

**TESTIMONY  
BY**

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**BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES  
FINANCIAL SERVICES SUBCOMMITTEE ON  
FINANCIAL INSTITUTIONS AND CONSUMER CREDIT**

**HEARING ON  
BANK SECRECY ACT'S IMPACT ON MONEY SERVICES BUSINESSES**

**JUNE 21, 2006**

Good morning Mr. Chairman and members of the Committee. My name is Phil Milne, and I am the President and CEO of MoneyGram International. I am pleased to have the opportunity today, on behalf of MoneyGram, to speak with the Committee about the ongoing bank discontinuance problem for Money Services Businesses<sup>1</sup> (MSBs), and to offer a few suggestions that MoneyGram believes could improve the situation, as well as enhance overall anti-money laundering compliance by MSBs. The bank discontinuance problem is not one that will go away on its own. It must be resolved by the federal banking regulators by removing the onus they have put on banks, either directly or impliedly, that the banks perform due diligence analysis on the compliance programs of their MSB account holders. I should also mention that I'm joined today by Tom Haider, MoneyGram's Chief Compliance Officer and Vice President of Government Affairs, who can assist in answering any of your questions.

#### Company Background

MoneyGram is an international payment services company conducting business in more than 170 countries and territories, through more than 92,000 locations. The locations that sell MoneyGram's services, commonly referred to as "agents," include banks, credit unions, supermarkets, convenience stores, and other retail locations. MoneyGram's services are sold through such well-known businesses as Wal-Mart, Albertson's, CVS Pharmacy, US Bank, and many small, independently owned "mom and pop" convenience stores. In the US, MoneyGram is licensed and regulated as a money transmitter by the majority of states, typically through the respective state's banking department. In addition, MoneyGram fully complies with the Bank Secrecy Act, the USA PATRIOT Act, and is registered with the Treasury Department as an MSB. MoneyGram is also a member of the Money Services Round Table, which is a coalition of the leading money transmitters in the US and whose other members include: American Express Travel Services, Western Union, Comdata Network, Travelex Americas, Sigue Corporation, and Ria Financial Services.

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<sup>1</sup> Money Services Businesses "MSBs" are defined in 31CFR103.11uu, and include money transmitters, money order issuers and sellers, check cashers, travelers check issuers and sellers, and stored value providers.

As we discuss the bank discontinuance problem, it is important to keep in mind that it is not a stand alone issue. It is part and parcel tied to anti-money laundering compliance and the challenges faced by the MSB industry in complying with the federal anti-money laundering laws, as well as the variety of interpretations of those laws by the state banking departments that regulate the industry. By fixing the bank discontinuance problem, federal regulators will also help improve overall compliance by the MSB industry. We are dedicated to continuing our partnership with law enforcement in the fight against money laundering and terrorist financing, but we need banking services and we need the federal government's help to ensure continued access to banks by the MSB industry.

#### Bank Account Concerns

Now I would like to address in greater detail the bank discontinuance issue, which is continuing to cause serious problems for many MSBs, including MoneyGram and its agents. The problem is one in which banks are either closing the accounts of existing MSBs, or refusing to open new accounts for them. The businesses are being told by banks, some of which they have had relationships with for years, that the business must choose between closing their account or ceasing to offer any kind of MSB services. When they ask their bankers "why?" they are frequently told that the bank's regulator considers MSBs to be high-risk and the regulator advises the bank to avoid doing business with such entities.

At MoneyGram, we have heard from dozens of agents that this situation is forcing them to consider stop serving as an agent. The agents who sell MoneyGram's money orders and money transfers do so mainly as a means of generating foot-traffic in their stores. The small amount of revenue that money order and money transfer sales generate for the agents simply does not justify the risk of losing their bank accounts.

Initially, the "mom and pop" stores and check casher locations were the MoneyGram agents that experienced the majority of the banking relationship problems. However, this problem is no longer limited to small businesses. Two months ago Bank

of America informed MoneyGram that it would be terminating its long-term relationship with MoneyGram. This was not just a simple deposit account, but rather a global banking relationship that generated millions of dollars in fees annually for Bank of America.

While Bank of America is only one of many banks with which MoneyGram conducts business, its decision to terminate our account relationship was a serious issue. That is because Bank of America, with its global footprint, had become the leading bank that MoneyGram was using to develop new master/sub-account relationships to address its agents' banking problems. Furthermore, Bank of America was an important partner for MoneyGram's international banking needs. But Bank of America is not alone in exiting the MSB industry. As noted in the American Banker on Monday, June 12, 2006, many other banks have also chosen to discontinue or curtail providing account services to certain MSBs, including Bank of New York, HSBC, KeyCorp, PNC, SunTrust and Chase. One point that is often overlooked is the number of entities that qualify as MSBs. It includes nearly every major grocery and convenience store chain in the country because they are leading sellers of money orders and money transfers. So, if the bank discontinuance problem continues, it could seriously damage the banking relationships of large corporations, or it could force a significant part of the distribution network for money orders and money transfers to exit the market.

Fortunately for MoneyGram and the MSB industry, FinCEN has continued to focus on the bank discontinuance problem and attempted to find a solution that would work for banks and MSBs. Last year, FinCEN took the lead on this issue by holding an informational meeting for interested parties. Then, FinCEN joined the Federal Banking Agencies in developing Interagency Interpretive Guidance on Providing Banking Services to MSBs, known as the "Guidance," which was issued on April 26, 2005. We now know the Guidance did not work as intended by the regulators. So, once again FinCEN has stepped forward and issued an Advanced Notice of Proposed Rulemaking on March 10, 2006, to solicit comments on the problem and to request suggestions for improvement. We appreciate FinCEN once more taking leadership in trying to resolve

this issue. MoneyGram, and more than 65 other MSBs, banks and trade associations have submitted comments to FinCEN. MoneyGram's principal suggestion, and the one that most other comments echoed, is that the existing Guidance is not working and needs to be replaced. MoneyGram has encouraged the federal regulators to replace the Guidance with a new version that eliminates the banking community's obligation to conduct due diligence reviews of MSBs' compliance programs.

In the meantime, in order to help our agents, MoneyGram has been negotiating with several banks to offer special accounts that consist of a master MoneyGram account with sub-accounts for the agents, but this is far from an ideal solution. It is very expensive for MoneyGram to maintain such accounts and it is difficult for our agents. In some cases, agents have not been able to use this arrangement because they cannot afford to be away from their store for the length of time it takes them to travel to new banks that are located much farther away than their old bank that was in their neighborhood. In order to retain some agents, MoneyGram is now paying for armored car service to collect the funds from these agents, which adds even more costs to conducting the business. These added costs present a difficult challenge to MoneyGram as we strive to maintain our value proposition to our customers in a rising cost environment. Too often that is a key point that gets lost in all of the discussion regarding banking relationships and compliance requirements. We simply forget that all of these issues cost money and, in turn, lead to higher costs for consumers.

#### Reasons for Bank Discontinuance

So, what is driving this exodus by the banks from the MSB industry? We believe it is the banks' fear of their own regulators. MoneyGram sympathizes with the regulatory pressure that banks are under. MoneyGram faces similar pressure from its own regulators, the state banking departments, which are interpreting and enforcing federal anti-money laundering laws.

Unfortunately, the Guidance issued by the federal banking regulators in April 2005 only heightened the bank discontinuance problem, because instead of reducing

banks' concerns, it actually increased their fears that they are responsible for policing the anti-money laundering compliance programs of their MSB account holders. The Guidance placed so much emphasis on the due diligence banks are to conduct on their MSB account holders that more of them stopped serving MSBs. Those banks decided the effort and risk exceeded the benefit from providing account services. From an anecdotal standpoint, the most glaring example of this worsening effect is demonstrated by the fact that there are no reports of banks, which previously terminated their relationships with MSBs, reversing course and re-establishing accounts for MSBs based on the new Guidance.

One of the most troubling aspects of the Guidance is that it makes no distinction between an MSB that serves as an agent versus an MSB like MoneyGram that engages exclusively in MSB services. The scope of compliance programs between such entities is naturally quite different. A "full service" MSB, like MoneyGram, should have a risk based compliance program, but agents need more objective criteria. As noted earlier, the majority of MoneyGram's agents are "mom and pop" convenience stores for which the sale of money orders and money transfers is just a small part of their business. They do a good job with the Bank Secrecy Act's quantifiable recordkeeping and reporting requirements, but asking them to develop their own, risk based compliance program is extreme and defeats the ultimate goal of having them detect suspicious activity.

In order to assist its agents with their compliance obligations, MoneyGram provides them with written anti-money laundering training tools in eight different languages. In addition, MoneyGram has anti-money laundering specialists who visit select agents to provide updated compliance training. Furthermore, all MoneyGram transactions are ultimately reviewed by MoneyGram's in-house compliance team. Thus, our agents are looking for suspicious activity that may occur at their store counter, while MoneyGram is searching for the criminal who structures his transactions to avoid detection by conducting smaller transactions through multiple locations. Therefore, the use of objective, non-risk based criteria by agents does not weaken their compliance effort because their transactions are also reviewed by MoneyGram.

### Recommendations

MoneyGram appreciates the opportunity to offer the Committee a few suggestions on how the bank discontinuance issue might be resolved, as well as suggestions on how compliance with anti-money laundering laws and regulations by MSBs might be improved. The two issues are linked, since improving anti-money laundering compliance should help banks and their regulators gain confidence in the MSB industry. With regard to the bank discontinuance issue, MoneyGram believes the biggest part of the problem is the Guidance that was issued in April 2005. It simply added confusion to the issue and caused greater consternation among banks. MoneyGram is therefore offering four straightforward suggestions to help correct the bank discontinuance problem and at the same time improve overall anti-money laundering compliance by MSBs. Those suggestions are as follows:

First, the federal banking agencies must rescind the existing Guidance and issue new Guidance. The current Guidance is flawed and patchwork amendments will only make the problem worse. New Guidance must make it absolutely clear that banks are not required to evaluate the quality of a MSBs' compliance program, nor are they expected to monitor the activities of a MSBs' customers. Instead, Guidance should enable banks to rely on their MSB account holders certification that: (1) they have a written anti-money laundering compliance program that addresses the requirements of the Bank Secrecy Act, and which contains a significant employee training component that includes the detection of suspicious activity and structuring; (2) they or their principal is licensed by the appropriate state regulator; and, (3) they or their principal is registered with FinCEN. Likewise, the bank should be free to request additional, general information about the MSB, such as the type of services provided and volume of transactions, in order to gain greater knowledge of the entity to determine whether its banking activity is appropriate for the business. MoneyGram, along with its fellow members of the Money Services Round Table, is pleased to offer a draft of new Guidance, which embodies these concepts, for consideration by the Federal Banking Regulators and FinCEN. (See attached Exhibit A.)

Second, some kind of incentive should be provided for banks to resume serving the MSB industry. One suggestion is to provide banks with Community Reinvestment Act credit for opening and maintaining accounts by MSBs. Without some type of incentive, the MSB industry is not confident that banks will voluntarily re-enter the market and begin offering account services to MSBs. In particular, the “mom and pop” shops that lost their bank accounts do not likely represent such an attractive opportunity that many banks will reverse their position on offering them accounts. Other incentives might also be effective, but there must be something to entice banks to re-establish accounts for MSBs.

Third, consistent enforcement of the anti-money laundering laws as they apply to MSBs is needed. MoneyGram is well aware of the recent efforts by FinCEN and the IRS to enter into Memoranda of Understanding (MOUs) with the states for the sharing of anti-money laundering information. MoneyGram supports those efforts and recognizes their importance in the fight against money laundering and terrorist financing. However, at the same time many states have been interpreting the federal anti-money laundering laws in their own way, sometimes inconsistently with each other, as well as inconsistently with the intentions of federal regulators. This variety of interpretations has only caused confusion for the MSB industry and adversely impacted the industry’s efforts to develop standardized compliance programs for themselves and their agents. As an initial step in providing consistent enforcement, MoneyGram is requesting that the Treasury Department and FinCEN establish their preemptive authority to interpret and enforce the Bank Secrecy Act, and related federal anti-money laundering laws and regulations. This will help provide the consistency that is needed for anti-money laundering compliance by MSBs.

An important offshoot of this suggestion is the need to create a system that can provide a consistent regulatory framework for the MSB industry. Towards that goal, MoneyGram is proposing an optional federal licensing regime for certain segments of the MSB industry that would enhance compliance with anti-money laundering laws and close



any regulatory loopholes that criminals may try to exploit in those states that do not regulate all MSBs within their borders. Such a regime would be available to entities that operate in multiple jurisdictions, and be mandatory for any entities that operate in states that do not license their activity.

One of the reasons that some banks are not comfortable serving MSBs is that banks are unable to determine what laws the MSBs should be following due to the wide variety of state requirements. A federal license would bring greater consistency to MSBs' compliance programs and would help the bank community gain a higher degree of confidence in the regulatory oversight applied to the MSB industry. Furthermore, just as various regulators and law enforcement officials have expressed concern that the ongoing bank discontinuance problem poses a serious threat that some aspects of the MSB industry will be driven underground, there is also a threat that criminals will operate underground in those states that either do not license MSBs or which only regulate a portion of the industry.

Fourth, standards for MSBs as to what constitutes an effective anti-money laundering compliance program must be established. We understand that FinCEN is working with the Internal Revenue Service (IRS) on an examination manual that IRS staff will use when analyzing MSBs' compliance programs. We applaud these efforts, and MoneyGram, and the other members of the Money Services Round Table, are ready and willing to lend FinCEN and the IRS their full support to help with this effort. The absence of such a manual or set of standards has left the MSB industry with no clear direction on what measures to take in order to establish an effective compliance program. As previously noted, that challenge is made even more difficult due to the variety of interpretations of the federal money laundering laws by the state banking departments that are charged with regulating the MSB industry for safety and soundness.

### What can Congress do?

MoneyGram appreciates Congress holding a hearing on this very important issue. Last year, the Senate Banking Committee held a similar hearing and we were very encouraged at that time that legislative interest, combined with the Guidance issued by the Federal Banking Agencies, would solve the bank discontinuance problem. We know now that it wasn't. But it was not due to lack of effort. Many members of this body, and many regulators, worked hard to come up with a solution that would work for all interested parties. This time, though, we must get it right.

MoneyGram recognizes that Congress can not solve the problem by ordering banks to serve MSBs. But we do believe that, through its oversight and budget authority, Congress can compel the federal regulators to take appropriate action. MoneyGram requests that Congress continue to monitor the bank discontinuance problem and that Congress hold federal regulators accountable for implementing a workable solution by the end of the year.

### Conclusion

In conclusion, I want to thank you, Mr. Chairman and members of the Committee, for the honor of having the opportunity to present testimony on behalf of MoneyGram International. We truly appreciate your continued interest in this issue, Mr. Chairman, which we believe will help ensure a successful resolution to the bank discontinuance problem and long-term improvement in the MSB industry's compliance programs. We at MoneyGram are proud of our company's strong efforts in the fight against money laundering and terrorist financing, and we remain dedicated to working with Congress, regulators and law enforcement officials to defeat the attempts by criminals to use any of our services for illegal purposes. Mr. Chairman, we hope that you will view us as a partner in this effort and will call upon us for whatever assistance we can provide. Thank you again.

## **EXHIBIT A**

### **Revised Interagency Interpretive Guidance on Providing Banking Services to Money Services Businesses Operating in the United States**

On April 25, 2005, the Financial Crimes Enforcement Network (“FinCEN”), along with the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, the National Credit Union Administration, Office of the Controller of the Currency and Office of Thrift Supervision (“Federal Banking Agencies”) issued interpretative guidance to clarify further the requirements of the Bank Secrecy Act and its implementing regulations (including the parallel provisions issued by the Federal Banking Agencies) to banks when providing account services to Money Services Businesses (“MSBs”) operating in the United States.

The goal of the prior interpretive release was to confirm “that banking organizations have the flexibility to provide services to a wide range of money services businesses while remaining in compliance with the Bank Secrecy Act.” In short, banks were told that they “will not be held responsible for their customer’s compliance with the BSA and other federal and state laws and regulations.”

Notwithstanding the intent of FinCEN and the Federal Banking Agencies, there is significant evidence both anecdotal and documented in submissions to FinCEN in response to the Advance Notice of Proposed Rulemaking, that the April 26, 2005 Interagency Interpretive Guidance did not have the desired result of easing bank concerns with regard to the level of scrutiny and responsibility imposed on a bank in opening or maintaining an account for an MSB. In fact, there is some indication that the articulation of “due diligence for high risk customers” set forth in the interpretive guidance was read by some regulators and banks as constituting the imposition of more stringent obligations on banks with regard to MSB customers. As a result of this apparent confusion since the issuance of the Interagency Interpretive Guidance more than a year ago, both national and regional banks have canceled accounts of MSBs at an accelerated rate. The cancellations have occurred nationwide and threaten the viability of the MSB industry.

Clearly, it was not the intent of FinCEN and the Federal Banking Agencies to hasten the closure of MSB bank accounts. As emphasized in numerous public releases of the Treasury Department, MSBs provide essential financial services to the public and the widespread discontinuance of the availability of these services inevitably will lead to the migration of funds to the underground. Such a prospect is contrary to the national interest and undercuts government efforts to curb terrorist financing and stem money laundering.

Since the Interagency Interpretive Guidance has not had the desired effect, FinCEN and the Federal Banking Agencies are issuing this further interpretive clarification designed to provide clear guidance to banks, MSBs and the banking regulators that **banks need not undertake special compliance procedures with regard to MSB accounts.**

Therefore, in case there is any doubt from the prior guidance, banks should take the following steps with regard to MSB accounts:

1. NEW MSB ACCOUNTS -- Banks should perform the following due diligence when opening new MSB accounts:
  - Obtain evidence that the MSB is licensed if required in that state or verification that it operates as an agent for a licensed MSB.
  - Obtain evidence that the MSB is registered, if necessary, with FinCEN.
  - Obtain information about the nature of the MSB's business and expected activity.
  - Confirm that the MSB has an AML compliance program. **NOTE: The bank is not required to assess the adequacy or quality of the MSB's anti-money laundering program or "audit" or "examine" the quality of the MSB's internal AML controls and procedures.**
2. EXISTING MSB ACCOUNTS -- With regard to established accounts, banks are required only to monitor unusual or suspicious activity and changes in the nature of such activity. **NOTE: Banks are not responsible to review the MSB's customers' activities and/or monitor the transactions conducted by the MSB's customers.**

In sum, it is the intention of FinCEN and the Federal Banking Agencies that banks are not under an obligation to police the activities of the customers of their MSB account holders. Likewise, if banks perform the steps above referenced, and notwithstanding anything to the contrary in the prior interpretive guidance or in the FFIEC Bank Secrecy Act Anti-Money Laundering Examination Manual, banks will satisfy their obligations under the Bank Secrecy Act in opening or maintaining MSB accounts.