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Robert W. Werner, Director
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REF: RIN 1506-AA85

SUBJECT: Washington State Department of Financial Institutions – Official Comments Regarding Advanced Notice of Proposed Rulemaking – Provision of Banking Services to Money Services Businesses

Dear Mr. Werner:

The Washington State Department of Financial Institutions is pleased to comment officially on the Advanced Notice of Proposed Rulemaking ("ANPR") promulgated by the Financial Crimes Enforcement Network ("FinCEN") in regard to the provision of banking services to money services businesses ("MSBs"). We appreciate FinCEN's extension of the time to make official comments, which has permitted us the opportunity to express our views as a state regulator of MSBs.

At present, we regulate 79 state-chartered depository banks and savings banks, 79 state-chartered credit unions, and 1 depository alien bank branch and 4 non-depository alien bank bureaus in Washington State. We also regulate 84 money transmitter licensees, 6,156 money transmitter agents, 6 currency exchange licensees, and 3 authorized delegates of currency exchangers under the Uniform Money Services Act ("UMSA"), as adopted in Washington State pursuant to Chapter 19.230 RCW. From this perspective, we are in a position to appreciate the concerns of depository institutions handling the accounts of MSBs, while also being mindful of the legitimate needs and concerns of MSBs we also examine and regulate.

In our view, FinCEN should take whatever steps are *prudent* to achieving three fundamental goals:

- Maintain proper standards of compliance that will ultimately protect our national security and vigorously prosecute financial crimes;
- Reduce unnecessary paperwork and reporting burden of the Bank Secrecy Act on our depository banks and credit unions; and
- Foster an environment that does not discourage participation and competition for money transmitter businesses.

While the Proposed Guidelines re: Provision of Banking Services to Money Services Businesses [RIN 1506-AA85] ("FinCEN Proposal") were intended to address all three of these goals, we believe that there is an opportunity for additional reflection and revision by FinCEN in order to assure fairness to hundreds of legitimate MSBs which require the services of depository institutions, both in Washington State and nationwide.

As FinCEN considers additional guidance, we would ask that further consideration be given to the critical role that *state regulators* play in regulating and enforcing national anti-money laundering policy. The intent of national policy has been that the states, by and through the UMSA, would be the primary, frontline regulator of MSBs, and, indeed, that the states would even act as the "vetting" agent for determining the legitimacy of MSBs. Without an applicable license from our agency, an MSB is neither legal nor able to obtain a deposit account with any federal or state-chartered bank or credit union operating in Washington State. Our licensed MSBs go through an involved application process, followed, in the case of money transmitters and currency exchangers, by regular, periodic examination of their operations to assure that they are in compliance with applicable federal and state laws and regulations. Thus, when a depository institution has evidence of a Washington-licensed MSB being in good standing with our agency, this ought to be of great weight in the depository institution's decision to accept deposits from and provide other services to the MSB.

Our MSBs fulfill a valuable and necessary service to significant numbers of our state citizens and are an increasingly important factor in our global economy. Unfortunately, in our view, the FinCEN Proposal, which is both an advisory to MSBs and a guide to banks, still encourages financial institutions to deny or close down some existing accounts of worthy and legitimate MSBs in our state. For example, while the FinCEN Proposal provides to banks a list of *high risk indicators*, banks, in our view, are not advised which or even how many of these high risk indicators are necessary for a bank to refuse to open or otherwise close a deposit account of an MSB. In turn, the FinCEN Proposal also provides no similar guidance with respect to how to employ the list of *low risk indicators*. Thus, it is quite possible that a depository institution might encounter a *single* high risk indicator and simply refuse to open an account on that basis alone.

While we respect the role that banks have traditionally played and should continue to play in Bank Secrecy Act compliance, we do not believe that banks, including those state-chartered institutions we regulate, should be put in the position of being the primary regulator of MSBs. They are ill-suited to the task. Rather, we believe that national policy, as reflected in FinCEN rules, should encourage depository institutions to give more credence and weight to the licensing and examination decisions of state MSB regulators, including our agency.

We have an additional concern that the FinCEN Proposal may have the effect of putting depository institutions in the uncomfortable position of being the primary and *subjective* arbiter of who may be an MSB. Without some rational counter-balance and additional guidance in the FinCEN Proposal, there may be too much discretion left to depository institutions to effectively exclude legitimate MSBs from market entry, including worthy immigrant and ethnic-based MSBs. As financial services businesses fairly regulated by the states, prospective non-depository MSBs already face a formidable barrier to entry in the form of UMSA licensing, examination, and enforcement. Over-dependence on depository institutions as *de facto* regulators, including large banks which may themselves covet a stake in the international remittance business, may also have a tendency to encourage anti-competitive behavior.

We appreciate that compliance policy often needs to leverage a regulated industry's own self-policing capabilities in order to martial precious government resources. However, we would like to close this comment letter with the suggestion that more effort needs to be given to solutions in which the non-depository MSBs (and not primarily their would-be competitors) would, in addition to state UMSA regulation and enforcement, begin to police themselves. One excellent model for such a solution is the undertaking by the National Association of Securities Dealers (NASD) to assure USA PATRIOT Act compliance by rigorously "vetting" existing and prospective broker-dealers. The NASD has long been the "partner" of federal government policy, both with respect to securities regulation and anti-money laundering. Nascent organizations within the MSB industry are capable of performing an analogous role in policing their own industry, particularly if federal government policy were to encourage such a solution. Moreover, NASD has recently demonstrated a willingness to share its experience and technology to achieve regulatory and self-policing solutions in other financial services industries.

We recognize that the task of BSA compliance is an enormous one, requiring a *balanced* approach that involves not only numerous, hard-working federal agencies, but *also* state regulators such as our agency, depository institutions, and even MSBs themselves. We appreciate the time given to express our views on this important issue, and we sincerely hope that you take our remarks into consideration when re-evaluating the original FinCEN Proposal.

Respectfully yours,

WASHINGTON STATE DEPARTMENT
OF FINANCIAL INSTITUTIONS

By:

Scott Jarvis, Director