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July 10, 2006

VIA E-MAIL (regcomments@fincen.treas.gov)

Robert W. Werner
Director
Financial Crimes Enforcement Network
P. O. Box 391
Vienna, Virginia 22183

Re: RIN 1506-AA85
Provision of Banking Services to Money Services Businesses
Advanced Notice of Proposed Rulemaking

Dear Mr. Werner:

This letter addresses issues faced by one specific group of Money Services Businesses ("MSBs"), the Licensed Remittance Companies ("LRCs"; alternately, Licensed Money Transmitters, or, less precisely, Money Transfer Organizations) in maintaining access to banking services. Although the joint guidance that was issued by FinCEN et al. in May of 2005 was issued to address access to banking services by MSBs in general, it is impossible to discuss this matter competently in the general case. The MSB category broadly includes businesses that have drastically different risk profiles, modes of operation, corporate organization, tendencies in ownership, ethnic affiliation, and, most significantly, regulatory oversight and governing law. Although MSBs do share certain characteristics (MSB offer financial services to populations that tend to be lower income and tend not to use banks) any policy that attempts to treat all types of MSB as one type of entity will be met with only limited success. It is for this reason that instead of dealing with the impact of federal guidance on Check Cashers, Issuers of Stored Value Cards, Issuers of Checks, large MSB agents like WalMart, or small MSB agents like a mom-and-pop grocery store, this letter deals with the impact of federal guidance on Remittance Companies licensed to operate as such by the States.

Current Status

That the guidance issued by the federal banking regulators has done nothing to stop the "bank discontinuance" problem (the continued denial of banking services to LRCs) is obvious to anyone familiar with the matter—one need only read the other submissions made to FinCEN in response to its request for comments. In fact, the evidence presented to FinCEN seems to support the argument made by many that since the guidance has been issued, the trend denying banking access to LRCs has accelerated. Certainly, the most optimistic predictions regarding this guidance, that it would reverse the trend and cause a large number banks to actively seek LRCs as new customers, have proven unjustified. The best that can be said is that the guidance has slowed a trend that continues to disrupt the stability of an industry that provides an essential service to the vast majority of immigrants working in the United States, and accounts for up to 10% of the GDP of many third-world countries.

Some individuals have argued that because a small number of banks continue to accept new LRC accounts on a restricted basis, because a number of banks have maintained relationships with the limited number of LRCs with which they have had long-term relationships, and because the largest LRCs are not threatened with bankruptcy but only with inconvenience, no problem of "crisis" proportion exists and calls for change are without merit. According to these individuals, the FinCEN guidance, by clarifying matters for banks regarding relationships with MSBs in general, has performed its function in the manner intended; if as a result of the guidance banks continue to restrict access, so be it. However, the purpose of regulatory policy should not be to restrict or hamper the operation of LRCs by limiting the number of banks with which they may work. Doing so does nothing to improve the fiscal solvency of LRCs or the compliance of LRCs with the Bank Secrecy Act, which should be the primary goals of regulation. In fact, by restricting and hampering the operation of LRCs in this way, and thus creating an unnecessary operational burden for LRCs that competes for resources with proper BSA compliance and fiscal management, the guidance works against the proper objectives of LRC regulation. In a worst-case scenario, federal regulatory policy may yet force many LRCs out of business, only to be replaced by illegal black-market entities operating outside the substantial LRC regulatory framework that has been built-up over the last ten years.

Some individuals have also argued that what is happening to LRCs is simply the market for banking services adjusting to a heightened perception of risk. This, of course, is true; any change in risk perception by a group of businesses will cause the market for the services they provide to adjust itself. However, the risk that banks are responding to is "regulatory risk", risk created by regulatory policy alone. The market for banking services for LRCs is restricted primarily because of the risks created by the guidance; restrictive regulatory policy is causing an artificial restriction in the market that would not exist to the same extent if banks were not saddled with the burdens created by the guidance.

Why This Problem Should Not Exist.

Licensed Remittance Companies are among the most-regulated and best-regulated businesses in the United States. There are forty-six (46) state bodies that regulate Licensed

Remittance Companies, along with two federal entities, FinCEN and the IRS. In addition, the state legislatures as a whole have shown that they are very willing to strengthen remittance company licensing requirements when it is appropriate to do so.

Regulation of LRCs begins at the earliest stage—when the license application is made. The process of approving a license application (which varies some by state) involves fingerprinting of principals in the business, background checks, review of personal financial statements, review of business plans, and a number of other forms of hard verification. However, once the license has been granted, oversight continues. Unlike state banking regulators who regulate state banks, state banking regulators who regulate remittance companies do not rely on the regulator in the state of residence of the LRC to perform an examination on their behalf. On-site and off-site examinations are conduced by each individual state on a duplicative basis. These on-site examinations by the states, which include inspections of financial condition, anti-money laundering programs, information technology systems, and any changes in the organization since the last examination, are further duplicated by IRS examinations of LRCs' agents and LRCs themselves. The states may revoke an LRC's license at any time if significant violations are found, in addition to being able to mandate changes in the business or to impose fines. In most cases the scope of these examinations are not limited by budgetary constraints, due to the fact that the greater portion of the cost of regulating LRCs is born by LRCs themselves through assessments levied by the banking departments of the states.

Although there is some variation among the states regarding the specific bonding, consumer disclosure, and net worth requirements imposed on their licensees, all such states require and examine LRCs' compliance with the BSA, OFAC regulations, and the Patriot Act. Coordination exists among the state regulators through the Money Transmitter Regulators Association ("MTRA"); via the MTRA, the state regulators exchange information regarding their examination practices. And while licensed entities are rigorously regulated, law enforcement has aggressively prosecuted unlicensed operators. Since the passage of the USA Patriot Act, which made operating a money transfer business without a license a felony, dozens of violators have been prosecuted by the justice department, with many convictions resulting in prison terms of up to ten years.

There are two ways in which any individual or entity may confirm that a Remittance Company is properly licensed, both of which are convenient and cost effective ways to distinguish between an entity that has already gone through the rigors of the licensing and examination process, and an entity that is operating illegally and should be reported to the FBI or the Justice Department for prosecution: first, every state that issues a license to an LRC issues a physical license, a photocopy of which may be provided to any inquiring individual; second, the vast majority of states that issue licenses also publish lists of licensed entities on the internet.

Because a significant regulatory infrastructure already exists for LRCs, because unlicensed remittance operators are readily prosecuted, and because reliable confirmation of an LRC's licensed status is readily available, banks should be permitted to bank any LRC without fear of sanction after the bank has confirmed that the LRC is properly licensed and after the LRC has itself self-certified that its anti-money laundering program contains those elements which are required to ensure that it remains in compliance with the law. Any additional burden placed on a bank that wishes to work with an LRC, including a review and assessment of that LRC's anti-money laundering program, and an assessment of the "money laundering risk" represented by that entity, is simply a duplication of work conducted by state and federal regulators whose specific task and office is to perform such a review and examination. The view that a bank must make a customized and in-depth risk assessment of each LRC with which it may seek to work seems to dismiss as irrelevant the hundreds of state and federal employees dedicated to ensuring that Licensed Remittance Companies are well-run, fiscally secure, and are in complete compliance with their BSA and anti-money laundering obligations. Additionally, as events have shown, banks would rather refuse to work with LRCs than design an oversight program along the lines of what has been proscribed by the current federal guidance.

What Must Be Done

- New federal guidance should be issued dealing with specific types of MSB on an individual basis, including LRCs.
- The guidance should reinforce an awareness of the regulatory infrastructure that already exists regarding Licensed Remittance Companies.
- Regarding Licensed Remittance Companies, the guidance should specifically define the sole requirement of banks to be to verify their customers' proper licensing status, and to obtain a self-certification on the part of the LRC of its anti-money laundering program.

This self-certification is acceptable in the case of international correspondent banking, when the foreign bank in question is regulated by a foreign government. In the case of LRCs, our regulators are FinCEN, the IRS, and the various States.

- Finally, issue CRA credits to banks that choose to offer banking services to LRCs.

Although not universal, many banks, in their rejection of LRC customers, have displayed a vociferousness and contempt that defies logic. Examples of this negative bias, which extends beyond a simple reticence to implement the burdensome protocols mandated by the current federal guidance, can be seen in several of the submissions made by small banks in response to FinCEN's request for comment, at least one of which interestingly calls for the elimination of all MSBs en masse. There is even one bank of which we are aware, which, in notifying one LRC of its intention to close its bank accounts, actually informed the LRC that its employees would be prosecuted for trespassing if they even attempted to enter one of the Bank's branches. One would suppose that this bank felt that the employees of the LRC were themselves also unworthy of being customers of the bank. There are some who have suggested that this tendency towards contempt is somewhat related to the fact that in addition to serving minority and immigrant groups, the majority of MSBs, including LRCs, are owned and managed by members of minority and immigrant groups (especially Hispanics). It is specifically this tendency in the banking world that the Community Reinvestment Act was designed to offset.

Sincerely,

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TIFF (LZW) decompressor
are needed to see this picture.