



FINANCIAL SERVICE CENTERS OF AMERICA, INC.  
A NATIONAL TRADE ASSOCIATION

Statement of

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Before the  
U. S. Senate Committee on Banking, Housing  
and Urban Affairs

Regarding  
An Update on Money Services Businesses  
Under Bank Secrecy Act and  
USA PATRIOT Act Regulations

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Mr. Chairman, Members of the Committee, my name is Gerald Goldman. I serve as General Counsel to the Financial Service Centers of America, also known as FiSCA. I thank you for the opportunity to appear today to present our views on the relationship of Money Services Businesses and banks in the current environment of examinations and enforcement actions. Those view will provide the experience of check cashers, as one segment of the MSB industry, with the phenomenon that we call "bank discontinuance." In simple terms, bank discontinuance is the indiscriminate termination by banks of the accounts of all of the members of an industry.

FiSCA is a national trade association that represents more than 5,000 neighborhood financial service providers throughout the United States. Our members provide non-traditional financial services including check cashing, money orders, wire transfers and utility bill payment services. We serve hundreds of thousands of customers, banked and unbanked, who use us for the advantages that we provide: convenient access, service and the ability to obtain instant liquidity. The most common service that we provide is a place for hard-working people to cash their paychecks; a necessary service that they cannot always obtain at a bank, or choose not to.

Our industry is also transitioning into one that provides customers with a portal to traditional financial services. We do this in partnership with certain banks and credit unions, through Point of Banking facilities. In fact, in the next two weeks, our industry will unveil a revolutionary national savings program for the unbanked. Perhaps our most important trait as an industry is that we evolve to meet the needs of our customers, instead of requiring our customers to fit into a pre-determined model of what they need.

The value that our members provide to our customers and our role as a key component of a healthy financial sector has been recently recognized by public officials. For example, on February 10, 2005, U.S. Treasury Secretary John Snow stated that money service businesses are a key component of a healthy financial sector and "...it is very important that they have access to banking services."

On March 11, 2005, Julie L. Williams, the Acting Comptroller of the Currency, said:

"MSBs play a vital role in the national economy, providing financial services to individuals who are not otherwise part of the mainstream financial system" and "[i]t is absolutely not OCC's intent that national banks should be forced to sever their relationships with money service businesses."

In a letter dated October 13, 2004, to Congresswoman Carolyn Maloney, former Comptroller John Hawke said:

"I would also like to make it clear that the OCC recognizes the important role that check cashers and similar money services businesses (MSB's) play in providing financial services to segments of our society that do not have access to the banking system. Check cashers generally offer convenience,

neighborhood locations and a variety of financial services that appeal to certain consumers.”

We also were for a long time recognized as good customers by our banks, and we worked hard to nurture the banking relationships that we had. Witness the statement of JP Morgan Chase Vice President Peter Grassl, who, a mere year or so ago, said:

“The Chase and predecessor banks have been servicing the check cashing industry in New York State for close to 50 years. In the 90’s, we started servicing check cashers in our neighboring states of New Jersey and Connecticut, and we are now the leading bank serving the industry in the tri-state area. We’re looking to expand our business to Philadelphia and also to Texas. We’ve developed a mutually beneficial relationship with the industry over these years.

“Over the last 20 years, we’ve had only one loss and that’s a pretty good record. Obviously our experience over the years has been favorable. We wouldn’t stay in it if it weren’t.”

Nevertheless, just six months ago, our 50-year old friend, JP Morgan Chase, notified its 500 licensed check casher customers that it had made a general business decision to: “. . . no longer maintain credit relationships with or provide other financial accommodations or services to check cashing businesses.”

In addition to Chase, over the past several years scores of banks, including Bank One, Am South, Citibank, Fleet Bank, Chamber One, Sovereign, Sun National, Bank of America and others, have indiscriminately terminated the accounts of thousands of check cashing locations and financial service centers.

The results of a recent survey conducted by the American Banker reported that 70% of banks do not lend to check cashers or that there are none in their market area. Of the remaining 30% of the banks that responded, 50% said that they had “recently stopped” lending to check cashers. This is a staggering number and has caused thousands of check cashers to scramble to find new banks among an already limited number. Apart from the check cashers, the ones most directly impacted are the hundreds of thousands of customers that they serve.

What has essentially happened can best be described by an exemplified hypothetical which might bring this matter close to home, your home. What if the banks in the United States announced that they would no longer provide banking services to Members of Congress and that they were doing it for business reasons. Could they do it? Yes. Banks could cut Members of Congress out of the banking system and essentially that’s what they are doing to our industry.

The irony is: Banks don’t make serving our customers the priority that we do. Yet, they have the power to stop us from serving them. It makes no sense and it is not fair.

The question is, “why is this happening?” The facts should point otherwise. Our industry is financially sound, it is stable, it is responsible, and it is profitable for banks as well as ourselves. We use our own money, we pay our bills, and we don’t go bankrupt. In

surveys of customers, we have even higher satisfaction ratings from our customers than most banks do from their customers.

Our industry is not one that operates underground. Our businesses are licensed and regulated in 38 states, in many instances by the same agencies that regulate banks. We are regulated under the Bank Secrecy Act and the USA PATRIOT Act, including the requirement that we register with the Internal Revenue Service as MSB's. And, we have an exemplary record of compliance with federal and state anti-money laundering laws. In fact, James Sloan the former Director of FinCEN, stated that check cashers "have set the standard for the financial services industry in the fight against money laundering, financial crimes and terrorism."

Among the reasons that we can identify for banks discontinuing check cashers is the designation by the OCC in Advisory Letter 2000-3, of check cashers as businesses that are a "high risk" for money laundering. AL 2000-3 was followed by the Comptroller's Handbook, released in September of 2000, addressing BSA Anti-Money Laundering. In its Handbook, the OCC advised its examiners that certain types of businesses, including nontraditional financial entities such as check cashing facilities, could be a potential source of money laundering. Interestingly, also included among the list of high-risk businesses were professional service providers, such as lawyers, accountants and investment brokers. What followed since 2000 was not a spate of terminations of the accounts of lawyers and accountants, but a rash of terminations of the accounts of check cashers and other non-traditional financial entities. This knee-jerk reaction has occurred despite the fact that many regulators, including former FinCEN Director Sloan, have publicly stated that, in his view, the check cashing industry is no more a risk than any other business.

Following the release of AL 2000-3, we warned the regulators that the unintended result of the "high risk" designation would be the indiscriminate termination of bank accounts. I myself, as a charter member of FinCEN's Bank Secrecy Act Advisory Group, started beating the drum in November of 2000 and repeated the warning many times thereafter. Our warnings fell on deaf ears, but our predictions came true; and the bleeding has continued for 4 years.

So again we ask "why is this happening?" There is no better evidence than the statements of banks themselves. For example, in a January 3, 2005 letter from Sun National Bank, which terminated all of its check casher clients, we were told:

" . . . the Bank Secrecy Act and its required due diligence program are intended to control money laundering activities . . . these relatively new and expanded regulatory requirements place an administrative burden on national banks far beyond the anticipated scope. Consequently, Sun National Bank has made a decision that we will no longer be able to service this type of business."

A similar sentiment was expressed in a letter to the Federal Reserve Board, written by Fleet Bank Vice President Jonathan Fine, who wrote:

"In making its determination, FleetBoston weighed the costs associated with implementing and maintaining the additional control systems necessary to monitor its relationships with Service Providers to ensure the legitimacy of

transactions being processed, the legal and enterprise risks associated with maintaining such relationships, and the benefits of maintaining such relationships. On this basis alone, FleetBoston determined that the risk and cost associated with having Service Providers as customers out-weighed the benefits.”

These letters are examples of letters that we have received from banks throughout the United States.

Finally, after the damage was done, former Comptroller Hawke, in a letter to Congresswoman Carolyn Maloney dated October 13, 2004, said:

“Absent extraordinary circumstances, the OCC will not direct or encourage any national bank to open, close, or refuse a particular account or relationship.”

Just six months earlier, OCC Commissioner Hawke, appearing before the House Financial Institutions Subcommittee, had stated:

“ . . . I would say that we’ve done nothing that should have resulted in banks dropping check cashers as a class, and I think that’s one of the things that has to be looked at on a case-by-case basis.”

The irony is that all of this discontinuance activity is done in the name of fighting terrorists and money laundering, both goals that we all support. However, the activity has had the unintended effect of punishing law abiding business owners and the customers that they serve. Where are the bad guys? It is the good guys who are being penalized. What we have is overkill imposed by regulators, and adopted by banks.

Most recently, a parade of public officials, including FinCEN Director William Fox, have been decrying bank discontinuance. On March 8, 2005, FinCEN conducted a hearing at which representatives of MSB’s were permitted to testify on the extent of this problem.

Following the Hearing, on March 30, 2005, FinCEN, the Federal Reserve, FDIC, the National Credit Union Administration, the OCC and OTS, issued a Joint Statement, in which it was officially recognized that:

“Money services businesses are losing access to banking services as a result of concerns about regulatory scrutiny, the risks presented by money services business accounts, and the costs and burdens associated with maintaining such accounts.”

The Statement went on to say that the concern of banks:

“ . . . may stem, in part, from a misperception of the requirements of the Bank Secrecy Act, and the erroneous view that money services businesses present a uniform and unacceptably high risk of money laundering or other illicit activity.”

We do wish to commend FinCEN and the Federal Banking Agencies for their recent efforts to respond to the bank discontinuance problem. FinCEN has also promised to issue a Guidance on account relationships with money services businesses that will clarify the Bank

Secrecy Act requirements and supervisory expectations for the accounts of money services businesses. We remain skeptical, however, as to the effects of the Guidance, unless it aids in retaining and bringing banks back to our segment of the market.

And we are not certain that even a successful clarification of compliance requirements will undo the damage done to our banking relationships. We see no evidence of banks coming forward since FinCEN's Joint Statement.

No industry, including Congress, should be subject to the awesome power of blanket termination at will. Until this very issue of blanket termination at will is addressed, the mistakes made and the arrogance of power of some will continue to prevail. We would like to see this Committee really tackle not only the injustice that has occurred, but also to define the responsibilities of banks in serving MSB's based upon the merits of the individual MSB, so that access to the banking system will be available to all, particularly to the unbanked.

When we were invited to speak here today, we were asked to help in finding solutions to this problem. During the FinCEN hearing, we proposed one immediate solution, but that solution was designed merely to preserve the status quo, to stop the bleeding. We proposed that FinCEN and the Federal Banking Agencies immediately issue a statement encouraging a voluntary moratorium on the blanket discontinuance by banks of MSB accounts. We repeat that call today, and ask this Committee to consider expressing support for this interim solution.

We also stand ready with ideas, borne from the ingenuity that comes from entrepreneurial minds, to assist in finding concrete, long term solutions to this problem. Among our thoughts are the following:

1. Definite standards should be developed before agencies can assign the label "high risk" to an industry;
2. The labeling of an industry as "high risk" should be done only after appropriate due process, including fact finding hearings with the right of the targeted industry to be heard;
3. Congress should consider passing a "Banking Services Continuation Act" that would permit banks to discontinue the accounts of MSB's only after it could be shown that the customer has failed to meet its statutory and regulatory anti-money laundering obligations, or for legitimate business reasons unrelated to the costs of compliance;
4. A Group should be created by the Secretary of the Treasury, made up of representatives of the Federal Banking Agencies, banks, check cashers and money transmitters, with the sole purpose of ensuring access to banking services;
5. CRA Credit should be given to banks that serve MSB's in neighborhoods that serve low- and moderate-income consumers; and
6. There should be more transparency in the bank examination process, so that all can be assured that regulatory directives that are designed to ensure the safety of our financial system, and to keep it free from terrorist and other unlawful financing, do not punish the law-abiding, but only the law breakers.

In sum, there must be a process created so that no group can be denied access, directly or indirectly, to the nation's financial system, of which banks are the trustees.

We once again thank you, Mr. Chairman, and the entire Committee, for the opportunity to appear before you today and present the views of our industry.