



**STATEMENT OF ASSOCIATE DIRECTOR
FOR REGULATORY POLICY AND PROGRAMS
JAMAL EL-HINDI
FINANCIAL CRIMES ENFORCEMENT NETWORK
UNITED STATES DEPARTMENT OF THE TREASURY**

**BEFORE THE
SENATE CAUCUS ON INTERNATIONAL NARCOTICS CONTROL**

MARCH 9TH, 2011

Chairman Feinstein, Co-Chairman Grassley, and distinguished Members of the Caucus, thank you for the opportunity to appear before you today to discuss the Financial Crimes Enforcement Network's (FinCEN) ongoing role under the leadership of the Under Secretary of the Treasury for Terrorism and Financial Intelligence, in the Administration's efforts to stem the flow of illicit proceeds along the southwest border. We appreciate the Caucus' interest in this important issue, and your continued support of our efforts to help prevent illegal financial activity in this region.

I am also pleased to be testifying with my colleagues from the Department of Homeland Security (DHS) and the Government Accountability Office (GAO). Each of them plays an important role in the global fight against money laundering and terrorist financing, and our collaboration on these issues along the southwest border has greatly improved the effectiveness of our efforts.

Each of the major initiatives that I will touch upon in my testimony are among FinCEN's contributions to the Administration's National Southwest Border Counternarcotics Strategyⁱ, and the 2010 Implementation Update of that Strategy.ⁱⁱ

FinCEN's mission is to enhance U.S. national security, detect criminal activity, and safeguard financial systems from abuse by promoting transparency in the U.S. and international financial systems. FinCEN works to achieve its mission through a broad range of interrelated strategies, including:

- Administering the Bank Secrecy Act (BSA) - the United States' primary anti-money laundering (AML)/counter-terrorist financing (CFT) regulatory regime;
- Supporting law enforcement, intelligence, and regulatory agencies through the sharing and analysis of financial intelligence; and,
- Building global cooperation and technical expertise among financial intelligence units throughout the world.

To accomplish these activities, FinCEN employs a team comprised of approximately 320 dedicated federal employees, including analysts, regulatory specialists, international specialists, technology experts, lawyers, administrators, managers, and federal agents.

FinCEN's main goal in administering the BSA is to increase the transparency of the U.S. financial system so that money laundering, terrorist financing, and other economic crime can be detected, investigated, prosecuted, and ultimately prevented. Our ability to work closely with our regulatory, law enforcement, international, and industry partners promotes consistency across our regulatory regime and better protects the U.S. financial system.

Mitigating Money Laundering Vulnerabilities in Prepaid Access Devices

One of our biggest challenges as a regulator of financial institutions is striking the right balance between the costs and benefits of regulation. Recognizing the emergence of sophisticated

payment methods and the potential for abuse by criminal actors, several years ago FinCEN began working with our law enforcement and regulatory counterparts and the industries we regulate to study the stored value/prepaid card industry in the context of expanding AML obligations to emerging payment systems. While regulations covering money services businesses in this sector have been in place since 1999, those requirements were not as comprehensive as the requirements for other sectors; this less comprehensive approach was appropriate at the time as the prepaid/stored value industry was new and there was a desire not to squelch its development. Over time, however, it was clear that more comprehensive regulations were needed.

Recognizing the importance and value of bringing a cross-section of experts together to study this issue, in May 2008 FinCEN formally established a subcommittee to focus on stored value issues within the Bank Secrecy Act Advisory Group (BSAAG). The BSAAG is a Congressionally-chartered forumⁱⁱⁱ that brings together representatives from the financial industry, law enforcement, and the regulatory community to advise FinCEN in its regulatory functions. The stored value subcommittee provides a comprehensive panel of experts available to consult on these issues and from whom a body of empirical information is regularly gathered and exchanged.

Prepaid access is attractive to customers who do not have similar easy-to-obtain options for non-cash payments or the ability to conduct transactions remotely. But the ease with which prepaid access can be obtained and used, combined with the potential for the relatively high velocity of money moving through accounts involving prepaid access, the potential in some cases for anonymity, and the lack of a full regulatory framework, may make it particularly attractive to

illicit actors. Criminals value the ability to receive and distribute a significant amount of funds without being subject to many of the reporting or recordkeeping requirements that would apply to similar transactions using cash or involving an ordinary demand deposit account at a bank. These are among the reasons FinCEN believes that the risks and appropriate regulatory framework to attempt to mitigate them is to consider prepaid access as a type of money transmission.

The framework for money transmission – and that which we propose for prepaid access – is an activity-based test. More specifically, we are looking at the ability to introduce value and to realize that value at a subsequent time, at a different place, or by a different person, for a subset of the original amount, or some combination thereof.

In furtherance of the above, FinCEN began to take formal steps to address this industry sector -- including seeking public comment on how stored value should be defined and related issues in the proposed rule, Amendment to the Bank Secrecy Act Regulations – Definitions and Other Regulations Relating to Money Services Businesses.^{iv} After we had begun efforts to revise our regulations, on May 22, 2009, President Obama signed the Credit Card Accountability, Responsibility, and Disclosure (CARD) Act of 2009.^v Section 503 of the CARD Act directs FinCEN, as administrator of the BSA, to issue regulations regarding the sale, issuance, redemption, or international transport of stored value, including prepaid devices such as plastic cards, mobile phones, electronic serial numbers, key fobs and/or other mechanisms that provide access to funds that have been paid for in advance and are retrievable and transferable. Although FinCEN had taken steps toward more comprehensive regulations for the prepaid/stored value sector before the CARD Act became law, the statute accelerated our timeframe.

After extensive study, FinCEN issued its notice of proposed rulemaking (NPRM) which proposed new rules that would establish a comprehensive BSA/AML regulatory framework for non-bank stored value providers, which our proposal now refers to as “prepaid access.” In developing this NPRM, we consulted with the Department of Homeland Security and various other law enforcement and regulatory agencies throughout the process, meeting throughout 2009-2010 with larger and smaller groups of stakeholders as often as three to four times each month to collaborate on these issues and to solicit input for moving forward.

Under FinCEN’s proposal, non-bank providers of prepaid access would be subject to comprehensive BSA regulations similar to depository institutions. To make BSA reports and records valuable and meaningful, the proposed changes would impose obligations on a party responsible for predominant oversight and control, as well as others who might be in a position to provide meaningful information to regulators and law enforcement. Depository institutions would retain AML obligations for most bank-issued prepaid cards.

Among the major features in the proposal are:

- Renaming “stored value” as “prepaid access” to allow for future changes in technology and prepaid devices;
- Making this newly defined “provider” of prepaid access a responsible party subject to regulation;
- Placing program requirements on providers of prepaid access, including registration, suspicious activity reporting, customer information recordkeeping, and new transactional recordkeeping requirements;
- Establishing requirements for sellers of prepaid access; and,

- Exempting certain categories of prepaid access products and services posing lower risks of money laundering and terrorist financing from certain requirements.

This last aspect assists our efforts to achieve the right balance. FinCEN believes that certain prepaid programs operate in such a way as to reduce potential money laundering threats and are therefore generally not subject to the provisions of the NPRM. Such products include payroll cards, government benefits cards, health care access cards, closed loop cards, and low dollar products with strong safeguards in place.

Other risk variables - such as whether a product is reloadable, can be transferred to other consumers, or can be used to transfer funds outside the country - were all things that we identified through our extensive regulatory, law enforcement, and industry consultations. With the NPRM, we asked the general public to help validate whether we have found the right balance so that higher-risk persons and products will be appropriately regulated while lower-risk products would not be subject to undue regulatory obligations or constraints.

The proposed regulation is designed to be flexible and to accommodate new technologies as they emerge. Prepaid access can include cards, electronic serial numbers or codes, mobile phones, key fobs and other yet-to-be-invented devices. Now that the comment period has ended and the information received has been thoroughly reviewed, we are diligently working to finalize the rule as quickly as possible, while continuing our obligation to strike the correct balance between law enforcement needs and a meaningful, workable regulation. With respect to timing, we recognize that the 270-day statutory deadline for finalizing the regulation has expired, and completing it remains a top FinCEN priority.

Strategic Collaboration with the Government of Mexico

FinCEN has a strong history of cooperation with its counterpart financial intelligence unit (FIU) in Mexico -- the Unidad de Inteligencia Financiera (UIF) -- dating back to 1994 when FinCEN completed negotiations of an agreement to exchange information on financial crimes that was signed by then-Secretary of the Treasury Lloyd Bentsen together with then-Mexican Finance Minister Pedro Aspe Armella. For 15 years, FinCEN's ongoing work with the UIF demonstrates the mutual commitment and deep level of cooperation between our two countries. The bilateral cooperation to exchange information relating to cross-border threats and thereby further law enforcement cooperation is leveraged through the participation of FinCEN and the UIF in the Egmont Group^{vi} of FIUs from over 100 jurisdictions around the world. Representatives from FinCEN and the UIF have long been active in building this international network, and both countries have served as chairmen of the Egmont Group in the past. Membership in the Egmont Group provides a structured process for making requests for tactical, case-related financial information from one nation to another outside of other international legal agreements such as mutual legal assistance treaties (MLATs) and Letters Rogatory. In recent years, both agencies expanded cooperation and information sharing to new levels, agreeing to work jointly to support bi-national law enforcement efforts to combat the illicit finance activity of the Mexican cartels and their cohorts in the United States. FinCEN also has deepened its cooperation with its Mexican counterpart responsible for AML/CFT regulations, the National Banking and Securities Commission (CNBV).

For example, FinCEN and the UIF completed a joint study in 2010 of cross-border currency flows and U.S. banknote activity in Mexico. The effort developed a model for constructive

sharing of financial information based on a relationship of shared goals and mutual benefits. The findings of the study helped inform the Mexican government's June 2010 decision to implement regulations restricting U.S. dollar acceptance by Mexican financial institutions. The FinCEN/UIF study also identified money laundering targets that were referred to U.S. and Mexican law enforcement agencies for investigative follow-up. The success of this study led to the detail of a senior FinCEN analyst to Mexico to work directly with the UIF in 2010.

FinCEN Analyst Deployed to Mexico

FinCEN's multi-year assignment of a senior analyst to Mexico has helped to facilitate closer cooperation and collaboration between FinCEN and the UIF, with the expected result of improving the quality and quantity of joint projects and facilitating the sharing of sensitive information and money laundering targets with U.S. law enforcement agencies, particularly U.S. Immigration and Customs Enforcement (ICE), the Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI) and Criminal Investigation division of the Internal Revenue Service (IRS-CI). The FinCEN analyst embedded in the UIF has proven to be a force-multiplier by utilizing his unique position to support many cases of joint interest to the U.S. and Mexican authorities. For example, the FinCEN analyst is providing analytical support to 12 bilateral law enforcement investigations, all of which are related to narcotics and contraband money laundering cases. The FinCEN analyst in Mexico continues to work closely with colleagues at FinCEN headquarters and also complements the work of our longstanding analyst based in Texas at the Southwest border High Intensity Financial Crime Area (HIFCA). Furthermore, in April 2010, FinCEN launched an effort with the support of the Office of National Drug Control Policy (ONDCP) to more consistently engage with and support financial

aspects of investigations in the High Intensity Drug Trafficking Areas (HIDTAs). A focus of the coming year will be training analysts and ensuring ongoing points of contact in the interagency coordinating groups in the HIDTAs.

Mexican Regulations Imposing Restrictions on Mexican Banks for Transactions in U.S.

Currency

As previously mentioned, on June 15, 2010, the Mexican finance ministry announced new AML regulations to restrict the amounts of physical cash (banknotes and coins) denominated in U.S. dollars that Mexican banks may receive.^{vii} Shortly following this announcement, FinCEN issued a public Advisory^{viii} to financial institutions advising them of these important actions taken by Mexican authorities. The Advisory outlines several potential direct and indirect effects – some of which we are already observing, and others that we continue to monitor for and assess. For example, in analyzing cross-border currency flows between the United States and Mexico, we have observed notable changes, but other potential impacts, such as increased pressure to place criminal proceeds in the U.S. financial system, or diversion of currency to other countries in the region, are more difficult to directly quantify. The Advisory also requests that filers include a special keyword in Suspicious Activity Report (SAR) narratives (“MX RESTRICTION”) where the filer believes suspicious financial activity could be related to the regulatory change in Mexico. This has allowed FinCEN to more easily monitor for potential shifts in suspicious activity or emerging money laundering trends.

As Mexican banks must now limit the amount of U.S. dollars they receive from their customers, they are sending less cash back to the United States through bank channels, such as wholesale

banknote shipments. Consistent with reporting from Mexican authorities and industry groups, wholesale banknote repatriation from Mexico to the United States has declined significantly following the implementation of the U.S. dollar cash restrictions. As reported on Currency Transaction Reports (CTRs) that are filed by depository institutions, currency repatriation from Mexican banks and licensed casas de cambio declined 64 percent in the fourth quarter of 2010 (the first full quarter after the Mexican regulations took effect) compared to the same period in 2009 (representing an annual decline of 37 percent comparing year-end 2010 to 2009).

Moving forward, we must also be mindful that as Mexican financial institutions limit their acceptance of U.S. dollar transactions, money flows -- particularly those related to narcotics trafficking or organized crime -- could instead be diverted from Mexico to other countries in the region. Moreover, trends in other forms of criminal activity such as trade-based money laundering could potentially rise. Vigilance is paramount and we will continue monitoring BSA data and other sources for changes in broader money laundering trends that may result, and we will continue to foster collaboration with our counterpart FIUs on this issue, including partners from Colombia and Guatemala who have hosted a number of multilateral FIU meetings on this topic.

Proposed Regulatory Requirement for Financial Institutions to Report Cross-Border Electronic Transmittals of Funds

In September 2010, FinCEN submitted an NPRM that would require certain depository institutions and money services businesses (MSBs) to report records to FinCEN of certain cross-border electronic transmittals of funds (CBETF). Current regulations already require that these

financial institutions maintain and make available, but not affirmatively report, essentially the same CBETF information. FinCEN issued this proposal to meet the requirements of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA). Section 6302 of IRTPA^{ix} directed the Secretary of the Treasury to study the feasibility of "requiring such financial institutions as the Secretary determines to be appropriate to report to the Financial Crimes Enforcement Network certain cross-border electronic transmittals of funds, if the Secretary determines that reporting of such transmittals is reasonably necessary to conduct the efforts of the Secretary against money laundering and terrorist financing."

Prior to publishing the NPRM, FinCEN conducted an extensive study of the technical feasibility to the government of imposing such a requirement and in January of 2007 published the congressionally-mandated report *Feasibility of a Cross-Border Electronic Funds Transfer Reporting System under the Bank Secrecy Act*^x that affirmed the feasibility of the reporting system. FinCEN, with the participation of both the financial services industry and law enforcement, then conducted a follow on study on *Implications and Benefits of Cross-Border Funds Transmittal Reporting*^{xi} to determine and quantify both the benefits to the public of the system and the costs to parties affected by any such potential regulatory requirement.

The proposal will produce valuable data for law enforcement agencies by having first-in and last-out depository institutions (those institutions that are the first to receive funds transferred electronically from outside the United States or the last U.S. institution to transmit funds internationally) to report all such transmittals of funds. MSBs that conduct CBETF will be required to report international transactions equal to or in excess of \$1,000. FinCEN estimates that fewer than 300 depository institutions and 700 MSBs will be subject to this requirement.

FinCEN is also proposing to require an annual filing by all depository institutions of a list of taxpayer identification numbers of accountholders who transmitted or received a CBETF. This additional information will facilitate the utilization of the CBETF data, in particular as part of efforts to combat tax evasion by those who would seek to hide assets in offshore accounts. The comment period for the NPRM ended on December 29, 2010 and we are currently reviewing the comments received.

Bi-national Partnering to Combat Bulk Cash Smuggling

I would also like to share with you that in April 2010, FinCEN supported DHS and the Government of Mexico to complete a U.S.-Mexico Bi-national Criminal Proceeds Study. The findings of the study were helpful to United States and Mexico law enforcement professionals in their efforts to combat the smuggling of illicit proceeds. This was a successful initiative that not only provided information that is being used to enhance investigative efforts in regard to bulk cash smuggling, it also fosters better collaboration with our counterparts in Mexico. FinCEN continues to be supportive of such initiatives to increase vigilance in combating illicit proceeds, and facilitate law enforcement efforts to detect, disrupt, and dismantle criminal networks engaged in this kind of illegal transnational activity.

Conclusion

The Administration has made combating drug-related crime in Mexico a national priority, and as a result the Treasury Department's efforts in this regard have increased significantly over recent years through targeted financial measures, and outreach to international counterparts and our partners in the private sector. While we explore new ways in which our two countries can continue to foster collaboration, FinCEN will further build upon its excellent relationship with

the UIF in support of law enforcement. Success in this regard requires the ongoing vigilance of private financial institutions and their efforts to report appropriate information to the government. By facilitating the strategic sharing of information, we can protect our financial institutions from criminal abuse while providing the government with the information it needs to track down the criminal actors. We are very encouraged by the progress we have made thus far, and we are dedicated to continuing to build on these accomplishments as we chart a course for the future. Thank you for inviting me to testify before you today. I would be happy to answer any questions you may have.

ⁱ http://ondcp.gov/publications/swb_counternarcotics_strategy09/swb_counternarcotics_strategy09.pdf

ⁱⁱ http://ondcp.gov/publications/swb_implementation10/swb_implementation10.pdf

ⁱⁱⁱ http://www.ffiec.gov/bsa_aml_infobase/documents/regulations/Annunzio_Wylie.pdf

^{iv} 74 FR 22129 (May 12, 2009)

^v <http://www.gpo.gov/fdsys/pkg/PLAW-111publ24/pdf/PLAW-111publ24.pdf>

^{vi} <http://www.egmontgroup.org/>

^{vii} http://www.fincen.gov/news_room/rp/files/06-2010-0238-eng-final.pdf

^{viii} http://www.fincen.gov/statutes_regs/guidance/html/fin-2010-a007.html

^{ix} <http://thomas.loc.gov/cgi-bin/query/F?c108:4:./temp/~c108zQiWCF:e11893:>

^x http://www.fincen.gov/news_room/rp/files/cross_border.html

^{xi} http://www.fincen.gov/news_room/rp/rulings/pdf/ImplicationsAndBenefitsOfCBFTR.pdf