

Department of the Treasury
Review of the Regulatory Structure Associated with Financial Institutions

Comments by MoneyGram International

November 21, 2007

To Whom It May Concern:

MoneyGram respectfully submits the following comments to Department of the Treasury in connection with the *Review by the Treasury Department of the Regulatory Structure Associated with Financial Institutions*. MoneyGram understands that the review is specifically focused on depository institutions, insurance and securities and futures regulation; however, MoneyGram recommends Treasury also focus on the regulatory framework for non-depository financial institutions, such as money services businesses (“MSBs”). The current patchwork of state regulation in this space, layered with federal anti-money-laundering (“AML”) compliance, imposes unnecessary costs, leads to inconsistent consumer protections, and reduces transparency in the domestic and international remittance of funds. We believe that the definition of MSB should be refined and that there is a need for preemptive federal licensing and oversight of MSBs that operate in states that do not fully regulate MSBs or for MSBs that operate in multiple states.

Background

MoneyGram is an international payment services company conducting business in more than 170 countries and territories, through more than 138,000 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. Today, MoneyGram is the largest issuer of money orders in the United States and the second largest money transmitter in the world.

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 a money service business ("MSB"). As part of its AML compliance, MoneyGram analyzes millions of transactions and reviews the names of every sender and receiver against Treasury's OFAC list every year. MoneyGram is also a member of the Money Services Round Table, which is a coalition of the leading money transmitters in the US.

MSBs are an important component of our financial sector. They provide convenient access to financial services in areas that other financial institutions have largely ignored. Even in areas served well by banks, MSBs can provide efficient, rapid and low cost transfer of funds to points throughout the world where banks simply do not have a distribution network. Particularly in the remittance space, it is crucial to have a licensed and monitored industry that can provide money transfer services at a cost that discourages consumers from using less transparent means to send and receive cash. Competition in the industry and technological advances essentially have taken the cost of remittances to many destinations to a floor, and regulatory costs account for an ever-increasing portion of overall operating expenses. Moreover, unlicensed remittance companies or those that operate in states with little supervision pose a risk to consumers and, consequently, dramatic reputational risks to those remittance companies that abide by the highest of standards, comply with state and federal laws, and cooperate with law enforcement.

Regulation by the States

Currently, 48 states, the District of Columbia, Guam and Puerto Rico license at least one type of MSB. Of those states, about two dozen examine MSBs for compliance with the Bank Secrecy Act ("BSA") and AML regulations. There is little uniformity among the states, however, on how MSBs are regulated and the requirements that they must meet. Some states have a very strict rules-based approach towards MSB operations with point of transaction disclosure requirements and performance standards. These states also tend to have thorough examination procedures. Other states do little beyond the initial licensing of the MSB. Where there is an examination procedure in place, it can be based on the state's own banking exam laws, FFIEC guidance, or IRS guidance. Regulation and examination for BSA and AML

compliance is often done by Memorandum of Understanding with FinCEN and/or the IRS; however, these MOUs usually only apply to information sharing and the federal agencies remain the primary regulators of MSBs for BSA and AML compliance.

Federal Law, Regulation and Oversight

Since 1990, the Financial Crimes Enforcement Network (FinCEN) has been the primary federal regulator for BSA compliance for the MSB industry. FinCEN defines money services businesses in rather broad terms that include: (1) currency exchangers; (2) check cashers; (3) issuers, sellers, or redeemers of traveler's checks, money orders, or stored value; (4) the United States Postal Service; and (5) money transmitters. Beyond the breadth of services covered by the FinCEN definition of an MSB, the agency has determined a threshold for inclusion for BSA and AML compliance, *i.e.* \$1000 for any one person on any given day triggers the regulatory requirements of FinCEN.

Treasury has delegated the responsibility of BSA regulatory compliance of MSBs to the Internal Revenue Service ("IRS"). The IRS is charged with: (1) identification of MSBs; (2) educational outreach to MSBs; and (3) examination of MSBs for compliance with federal laws. Recent testimony by the IRS stated that 24,000 MSBs are registered with FinCEN and as of June, 2006, the IRS had identified over 2,000 businesses that had not registered as required.¹ While the IRS has enhanced its capabilities in MSB oversight, it is not the core mission of the IRS. Moreover, the IRS is not considered a financial institution regulator or examiner and is not part of the Federal Financial Institution Examiners Council (FFIEC). This puts MSBs at a perceived disadvantage by banks with which MSBs are experiencing account closing issues. That's because many banks simply lack confidence in the regulation and oversight of MSBs by the states and IRS, and therefore have chosen to stop conducting business with MSBs.

¹ Written Testimony of Eileen C. Mayer, Director of Fraud/Bank Secrecy Act (BSA), Internal Revenue Service, before House Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit, June 21, 2006.

Patchwork regulation of the MSB industry harms consumers, banks, MSBs and the transparency of non-bank money transfers.

For a multinational company such as MoneyGram that operates in more than 50,000 outlets located in every state and territory of the United States, compliance with 48 different state regulatory systems is costly and unduly burdensome. Many of MoneyGram's consumer's are recent immigrants and are struggling to improve their own quality of life and the quality of life for their relatives in their native countries. Usage of remittances through legal channels such as FinCEN-registered MSBs is, therefore, very price sensitive and MoneyGram has a difficult time driving costs down for consumers when its own regulatory compliance costs are increasing. Moreover, compliance costs associated with operations in states that have the most burdensome regulatory framework end up being passed along to consumers in states that have a more risk-based, principles-based approach towards MSB regulation.

There also remains a lack of clarity and consistency in BSA and AML regulation and enforcement, which also adds unnecessary costs to operations. MoneyGram is well aware of efforts by FinCEN and the IRS to enter into MOUs with the states for the sharing of anti-money laundering information described above. MoneyGram supports those efforts and recognizes their importance in the fight against money laundering and terrorist financing. However, many states have been interpreting the federal anti-money laundering laws inconsistently among each other and inconsistently with the practices of federal regulators and examiners. The variety of interpretations of the BSA and other federal laws 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.

Perhaps the most significant cost associated with the patchwork regulatory framework for MSBs, is the lack of faith bank regulators and banks have in the BSA and AML compliance of MSBs. The record is well-established that banks are either closing the accounts of MSBs, or refusing to open new accounts for them. Many agents are being told by banks, some of which they have had relationships with for years, that they must choose between closing their accounts or ceasing to offer any kind of MSB services. These agents 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.

Despite repeated pronouncements by federal banking regulators that examiners are not given such instructions and despite their acknowledgement of the important role that the legal and transparent remittance industry plays in the world economy, the problem of bank discontinuance has grown from the closing of agents' accounts to the closing of accounts by major depository institutions of all MSBs, including those of MSBs that have very rich BSA and AML compliance programs.² FinCEN issued amended guidance for bank regulators in dealing with MSBs in April, 2005, in an attempt to bring clarity to the obligations of banks doing business with MSBs. However, this amended guidance has only complicated the servicing of MSBs as banking clients and there has been little actual relief. Recognition of this problem at the federal level by the IRS and by banking trades has not led to any meaningful changes in either the guidance given to banks by federal regulators or the continued stream of discontinuance.

Federal licensing and preemption is necessary to insure that transfers through non-bank channels are affordable and transparent.

MoneyGram believes that banks would not be closing MSB accounts and bank examiners would not be assigning the "high-risk" categorization to MSBs if there was more uniform federal bank-like regulation of MSBs. The bank discontinuance problem is 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.

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. 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

² Banks that have chosen to discontinue or curtail providing account services to certain MSBs include Bank of America, Bank of New York, HSBC, KeyCorp, PNC, SunTrust and Chase. *American Banker*, June 12, 2006.

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.

Furthermore, the broad definition of MSBs imposes upon agents the very same compliance obligations as the largest, publicly traded, global remittance companies. The current definition includes small, independent grocers and retailers and nearly every major grocery and convenience store chain in the country because they are leading sellers of money orders and money transfers. If the compliance costs and struggles to obtain banking services associated with maintaining MSB operations persist, the current framework could force some portion of the distribution network for money orders and money transfers to exit the market. Federal authorities should adopt a more risk-based approach towards BSA and AML compliance of MSBs, with more robust requirements for remittance companies, but more simplified, straightforward record-keeping and reporting requirements for remittance companies' agents. This tiered approach makes sense when one considers that each transaction that our agents conduct are processed through our very sophisticated BSA and AML systems and procedures.

Finally, the Treasury Department and FinCEN should establish their preemptive authority to interpret and enforce the BSA, 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 and will reduce operating expenses and the costs of remittances for consumers.

Conclusion

As the Treasury contemplates changes to the financial institution regulatory framework, with an eye towards promoting capital market efficiency and continued domestic and foreign investment, MoneyGram hopes due consideration will be given to the regulation of non-bank financial services companies involved in the payments and remittance businesses. Remittances are a crucial component of the world economy and remittances from people inside the U.S. often comprise a substantial portion of developing nations' economies – in some countries even outpacing foreign direct investment. Ensuring that remittance costs are minimized while keeping

the transactions within a regulatory framework that provides transparency to law enforcement is an important balance to strike. Consumers also would be better served by consistent standards. . Finally, an increased, preemptive role for federal regulators in the licensing and regulation of MSBs would provide the confidence and legal certainty to encourage integration of remittances into the ordinary course of banking business by facilitating greater partnerships between banks and remittance companies.



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