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**TESTIMONY OF**

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**Before the**

**SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT**

**of the**

**COMMITTEE ON FINANCIAL SERVICES**

**UNITED STATES HOUSE OF REPRESENTATIVES**

**June 21, 2006**

Statement required by 12 U.S.C. 250:

The views expressed herein are those of the Office of the Comptroller of the Currency and do not necessarily represent the views of the President.

## I. INTRODUCTION

Chairman Bachus, Ranking Member Sanders, and members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss the Bank Secrecy Act's impact on money services businesses (MSBs). My testimony will focus on the nature of the MSB industry, concerns over whether MSBs are losing access to banking services, and the OCC's perspective concerning banks' relationships with MSBs. Over the past two years, the OCC has taken many actions to help ensure that MSBs are not unfairly denied access to a bank account. Those actions, which I will describe in greater detail, include numerous meetings and conferences with representatives of the banking and MSB industries; the issuance of an interagency policy statement, guidance, and examination procedures; and instructions to examiners and training. We very much appreciate your leadership, and that of the Subcommittee, on this vital issue.

*Money Services Businesses*

"Money services business" is an umbrella term encompassing many different types of financial service providers. MSBs are defined broadly in the Bank Secrecy Act (BSA) regulations to include: (1) currency dealers or exchangers; (2) check cashers; (3) issuers of traveler's checks, money orders or stored value; (4) sellers or redeemers of traveler's checks, money orders or stored value; and (5) money transmitters. A 1997 study by Coopers & Lybrand commissioned by FinCEN, estimated that over 200,000 MSBs were operating in the United States, providing financial services involving approximately $200 billion annually. A majority of the MSB population is made up of agents of the major businesses (*e.g.,* Western Union and MoneyGram) and, in 1997, approximately 40,000 MSBs were outlets of the U.S. Postal Service, which sells

money orders. This 1997 study also estimated that check cashers and money transmitters would grow at a rate of at least 11% per year. The MSB industry is extremely broad and very diverse, ranging from Fortune 500 companies with numerous outlets world-wide, to small independent "mom and pop" convenience stores offering check cashing or other financial services.

As the regulator of national banks, the OCC has long been committed to ensuring that all Americans have fair access to the banking system and financial services, and we recognize the positive role that MSBs play in this process. MSBs provide financial services to individuals who, for a variety of reasons do not have accounts with mainstream banks. MSBs generally offer convenience, neighborhood locations and a variety of financial services that appeal to these customers. Furthermore, some of the products and services offered by MSBs (*e.g.,* foreign remittance services) may not be available at the local neighborhood bank. According to an industry trade group, as many as 40 million Americans do not have mainstream bank accounts and satisfy most of their financial needs using MSBs.

Some MSBs can present a heightened risk of money laundering. The 2005 U.S. Money Laundering Threat Assessment prepared jointly by the Departments of Treasury, Justice, and Homeland Security; the Board of Governors of the Federal Reserve System and the United States Postal Service devotes an entire chapter to MSBs and states that:

> MSBs in the United States are expanding at a rapid rate, often operate without supervision, and transact business with overseas counterparts that are largely unregulated. Moreover, their services are available without the necessity of

opening an account. As other financial institutions come under greater scrutiny in their implementation of and compliance with BSA requirements, MSBs have become increasingly attractive to financial criminals.

Recent testimony provided by the FBI before this Subcommittee during hearings on the seasoned customer exemption for filing currency transaction reports noted that seventy-three percent of MSB suspicious activity report (SAR) filings involved money laundering or structuring.

State licensing, regulation and oversight of MSBs can also vary greatly between jurisdictions. For example, some states require no licensing, some states license only certain segments of the MSB industry (*e.g.,* check cashers or money transmitters) while other states exercise strong regulatory oversight over all facets of the industry. Furthermore, according to the 2005 Threat Assessment, despite repeated outreach efforts, only a small fraction of the nation's MSBs - approximately 23,000 - have registered with FinCEN as required by Federal law. Many small MSBs are aware of the registration requirement, but they nonetheless may fail to register because of language, culture, cost, and training issues.

Notwithstanding the foregoing, not all MSBs are risky and most MSBs have never been tainted by or associated with money laundering. Some are nationally recognized and respected companies that have strong anti-money laundering (AML) programs and are licensed and supervised, while others are small businesses such as local grocery stores whose products, services and customer base present little to no risk of money laundering. The challenge for all of

us is to ensure that banks recognize these differences and that our supervisory expectations with respect to MSB accounts are clear.

*Loss of Access to Banking Services*

The OCC is very concerned about the problems that MSBs are experiencing in obtaining banking services. As with any business enterprise, a bank account is essential for the success of an MSB's business. The reasons some MSBs have lost access to banking services are complex and derive from a multitude of factors, including the risks presented by some MSB accounts, the costs and burdens associated with maintaining MSB accounts, and banks' concerns about law enforcement and regulatory scrutiny. Notwithstanding these concerns, there are still a significant number of national banks that continue to provide accounts and banking services to MSBs. In fact, about half of the national banks supervised by the OCC have MSB accounts, including accounts for several large MSBs with nationwide operations.

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

The OCC acknowledges that there may not have been clear guidance in the past concerning supervisory expectations of banks that provided financial services to MSBs. However, the Interagency Interpretive Guidance on Providing Services to Money Services Businesses Operating in the United States (Interagency Guidance), issued April 26, 2005, specifically

addressed these issues and provided additional clarity as to: (1) the minimal level of due diligence that should be conducted on low-risk MSBs; (2) the amount of due diligence expected of banks to conduct a risk assessment of their MSB customers; and (3) whether banks are expected to file SARs, close accounts, or take some other action upon discovery that its MSB customer has not complied with Federal or state licensing requirements.

Under the Interagency Guidance, banks must, at a minimum: (1) apply their customer identification program; (2) confirm FinCEN registration, if required; (3) confirm compliance with state or local licensing requirements, if applicable; (4) confirm agent status, if applicable; and (5) conduct basic risk assessment to determine the level of risk associated with the account. If the MSB is categorized as high risk, additional resources must be expended by the bank to ensure that it is fulfilling its obligations under the BSA.

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

Banks are also concerned about the reputation risk associated with doing business with MSBs. This may be due, at least in part, to several high-profile criminal cases brought against banks that have relationships with MSBs. In the current environment, banks have become understandably

highly risk-averse and may simply close the accounts of businesses that present more risk than they are willing to tolerate.

*The OCC's Perspective Concerning Banks' Relationships with MSBs*

To carry out our supervisory responsibilities, the OCC conducts regular examinations of national banks and federal branches and agencies of foreign banks in the United States. These examinations cover all aspects of the institution's operations, including compliance with the BSA, and are conducted using procedures in the Interagency Bank Secrecy Act and Anti-Money Laundering Examination Manual (Interagency Manual). The Interagency Manual was released in June 2005 and was developed in conjunction with the other Federal banking agencies and FinCEN, based on our collective experiences in supervising and examining national banks in the area of BSA compliance. The Interagency Manual includes a section devoted to non-bank financial institutions, which includes MSBs. We continue to work to improve our supervision in this area. We will revise and adjust our procedures to keep pace with industry changes, technological developments, and the increasing sophistication of money launderers and terrorist financers. In this regard, we are presently working closely with FinCEN and the other Federal banking agencies and expect to issue updates to the Interagency Manual shortly.

Over the last eighteen months, the OCC has participated in various forums to better understand MSB issues and to educate the industry and our staff. Moreover, senior OCC officials have met regularly and often with various representatives of the MSB industry to discuss the issues and problems they face in obtaining bank accounts. For example, in March 2005, OCC representatives attended the fact-finding hearing on MSBs hosted by FinCEN; the OCC also

hosted a teleconference for the banking industry in which we discussed a variety of BSA concerns, including MSB issues; and the OCC participated in a nationwide teleconference on MSB issues hosted by the American Bankers Association.

As our knowledge and understanding of MSBs and their issues have continued to grow, our guidance has continued to evolve and develop. On March 30, 2005, the Federal banking agencies and FinCEN issued an Interagency Policy Statement to address our expectations regarding banking institutions' obligations under the BSA for MSBs. This statement specifically states that the BSA does not require, and neither FinCEN nor the Federal banking agencies expect, banking associations to serve as the *de facto* regulator of the MSB industry. It provides that banking organizations that open or maintain accounts for MSBs should apply the requirements of the BSA on a risk-assessed basis, as they do for all customers, taking into account the products and services offered and the individual circumstances. Accordingly, a decision to accept or maintain an account with an MSB should be made by the banking institution's management, under standards and guidelines approved by its board of directors, and should be based on the banking institution's assessment of risks associated with the particular account and its capacity to manage those risks.

As previously discussed, along with FinCEN and the other Federal banking agencies, we issued the Interagency Guidance to further clarify our expectations for banking organizations when providing banking services to MSBs. The guidance sets forth the minimum steps that a bank should take when providing banking services to MSBs, specific steps beyond minimum compliance obligations that should be taken by banking organizations to address higher risks, as

well as due diligence, ongoing account monitoring, and examples of suspicious activity that may occur through MSB accounts. The guidance is intended to provide additional clarity regarding existing anti-money laundering program responsibilities but is not intended to create new requirements or impose additional burdens on banking organizations. The guidance has since been incorporated into the Interagency Manual and FFIEC anti-money laundering training.

National banks appear to be following the Interagency Guidance. We have found that national banks are differentiating between lower risk and higher risk MSB customers and are applying certain due diligence procedures depending on risk in the accounts. As a result, some national banks are choosing to close some MSB accounts while continuing to service other MSB account relationships. We have also found that national banks, in keeping with the guidance, are obtaining from their MSB customers information about the status of required registrations and licenses. Furthermore, although not required by the guidance, some banks are even providing assistance to smaller, less sophisticated MSB customers in understanding the registration and licensing processes, in order to continue to provide services to these customers.

On March 10, 2006, FinCEN issued an Advance Notice of Proposed Rulemaking (ANPR) to solicit additional information concerning MSB access to banking services as well as recommendations regarding the extent to which additional guidance or regulatory action under the Bank Secrecy Act might address these concerns. The comment period will close on this ANPR on July 10th. The OCC will continue to work with FinCEN and the other Federal banking agencies to provide guidance to the banking industry that is clear and consistent, and we

commend the efforts of Director Werner for the leadership he has shown in addressing this important issue.

Finally, on April 24, 2006, the OCC attended, along with the other Federal banking agencies, FinCEN, IRS, the Maryland Office of Financial Regulation, banking and MSB trade groups, an MSB regulatory policy meeting sponsored by the American Bankers Association. The meeting and discussion focused on understanding the challenges facing MSBs and banks in maintaining financial services relationships.

The BSA has been the focus of regulatory, Congressional and media attention for the past few years, and certainly there has been an increasing sense of urgency since 9/11. Clearly, these are very important issues to the banking industry, the OCC and the United States. The intense focus on BSA compliance may have led to misperceptions about the OCC's policies and practices relating to MSB accounts at national banks. To be clear: first and foremost, the OCC does not supervise MSBs and does not expect national banks to be the *de facto* regulators of their MSB customers. Moreover, while we are cognizant of the risks that some MSBs present, and appropriately address those risks through our risk-based supervisory approach, we have not singled out MSBs as a focus of our supervisory efforts.

Second, the OCC, does not, as a matter of policy, require any national bank to close the accounts of an MSB or any other customer (except in the context of administrative enforcement actions, where due process protections apply). The determination of whether to open, close, or maintain

an account is a business decision made by the bank following its own assessment of the risks presented, in accordance with policies and procedures approved by the bank's board.

Third, the OCC does not discourage banks from having MSB accounts, and we expect banking organizations that open and maintain accounts for MSBs to apply the requirements of the BSA, as they do with all accountholders, on a risk-assessed basis. We fully recognize that, depending upon the circumstances of a particular MSB, the risks presented are not the same, and it is essential that banking organizations neither define nor treat all MSBs as posing the same level of risk. Banks need to calibrate the level of due diligence that they apply to MSBs, and it is entirely appropriate to conduct a lower level of diligence for those MSBs that present lower levels of risk.

The OCC has taken steps to ensure that our examiners are acting in conformance with agency policy on this issue. For example, when the Interagency Guidance was issued, we provided copies of it to every national bank examiner with the instruction that it was to be followed immediately and in all cases. As previously discussed, the Interagency Guidance has been incorporated into the Interagency Manual, and the Comptroller has directed that the procedures in the Interagency Manual be used at every BSA/AML examination. We have also trained our examiners extensively on the procedures in the Interagency Manual. Perhaps most significantly, in the past year, senior OCC officials have held nationwide teleconference briefings with the entire national bank examination force, at which they were instructed that, under no circumstances, should they be directing or encouraging banks to close MSB accounts.

*Conclusion*

Mr. Chairman, the OCC salutes your leadership in this vital area. We also believe that important objectives are achieved when MSBs have access to banking services, consistent with anti-money laundering laws and rules. We stand ready to work with Congress, FinCEN, the other financial institutions regulatory agencies, and the banking industry to achieve these goals.