

Testimony of  
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Hearing on

The Regulation of Money Service Businesses  
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## **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-site 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.