

STATE REPRESENTATIVE
37th DISTRICT
SHARON TOMIKO SANTOS
HOUSE MAJORITY WHIP

State of
Washington
House of
Representatives



EDUCATION
FINANCE
FINANCIAL INSTITUTIONS
& INSURANCE

July 1, 2006

Robert W. Werner, Director
Financial Crimes Enforcement Network
United States Department of Treasury
P.O. Box 39
Vienna, VA 22183

Re: RIN 1506-AA85 – Public Comments

Dear Director Werner:

Thank you for this opportunity to provide comments to the United States Department of Treasury Financial Crimes Enforcement Network (FinCEN) about the issue of access to banking services by money service businesses (MSBs) within the context of the Bank Secrecy Act (BSA). Pursuant to your advance notice of proposed rule-making, dated March 20, 2006, I am writing to share specific examples of the challenges experienced by my constituents in maintaining account relationships with banks, by banking institutions in complying with key provisions of the BSA, and by state regulators in balancing consumer accessibility to bank products and services with consumer protection and national security interests.

In March of this year, I met with a group of constituents to discuss their concerns about recent closures of bank accounts held by MSB operators and the adverse impact of these actions on the economic well-being of their families. According to the Washington State Department of Financial Institutions (DFI), these closures primarily affected small community-based MSBs that serve immigrant and refugee populations. This factor is particularly disturbing to me because my legislative district has the highest proportion of foreign-born residents in the state, with more than 1 of every 4 individuals (25.74%) born outside of the United States [*estimate provided by the Washington State Office of Financial Management based on Census 2000 data*]. Largely underserved by mainstream banking institutions, this population is most likely to seek out the services of small community-based financial services businesses that are culturally and linguistically accessible rather than large corporate MSBs such as Western Union.

Indeed, the constituents I met are members of Seattle's Somali community for whom the loss of access to banking and money transmission services is a devastating blow as they adjust to new lives in the United States following extraordinary traumas related to civil war and displacement from their homeland. The following examples illustrate the experiences of my constituents:

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- A MSB operator went to his bank to make a deposit whereupon he discovered that all of his accounts – including personal accounts and accounts unrelated to the MSB operation – were closed by the bank. The bank did not provide a formal explanation for its action and, since the bank involved is a federally chartered financial institution, state regulators are not able to investigate the matter on behalf of this consumer. My constituent was left without a banking relationship to handle his most basic financial transactions, including cashing checks and paying bills, harming his ability to provide food and other necessities for his five children.
- In August 2005, another MSB operator began receiving requests from his bank for documentation of compliance with the anti-money laundering provisions of the BSA. My constituent provided the information as requested and was surprised thereafter to receive a letter informing him that his account was closed due to the risk involved. The bank's assessment is especially difficult to comprehend since this individual has received high security clearance by the United States Department of Defense and is a U.S. military veteran. Despite my constituent's willingness to observe any security protocol established and to employ any system required of him, the bank is unable to identify specific actions that would alleviate its risk assessment of his business.

Like many refugee and immigrant families, Somalis supply much needed financial resources to extended family members who continue to reside in Somalia or in scattered refugee camps. Without access to bank accounts, owners of MSBs in my community must carry cash to purchase and mail cashier's checks to MSBs located in other states to complete the money transmission transactions. Not only does this practice present a danger to the personal safety and security of my constituents, the sums involved can and often do require the filing of a Large Cash Transaction report thereby casting a further suspicious light on the financial activities of my constituents.

In a follow-up meeting I convened with representatives from the Washington State Bankers Association, the Washington Independent Community Bankers Association, the Washington Credit Union League, the Washington State DFI, and members of the Somali community, the bankers cited the BSA for institutional decisions to discontinue banking relationships with MSBs. In particular, the recordkeeping and travel rules which require banks to collect, retain, and transmit information about the customer's (the MSB) customers (the MSB consumers) are perceived as onerous and unverifiable. In light of the significant fines recently assessed against the Bank of New York and BankAtlantic for failure to comply with BSA provisions, the reluctance of banking institutions to assume this risk is, perhaps, understandable even if I find it unacceptable. Coincidentally, a potential joint agency rule by FinCEN and the Board of Governors of the Federal Reserve System [RIN 1506-AA86] would exacerbate the lack of access to banking products and services faced by my constituents by lowering the \$3,000.00 threshold requirement for collecting, retaining, and transmitting information on funds transfers and transmittal of funds.

The agency responsible for regulating financial institutions and MSBs in Washington State is largely sidelined in this situation. Of the 36 financial institutions located in my legislative district, only 4 are Washington State chartered institutions. Two are chartered in the State of

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California and the rest are regulated by federal agencies. As mentioned previously, this limits the ability of DFI to investigate the concerns raised by my constituents. While I remain committed to the principle of a dual charter banking system, I believe that the federal government can and should work closely with state regulators of MSBs to develop system tools and resources that provide banking institutions with the measure of assurance necessary to satisfy compliance with the "Know your Customer" provisions of BSA. For example, in Washington State, MSBs must submit to extensive audit examinations by DFI which includes a review of BSA compliance. This should, in theory, satisfy the recordkeeping requirements of our banking institutions.

In summary, balancing our national security interests with the basic financial security interests of our consumers requires the cooperation and commitment of all involved: federal and state policymakers and regulators, banks and financial institutions, money services businesses, and consumers. Based on my conversations with MSB operators and their customers, I am confident that these individuals are anxious to take any step, including assessing special service fees, to ensure the ongoing viability of MSBs in the regulated marketplace. Mainstream financial institutions are not seeking guidance as much as resources and tools to assist in compliance with BSA provisions, especially recordkeeping and travel rules. State regulators are working with state-chartered institutions to develop incentives for "banking" MSBs, but lack any authority to work with the numerically dominant federally-chartered institutions. As a state lawmaker with a significant immigrant and refugee populace, I urge you to take steps that recognize the differences of scale represented by community-based MSBs and to develop policies, tools and resources that enable these small businesses to continue providing vital financial services to our families and our communities.

Thank you, again, for the opportunity to provide these comments on behalf of my constituents in the State of Washington. I appreciate your consideration of my thoughts on the matter of access to banking services by money services businesses within the context of the Bank Secrecy Act. Please do not hesitate to contact me at the address or phone number noted on my letterhead if you require additional information or clarification of the contents herein.

Sincerely,



Sharon Tomiko Santos
State Representative
37th Legislative District
House Majority Whip