that MSBs are already regulated at the State level, but would a self-certification process pose an additional burden on MSBs that might dissuade them from continuing to serve customers?

Ms. THOREN-PEDEN. I think if the self-certification process allows a bank to rely upon the MSB's certification and basically gives the bank a safe harbor for allowing them to be a banking customer, that would be very helpful.

As you indicated, that is one of the core issues that has come up over the past couple of years.

Mrs. MALONEY. Mr. Cachey, your response?

Mr. CACHEY. I think self-certification is probably the easiest way for smaller MSBs to address the banking issue that everybody has expressed concern over.

Mrs. MALONEY. I would like to ask anybody on the panel to discuss the current banking situation for MSBs, how is it affecting businesses and their ability to deliver financial services?

Mr. MCCLAIN. I think at least with respect to the retail MSB industry, I can address that. What we are seeing is, again, a very small pool of banks willing or able to service the industry. We are seeing some bright spots in some smaller community banks that are willing to step in. I think they see some opportunity here.

Generally, the problem is certainly not on a large scale improving. We have some regional areas, particularly Florida, Ohio, the Northeast, where there are really just very few banks that can service our industry. It continues to be a problem.

Mr. MILLER OF NORTH CAROLINA. The gentleman from Texas, Mr. Green, for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. I thank the witnesses for appearing. To make sure I direct my questions to the appropriate persons, if you believe that there is no need for additional regulation, will you kindly extend a hand into the air? Witnesses, if you think there is no need for additional regulation.

[show of hands]

Mr. GREEN. Two. Thank you. Given my source of information, and I will share with you what I have, the indication is that we have approximately 40,000 to 160,000 MSBs with only 15,000 to 20,000 actually registered.

Is this a fair statement? If you differ with the statement, kindly extend a hand into the air. Does anyone differ?

[show of hands]

Mr. GREEN. Yes, sir. What would your number be in terms of the actual number of MSBs, please?

Mr. CACHEY. I think something between 30,000 and 40,000 MSBs. I think the 160,000 number is probably agent locations or locations that do not need to be registered.

Mr. GREEN. Do you agree that we have more that are not registered than are registered?

Mr. CACHEY. I do not know, but I think you are right in that there are a number out there that are not.

Mr. GREEN. The indication was that we have about 40,000 that are MSBs; correct? My indication is we have 15,000 to 20,000 that are actually registered. If it is 40,000, we have at least as many that are not registered as are registered. Fair statement?

Mr. CACHEY. Fair.

Mr. GREEN. Ma'am, do you concur?

Ms. THOREN-PEDEN. I do not have the estimates in front of me.

Mr. GREEN. Without the estimates in front of you, do you agree we have more that are not registered than are registered?

Ms. THOREN-PEDEN. I—

Mr. GREEN. Do you agree that we have a good number that are not registered?

Ms. THOREN-PEDEN. That, I agree with.

Mr. GREEN. Given that we have a good number that are not registered and given that we have found that some banks are having great difficulty with the current circumstance and they are discontinuing the service, do you both agree the banks are discontinuing this service and working with these MSBs?

Do you agree? If you do, raise your hand.

[show of hands]

Mr. GREEN. This is the only way I can do it. I am sorry to be so elementary.

Ms. THOREN-PEDEN. I believe there are certainly a number of banks that have chosen to not bank MSBs.

Mr. GREEN. Do you agree that banks are in a tough position?

Ms. THOREN-PEDEN. Yes.

Mr. GREEN. They are trying to engage in a legitimate business practice and they find themselves having to not only vet the MSBs but even after vetting, they may find that they have done something that is inappropriate, but they have not done it with malice or forethought.

Do you agree, ma'am?

Ms. THOREN-PEDEN. I agree, sir.

Mr. GREEN. Do you agree, sir?

Mr. CACHEY. Yes.

Mr. GREEN. The banks are really the entities that are of concern, there are others as well, but it is hard to get around the fact that you have banks that are engaged in legitimate business practices that have this concern.

Given that we have the banks with the concern and we have those that are not registered, my question to you is, how will you

stand on the premise that we do not need additional regulation, given this circumstance that exists with our banking institutions?

How do you stand on this premise that we need no additional regulation? My guess is you may not like the regulation that is being proposed. You may think this is not a panacea, but surely, given the circumstance, something has to be done because we have legitimate business enterprises, known as banks, who are not engaging in the process and others that are considering discontinuance as it relates to this.

How can you stand on this, and so as not to give you a moment to just talk about it endlessly, and I am sorry to do this to you, would you agree rather than answer the question, which was rhetorical, would you agree that some regulation is necessary?

I will start with you, sir, Mr. Cachey. Would you agree that some regulation is necessary?

Mr. CACHEY. No, I think we just need to apply the regulations that we have to the entire industry.

Mr. GREEN. How would you apply the regulations that you have to the entire industry when the IRS only has 500 people and they are already overworked? How would you do that?

Mr. CACHEY. Give them more people.

Mr. GREEN. You would hire more people at IRS and let the more people at IRS, the 500-plus additional people, service this industry?

I take it, ma'am, that would be your position as well?

Ms. THOREN-PEDEN. Yes. The regulations and licensure structure are already in effect. They are on the books.

Mr. GREEN. You would just enforce the regulations that are on the books?

Ms. THOREN-PEDEN. Yes, sir.

Mr. GREEN. If the regulations that are on the books have not picked up as many persons as are registered, how can you contend that is an efficacious regulation? You have more people—this is my statement and at least one person agrees with me—unregistered than registered.

How do you contend that is effective regulation when they are going under the radar to the extent they are?

I thank you for the time, Mr. Chairman, and I thank Representative Maloney for her legislation as well as the other members.

The members are trying to do something about the problem and I think while you may not concur with what is being proposed, you have to admit it is time to act.

Thank you.

Mr. MILLER OF NORTH CAROLINA. If any witness wishes to respond in one sentence with ordinary punctuation, or you may respond for the record, if you would like.

[No response.]

Mr. MILLER OF NORTH CAROLINA. The Chair now recognizes the gentleman from Georgia, Mr. Scott, for 5 minutes.

Mr. SCOTT. Thank you. Let me ask Western Union, Mr. Cachey, what mechanisms do you use to ensure that the services that are provided by Western Union do not support terrorist activities or money laundering?

Mr. CACHEY. That is actually the function that I am personally in charge of at Western Union. We spend over $35 million a year

and I have over 325 employees located in 40 offices around the world who work on anti-money laundering and the counter financing of terrorism.

This includes not only monitoring transactions, looking for suspicious activity that can be reported to the government under the Bank Secrecy Act, but also doing things like government-sanctioned programs in conjunction with OFAC and the Department of Treasury, but also gathering and building relationships with law enforcement and regulators around the world, since we do business in 200 countries, and bringing that intelligence back in and trying to determine where in our system there might be abuses, and then either eradicating those abuses or if there is potential abuse, reporting those to the government so they can be acted upon.

Mr. SCOTT. Can you share with us some examples perhaps of where you have found out that terrorists, organizations or sympathy organizations for terrorists have been able to use Western Union's services, and if you could tell us, does most of your business now—Western Union is international—how much of it is national and how much of it is international?

Mr. CACHEY. Approximately 60 percent of Western Union's transactions do not touch the United States. Therefore, the money goes from France to Algeria, let's say, or some other corridor.

Frankly, when we report to the government what we suspect may be some type of illicit activity, we do not get a lot of feedback from the government as to hey, good job, that was something connected to money laundering or terrorist financing and we stopped it.

We do not get that feedback with all the reporting that we do. I cannot cite examples of that, although anecdotally, you see things that might get reported in the paper or you hear something, oh, yes, an investigation occurred and yes, we know we were part of what people are reporting.

There is not a good mechanism to get information back from the government on how much we are helping with the government's efforts.

Mr. SCOTT. You would say in conclusion that there have been several suspicious examples, but nothing concrete. For 9/11, if my memory serves me correctly, there were about 28 individuals who were intimately involved. They were over here. They received money.

Was any of that suspicious activity through Western Union?

Mr. CACHEY. Actually, there was about $5,000 that was returned the day before 9/11 back to the Middle East. Again, it was not suspicious because these individuals had the appropriate government-issued i.d.'s on the State level. They had bank accounts. They had credit cards.

In looking at our system, the transaction looked like a normal day-to-day transaction to us because there was nothing irregular about the identification or about the mode in which the people sent the funds.

The only way the funds were identified as being part of that was after the names were released by the government and then we ran the names through the system and found that $5,000 transaction.

Mr. SCOTT. There have been reports of MSBs that falsely certify they are compliant with the requirements of the Bank Secrecy Act. How prevalent is this problem?

Mr. MILLER OF NORTH CAROLINA. Again, one sentence orally, and as long as you would like in writing for the record.

Mr. MCCLAIN. Thank you, Congressman. I will field that question. I am not aware of any particular circumstances involving those types of violations.

I am aware that the IRS has conducted thousands upon thousands of examinations of MSBs and there have only been a handful of cases that have been referred to FinCEN for enforcement action.

Again, I am not aware of any of those circumstances to which you referred.

Mr. SCOTT. All right. Thank you, Mr. Chairman.

Mr. MILLER OF NORTH CAROLINA. Thank you. The Chair now recognizes the gentleman from Illinois, Mr. Foster, for 5 minutes.

Mr. FOSTER. Thank you. My questions have to do with the technological future of this industry. I think you all must be thinking about whether even 2 to 5 years from now, everyone is just going to have their smart phone and that is how they will do everything from check cashing, money transfers, prepaid cards, all this sort of thing. We are going to just be transferred to electronic platforms.

I think just the existence of storefront operations is in question within a few years.

The two questions I have, first, if you could just comment on what you think the industry will look like 5 years from now, from a technological point of view, and what regulation, if any, we should be thinking about to get ahead of the curve on the changes here, and finally, any comments you have on the proposals that I guess are coming through the Senate for effectively a biometric worker i.d. card, which could be an important part of authentication, which is a huge issue in all these things, and what are the main reasons why you would have a remaining need for a store front operation.

A wide range of issues. Let's start with Mr. Cachey.

Mr. CACHEY. We agree with you, things like mobile money transfer, mobile banking, that we think are the wave of the future, although we do not think the storefront is going to become obsolete because eventually people want to figure out how to get cash in or cash out of their cell phone.

Mr. FOSTER. Is that not why God invented the ATM?

Mr. CACHEY. In a lot of places around the world, they do not have ATMs, but there is a Western Union location there that can help people with their financial needs.

That is why we still think the brick-and-mortar locations will be viable.

From a transfer standpoint, we agree and we are already offering services between the United States and the Philippines and the United States and Kenya based on mobile money transfers as pilots to determine what is the best way to offer those services and also be compliant with things like the Bank Secrecy Act and foreign jurisdiction bank secrecy acts.

Mr. FOSTER. Mr. McClain?

Mr. MCCLAIN. It is difficult to foresee the future, but as Mr. Cachey has pointed out, I think there will always be a need for brick-and-mortar retail financial services.

Cash will always be with us, I think. I think we are seeing in our industry a decline in the number of check transactions, as some payments move toward electronic payment systems. I do not think we will ever get to a point or certainly not in the foreseeable future, where all of a sudden checks will just be obsolete. There is certainly a need for them and they serve a very convenient need.

With respect to regulation, it always takes some period of time before the law catches up with the technology. I think it is just a question of identifying how new technologies create these risks and acting aggressively to enact appropriate legislation to address that.

Mr. FOSTER. Thank you. Ms. Thoren-Peden?

Ms. THOREN-PEDEN. I agree. I think a lot of payments and payment systems are absolutely growing electronically, whether it is going to be through E-Wallet, mobile payments, even the clearinghouse in the Federal Reserve is opening up to 37 countries by the end of the year through the ACH system. It tends to be faster, quicker. I believe there will be a shift.

Like Joe, I still think there is going to be some cash as well in the community.

In terms of the biometric question, it would be a convenient identification methodology. I recognize that on a privacy front, there are significant privacy issues. Certainly, in a voluntary capacity, I think it would be terrific. I think it is a good way to do i.d.

In terms of the current regulations, most of them are written with an eye toward electronic payments, so I think while the regulations are in pretty good shape, probably there needs to be a little more guidance on some of them. I think it is going to be more adapting them and helping people understand as they offer new services how it applies to them.

Mr. FOSTER. Thank you. I yield back.

Mr. MILLER OF NORTH CAROLINA. Thank you, Mr. Foster. The Chair recognizes the gentleman from Massachusetts, Mr. Lynch, for 5 minutes.

Mr. LYNCH. Thank you very much, Mr. Chairman. Thank you for your courtesy in allowing me to sit in. I am not a member of this subcommittee, but along with Mr. Royce, the gentleman from California, I co-chair the Taskforce on Terrorist Financing. This overlaps with that jurisdiction.

As Mr. Royce has indicated, we have had some success there in terms of denying access to the legitimate financial system to terrorists. We owe a lot of credit to Treasury, FinCEN, OFAC, FATF, the Financial Action Taskforce, which is an inter-governmental agency, but there has been some success.

We have been able to drive out a lot of terrorist financing from the major banks and major institutions, but what has happened is like squeezing a balloon; we have seen that it has gone down to less formal institutions.

Right now, we just concluded a round of discussions with the Central Banks in Pakistan. We were very involved in Jordan, Tunisia, and Morocco to get them to adopt anti-money laundering stat-

utes and to actually stand up financial intelligence units in those countries.

Part of our focus has been on these hawalas that operate, and it is an informal value transfer system, you might call it the "Muslim Western Union." Because of the connection with Muslim culture, it has been a delicate area.

Here we are requesting these foreign governments to require hawalas to register and to adopt anti-money laundering measures, to know their customers.

It seems like what you are suggesting here because of bank discontinuance is that we are going to move away from that in this country. It is just going to make it very difficult for us to require other nations to be more prudent while we, at least at your urging, are moving away from this tighter regulation and tighter standard, at least with respect to terrorist financing.

I am just wondering how you think this is going to help us on the terrorist financing end if banks are required to do less and if MSBs are required to do less. How is that going to help?

Mr. CACHEY. I think in the bank certification bill, if I can call it that, my understanding is banks still have the right to say to a prospective client, you are an MSB, so I need to see your FinCEN registration. I do not think it is the guys who already play by the rules who are the challenge here.

The typical challenge that we are all having with hawalas is that they do not register with whatever entity they are supposed to register with, they do not get the licenses they are supposed to get at the State level, and therefore, they are outside the scope of examination.

A self-certification process as contemplated in the bill would not preclude a bank from doing its normal due diligence which we recommend to banks, let me see your FinCEN registration, let me see your State license, to make sure you are being regulated appropriately, let me see your compliance program, and let me see your certification that you are doing everything that you say you are doing.

I do not think it diminishes or sort of opens the banking system up, if you will, to hawalas to infiltrate it.

Mr. LYNCH. No, but I am using our example here in this country with MSBs. The fact that we have half the folks maybe registered. I am not sure what the exact number is. Half the people are not.

We seem to have a very loose and informal system here. You are arguing, at least from the testimony here, because of bank discontinuation, we are going to lower the responsibilities they have and also with no further regulation on MSBs, we are going to reduce the requirement to you as well.

It seems to be sort of an open system or a less secure system. I just see problems in that. I just was wondering how you anticipate addressing that.

Ms. Thoren-Peden?

Ms. THOREN-PEDEN. Yes, sir. I do not think the banks are going to go away at all. I just think transactions are going to become more electronic. That is what I was saying.

Even under the current regulations, the bank's obligations to file suspicious activity reports will continue under the Bank Secrecy

Act, as is the case with the money services businesses as well, which today are also subject to the filings.

The monitoring systems and the filings, I do not see as changing with any of the proposals for self-certification.

Mr. LYNCH. As long as there is a connection between the bank and the MSB; right?

Ms. THOREN-PEDEN. Yes.

Mr. LYNCH. Are we talking about the possibility that is no longer the requirement here?

Mr. MILLER OF NORTH CAROLINA. A one sentence answer, orally.

Ms. THOREN-PEDEN. I think financial services would continue to be provided either through the bank or the money service businesses, both of which are subject to the Bank Secrecy Act and will continue to be.

Mr. LYNCH. Thank you, Mr. Chairman.

Mr. MILLER OF NORTH CAROLINA. Thank you, Mr. Lynch.

The Chair recognizes the gentleman from Minnesota, Mr. Ellison, for 5 minutes.

Mr. ELLISON. Mr. Chairman, thank you for your work here, and thank you for this hearing.

In my district in Minneapolis, we have a number of hawalas. These folks are small business people. I think they are trying to do the right thing. A number of them have had their relationships with their financial institutions cut off.

I guess my question to the panelists is, for hawalas doing business, trying to get money to remote parts of the world, who are working to try to comply but for whom there is no specific reason to believe they are not in compliance, how will this affect their business? How will the bill, H.R. 4331, affect their business?

Mr. MCCLAIN. I will take that, Congressman. I do not think it was really designed to affect their businesses at all. I think this proposed—first of all, if they are conducting business and acting as a money transmitter, they have to be registered as a money transmitter, and at the State level, they have to be licensed in most jurisdictions. That is an absolute threshold they do have to meet.

With respect to the proposed legislation, I do not think it would impact at all their ability to do business. One of the proposals is the creation of a self-regulatory organization.

I think that again bears some further examination by the industry and some additional work with the subcommittee. I think again it is something that would not necessarily directly impact a money transmitter's ability to conduct business.

Mr. ELLISON. I am also curious to get your views on this topic. Post-9/11, our country very correctly took measures to try to stop terrorist financing.

Given the 9 years or 8½ years hence, in your view, are there things we should do to allow for more enterprise and more money transmitting that will not sacrifice our ability to stop terrorist financing?

Mr. MCCLAIN. I think I will direct that to Mr. Cachey, who represents Western Union.

Mr. CACHEY. Our point of view is that the laws are there. The Patriot Act has been very effective if you look at the reports coming out of the Department of the Treasury year after year. Therefore,

the need here is not a different regulatory scheme or a regulatory scheme that has more laws, but how do we push the effectiveness of the regulations through the entire industry?

When you have a Western Union or a MoneyGram, which is a Minnesota company, and you are doing the right thing, that is one thing, but when you have 5,000 or 10,000 other companies out there that according to the statistics are not even registered with FinCEN, it seems to me that is where the risk is, and that is where the effort should be put, as opposed to passing more laws and trying to just create more regulations for the industry.

Mr. ELLISON. Why do you think this large number of companies are not registered with FinCEN? Is it because they are just small mom and pop operations? Based on your institutional knowledge, is there any general reason why not?

Mr. CACHEY. I think it is typical of regulation of any industry. The small guys are the start up's, they are entrepreneurial, they are willing to take the risk. Compliance costs money. If you are only making $50,000 a year on this service, are you going to go out and spend $20,000 on a compliance system and a person to take a look at it and lawyers to advise you on it and all that type of stuff. That is their decision to make.

I could see how a small business person starting something up could say maybe I am just going to take the risk for the first couple of years to see if this works before I am going to build a process to comply with these laws.

Mr. ELLISON. What about a more streamlined way to build compliance that ensures safety of the system but reduces some of the barriers to entry? As much as it is great to have a big company like Western Union and MoneyGram, this is still America. We still believe in enterpreneurism.

Any reflections on that?

Mr. CACHEY. I think there has been a lot of talk recently about the risk-based approach to compliance, meaning build a system that is commensurate with the risk that your institution offers. I think that sheds some light on the subject and gives us sort of a light at the end of the tunnel for the smaller remitters.

Mr. ELLISON. Thank you.

Mr. MILLER OF NORTH CAROLINA. Thank you, Mr. Ellison.

The gentlelady from New York has a great interest in this topic and has further questions, so we will have a second round of questions out of the Chair's great affection and respect for the gentlelady and because she is from Greensboro, originally.

The Chair waives his round. I understand Mr. Marchant waives a second round of questioning. The Chair now recognizes the gentlelady from New York.

Mrs. MALONEY. I would just like to ask Mr. Cachey, and I know you testified earlier, I have been in and out with meetings with constituents in the other room, but I do know you testified you had concerns about H.R. 4331.

I am wondering whether you can provide your views on the bill I have introduced that would allow for a self-certification process for MSBs while maintaining the State regulatory structure.

Do you believe that this approach is more in line with your proposal to create a licensing system? Do you see the licensing system

better than these two bills? Do you see it working in conjunction with these bills? How do you see us moving forward with some type of legislative framework that could help the commerce, help the people, and solve this problem?

Mr. CACHEY. Congresswoman, I see two separate problems. One is that the smaller remitters, smaller MSBs, are having problems maintaining or obtaining bank accounts which they need to do their business. I see the self-certification bill that you mentioned as an appropriate way to address that.

On the issue of licensing, as a nationwide business, if you will, right now, I have 48 licenses. I get examined between 15 and 20 times a year from various State banking departments. I would rather have one Federal regulator license me and come in and examine me every year. To me, that is a more efficient way to operate our business.

I really see them as two separate issues. I think the certification process is appropriate. I do not think there is any hidden bogeyman in there. I think it is a way for smaller businesses to get the services they need from their local banks.

For a company like Western Union, MoneyGram, which we mentioned before you came in, and the other larger MSBs, the bifurcation of licensing among 48 States just is burdensome, contradictory in some circumstances, and just is not an efficient way to operate a business.

Mrs. MALONEY. Thank you. Mr. Chairman, that was my focus, to try to figure out what would be a way to move forward. Thank you.

Mr. MILLER OF NORTH CAROLINA. The Chair thanks the gentlelady, and the gentlelady from the upper east side of Manhattan is proof that if you can make it in Greensboro, you can make it anywhere.

Mr. Ellison does not have a second round.

I would now like to thank all the witnesses and the members for their participation in the hearing. As I have said repeatedly to the witnesses and to the members, the record will remain open.

Without objection, the hearing record will remain open for 30 days for members to submit written questions to the witnesses, and to place the witnesses' responses in the record, as well as any written responses to oral questions asked today.

The subcommittee hearing is now adjourned.

[Whereupon, at 11:40 a.m., the hearing was adjourned.]

A P P E N D I X

March 10, 2010

Opening Statement of Chairman Luis Gutierrez
At the Subcommittee Hearing on
"Regulation of Money Services Businesses"
House Financial Services Subcommittee on Financial Institutions and Consumer Credit
March 10, 2010

Good morning. Today's hearing on the "Regulation of Money Services Businesses" gives us an opportunity to review the adequacy of government oversight of these entities and should assist us in determining whether legislation is needed in order to have better supervision and enforcement and, if so, what should be the proper scope of such legislation.

Money Services Businesses (MSBs) offer a range of services from check cashing to currency exchanges and beyond. We may be most familiar with them because they provide a convenient way to send or "remit" money to a person in another country. This remittance aspect of MSBs has been important in helping to retain ties among family members and in providing relief against poverty.

The United States is the largest remitting nation in the world with outward flows exceeding $42 billion in 2006. Wire transfers are the most convenient and most used methods of transferring those funds. Companies such as Western Union and Money Gram International facilitate this flow, often in relatively small amounts of

individual transfers between $100 to $500. Given the importance of these funds to both the transferor and transferee, we have an interest in keeping such financial transactions readily available and convenient.

MSBs, however, also have the potential for significant regulatory problems. Depending on who is counting and what definitions are used, it is estimated that there are as many as 100,000 entities that can be properly labeled as MSBs. Each of these entities offers potential for abuse.

The burden of regulation and enforcements has historically rested with the states. At least 37 States have some form of registration or regulation. But few of those States have a comprehensive supervision/enforcement mechanism, leaving a potentially large risk gap in our financial network.

MSBs are required to develop a risk-based system for complying with US anti-money laundering laws, the compiled directives of what we know as the Bank Secrecy Act (BSA). They are required to register with Treasury's FinCen (the Financial Crime Enforcement Network).

The responsibility for compliance, however, rests with the Internal Revenue Service (IRS), an already burdened agency. This relatively incomplete patchwork of oversight, supervision and enforcement raises questions and doubts over our federal regulatory policy and for entities that interface with MSBs, notably banks.

MSBs, in order to survive, must be bankable. But banks often find MSBs potentially risky. Banks are required under legal penalty to know their customers, but they cannot fully know an MSB, given that they cannot know an MSB's customer. It is often the case that MSBs cannot or do not know their customer, in a manner satisfactory to the rigorous established anti-money laundering standards. The risk, therefore, is that MSBs, especially smaller ones, can become unbankable and go out of business and place their customers at the mercy of grey or black market channels for transfers.

We want to do what we can to better regulate MSBs, quiet the fears of the banks with whom they interface, and allow the industry to provide continuing services to those who might otherwise be without basic financial services.

Last year Congresswoman Maloney introduced H.R. 2893, which created an approach to imposing the proper oversight of MSBs. Her work on self certification

as a step towards ending "banks discontinuance" is providing a foundation for a platform on which to build a better system.

Late in the first session of this Congress, I co-sponsored a bill introduced by ranking member Bachus that builds on the idea of self regulation. H.R. 4331 would establish an Office of Money Service Business Compliance which would register and enforce compliance duties relating to MSBs. The office would be empowered to recognize a self-regulatory organization (SRO), subject to rule-making and enforcement duties for MSBs. The office would not pre-empt state safety or soundness consumer laws, but would seek to ensure a more adequate AML (anti-money laundering) compliance by MSBs and give assurance to banks that MSBs now have proper AML programs and will not present potential liabilities to banks with which they do business.

Today's hearing gives an opportunity to review these initiatives and perhaps to discuss some other approaches.

Some may oppose any further regulation or oversight. But the uncertainty and gaps in the current system have a chilling effect on many businesses and individuals who want to conduct legitimate transactions. The system we need to

have in place is one that, instead, has a chilling effect on those who intend to use MSBs and financial institutions for money laundering, terror financing and other illegitimate and illegal transactions. Until we have a system that accomplishes both goals, we need to look at further oversight and regulation.

Testimony of
Mr. Joe Cachey
Chief Compliance Officer
The Western Union Company

Submitted to the

United States House of Representatives
Financial Services Subcommittee on
Financial Institutions and Consumer Credit

Hearing on

The Regulation of Money Service Businesses
March 10, 2010

I. Introduction

Good morning Chairman Gutierrez and Ranking Member Hensarling. My name is Joe Cachey and I am the Chief Compliance Officer for The Western Union Company. I am pleased to be here today to discuss ways to improve the regulation of money service businesses.

Western Union is a leader in global payment services. Western Union provides consumers and businesses with fast, reliable and convenient ways to send and receive money around the world, as well as send payments and purchase money orders. Western Union services are offered through a combined network of more than 410,000 agent locations in 200 countries and territories. In 2009, Western Union completed 196 million consumer-to-consumer transactions worldwide, moving $71 billion of principal between consumers, and 415 million business payments.

Regulation of money service businesses is a topic which warrants a comprehensive review. The regulatory structure of Western Union and other money transmitters is complex, and I am pleased that the Committee is holding this hearing to discuss the regulatory challenges we face. I also appreciate the opportunity to express Western Union's concerns with H.R. 4331, the Money Services Business Compliance Act of 2009. Let me briefly review our primary concerns with the legislation as proposed:

1. Money service businesses already operate in a complex and cumbersome network of state and federal regulators. Additional regulatory oversight, without corresponding reforms to the existing system, may unintentionally result in less efficiency and more conflict in the regulatory arena by not creating uniform standards for safety and soundness.

2. The current maze of state and certain federal requirements can be in conflict with one another – particularly so in the event of more regulation wherein they may exacerbate the confusion.

Before I elaborate on Western Union's concerns with H.R. 4331, I would first like to review the current regulatory structure in which Western Union operates. Hopefully, this will provide the Committee with a better understanding of our concerns with the bill and how we believe the regulatory structure can be modified to achieve the goals of the Committee.

II. Background on the Current Regulatory Structure for Money Service Businesses

Currently, Western Union and other money service businesses (MSBs) are licensed by the states in which they do business. States are also responsible for the day-to-day regulatory supervision and oversight of MSBs.

However, MSBs are also subject to federal laws such as the Bank Secrecy Act (BSA), USA Patriot Act and other relevant federal laws, such as the sanctions programs administered by the Treasury Department's Office of Foreign Assets Control.

Under current law, and with a few exceptions, each MSB must register with the Financial Crimes Enforcement Network (FinCEN), a part of the Department of the Treasury. Registration must be renewed every two years. As of February 10, 2010, there are 40,831 FinCEN-registered MSBs.

Traditionally the states have regulated Western Union and other money transmitters through comprehensive licensing laws. These laws impose a high degree of regulation and are intended to assure the safety and soundness of licensees. For example, they provide for periodic on-sight examinations, often by teams of examiners, filing of extensive financial and other reports and the maintenance of financial reserves. Typically, the state regulators are the state banking departments or the state department of financial institutions. In most states, the quality of the regulatory oversight is equivalent to that for state chartered banks and credit unions.

Western Union does business in all 50 states and several U.S. territories. Western Union is subject to examination by each state in which it is licensed, including examination for anti-money laundering compliance. We are regulated by 48 states, the District of Columbia and several of the United States territories. In 2009, Western Union was examined by over 15 state banking departments.

With respect to its anti-money laundering and anti-terrorist financing obligations under the BSA, Western Union is subject to regulatory oversight by FinCEN and examination by the Internal Revenue Service (IRS). Both FinCEN and the IRS have enforcement authority over Western Union with respect to any violations of its BSA obligations.

Given the large number of MSBs, and the IRS focusing more of its resources on identifying unregistered entities, the IRS has entered into memoranda of understanding (MOU) with at least 40 states and Puerto Rico, to facilitate the sharing of examination information and leverage the states' resources. FinCEN separately has entered into similar MOUs with states to share BSA compliance information.

In addition to the safety and soundness examinations conducted by the states referenced above, an increasing number of state MSB regulators are reviewing BSA compliance under state statutes requiring specific compliance with the BSA or general compliance with all laws or operation in a safe and sound manner. This subjects MSBs, such as Western Union, to examination and enforcement for federal anti-money laundering laws by the states as well as by the IRS and FinCEN.

Like banks and all other financial service providers, money transmitters are vulnerable to abuse by money launderers and others who seek to use the world's financial systems to support illicit activities. Accordingly, one of Western Union's top priorities is preventing its services from being used for illegal purposes. Western Union spends over $35 million per year on its anti-money laundering compliance program and employs approximately 325 people on anti-money laundering compliance. Western Union is justly proud of its anti-money laundering program and believes it rivals any in the industry.

Western Union is also proud of its record of working with regulatory and law enforcement authorities around the world to assist them in detecting and prosecuting illegal activity. In the

U.S., Western Union has a strong and cooperative relationship with agencies such as FinCEN, the Secret Service, the IRS, the Federal Bureau of Investigation, and Immigration and Customs Enforcement (ICE). For example, Western Union just completed a term on FinCEN's Bank Secrecy Act Advisory Group (BSAAG), which was created by Congress in 1992 and consists of representatives from Federal regulatory and law enforcement agencies, financial institutions, and trade groups in order to actively solicit advice on the administration of the BSA. The BSAAG plays a critical role in assisting FinCEN with their regulatory obligations by providing meaningful insight from the perspective of the various industries covered by the BSA. Our service on BSAAG, particularly our seat on the MSB Subcommittee, was helpful in providing a comprehensive insight of the MSB industry to FinCEN, and we were proud to be able to provide FinCEN with our expertise and industry perspective while they solicited feedback on the direction and scope for their current rulemaking on an updated definition of MSBs.

In addition to its work on BSAAG Western Union was pleased to host the Director of FinCEN, James Freis, as part of FinCEN's broader Outreach Initiative, at our headquarters in 2009 for a candid discussion on how Western Union is working to comply with BSA requirements, and to explore ways to work with our regulators to combat money laundering and terrorist financing. In addition, over the years, Western Union has received numerous letters and other expressions of appreciation from these agencies regarding its assistance and cooperation in their efforts. Western Union also strives to maintain open and cooperative working relationships with the state regulatory agencies which oversee its activities.

III. H.R. 4331 Overview

H.R. 4331 would establish an Office of Money Services Business Compliance within the Treasury Department to assure compliance with the reporting requirements of the BSA, and any other duties delegated to it, by the Secretary of the Treasury. The office would be headed by a Presidentially-appointed Director. The President would be required to consult with the Chairman of the Federal Reserve Board and the Comptroller of the Currency in making his selection. The Director has three duties under the bill:

1) to assure compliance by MSBs with all applicable requirements of subchapter II of chapter 53 of title 31, United States Code;
2) to establish procedures for the registration of MSBs and enforce registration; and
3) to carry out any other duties delegated to the Director by the Secretary of the Treasury.

MSBs would be required to annually register with the Office. The Director may approve the establishment of a self-regulatory organization to assure compliance. The Director is provided the same examination and subpoena power as the Secretary of the Treasury for civil enforcement investigations of violations federal law. The Director may issue temporary or permanent cease and desist orders and may take any other action that the Director deems appropriate to prevent harm to consumers or the public interest. Orders are to be entered after notice and opportunity for hearing, unless the Director determines that notice and hearing would be impracticable or contrary to the public interest.

Finally, the bill authorizes appropriations of such sums as may be necessary for the Office for fiscal years 2010, 2011 and 2012. Within 18 months of enactment, the Director is to submit a

plan to Congress containing recommendations for 'an appropriate long-term funding model' to 'ensure the independence of' the Office. While it is not explicit in the legislation, it is likely that such a funding model will include assessments on the MSB industry.

IV. Western Union's Concerns with H.R. 4331

Western Union does have several concerns with H.R. 4331. As detailed above, Western Union and other MSBs are highly regulated and supervised by state and federal entities. However, H.R. 4331 does not create uniform standards for safety and soundness, leaving Western Union to continue navigating the current maze of state requirements which can be conflicting. Rather than being preemptive and providing uniform standards for companies, H.R. 4331 preserves state laws and state enforcement powers, leaving in place the current regulatory chaos, and layers on top of it a new federal regime which could potentially be in conflict with our state regulation.

H.R. 4331 substitutes the new Office in place of registration with FinCEN and examination by the IRS, but does not appear to change either the registration or examination requirements. In fact, it requires annual registration with the Office, compared with FinCEN's current biennial registration.

Finally, Western Union is concerned that H.R. 4331 leaves the funding for the new MSB regulatory agency unclear. The lack of clarity regarding the funding of the new MSB regulatory office in the Treasury Department, combined with the lack of any preemption of state law or regulatory obligation leaves us concerned that we will face increased regulatory costs as a result of the passage of H.R. 4331.

V. The Need for Federal Regulation of MSBs

While Western Union does not support H.R. 4331, we do encourage the Committee to consider creating a single federal regulator for money transmitters. Given the growth of the remittance industry over the past decade, the increased importance of remittances to the global economy, and the unique federal interests in assuring compliance with federal anti-money laundering and terror financing laws, we believe the time has come for Congress to establish a federal license for money transmitters.

This license would grant the federal government greater oversight over the industry and its related issues, and would provide the industry with more consistent guidance and regulation than it currently receives. It would also be consistent with the current regulatory reform effort to establish a more structured regulatory framework for financial entities. Furthermore, federal oversight of compliance with the BSA and anti-money laundering laws will better serve the interests of the United States and the industry in the battles against terrorism and illegal drugs. These are not issues that should be left for each state to address. The current situation often leads to conflicting interpretations, confused priorities and muddled direction as numerous state regulators attempt to interpret and enforce these federal requirements.

The structure we are proposing would establish an optional federal MSB license which companies could choose if they desire. The license would be issued and enforced by a federal

regulator, who would be responsible for all safety and soundness examinations and enforcement. Furthermore, the federal MSB regulator would have authority for examination and enforcement of all federal money laundering and terrorist financing laws. This charter would be preemptive of state MSB laws and, in order to ensure uniform enforcement of standards and regulations, would be preemptive of state MSB licensing laws. However, this license structure would allow states to act on issues involving consumer protection for their residents in areas where the federal regulator has not already taken action.

Western Union believes that an optional licensing and regulatory structure would provide a benefit to both consumers and the industry by allowing companies to choose the licensing structure which would be most cost efficient for their business model, while not reducing consumer protection or putting the safety and soundness of these companies at risk. Ultimately, this will lead to lower costs and greater service for the customers of our nation's MSB companies, in addition to providing more uniform and efficient enforcement of our nation's money laundering and terrorist financing laws.

VI. Conclusion

Western Union appreciates the Committee's effort to take a first step towards modernization of MSB regulation. However, we do not believe that H.R. 4331 would improve the oversight or supervision of MSBs. Instead, we believe that creation of a federal licensing structure for money transmitters will better accomplish the Committee's goals.

With the recent focus on regulatory restructuring to enhance the supervision of our financial system, and the focus on combating money laundering and terrorist finance, we believe this is the right time to look at modernizing the regulation of MSBs by providing a federal licensing and examination regime that sets uniform standards for safety and soundness, as well as uniform and comprehensive examination for compliance with federal money laundering and terrorist financing laws.

Western Union looks forward to working with the Committee to improve H.R. 4331, or future legislation, to achieve these important goals. Thank you again for inviting me to testify. I look forward to answering any questions you may have.

FINANCIAL SERVICE CENTERS OF AMERICA, INC.
A NATIONAL TRADE ASSOCIATION

Statement of

SCOTT K. McCLAIN
Deputy General Counsel

Financial Service Centers of America

Before the
U. S. House Committee on Financial Services
Subcommittee on Financial Institutions and Consumer Credit

Regarding
Regulation of Money Service Businesses

Washington, D.C.

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Chairman Gutierrez, Ranking Member Hensarling, and esteemed Members of the Subcommittee, my name is Scott McClain. I serve as Deputy General Counsel to the Financial Service Centers of America, also known as FiSCA. On behalf of the FiSCA membership, we are grateful for this opportunity to discuss issues concerning regulation of the Money Services Business (MSB) industry.

FiSCA is a national trade association representing nearly 7,000 neighborhood financial service providers operating in the United States. Our membership serves millions of customers from all walks of life, including those with bank accounts as well as the "unbanked."

Our members, which we call "Financial Service Centers" or "FSCs" provide a broad range of financial services and products, including check cashing, remittances, money order sales, and utility bill payments, to name just a few. FSCs make up an economically significant industry that conducts more than 350 million transactions each year, providing over $100 billion in various products and services to over 30 million customers.

FSCs specialize in delivering retail financial services – offering convenient locations, extended hours of operation, and transparent and affordable transaction fees. Our customers pay only for services they use, with no account maintenance fees, no minimum balance requirements, and no NSF fees. We are proud of recent industry surveys showing that more than 90% of our customers find the value and level of our services as "good to excellent."

Check cashers and other MSBs are dependent on access to depository and banking services for their very survival. Banks that service our industry, however, are faced with onerous regulatory burdens, and are required to expend ever greater resources in maintaining customer compliance and monitoring systems. As a result, many banks have terminated their MSB customers, are refusing new accounts, or are placing burdensome requirements on the accounts they maintain.

There is a dangerously small pool of banks willing or able to provide services to MSBs. As a result of these trends, check cashers and other MSBs are experiencing problems in locating and maintaining accounts, banking costs are increasing, and would-be entrepreneurs in this area are experiencing barriers in opening new businesses.

Part of the current bank discontinuance problem stems from a misperception in the eyes of some regulators and bankers that check cashers are inadequately regulated. Let me demonstrate how that is not accurate. At the state level, check cashers are regulated in most U.S. jurisdictions, typically by state banking departments or other regulators. State regulation typically includes licensing or registration requirements, mandatory recordkeeping, examinations, financial reporting, regulation of fees and consumer protections. Virtually every state with any sizable check casher industry has enacted legislation to regulate these businesses. Moreover, all check

transactions are subject to the Uniform Commercial Code, adopted in all U.S. jurisdictions.

In addition, at the federal level, as of 2001, MSBs have been required to register every two years with the U.S. Treasury Department. They must also implement anti-money laundering programs, including policies and procedures, compliance officers, employee training programs, and independent compliance examinations. Like banks and other financial institutions, check cashers and other MSBs are subject to Bank Secrecy Act (BSA) reporting requirements, including currency transaction reporting (CTRs) and suspicious activity reporting (SARs) for certain types of transactions. They are also required to maintain detailed records of monetary instrument sales and remittance activity at certain levels as mandated by the BSA.

MSB compliance is overseen by the Financial Crimes Enforcement Network (FinCEN), with the examination function administered by the Internal Revenue Service. In a typical "Title 31" audit, IRS examiners will go on-site to assess the level of a check casher's compliance, including a review of all reporting and recordkeeping functions. The IRS examination process is rigorous.

In short, the perception that the check cashing industry is under-regulated is simply not accurate.

With the limited number of banks serving the industry, a tenuous relationship exists in which another termination by any one of the few remaining larger banks could create serious problems for the industry and its customers. I would also stress that the loss of bank accounts threatens to drive customer transactions underground to unregulated channels. It is important to the interests of national security and consumer protection that transparency of transactions be maintained by ensuring that check cashers and other MSBs remain a viable part of the regulated financial community and continue to have access to depository services.

FiSCA will continue to work with members of Congress and this Subcommittee to help ensure the availability of banking services to the industry. One solution currently being considered is H.R. 2893, "The Money Service Business Act of 2009", introduced last year by Representative Maloney and co-sponsored by Chairman Gutierrez, Ranking Member Hensarling, and Representative Biggert. This proposed solution continues to have bi-partisan and industry support. We are grateful to the bill's sponsors for their continued efforts in this regard. We also appreciate the concern of Congress for this problem as demonstrated in H.R. 4331, the "Money Services Business Compliance Facilitation Act of 2009" as introduced by Chairman Gutierrez and Ranking Member Bachus.

As a final point, although the MSB industry continues to experience significant problems in access to banking services, a number of depositories have seized on this as an opportunity. Many banks have found check cashers to be excellent, profitable customers, whose accounts can be efficiently and safely managed, and who can

significantly add to the bank's bottom line. FiSCA has developed written materials on banking MSBs, and we will gladly work with any depositories who may want to take a second look at our industry.

In conclusion, FiSCA and it members are committed to working with the Subcommittee and our industry partners to help ensure that MSBs continue to have access to banking services.

Again, we thank you for the opportunity to present these views.

Deborah Thoren-Peden
Pillsbury Winthrop Shaw Pittman LLP
Testimony Before the Subcommittee on Financial Institutions and Consumer Credit of the House Committee on Financial Services
"Regulation of Money Services Businesses"
March 10, 2010

1. Money Services Businesses, known as MSBs, generally include money transmitters and remitters, check cashers, currency exchanges, stored value, bill pay services, and other similar services. They are among the most heavily regulated businesses in the United States. Almost every state requires licensure (similar in scope to banking licenses) in order to engage in money services businesses, especially money transmittal. The state regulators are usually the same regulators as the state banking regulators. These regulators conduct examinations, and are empowered to impose a wide range of sanctions on non-compliant MSBs; they have revoked licenses, imposed fines, made criminal referrals, and imposed civil sanctions, cease and desist orders, and other penalties. I have interacted with many of these state regulators over the years, and can attest they are extremely dedicated and take their responsibilities for protecting the public very, very seriously. During the last few years they have become even more diligent in their examinations, many of which can last several weeks. For some of the larger MSBs, this means they may undergo examinations from several states during the course of the year—in other words, they can be subject to examination by various examiners for several months each year. Although there are some variations in the depth of experience among the state regulators, in my view, they have become much more sophisticated over the last few years. In some cases, they even conduct joint, multi-state examinations. Similarly, the Financial Crimes Enforcement Network (FinCEN), the Office of Foreign Assets Control (OFAC), the Federal Reserve, the Federal Trade Commission (FTC), the Internal Revenue Service (IRS), and other federal regulators are very dedicated and experienced, and I believe we should be proud of their oversight of MSBs. I highly regard all of the regulators and law enforcement agencies who oversee MSBs, and believe they should be commended for their oversight and commitment.

2. In addition to the state regulators, the IRS is empowered under the Bank Secrecy Act (BSA) to examine MSBs, and it regularly conducts such examinations. Additionally, the FTC has regulatory oversight of non-bank financial services companies, and has used such powers as well. Moreover, FinCEN and OFAC also are empowered and on an ongoing basis do enact new regulations, as well as impose sanctions on MSBs who fail to comply.

3. I believe additional regulatory oversight is not appropriate. There have been very few reported incidents of an MSB failure that caused harm to any consumer or other customers. Moreover, under most state laws, licensed MSBs must maintain surety bonds or permissible investments (up to 100 percent) to protect consumers in the event the MSB faces financial difficulties or bankruptcy. Licensed MSBs are required to provide audited financials, usually annually, and in many cases, must provide quarterly reports to their regulators.

4. MSBs provide a tremendous service to the un-banked and underbanked. I am aware of estimates that between 10-15 percent of individuals in our country are either un-banked or underbanked. MSBs allow many such individuals access to the financial systems in the United States, in a way that is safe and convenient. There are hundreds of thousands of MSB locations throughout the United States; such locations are known as authorized delegates of the licensees, and as such, they, too, are already subject to regulatory oversight (for example,

they are subject to examination by both the state regulators and the IRS). Most authorized delegates are also fully subject to the Bank Secrecy Act, the PATRIOT Act and the economic sanctions overseen by OFAC. Like banks, they must file Suspicious Activity Reports, Currency Transaction Reports, and other BSA required reports, and comply with the recordkeeping requirements under the BSA's Fund Transfer Rule, Monetary Instrument Sales, NACHA's new IAT requirements, etc.

5. Additional regulations and oversight would likely cause a number of authorized delegates (such as certain retailers) to withdraw from the business. Such entities will do a cost-benefit analysis and may conclude that, in light of the increased risk they face if they fail to comply with every applicable law and regulation, it is simply not worthwhile for them to engage in such activity. One thing on which law enforcement, regulators, and the industry can all agree is that no one wants to cause such transactions to go underground. If such transactions go underground, the ability of law enforcement and the regulators to identify illegal transactions will become much more difficult. Like law enforcement and the regulators, the industry does not want to see increased risk of misuse.

6. I believe that we also all agree that we should have a mutual objective of making sure that MSBs remain as respected financial services providers. Much of the growth in the past few years in financial services has involved such entities, and they provide needed services, along with banks, to millions and millions of U.S. consumers.

7. Banks need to have additional protections in terms of banking MSBs. Today, very few banks are willing to bank MSBs as customers. The banks cannot be criticized for such reluctance, as MSBs have been, by and large, identified as high risk, and the banks can potentially be held liable for illicit activity engaged in by an MSB banked by the bank. The banks need a safe harbor that allows them to to bank MSBs without incurring undue risk—for example, banks should be allowed to rely on an MSB's representation that it has an appropriate anti-money laundering program in accordance with BSA and PATRIOT Act requirements. Banks should not be expected nor required to double check such representations.

8. Although there have been a limited number of reported cases of illegal activities by MSBs, many of the reported cases have involved offshore entities or businesses that are not readily subject to U.S. jurisdiction. For example, there have been very few reported cases of misuse of prepaid cards issued by U.S. entities domestically.

9. Imposition of additional burdensome regulations that impose increased obligations on MSBs or their authorized delegates will result in services being withdrawn, in many cases, from those who need it the most—the unbanked and underbanked. I think this is contrary to our mutual goal, which is to increase access to such financial services to the unbanked and underbanked. For example, prepaid cards, issued by U.S. banks or licensed MSBs, may be one of the best tools in recent years to expand access to financial services to the unbanked and underbanked, and have given millions of individuals ready access to financial networks and, in general, safe financial services. We should take care to nurture such efforts by banks and MSBs, not undermine them.