TESTIMONY OF

CHARLES V. COLLIER
ASSISTANT DIRECTOR
OFFICE OF ANALYSIS AND SPECIAL ACTIVITIES
DIVISION OF SUPERVISION
FEDERAL DEPOSIT INSURANCE CORPORATION

ON

MONEY LAUNDERING

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS SUPERVISION,
REGULATION AND INSURANCE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

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Good morning Mr. Chairman and Members of the Subcommittee. Thank you for the opportunity to present the Federal Deposit Insurance Corporation's views on pending legislation to further curb the practice of money laundering. The FDIC strongly supports the fight to curtail money laundering activities and related crimes. Money laundering is a serious crime against society, and we believe it should be prosecuted to the full extent of the law.

Before addressing the pending bills, we will explain briefly to the Subcommittee how the FDIC identifies money laundering in the banks under its supervision and what actions we take to refer that activity for criminal or civil prosecution.

As the primary regulator of state nonmember banks, the FDIC generally discovers possible money laundering activity in these banks either through FDIC examinations or through the Reports of Apparent Crime that the banks are required to submit under our regulations. Our current instructions for these Reports require banks to submit them to the Internal Revenue Service's Criminal Investigation Division at the same time they send them to us. The IRS is responsible for evaluating the reports and actually determining whether a civil action or a criminal investigation is appropriate under the circumstances. If the IRS decides to conduct a criminal investigation, it frequently calls upon the FDIC to assist in cases involving insured nonmember banks and their directors, officers and employees.

In most instances, the FDIC also sends copies of the Reports of Apparent Crime to Treasury's Office of Financial Enforcement. During 1989, the FDIC forwarded 248 such Reports involving suspicious currency transactions to the Office of Financial Enforcement. The purpose of forwarding the Reports is to enable Treasury to keep track of criminal referrals and to get more involved in an investigation if necessary.

The FDIC has no authority to pursue criminal actions against banks or individuals who violate the Bank Secrecy Act. FDIC regulations in the money laundering area focus on ensuring that state nonmember banks adopt and maintain adequate procedures to enable them to comply with the Bank Secrecy Act. Banks that fail to comply with the FDIC's regulations can be subjected to formal cease and desist actions and civil money penalties for those violations. To date, the mere threat of formal action by the FDIC has been sufficient to persuade banks that are not in complete compliance to comply fully with our regulations.

Mr. Chairman, we agree with the underlying assumption of your legislation -- namely, that financial institution regulators, including the FDIC, could benefit from a grant of more explicit authority to deal with institutions and individuals involved in money laundering. We have several recommendations that we believe would strengthen the FDIC's ability to deal with banks and bank employees who are implicated in money laundering schemes. First, conviction of money laundering offenses could be added as a criterion for termination of deposit insurance. The exercise of this authority, however, must be within the discretion of the FDIC. As more fully described below, automatic termination could have dire results for depositors and the deposit insurance fund. Second, enhanced authorities should target those actually guilty of money laundering offenses by making it clear that money laundering convictions will lead to removal of the responsible individuals. The FDIC also would support permanently barring individuals convicted of money laundering offenses from participation in the affairs of all federally insured institutions.

H.R. 3848

H.R. 3848 would require the appropriate Federal depository institution regulator to revoke the charter of any Federal depository institution that is found guilty of a crime involving money laundering or that commits monetary transaction report offenses. In addition, it would require the FDIC to terminate the deposit insurance of any State depository institution found guilty of such crimes or offenses.

As proposed, H.R. 3848 does not appear to allow any discretion on the part of the regulators. The bill suggests that a bank or thrift charter could be revoked or federal deposit insurance terminated for actions that are often under the control of tellers and clerical employees and for inadvertent violations of the complicated laws and regulations governing monetary transaction reporting.

Charter revocation and termination of federal deposit insurance should be used only in the most egregious cases involving corruption of senior management or blatant disregard of the law by the institution. Termination of federal deposit insurance is a drastic measure that requires a careful analysis of each particular case. It should not be used as a standard punishment for crimes which are committed by employees who do not participate in the management of the institution.

The absence of discretion with regard to deposit insurance termination and charter revocation could have very negative consequences for bank depositors and other customers. An indictment for money laundering offenses may be sufficient to cause the demise of the institution when depositors become aware that they could lose their federal deposit insurance upon conviction of the institution. Even rumors of a money

laundering investigation at a bank could unduly alarm some customers and cause a run on the bank, even if the rumor were totally unfounded. Either event could trigger insolvency of the bank and require assistance or payoff by the FDIC.

Additionally, consumers could lose banking services entirely if a bank found guilty of a money laundering offense were located in a community in which it were the only depository institution. In fact, the bill's greatest impact would appear to be on innocent customers and shareholders. They could be punished because of the misdeeds of a few bank officers or employees. The depositors could lose their banking services, and possibly part of their life savings, and the shareholders could lose their investments.

The FDIC is charged with the protection of depositors' funds. Therefore, we believe that we should participate in any decision to terminate the rights of those depositors. FDIC discretion in the revocation of deposit insurance would allow us to better prepare, and arrange for, an orderly liquidation of the guilty institution and to preserve federal deposit insurance coverage for innocent customers.

The bill's provisions requiring termination of insurance of State-chartered banks and thrifts appears not to require the FDIC to comply with the notice requirements of section 8(a) of the Federal Deposit Insurance Act with respect to an involuntary termination of insurance. That section provides for the insurance of existing deposits for at least six months and up to two years from the effective date of the termination of insurance action. The provision is designed to protect institutions' depositors and give them time to find alternative banking services.

Mandatory charter revocation and insurance termination provisions also may prove self-defeating by decreasing incentives for voluntary reporting of suspicious activities and transactions. The fear of losing a charter or federal deposit insurance may cause some to hesitate to draw attention to any suspicious currency transaction activity in their institutions. The disincentive to report possible offenses is only increased by the fear of deposit runs on the institution should the public discover that a bank is being investigated for possible money laundering activity.

Banks and thrifts are unlikely to plead guilty to or settle money laundering offenses knowing that their deposit insurance will be revoked or their charter terminated immediately. Some institutions have agreed to guilty pleas and settlements with the government because of the desire to avoid lengthy and costly litigation. If their charters or deposit insurance will be revoked, they will litigate even the most minor charges and use every avenue to prolong the litigation.

The reluctance to plead guilty or settle will occur irrespective of the nature or magnitude of the offense because H.R. 3848 does not seem to distinguish among different types of "money laundering" offenses. The same dire consequences result for currency transaction reporting violations -- whether intentional or inadvertent -- that result for actual money laundering. All banks and thrifts found guilty of any type of money laundering offense, regardless of the scope or magnitude of the offense, would be subject to the same punishment -- charter revocation or insurance termination. This result is inconsistent with punishment guidelines for most other crimes, where judges are given discretion to fashion an appropriate sentence. Further, the ultimate decision to prosecute a bank for money laundering offenses (and, thus, close the institution or terminate its deposit insurance) would be made by the United States Attorney's Office.

Any bank found guilty of a money laundering offense would surely appeal that verdict. Regardless of a bank's right to appeal, however, the end result may be the same. Upon the initial announcement of a guilty verdict, depositors' fears of losing federal deposit insurance would likely spur substantial deposit withdrawals. Heavy demands on the bank's resources could seriously weaken it, requiring FDIC assistance. Further, a merger or purchase and assumption transaction would be unlikely -- given the uncertainty of the outcome of the appeal and a recent court decision holding successor banks liable for the criminal acts of their predecessors.

Rather than revoke a bank's charter or terminate deposit insurance, we think it far preferable to focus attention on the <u>individuals</u> in the institution who actually commit the offenses. Existing law already provides substantial penalties for those convicted of money laundering offenses, including forfeiture of assets, substantial fines and lengthy prison sentences. Earlier, we described some additional measures that could enhance the regulators' ability to punish money laundering offenders. We would support the adoption of such provisions.

We strongly support the government's fight to end drug trafficking and money laundering. However, the automatic revocation of deposit insurance for the misdeeds of a few people is potentially far too costly for depositors and the FDIC. We believe it would be more fair and effective to convict and punish the guilty individuals involved and permanently ban them from employment in federally insured depository institutions.

<u>H.R. 3939</u>

Congressman Saxton's bill encourages States to establish uniform licensing and regulation of check cashing services, money order issuers, and other non-bank money transmitters for the purpose

of preventing money laundering and protecting the payment system. It also requires the Secretary of the Treasury to conduct a study and make appropriate recommendations on such efforts. The FDIC believes that these non-bank entities should be subjected to an effective regulatory scheme. H.R. 3939 is certainly an appropriate step in achieving that objective.

H.R. 4064

H.R. 4064, introduced by Congressman Torres, would amend the financial recordkeeping provisions of the Bank Secrecy Act to modify and codify recordkeeping requirements relating to international wire transfers.

The proposed legislation appears to follow closely Treasury's Advance Notice of Proposed Rulemaking to which the FDIC responded in December, 1989. In our response, we agreed that more complete information could be required in connection with international wire transfer requests, particularly for requests by noncustomers. Specific customer identification could be required to be kept on file for regular customers while special requirements could be placed on transactions requested by noncustomers.

Much of the information that would be mandated under the proposed legislation is already captured by many banks. However, it should be noted that international wire transfer information is not uniform. In many cases, the name of the originator and the owner of the account charged for the wire transfer, as well as the name of the recipient and the owner of the account credited, are omitted. Account numbers are sometimes the only account identification used. This is particularly true when wire transfers originate or terminate in a foreign bank. This enables many originators and recipients to remain unidentified to U.S. authorities who may be conducting an investigation into the source or disposition of suspected money laundering. We would not oppose legislation which would standardize international wire transfer information, as long as the requirements would not disrupt legitimate international commerce or create a competitive disadvantage for U.S. banks.

H.R. 4044

H.R. 4044, introduced by Chairman Gonzalez would do several things to enhance the capability of law enforcement authorities to detect money laundering offenses. The proposed legislation would give discretionary authority to the Secretary of the Treasury to require non-depository financial institutions, such as check cashing services, to furnish to the depository institution copies of any currency transaction reports filed by the non-depository financial institution that relate to a reportable transaction being conducted by the two institutions. If the depository institution did not receive a copy of the

report when required, it would notify the Secretary of the Treasury that the non-depository financial institution failed to provide a copy of the report.

The bill includes provisions similar to those in H.R. 3939 and H.R. 4064. As previously indicated, we generally support these provisions.

The legislation would clarify the Secretary of the Treasury's authority relating to the confidentiality of targeting orders. We support this proposal since public disclosure of this information could possibly start unfounded rumors and unduly alarm bank customers. Disclosure of the targeting orders also could defeat the purpose of the orders by alerting money launderers to avoid particular institutions.

H.R. 4044 also would require the Federal Reserve Board to prepare analyses of currency surplus reports at the request of the Attorney General. The Federal Reserve Board already makes this type of information available to the U.S. Customs Service which uses that information to identify areas of the country where currency surpluses and currency flows are not consistent with the volume of Currency Transaction Reports filed with the IRS. The Customs Service provides copies of its studies to the FDIC, which targets those areas for special Bank Secrecy Act compliance reviews.

In addition, H.R. 4044 would require the Secretary of the Treasury to submit reports to the Congress containing information on the uses of Currency Transaction Reports. We believe such reports would be beneficial, as there is some question as to how useful CTR's are in the detection, investigation and prosecution of money laundering offenses. If it can be proven that currency transaction reporting is an effective tool in curbing money laundering, there would be increased support for the reporting and recordkeeping burdens.

Finally, the proposed legislation would require the Comptroller General of the United States to conduct a study of the Financial Crimes Enforcement Network (FINCEN). We periodically receive data from FINCEN concerning unusual currency flows affecting state nonmember banks, which we then forward to the appropriate FDIC Regional Office for follow-up by examiners. We also use FINCEN as a source for conducting routine background checks on individuals who have requested FDIC approval of certain applications, such as for deposit insurance or for a change of bank control. Currently, FDIC only uses FINCEN to determine whether or not the subjects of our background checks have been investigated, indicted, or convicted of Bank Secrecy Act violations.

The FDIC welcomes any efforts by federal law enforcement agencies and others to identify individuals who have committed

criminal acts against federally insured financial institutions and to make that information available to the appropriate regulatory agency. Section 19 of the Federal Deposit Insurance Act bars many of those individuals from any future participation in the affairs of a federally insured depository institution; however, it is sometimes difficult to identify those individuals in a timely manner. A centralized system of information concerning financial crimes would go a long way toward speeding up this process.

Conclusion

In conclusion, the FDIC fully supports the government's war on money laundering and related crimes. We are committed to working with this Subcommittee to fashion meaningful and effective solutions to the money laundering problem.