The National Money Transmitters Association, Inc.

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Prepared Testimony of David Landsman
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before the US Senate Committee on Banking, Housing, and Urban Affairs
on the Epidemic Denial of Banking Services to Licensed Money Transmitters
April 26, 2005

We appreciate the opportunity the Committee has given us today to have our grievances on this subject heard.

We are also grateful to New York Superintendent of Banking Diana Taylor, for meeting with us last month on this issue.

FinCEN is now working hard with Federal bank regulators to publish guidelines as soon as possible. For this we are also grateful, and we applaud the stance they have taken. They are doing what they can to fix the problem and correct this injustice, an injustice that has ominous implications for other industries untouched by this problem as yet.

Yet relief will not come soon enough for many of us. If nothing is done, and done quickly, many licensed remittance companies will lose their last bank account in three days, and probably breathe their last.

In the March 30th Joint Statement, FinCEN publicly acknowledged for the first time that there may have been "…a misperception of the requirements of the Bank Secrecy Act, and the erroneous view that money service businesses present a uniform and highly unacceptable risk of money laundering or other illicit activity." This is an understatement.

Further clarification of minimal best practices will help, as a first step, but most of these guidelines have been in the public domain for years, available to us and the banks. For our part, many of us have been early adopters of these best practices, even before the regulations were finalized for MSBs, out of concern for self-preservation. But many bankers are still not aware of their own state's license requirements.

Now, regulators are properly alarmed at the idea that two entire licensed industries – money transmitters and check cashers -- can be so red-flagged as to make it impossible for even the best of them to get an account anywhere.

The main reason for these closings is a fundamental misunderstanding of licensed remittance companies, compliance, money laundering and the law, by both the banks and the Federal regulators. (State regulators have traditionally left anti-money laundering initiatives to the Federal government.)

Who We Are

We are licensed to engage in the money transfer business by the state banking departments in the states where we operate. The money transfer services we provide are vital to our customers and their beneficiaries and the economies of the many countries that receive these remittance flows. We provide outstanding service at affordable prices for the large number of immigrants who send money home to these countries. We provide employment and income for our agents and the neighborhoods they serve.

We comply with all state and Federal regulations, and are committed to using best industry practices to detect and prevent money laundering through our facilities. We are committed to knowing our agents, our employees, our correspondents and our customers. We are committed to using adequate computer systems and internal controls, appropriate to the nature and volume of business we are doing and the type of customers being served.

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We are committed to fulfilling our recordkeeping and reporting requirements under the Bank Secrecy Act, and our obligations under state and Federal anti-money laundering statutes. We comply with the applicable provisions of Title III of the USA PATRIOT Act. We are committed to OFAC SDN-screening and we cooperate with law enforcement whenever called upon. Our training and supervision of employees and agents are both constant and close.

We are audited not only by the states and the IRS Title 31 examiners, but by our independent (usually external) compliance reviewers which are required by Section 352 of the Patriot Act. Licensed money transmitters take ID at lower transaction thresholds than banks, and we do it every time a customer comes to our window. Proportionately, we file more SARs than do banks themselves.

Our databases of remittances are available upon request, as are the due diligence folders we maintain on our agents. This would easily satisfy any bank's CIP obligations under Section 326 of the Patriot Act, and 31CFR103.121.

What is Happening?

What we are seeing now is the culmination of 20-odd years of various arms of the Federal government demonizing all non-bank financial institutions as hotbeds of money laundering, not making any distinction between licensed and non-licensed entities. This has led to the irony that those most compliant, sometimes have the roughest time. This is a trend that will not be easy to reverse.

Since we domestic licensed transmitters have to do much more than register with FinCEN as MSBs, we understandably resent being routinely classified with unlicensed transmitters who range from the ignorant but innocent, to the willfully sinister, and everything in between.

Instead of speaking of Informal Value Transfer Systems, let us be more specific: in the money transmission industry there are licensed and unlicensed money transmitters. That is all. Licensed money transmission is not only permissible and beneficial, it is altogether necessary and irreplaceable. It is to be regulated and monitored, yes, but it is also to be encouraged and protected. The alternative will drive the underground economy further underground.

The closing of our accounts goes back at least 10 years, although in those early days, no reason was given; the letters simply cited the bank's right to terminate any relationship at will. Now, the letters are more explicit. Now, there can be no doubt what the reason is. Back then, it was just an account here and there; no alarm was raised. No one would have listened. We kept a low profile. But an account could usually be had somewhere.

Over the years, with the continued closings and continued bank mergers, our accounts became concentrated in fewer and fewer banks. So when the last few banks went in rapid succession, things got very dire, very quickly. Even banks that were committed to our markets realized they had not only regulators, but prosecutors threatening criminal charges to worry about. That tipped the scale for even the most courageous bank.

For a time it seemed every week we heard of another major bank closing licensed MSB accounts, and those that didn't deny those accounts before, merged with those that do. This situation has undermined public confidence in licensed financial institutions.

That this acceleration has coincided with the accelerating rate of bank prosecutions, fines, enforcement actions and scandals, is no accident. The more heat that is brought on the regulators by Congress, the more they will 'crack down' on the banking industry. The more heat that is brought on the banking

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industry, the less it can afford to appear to be associated with those who look even slightly suspicious to some eyes.

No one has done a scientific survey, but I have collected closing letters and can relay some anecdotal evidence. New York is the epicenter of the problem: the problem started earliest in New York and New York is the hardest hit today. The problem spread along the Eastern seaboard, then migrated to the West coast. The middle section of the country is now catching up. This pattern roughly tracks examination trends, which recently have had significantly enhanced AML components added. Our agents, if they handle too much cash, are also having trouble finding and maintaining bank accounts.

The movement of money which is the lifeblood of our business, relies on banks that enjoy a public charter. We need bank accounts to collect money from our agents, and to wire that money to our correspondents abroad. Yet we are the only sector in the country that is routinely denied bank accounts, most times without even being given a chance to demonstrate compliance.

Regulators do a difficult job and enforce the law in good faith. They are beginning to appreciate the critical role we play in meeting the financial needs of the nation and the world. But the perception of risk they have fostered on the part of the banks has reached such a level that banks feel they have no choice but to close our accounts.

Regulators will tell you that they never told banks to close all MSB accounts. They will tell you that no regulator ever tried to persuade or dissuade a bank from taking on a particular customer or type of customer. Yet banks continue to feel pressure to close our accounts due to lack of guidance and reassurance.

From the moment it became acceptable, even advisable, to cure a bank's own compliance deficiencies by closing our accounts, the pattern was set that we be treated as pariahs, even scapegoats, with no recourse, and no chance of appeal.

Bankers, influenced by regulators, deemed it logical and a good solution to sidestep the problem in this manner. It was as if a doctor, finding a certain disease distasteful or intractable, decided to ignore it, and just stop treating those patients that had it. The more challenged a bank is found to be in their own compliance programs, the more likely it is that they will be pressured to close our accounts. This is beyond dispute, and is totally unjust.

Are We Risky Customers?

Much to the contrary, no adverse regulatory action has ever befallen a bank because of a licensed MSB account, unless it was because the bank forgot to ask to see a license.

Government controls tightening slowly over the last few decades, always starting with the banks and only coming to non-banks years later, have predictably driven some bad customers to non-banks, and attracted some bad elements into the money transfer business itself, causing legitimate licensees to be unfairly marked with a stigma we do not deserve, a presumption of guilt.

In most cases, closings have occurred, not because of any actual problem in our history or deficiency in our compliance programs, but simply because we are in a business designated "high-risk" by Federal banking regulators. Banks no longer feel they can do enough due diligence on us no matter how much time and money is spent. They do not feel secure, nor do they feel they can satisfy the probing questions of their examiners in this regard.

If some members of our industry have had compliance problems, they are lessons dearly learned and frankly, are dwarfed by comparison to the compliance problems the banks themselves have had.

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Image vs. Reality

We do not consider our money laundering risk to be as great as has been portrayed: we take in money an average of $300 at a time from consumers; most of us do employment verification for any sum over $5,000; we are licensed, we are domestic, and we are held fully responsible for any misdeeds by our agents. Despite all this, we are routinely classified together with any type of informal transmitter you can name: wholesale, foreign or unlicensed, it does not matter – we are tarred with the same brush.

If the respect afforded the state money transfer license needs to be upgraded and standardized, then let us look at that. But all that should be necessary is proof of licensure, some initial due diligence and some affordable monitoring.

The banks are not wrong to be fearful of our accounts. The greatest risk they face with our accounts, is getting into serious trouble with their regulators for having 'too many' MSB accounts.

No financial institution should refuse to consider, nor unreasonably deny, account facilities to another class of lawful business, as is happening right now to the licensed remittance industry. Since we have been categorized as "high risk," the presumption of guilt is so strong, that we are not even given a chance to demonstrate our compliance programs.

We and banks need a roadmap to an affordable due diligence process and the message needs to go forth that it is OK to have licensed remittance companies as customers, and that no discrimination shall be tolerated. The only message that has reached the banking community so far, is that MSB accounts, licensed or not, are to be feared as risky and expensive to maintain.

This problem can no longer be seen as the occasional result of prudent business practices on the part of banks. The problem is pervasive. Whether it is the direct consequence of compliance guidance the banks have been given, or the lack thereof, or because the guidance and our industry have been misunderstood and taken to irrational extremes, no longer matters. Something must be done to correct the current trend.

Considering that no bank has ever gotten into trouble for having a licensed remittance company as a client, as long as they remembered to do a few simple things, one wonders where our 'risky' reputation came from? It is clear as day that this is a regulator-caused problem, and therefore needs a regulatory about-face to solve it.

What Can Be Done About It?

We seek a National Money Transmitters Act that will require a national money transmitter's license not to deal with safety and soundness, but with anti-money laundering requirements. The purpose of this new license would not be to add more regulatory burdens, but to ensure uniform and universal application of our anti-money laundering laws, eliminate duplicative exams, and provide a certification that banks may rely on.

We seek a broad, clear, national definition of money transfer and when a money transfer license is required, even application of the licensing requirement, respect for the license itself, and meaningful punishment for those who willfully refuse to get a license.

With this license, any bank should be required to give the account applicant a fair evaluation and, if there is a rejection on AML grounds, the bank should be compelled to give a specific reason. The applicant should then be given the chance to cure and re-apply, or a chance to appeal the decision to FinCEN.

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It is time for FinCEN, the functional regulators, and Congress, to insist that licensed MSBs not be unreasonably denied access to banking facilities. Not just for our sake, but for everyone's, it is time to change the course we are on.

Treasury has long spoken about how important the remittance business is to world economic stability and why remittances are an important public policy issue, but has seldom made mention of *licensed* remittance companies in this connection. The movement to bank the unbanked, which includes poor people in general, as well as immigrants, is a laudable goal, which we support.

But there seems to be a myth that banks are really the preferred way to send money, both from a customer perspective and a public policy perspective. In fact we, the licensed MSBs, are the government's best ally in the fight against money laundering, and the best guarantee of competitive conditions, favorable to the consumer. We are the last channel with any hope of vetting those other 'unrecorded' customers, or preventing their number from growing. The worthy goal of thwarting money laundering must not be allowed to hurt the innocent, and that is what is happening today.

No financial institution can be required to guarantee that no tainted funds ever pass through its facilities. Such a guarantee would be impossible. What is required is that we and the banks, build systems that are adequate to the nature and volume of customer activity and take reasonable steps to detect and prevent money laundering.

This is no longer just a company problem, nor even just an industry problem, but a pervasive societal problem and one that involves national security, consumer protection, humanitarian needs, and global economic stability.

It is distressing to me that, in some circumstances, smaller licensees are likely to be 'priced' out of the market, in various ways, by both banks and government. We do not believe anyone would consciously intend this result either. Small licensees who can demonstrate good compliance should not be overburdened with fee upon fee for multiple, expensive audits.

All of these effects are predictable consequences of the present trend, and we have been well alerted to the problem so, if we do nothing at this critical time, history will not judge our motivations so kindly.

Clarification and Guidelines are Not Enough

Banks themselves are clamoring for clarification, and FinCEN has pledged to give it. But in this topsy-turvy atmosphere, sometimes 'clarification' can have negative consequences. In June 2004, the OCC came out with its Advisory Letter 2004-7 which contained a few simple steps for opening an MSB account. [i]

Those guidelines looked simple enough to me, in fact, they looked like what a bank should do on all business customers of a certain size. Yet, it was enough to prompt most banks to close some more accounts. In fact, some closing letters quote AL 2004-7 verbatim and cite it as the reason the account is being closed.

The letter simply advised caution with MSBs, especially when doing business with unlicensed or foreign MSBs. Although we fall into neither of these sub-categories, no such distinction was made in the minds of bankers or examiners. It was all one more big red flag on MSBs in general, to them.

No wonder regulators won't admit a causal connection: who would take responsibility for such a non-sequitur?

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The country of highest money laundering volume is the United States, and the preferred and predominant financial institution home for such monies is the US bank itself. The whole premise of "high-risk" is relative. A proportional comparison of the laundering done through licensed MSBs with that done through banks, makes the negative reputation we have all the more unjust.

We are not looking for leniency. To the contrary, we licensed MSBs welcome stringent regulation and we demand vigorous enforcement. At no time have we thought that the problem was due to regulations that were too stringent. To the contrary, closing accounts is a total abdication of and a running away from, responsibility. All we are asking for is a level playing field and a fair chance.

Section 311 of the Patriot Act anticipated this problem and tried to prevent it by ordering Treasury to consider "…whether the imposition of any particular … measure would create a significant competitive disadvantage…cost or burden associated with compliance, for financial institutions … licensed in the United States…any significant adverse systemic impact on the international payment…system, or on legitimate business activities involving a particular jurisdiction, institution, or class of transactions; and …the effect of the action on United States national security and foreign policy."

If 'clarification' works to some degree, it will be nice. It will help to see the number of account closings go down and the number of account openings go up, but this is not the whole story. We will never achieve true transparency until we have the right to know exactly why we have been rejected by any particular bank, and given a chance to cure the problem and re-apply, or given a chance to appeal to a higher authority….until then, there will be no due process for us, even when everything gets 'clarified;' to the nth degree.

The primary way we separate the good guys from the bad guys, ever since the BSA was passed in 1970, is to ask the customer for ID. That, and explaining any deviations from expected activity, are the essence of compliance for any financial institution. Without us around, the majority of senders will never get asked for ID. We will have our own government-induced parallel market where no ID will ever be requested and no records are kept.

From the moment no distinction was made between licensed and unlicensed MSBs, and nothing was known about what tests we go through and how good we are, we were in for trouble as an industry. From the moment it became OK, even recommended, to deal with a bank's own compliance deficiencies by closing all its MSB accounts, we were in for trouble as a nation.

We look forward to working with all parties toward a day when good compliance comes with viable procedures, by definition, without presumption of guilt and, if those procedures are not followed, that the right party gets educated and then leaned on, if necessary - when our legitimate reactions to crime, or terror threats or bank scandals, no longer cast undue suspicion on innocent parties, or encumber legitimate commerce.

Our shared obligation as financial institutions is not to guarantee that tainted money will never pass through our facilities. What is required is that we design and maintain systems and procedures that are reasonably designed to prevent, impede and/or report money laundering, in proportion to the size of our operation and type of risks posed by the customer.

Are Civil Rights and Anti-Trust Laws Being Violated?

If decisions continue to be made behind closed doors and banks continue to reject certain licensed customers without giving specific, rational reasons, and that rejected customer has no right to even try to improve or to appeal the bank's decision, we will be right back where we started. Remember, we are going for transparency here, not just a one-way mirror.

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If even one person is terminated for subjective reasons, it is one person too many. If two entire licensed industries – check cashers and money transmitters -- can be treated this way, imagine how much worse is the plight of the everyman with no such credentials.

For example, the last big bank I know of in the business is starting to close accounts selectively. So far, the only closings I have heard of is a small Muslim licensee in New Jersey, and a one-shop Florida licensee, who is mono-lingual Spanish. Selectively, indeed. How often will compliance concerns coincide with other sorts of profiling?

It is true: banks can take or refuse any customer they wish. Hotels and restaurants in the South used to have that right, too.

There is no such thing right now as a civil right to a bank account, even though bank accounts are as necessary as air to us, and we are being denied it in most cases not because of any transgression, but because of who we are. While overt racism may not be visible on the surface, the societal consequences are to the detriment of immigrants and minorities.

What may have started out as legitimate money laundering concern on the part of government and banks, has turned into nothing less than a denial of civil rights, not only to the community-based businesses we represent, but to the broader public they serve.

We have been told that this situation does not meet the legal definition of discrimination, nor does it rise to the level of an anti-trust violation. But one need only look around to see that the transmitters losing their accounts are the smaller, independently-owned money transfer businesses. These businesses also just happen to be ethnically-owned and serve ethnic communities.

Discrimination can never be adequately judged on a case-by-case, alone, and in a vacuum. Only after time, in the aggregate, and by comparison to the way others are treated, can one say whether discrimination is taking place. We believe it clearly has and is.

Money is the lifeblood of our business. Banks control the pipeline. Access to a bank account is access to life. It is a public accommodation, working under public charter, and should not be unreasonably denied to any class of people.

Treasury wants to see the cost of remittances reduced, yet fails to emphasize that we licensees are the reason costs have come down in the first place. This thriving competition must be maintained.

The bulk of remittance flows is not going through banks nor through large transmitters, but through small and mid-size companies. Just as small business collectively accounts for most of our economy and for most economic growth, so do we “smaller” transmitters, collectively, account for the bulk of recorded international migrant worker family remittances.

The banks, and even the larger transmitters, have only relatively recently ‘discovered’ our markets. Previously, service through those channels was poor and expensive, or non-existent. The competition that has improved these conditions was provided by us. Now, picking up the scent of profit, and with prodding from government itself, those same banks slowly but surely are shutting us off from the facilities they control with an iron grip, even as they position themselves to take on our customers, if they can.

Government has discouraged banks from banking us because of alleged compliance concerns, and simultaneously cajoled the banks into offering our services, on consumerist grounds. Yet anyone who is truly interested in keeping costs down for the remitting consumer, and anyone who cares about containing money laundering, should be a big booster of our industry. Surely our government did not

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mean to foster and further reinforce what may well become a de facto monopoly of these services by the banking sector.

While overt monopolistic behavior may not be visible here, the result is anti-competitive and unjust in the extreme. Racism and monopolistic behavior are seldom overt, but they are nonetheless real, very painful and unbecoming of a free society.

Why are these closings wrong?

Most banks stopped doing business with non-accountholders a long time ago. This was a convenient way to encourage people to open accounts, assure some kind of paper trail for AML purposes, focus on their core business, and avoid having the teller lines clogged up with non-accountholders. But some people could not afford the accounts.

The unbanked, the undocumented, the poor, those who did not speak English, would have to find somewhere else to go. It was OK to lose those 'other' customers, because the banks regarded them as unprofitable, anyway. And there were no laws saying that banks had to offer any particular service to any particular person. There still are not any such laws. Thank God for check cashers and licensed remittance companies.

Treasury itself has repeatedly asserted the national and world importance of cheap, efficient remittance flows. We independent licensed remittance companies are responsible for the lion's share of those flows, and will be for the foreseeable future. We are the best way to document, vet and control those flows for AML, safety and soundness, and consumer protection reasons. Were we to disappear tomorrow, most of our senders would not flock to banks but rather, would simply go underground.

We hope the Senate looks carefully into our plea, and gives it the same intelligent, proactive attention that we are required to give our compliance obligations. We do our best to comply. Now, we need your help to survive. Please fight for us.

Our strongest argument is on compliance grounds. The challenge of a free society in the age of terror, is to separate the good money from the bad, without impeding the flow of commerce or stepping on civil rights. In this particular case, I believe the pendulum has swung too far in one direction.

The challenge of a free society in the war on drugs and money laundering and the war on terror, is to separate and stop the tainted money, while letting the good money through and, especially, to separate the flows of migrant worker remittances, from the flows of nefarious schemes. The only way to do that is to encourage a vital, transparent non-bank sector. To do this, we need practical and rational measures, as opposed to impractical and irrational, knee-jerk responses.

The guidelines will be a great start, but banks will not restore our accounts until the field examiners have shown they really get the message that it is not appropriate nor required nor even a good idea for a bank to shun an entire industry because the compliance challenge is perceived to be difficult.

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[i] "National banks should perform careful due diligence of the accounts of MSBs to control money laundering and reputation risks. For example, banks should verify registration and licensing status, and consider visiting customers at their place of business and implementing monitoring procedures to identify and report suspicious activity. As part of their due diligence programs, banks should also consider obtaining and reviewing the following on the MSB:

- Financial information, including primary lines of business and major customers, and local reputation
- The MSB's anti-money laundering policies, procedures and controls
- Third-party references and information from verification services
- Information on owners of the MSB

- The MSB's license, including any restrictions
- Consideration of the purpose, source of funds to open the account, and expected activity

MSBs who have registered with FinCEN receive letters of acknowledgement from the Internal Revenue Service, Detroit Computing Center (DCC). A bank may rely on the DCC correspondence as verification that the MSB has properly registered with FinCEN and may ask its MSB customers to provide a copy of this form." – From OCC AL 2004-7