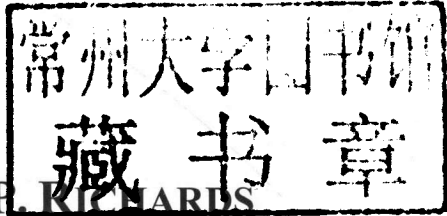




DEFENSE, SECURITY AND STRATEGIES

# DIRTY MONEY

## CROSS-BORDER MONEY LAUNDERING



DONNA F. RICHARDS

EDITOR



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**DEFENSE, SECURITY AND STRATEGIES**

# **DIRTY MONEY**

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## PREFACE

This book examines U.S. efforts to stem cross-border money laundering through the use of devices called stored value, such as prepaid cards and the corresponding regulatory gaps that may exist.

Chapter 1- U.S. Customs and Border Protection (CBP) is the lead federal agency responsible for inspecting travelers who seek to smuggle large volumes of cash—called bulk cash—when leaving the country through land ports of entry. It is estimated that criminals smuggle \$18 billion to \$39 billion a year in bulk cash across the southwest border. The Financial Crimes Enforcement Network (FinCEN) is responsible for reducing the risk of cross-border smuggling of funds through the use of devices called stored value, such as prepaid cards. GAO was asked to examine (1) the extent of actions taken by CBP to stem the flow of bulk cash leaving the country and any challenges that remain, (2) the regulatory gaps, if any, of cross-border reporting and other anti-money laundering requirements of stored value, and (3) if gaps exist, the extent to which FinCEN has addressed them. To conduct its work, GAO observed outbound operations at five land ports of entry. GAO also reviewed statutes, rules, and other information for stored value. This is a public version of a law enforcement sensitive report that GAO issued in September 2010. Information CBP deemed sensitive has been redacted.

Chapter 2- Hearing on Money Laundering and Bulk Cash Smuggling across the Southwest Border held by the Senate Caucus on International Narcotics Control on March 9, 2011.

Chapter 3- Statement of Richard M. Stana before the Senate Caucus on International Narcotics Control on March 9, 2011 regarding Moving Illegal Proceeds.

Chapter 4- Testimony of Alan Bersin before the Senate Caucus on International Narcotics Control on March 9, 2011 regarding Money Laundering and Bulk Cash Smuggling along the Southwest Border.

Chapter 5 – Statement of Kumar C. Kibble before the Senate Caucus on International Narcotics Control on March 9, 2011 regarding regarding Money Laundering and Bulk Cash Smuggling along the Southwest Border.

Chapter 6 – Statement of Jamal El-Hindi before the Senate Caucus on International Narcotics Control on March 9, 2011 regarding Money Laundering and Bulk Cash Smuggling along the Southwest Border.

Chapter 7- Money laundering is a federal crime, most often prosecuted today under 18 U.S.C. 1956. Money laundering is commonly understood as the process of cleansing the taint from the proceeds of crime. In federal criminal law, it is more. In varying degrees under federal law, money laundering involves the flow of resources to and from several hundred other federal, state and foreign crimes. It consists of: (1) engaging in a financial transaction involving the proceeds of certain crimes in order to conceal the nature, source, or ownership of proceeds they produced; (2) transporting funds generated by certain criminal activities internationally in order to promote further criminal activities, or to conceal nature, source, or ownership of the criminal proceeds, or to evade reporting requirements; (3) engaging in a financial transaction involving the proceeds of certain crimes in order to promote further offenses; (4) engaging in a financial transaction involving criminal proceeds in order to evade taxes on the income produced by the illicit activity; (5) structuring financial transactions in order to evade reporting requirements; (6) spending more than \$10,000 of the proceeds of certain criminal activities; (7) traveling in interstate or foreign commerce in order to distribute the proceeds of certain criminal activities; (8) transmitting the proceeds of criminal activity in the course of a money transmitting business; (9) smuggling unreported cash across a U.S. border, or (10) failing to comply with the Treasury Department's anti-money laundering provisions. The Supreme Court has recently indicated that the proscription in section 1956 against attempted international transportation of tainted proceeds to conceal their source, ownership, nature or ultimate location does not reach simple attempted cash smuggling without some proof of a specific concealment purpose for the smuggling. It indicated in a second case that references to the tainted "proceeds," which are the focus of section 1956, sometimes refer to the profits of a predicate offense and sometimes to its gross receipts.

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*Chapter 1*

**CHALLENGES EXIST IN THE FEDERAL  
GOVERNMENT'S EFFORT TO STEM CROSS-  
BORDER CURRENCY SMUGGLING**

*United States Government Accountability Office*

**WHY GAO DID THIS STUDY**

U.S. Customs and Border Protection (CBP) is the lead federal agency responsible for inspecting travelers who seek to smuggle large volumes of cash—called bulk cash—when leaving the country through land ports of entry. It is estimated that criminals smuggle \$18 billion to \$39 billion a year in bulk cash across the southwest border. The Financial Crimes Enforcement Network (FinCEN) is responsible for reducing the risk of cross-border smuggling of funds through the use of devices called stored value, such as prepaid cards. GAO was asked to examine (1) the extent of actions taken by CBP to stem the flow of bulk cash leaving the country and any challenges that remain, (2) the regulatory gaps, if any, of cross-border reporting and other anti-money laundering requirements of stored value, and (3) if gaps exist, the extent to which FinCEN has addressed them. To conduct its work, GAO observed outbound operations at five land ports of entry. GAO also reviewed statutes, rules, and other information for stored value. This is a public version of a law enforcement sensitive report that GAO issued in September 2010. Information CBP deemed sensitive has been redacted.

## WHAT GAO RECOMMENDS

GAO recommends that CBP, among other things, gather data on program costs and benefits and that FinCEN develop a plan, including target dates, to better manage its rulemaking process. CBP and FinCEN concurred with these recommendations.

## WHAT GAO FOUND

In March 2009, CBP created an Outbound Enforcement Program aimed at stemming the flow of bulk cash leaving the country, but further actions could be taken to address program challenges. Under the program, CBP inspects travelers leaving the country at all 25 land ports of entry along the southwest border. On the Northern border, inspections are conducted at the discretion of the Port Director. From March 2009 through June 2010, CBP seized about \$41 million in illicit bulk cash leaving the country at land ports of entry. Stemming the flow of bulk cash, however, is a difficult and challenging task. For example, CBP is unable to inspect every traveler leaving the country at land ports of entry and smugglers of illicit goods have opportunities to circumvent the inspection process. Other challenges involve limited technology, infrastructure, and procedures to support outbound operations. CBP is in the early phases of this program and has not yet taken some actions to gain a better understanding of how well the program is working, such as gathering data for measuring program costs and benefits. By gathering data for measuring expected program costs and benefits, CBP could be in a better position to weigh the costs of any proposed expansion of the outbound inspection program against likely outcomes.

Regulatory gaps of cross-border reporting and other anti-money laundering requirements exist with the use of stored value. For example, travelers must report transporting more than \$10,000 in monetary instruments or currency at one time when leaving the country, but FinCEN does not have a similar requirement for travelers transporting stored value. Similarly, certain anti-money laundering regulations, such as reports on suspicious activities, do not apply to the entire stored value industry. The nature and extent of the use of stored value for cross-border currency smuggling and other illegal activities remains unknown, but federal law enforcement agencies are concerned about its use.

FinCEN is developing regulations, as required by the Credit CARD Act of 2009, to address gaps in regulations related to the use of stored value for criminal purposes, but much work remains. FinCEN has not developed a management plan that includes, among other things, target dates for completing the regulations. Developing such a plan could help FinCEN better manage its rulemaking effort. When it issues the regulations, law enforcement agencies and FinCEN may be challenged in ensuring compliance by travelers and industry. For example, FinCEN will be responsible for numerous tasks including issuing guidance for compliance examiners, revising the way in which it tracks suspicious activities related to stored value, and addressing gaps in anti-money laundering regulations for off-shore entities that issue and sell stored value.

### ABBREVIATIONS

APA	Administration Procedure Act
BEST	Border Enforcement Security Task Force
BSA	Bank Secrecy Act
CBP	Customs and Border Protection
CMIR	Report of International Transportation of Currency or Monetary Instrument
CTR	Currency transaction report
DEA	Drug Enforcement Administration
DHS	Department of Homeland Security
DOJ	Department of Justice
EPIC	El Paso Intelligence Center
FATF	Financial Crimes Enforcement Network
FBI	Federal Bureau of Investigation
FinCEN	Financial Crimes Enforcement Network
IRS	Internal Revenue Service
MSB	Money services business
NBFI	Nonbank financial institution
NDIC	National Drug Intelligence Center
NPRM	Notice of Proposed Rulemaking
OFO	Office of Field Operations
OMB	Office of Management and Budget
SAR	Suspicious activity report
SB/SE	Small Business/Self Employed Division

Treasury

Department of the Treasury

October 25, 2010

The Honorable Max Baucus  
Chairman  
Committee on Finance  
United States Senate

The Honorable Jeff Bingaman  
United States Senate

Moving illegal proceeds across our nation's borders presents a significant threat to national security. Mexican drug trafficking organizations, terrorist organizations, and other groups with malevolent intent finance their operations by moving funds into or out of the United States. For example, a common technique used for taking proceeds from drug sales in the United States to Mexico is a method known as bulk cash smuggling.<sup>1</sup> Smuggling methods can involve taking bulk cash by private or commercial vehicles through land ports of entry, by private plane or boat through air and sea ports of entry, or through other means, including underground tunnels, parcels sent by mail, or by foot between ports of entry. Because of its clandestine nature, the extent of bulk cash smuggling is difficult to quantify with any certainty. The National Drug Intelligence Center (NDIC) estimates that proceeds from drug trafficking generated in this country are smuggled across the southwest border and the proceeds total between \$18 billion and \$39 billion a year.<sup>2</sup> NDIC also estimates that Canadian drug trafficking organizations smuggle significant amounts of cash across the Northern border from proceeds of drugs sold in the United States. In the largest known case of bulk cash smuggling, over two tons of currency, mostly in \$100 banknotes, totaling \$205 million was seized in Mexico City in 2007. In addition to bulk cash smuggling, 21<sup>st</sup> century methods and technologies of laundering money have emerged. In 2009, the NDIC stated that new financial products and technologies present unique opportunities for money launderers as well as unprecedented challenges to the intelligence, law enforcement, and regulatory communities.<sup>3</sup> Among other money laundering techniques, NDIC and others cited the use of prepaid cards or gift cards that are loaded with currency or value—also called stored value—as presenting a compact and easily transportable method that has been used to move money into and out of the United States.<sup>4</sup> U.S. law enforcement officials

agree that stored value is an emerging cash alternative for legitimate consumers and criminals alike.<sup>5</sup>

U.S. Customs and Border Protection (CBP)—a major component in the Department of Homeland Security (DHS)—is the lead federal agency in charge of securing our nation's borders. CBP carries out its responsibility by, among other things, inspecting travelers at land, air, and sea ports of entry.<sup>6</sup> In March 2009, the Secretary of Homeland Security called on CBP to help stem the flow of bulk cash and weapons moving south by inspecting travelers leaving the United States for Mexico. As a result of this request, CBP increased its effort to stem the flow of bulk cash smuggling. This effort—called outbound operations—expanded CBP's primary mission of inspecting travelers who seek to enter the United States. In addition to addressing the threat of bulk cash and arms that leave the country, CBP outbound operations may also, among other things, identify and pursue criminals or fugitives attempting to flee the country and travelers who attempt to take stolen vehicles across the border. CBP's responsibility for inspecting travelers who leave the country is a difficult task because it must also facilitate the cross-border movement of legitimate travelers and billions of dollars in international trade.

The Financial Crimes Enforcement Network (FinCEN)—a bureau in the Department of the Treasury<sup>7</sup>—seeks to deter and detect criminal activity and safeguard the financial system from the risk that terrorists and other criminals may fund their operations through financial institutions in the United States. Among other things, FinCEN is responsible for administering certain laws aimed at preventing criminals from abusing financial systems in the United States.

Given the important role that CBP and FinCEN play in national security, you asked us to review the progress that they have made in stemming the flow of bulk cash leaving the country and in ensuring financial entities whose businesses involve stored value carry out anti-money laundering practices, respectively. In response, in September 2010, we issued a law enforcement sensitive report to you that addressed the following questions:

- To what extent has CBP taken actions to stem the flow of bulk cash leaving the country through land ports of entry and what challenges, if any, remain?
- What regulatory gaps, if any, exist for cross-border reporting and other anti-money laundering requirements involving the use of stored value?

- If any regulatory gaps exist for cross-border reporting and other anti-money laundering requirements involving the use of stored value, to what extent has FinCEN taken action to address them?

This report is a public version of the prior sensitive report that we provided to you. DHS deemed some of the information in the prior report as law enforcement sensitive, which must be protected from public disclosure. Therefore, this report omits sensitive information about CBP's outbound inspection efforts, including techniques used to carry out inspections and data on staffing, infrastructure, and technology that support outbound inspections. In addition, at DHS's request, we have redacted data on the specific ports of entry where bulk cash has been seized. Although the information provided in this report is more limited in scope, it addresses the same questions as the sensitive report. Also, the overall methodology used for both reports is the same.

To address the question on CBP efforts to stem the flow of bulk cash leaving the country at land ports of entry, we conducted site visits, reviewed CBP data, and interviewed CBP officials. We visited and observed outbound operations at five ports of entry (Blaine, Washington; Buffalo, New York; El Paso, Texas; Laredo, Texas; and San Ysidro, California). We selected these ports of entry to provide us with examples of outbound operations at land ports of entry on the Northern and southwest border that have high volumes of traffic. At each location, we interviewed managers and CBP officers knowledgeable about outbound operations to determine actions that have been taken to stem the flow of bulk cash as well as ways to strengthen the program. While we cannot generalize our work from our site visits to all ports of entry, the results from this work provided us with valuable insights about outbound operations. Among other things, we reviewed and analyzed data on the amount of bulk cash seized from March 2009 through June 2010. We assessed the reliability of these data by interviewing staff responsible for the data and reviewing relevant documentation. We concluded that these data were sufficiently reliable for the purposes of our review. We reviewed data on the number of license plate readers installed on outbound lanes as of July 2010. We interviewed CBP staff responsible for collecting these data and determined that the data were sufficient for our review. We also reviewed CBP's policies and procedures and strategic plan for its outbound operations. We interviewed staff at CBP headquarters involved in (1) implementing the outbound program and (2) assessing staffing, technology, and equipment for outbound operations. We also reviewed documents on the budget for outbound operations, policy

guidance, and relevant statutes related to bulk cash smuggling. We reviewed assessments of bulk cash smuggling, including the 2009 and 2010 National Drug Threat Assessments issued by the National Drug Intelligence Center,<sup>8</sup> a National Drug Intelligence Center report on bulk cash smuggling,<sup>9</sup> and a Mexican Bulk Currency study issued by U.S. Immigration and Customs Enforcement (ICE).<sup>10</sup> We found these assessments to be acceptable for use in our report. We also reviewed January 2010 data from the Texas Center for Border Economic and Enterprise Development and interviewed center staff members to determine the reliability of the data. We concluded that the data were sufficiently reliable for our review. In addition, our investigators tested outbound operations at three ports of entry on the southwest border. Our investigators did their work in accordance with quality standards for investigations established by the Council of the Inspectors General on Quality and Efficiency. While we cannot generalize the work of our investigators to all ports of entry, the results from this work provided us with valuable insights about outbound operations. We reviewed *Standards for Internal Control in the Federal Government* and compared the standards for monitoring and controls with CBP's policies and procedures and performance measures for its Outbound Enforcement Program.<sup>11</sup> Our scope did not include an examination of outbound operations at air or sea ports of entry.

To address the questions on regulatory gaps, if any, of cross-border reporting and anti-money laundering requirements involving the use of stored value and the status of FinCEN efforts to address any identified gaps, we reviewed and analyzed information on the ways in which stored value has been used to smuggle currency across the nation's borders and to launder money. We also reviewed current regulations and statutes that govern issuers, sellers, and redeemers of stored value. To obtain further information on vulnerabilities related to stored value, we interviewed officials or obtained information from federal law enforcement agencies that are involved in efforts to interdict or investigate the illicit use of stored value, including ICE, the U.S. Secret Service, and CBP—components in DHS, the Federal Bureau of Investigation (FBI) and the Drug Enforcement Administration (DEA)—components in the Department of Justice (DOJ), and Criminal Investigation of the Internal Revenue Service (IRS)—a component in the Department of the Treasury (Treasury). In addition, we reviewed a random, probability sample of 400 reports on suspicious activities submitted by depository institutions and money services businesses (MSB) from October 2008 through April 2010 to identify examples of suspicious activities related to stored value.<sup>12,13</sup> To obtain information on the status of Treasury's efforts to address identified



vulnerabilities (on stored value), we interviewed officials from Treasury's Office of Terrorism and Financial Intelligence, FinCEN, and the Office of Fraud/Bank Secrecy Act, within IRS' Small Business/Self Employed Division (SB/SE). We reviewed relevant legislation, such as the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act)<sup>14</sup> and the Notice of Proposed Rulemaking related to stored value issued by Treasury in June 2010.<sup>15</sup> We also reviewed OMB's guidelines and requirements for the rulemaking process. Finally, we reviewed *Standards for Internal Control in the Federal Government*<sup>16</sup> and compared the standards for monitoring with FinCEN's policies and procedures for monitoring MSBs.

We conducted this performance audit from June 2009 through September 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## BACKGROUND

### **CBP Is the Lead Federal Agency Responsible for Stemming the Flow of Bulk Cash Leaving the U.S. at Land Ports of Entry**

CBP is the lead federal agency charged with securing our nation's borders while facilitating legitimate travel and commerce.<sup>17</sup> To meet the Secretary's March 2009 mandate that CBP conduct inspections of traffic leaving the U.S. for Mexico at all 25 land ports of entry on the southwest border, CBP expanded or initiated inspections of outbound travelers, including those leaving by foot, private vehicle (see figure 1), or commercial trucks. CBP's effort to stem the flow of bulk cash is part of a larger counternarcotics strategy to secure the southwest border.<sup>18</sup>

CBP has three main components that have border security responsibilities. First, CBP's Office of Field Operations is responsible for inspecting the flow of people and goods that enter and leave the country through air, land, and sea ports of entry. Second, CBP's Border Patrol works to prevent the illegal entry of persons and merchandise, including contraband, into and out of the United States between the ports of entry and at checkpoints located in major traffic routes away from the border. In doing so, the Border Patrol is responsible for