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ANTI-MONEY LAUNDERING

Better Communication Could Enhance the Support FinCEN Provides to Law Enforcement

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Highlights of [GAO-10-622T](#), a testimony before the Subcommittee on Oversight and Investigations, Financial Services Committee, House of Representatives

Why GAO Did This Study

Financial investigations are used to combat money laundering and terrorist financing, crimes that can destabilize national economies and threaten global security. The Financial Crimes Enforcement Network (FinCEN), within the Department of the Treasury, supports law enforcement agencies (LEAs) in their efforts to investigate financial crimes by providing them with services and products, such as access to financial data, analysis, and case support. This statement discusses the extent to which the law enforcement community finds FinCEN's support useful in its efforts to investigate and prosecute financial crimes. This statement is based on work GAO completed and issued in December 2009.

What GAO Recommends

In December 2009, GAO recommended that, among other things, FinCEN clarify the types of complex analytic products it can provide to LEAs; establish a process for soliciting input regarding the development of analytic products; and develop a mechanism to collect sensitive information from LEAs regarding regulatory changes. FinCEN agreed with our recommendations and outlined efforts it plans to take in response to our findings.

View [GAO-10-622T](#) or [key components](#). For more information, contact Eileen Larence at (202) 512-8777 or larencee@gao.gov.

ANTI-MONEY LAUNDERING

Better Communication Could Enhance the Support FinCEN Provides to Law Enforcement

What GAO Found

In December 2009, we reported that the majority of 25 LEAs GAO surveyed found FinCEN's support useful in their efforts to investigate and prosecute financial crimes, but FinCEN could enhance its support by better informing LEAs about its services and products and actively soliciting their input. Of the 20 LEAs that responded to a question GAO posed about which FinCEN services they found most useful, 16 LEAs cited direct access to Bank Secrecy Act data—records of financial transactions possibly indicative of money laundering that FinCEN collects—as the most valuable service FinCEN provides. Additionally, 11 federal LEAs cited a tool that allows federal LEAs to reach out, through FinCEN, to financial institutions nationwide to locate financial information related to ongoing investigations as a key service offered by FinCEN. To further enhance the value and relevance of its analytic work to LEAs, FinCEN has sought to increase development of complex analytic products, such as reports identifying trends and patterns in money laundering. Sixteen law enforcement agencies GAO surveyed reported that they generally found these complex analytic products useful.

However, we reported that three of five LEAs that are among FinCEN's primary federal customers stated that FinCEN does not provide detailed information about the various types of complex analytic products it can provide. Three of FinCEN's primary customers also stated that they would like more information about when completed products become available. In December 2009, we recommended that FinCEN clarify the types of complex analytic products it can provide to LEAs. FinCEN agreed with our recommendation and in April 2010 outlined plans to improve communication with law enforcement regarding FinCEN's services, products, and capabilities. All five LEAs also reported that FinCEN does not actively seek LEAs' input about ongoing or planned analytic products, though four of these LEAs believed that doing so could improve the quality and relevance of the products FinCEN provides to its customers. We recommended that FinCEN establish a process for soliciting input regarding the development of its analytic products. FinCEN agreed with our recommendation and in April 2010 outlined a number of steps it plans to take to better assess law enforcement needs, including ongoing efforts to solicit input from LEAs. Finally, liaisons from four of FinCEN's top five federal LEAs reported that their agencies do not have sufficient opportunities to provide input when FinCEN is considering regulatory changes because their comments often contain sensitive information that may compromise investigative techniques or strategies used in ongoing investigations. We recommended that FinCEN develop a mechanism to collect sensitive information regarding regulatory changes from LEAs. In April 2010, FinCEN reported that it developed an approach for collecting sensitive information without making the comments publicly available.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the services and products that the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) provides to law enforcement in support of their efforts to investigate money laundering, terrorist financing, and other financial crimes. Successful investigations into financial crimes can support the prosecution of money laundering, drug trafficking, and terrorist financing—crimes that have the potential to destabilize national economies and threaten global security. The Bank Secrecy Act (BSA), enacted in 1970, authorized the Secretary of the Treasury to establish anti-money laundering record keeping and reporting requirements for domestic financial institutions to help prevent abuse of the nation's financial system.¹ The BSA has three main objectives: create an investigative audit trail through regulatory reporting standards; impose civil and criminal penalties for noncompliance; and improve the detection of criminal, tax, and regulatory violations. Under the BSA's reporting requirements, financial institutions must retain records and file BSA reports when doing so would have a high degree of usefulness in criminal, tax, and regulatory investigations or in the conduct of intelligence activities to protect against international terrorism. For example, suspicious activity reports (SARs) are filed by financial institutions to inform the federal government of any suspicious transaction related to a possible violation of law or regulation.²

FinCEN, established in 1990 to oversee the administration of the BSA, helps to prevent financial crime by serving as a governmentwide, service-oriented, financial information-sharing agency to more than 275 federal

¹ Bank Secrecy Act, titles I and II of Pub. L. No. 91-508, 84 Stat. 1114 (1970) (codified as amended in 12 U.S.C. §§ 1829b, 1951-1959; 31 U.S.C. §§ 5311-5332). The BSA requires financial institutions to maintain records on financial transactions including suspicious activity that may be related to money laundering or other financial crimes.

² Under the regulations administered by FinCEN, a SAR is generally required when a transaction is conducted or attempted by, at, or through a financial institution that involves or aggregates at least \$5,000 in funds or other assets and the institution knows, suspects, or has reason to suspect that the transaction: involves funds derived from illegal activities; is intended or conducted in order to hide or disguise funds or assets derived from illegal activities as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation; is designed to evade any reporting requirement under federal law or other BSA requirement; has no business or apparent lawful purpose; or the transaction is not the sort in which the customer would normally be expected to engage and there is no reasonable explanation known for the transaction; or involves use of the institution to facilitate criminal activity. See 31 C.F.R. §§ 103.15-.21.

and state law enforcement agencies. In supporting law enforcement, FinCEN administers the financial transaction reporting system for the recordkeeping and reporting requirements mandated or authorized under the BSA. FinCEN is also responsible for the administration of BSA compliance in the financial industry and, as such, indirectly works to support law enforcement by developing and implementing regulatory standards so that law enforcement agencies have accurate and relevant information for conducting financial crimes investigations. Among other things, the support FinCEN provides to domestic law enforcement agencies in their efforts to investigate and prosecute financial crimes includes providing access to the BSA data to identify individuals, financial transactions, or accounts suspected of being connected to money laundering, terrorist financing, or other financial crimes. FinCEN also responds to requests from law enforcement agencies for information pertaining to specific investigations, and produces analytic products covering a range of issues related to financial crimes.³ For example, FinCEN has produced strategic reports examining the processes and actors, both licit and illicit, involved in the flow of currency between the United States and neighboring countries along various regions of the U.S. borders. We issued a report in December 2009 that addressed FinCEN's role in supporting law enforcement efforts to investigate and prosecute financial crimes such as money laundering and terrorist financing.⁴ My statement today highlights findings and recommendations from that report and addresses the extent to which the law enforcement community finds FinCEN's support useful in their efforts to address such crimes.

For our December 2009 report, among other things, we surveyed a nonprobability sample of 29 federal and state law enforcement agencies that included the primary users of FinCEN's services and products in fiscal years 2001 through 2007. In total, we received usable questionnaires from 25 of the 29 agencies we surveyed. We asked them about the extent to

³ FinCEN also collaborates with international counterparts in other countries to facilitate sharing of financial information between domestic and international law enforcement agencies. For more information, see GAO, *International Financial Crime: Treasury's Roles and Responsibilities Relating to Selected Provisions of the USA PATRIOT Act*, [GAO-06-483](#) (Washington, D.C.: May 12, 2006).

⁴ GAO, *Anti-Money Laundering: Improved Communication Could Enhance the Support FinCEN Provides to Law Enforcement*, [GAO-10-141](#) (Washington, D.C.: Dec. 14, 2009).

which they found FinCEN's services and products useful.⁵ We also interviewed officials from 8 of the 25 federal and state law enforcement agencies responding to our questionnaire including the agencies that FinCEN has identified as its top five federal law enforcement customers regarding the extent to which FinCEN's support has contributed to their investigations of financial crimes.⁶ We also reviewed a number of FinCEN reports and strategic plans including an internal assessment of the support FinCEN's Analysis and Liaison Division (ALD) provides to its domestic law enforcement customers.⁷ We conducted this work in accordance with generally accepted government auditing standards. More detail on our scope and methodology is included in our December 2009 report.⁸

⁵ Nonprobability sampling is a method of sampling when nonstatistical judgment is used to select members of the sample, using specific characteristics of the population as criteria. Results from nonprobability samples cannot be used to make inferences about a population, because in a nonprobability sample some elements of the population being studied have no chance or an unknown chance of being selected as part of the sample.

⁶ FinCEN has identified the following agencies as its top five federal law enforcement customers: the Drug Enforcement Administration, the Federal Bureau of Investigation, Immigration and Customs Enforcement, the U.S. Secret Service, and the Internal Revenue Service's Criminal Investigation Division.

⁷ FinCEN's Analysis and Liaison Division (ALD) is the division primarily responsible for providing support to law enforcement agencies.

⁸ [GAO-10-141](#).

Law Enforcement Finds a Number of FinCEN's Services and Products Useful, but Would Like More Information about Select Products and Opportunities to Provide FinCEN with Input about Some Types of Support

In our December 2009 report, we found that law enforcement agencies we surveyed generally reported finding FinCEN's services and products useful, citing direct access to BSA data, on-site liaisons, and access to financial information on people or organizations suspected of being involved in significant money laundering or terrorist financing activities—known as the 314(a) process—as those that are among the most useful.⁹ However, we found that FinCEN could (1) better inform law enforcement of the types of complex analytic products that it can provide, (2) more clearly define the types of requests for complex analytic support that it will accept, and (3) actively solicit input on the development of complex analytic products in order to help law enforcement better utilize FinCEN's expertise and enhance the value of the products it provides to law enforcement. Finally, we found that while FinCEN has taken initial steps to more actively solicit law enforcement input on proposed regulatory actions, FinCEN lacks a mechanism to allow law enforcement agencies to submit sensitive information regarding the potential impact of proposed regulatory actions on financial crimes investigations.

Law enforcement agencies cited direct access to BSA Data, the 314(a) process, and on-site liaisons as the most useful services FinCEN provides. Most law enforcement agencies responding to our survey (16 out of 20) cited direct access to BSA data as most useful and 19 out of 22 agencies responding indicated that BSA data was the FinCEN service they used most often.¹⁰ Liaisons from three of FinCEN's top five federal law enforcement customers noted that direct access to the BSA database provides law enforcement a means to access these data in order to help identify, deter, and detect money laundering or other potential financial crimes related to a range of criminal activity. As a result of the

⁹ The "314(a) process" refers to section 314(a) of the USA PATRIOT Act which required the Secretary of the Treasury to issue regulations to encourage further cooperation among financial institutions, financial regulatory authorities, and law enforcement authorities to promote sharing information regarding individuals, entities, and organizations engaged in or reasonably suspected of engaging in terrorist acts or money laundering activities, and to permit the sharing of information by law enforcement and regulatory authorities with financial institutions regarding persons reasonably suspected of engaging in terrorist acts or money laundering activity. 31 U.S.C. § 5311 note (Cooperative Efforts to Deter Money Laundering). See also 31 C.F.R. § 103.100.

¹⁰ Although a total of 25 law enforcement agencies responded to our questionnaire, all 25 agencies did not provide responses to each question. For example, a total of 20 agencies responded to the question regarding which FinCEN service or product they found to be most useful, and 22 agencies responded to the question regarding which FinCEN service they use most often.

Uniting and Strengthening America By Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), FinCEN also introduced a new tool to further assist federal law enforcement agencies in their investigations of financial crimes.¹¹ This tool, developed by FinCEN in response to Section 314(a) of the USA PATRIOT Act, enables federal law enforcement agencies to reach out to financial institutions across the country for potential information related to financial crimes investigations. FinCEN facilitates the 314(a) process through the use of a secure communications system. This system allows law enforcement to quickly locate financial data, such as open accounts and financial transactions related to ongoing investigations of persons, entities, or organizations suspected of being involved in significant money laundering or terrorist financing activities. Federal law enforcement agencies reported that the 314(a) process is a key service offered by FinCEN that provides case-specific and timely information to support ongoing law enforcement investigations. Specifically, all 11 federal agencies we surveyed that had a basis to judge the 314(a) process responded that it was either very or extremely helpful. Finally, law enforcement agencies reported that being able to maintain agency liaisons on-site at FinCEN is another valuable service FinCEN provides, facilitating law enforcement agency access to FinCEN's services and products.¹² Specifically, all 9 of the federal law enforcement agencies responding to the questionnaire that indicated they had on-site liaisons reported that it was extremely helpful.

FinCEN has sought to increase its production of more complex analytic products, which law enforcement agencies report are also helpful in financial crimes investigations. As more law enforcement agencies gained the ability to directly access the BSA data and conduct their own searches of the data, their reliance on FinCEN to conduct basic queries on their behalf has decreased. We reported that from 2004 through 2007, requests to FinCEN to conduct such queries decreased 80 percent from 2,048 to 409.¹³ As a result, FinCEN has identified a need to redefine its

¹¹ Pub. L. No. 107-56, 115 Stat. 272 (2001).

¹² FinCEN provides office space for law enforcement agencies to locate full-time liaisons at FinCEN's headquarters in Vienna, Virginia to facilitate their agencies' access to FinCEN's services and products.

¹³ FinCEN did not track the number of basic queries requested by law enforcement agencies before fiscal year 2004, so FinCEN was unable to provide us these data for fiscal years 2001 through 2003.

role in supporting law enforcement agencies and to enhance the value and relevance of its analytic work. As part of this effort, in recent years FinCEN has sought to increase its production of more sophisticated complex analytic products. These products range from complex tactical case support requiring large-scale BSA data analysis, to a variety of strategic projects, studies, and trend analyses intended to identify and explain money laundering methodologies or assess threats posed by large-scale money laundering and terrorist financing activities. For example, in 2007 FinCEN provided a study to one law enforcement agency that identified currency flows between the United States and another country which helped this agency to identify potential patterns in drug trafficking. Based on responses to our survey and interviews, law enforcement agencies reported general satisfaction with FinCEN's analytic products. For example, when asked why they requested analytic support from FinCEN, 15 out of 17 agencies that indicated they had made such requests reported that they did so because they believed FinCEN has unique expertise related to analyzing the BSA data.¹⁴ Additionally, liaisons from all of FinCEN's top five federal law enforcement customers specifically highlighted technical reference manuals as one of the most useful complex analytic products FinCEN produces. FinCEN's technical reference manuals provide practical information on a variety of issues, including how particular financial transfer or payment mechanisms may be used to launder money.

FinCEN could better inform law enforcement about the types of complex analytic products it can provide and when those products become available. We reported that according to liaisons from three of FinCEN's top five federal law enforcement customers, FinCEN does not provide detailed information about each type of product that would help law enforcement agencies to fully understand the various types of support FinCEN can provide.¹⁵ Senior ALD officials also acknowledged that they could clarify and better communicate to their law enforcement customers

¹⁴ Law enforcement agencies were asked about their reasons for requesting *any* type of analytic support from FinCEN, including requests for both basic and complex analytic products.

¹⁵ Our interviews with law enforcement agencies including interviews with the liaisons of the five federal agencies that use the most FinCEN services and products involved aspects of each agency's experiences working with FinCEN. As a consequence, we did not ask the same questions of all liaisons in these interviews. Officials with these agencies volunteered this information; therefore, we do not know the extent to which the other agencies had concerns regarding outreach.

the various types of complex analytic products FinCEN can provide. In addition, in both interviews and in response to open-ended survey questions, officials from 7 of the 25 law enforcement agencies we surveyed, including three of FinCEN's top five federal law enforcement customers, also indicated that they would like more information about when completed products become available.¹⁶ These liaisons noted that because FinCEN does not actively communicate with them about when completed products are available, they may not be aware of all of FinCEN's products that could be useful in their investigations of financial crimes. Similarly, an official from one of FinCEN's top five federal law enforcement customers noted that, in some cases, analyses FinCEN conducts for one customer might also be useful to the investigations of other financial crimes.

In an internal report generated by ALD staff in August 2008, ALD officials acknowledged that law enforcement liaisons reported that they would like FinCEN to provide clear guidance on the dissemination of its products.¹⁷ FinCEN officials also noted that they typically observe the "third-party rule" on dissemination of information obtained from the requesting agency and, in some cases, this may limit their ability to share products that are completed in response to a request from a single customer. The rule generally provides that information properly released by one agency to another agency cannot be released by the recipient agency to a third agency without prior knowledge and consent of the agency that originally provided the information. The third-party rule applies to all data and information FinCEN receives from the agencies with which it works on a specific project. However, officials further stated that they are committed to looking for ways to better publicize FinCEN's analytic work and will continue to do so within the framework of adequately protecting the information provided to them. While we recognize the need for FinCEN to protect sensitive information, establishing a process to clarify and communicate to law enforcement when and under what circumstances FinCEN can or will attempt to share analytic products with other law

¹⁶ Because officials volunteered this information in both interviews and in response to open-ended survey questions, we do not know the extent to which other agencies had similar concerns.

¹⁷ In 2008, ALD conducted an internal assessment of the support the division provides to its domestic law enforcement customers. The resulting internal report, provided to senior FinCEN management in August 2008, assesses the division's efforts to measure the requirements of FinCEN's law enforcement customers and align the resources and efforts of ALD personnel to satisfy those requirements. This report outlined several recommendations designed to enhance FinCEN support and better meet the needs of its law enforcement customers.

enforcement customers will help ensure that it is effectively carrying out its mission to support the investigation and prosecution of financial crimes. We recommended that FinCEN clarify and communicate to law enforcement agencies the various types of complex analytic products FinCEN can provide and establish a process for informing law enforcement agencies about the availability of these products. FinCEN agreed with our recommendation and outlined plans it would take in order to improve communication with law enforcement regarding the services, products, and capabilities FinCEN offers. In response to our report, FinCEN officials stated that they would compile an inventory of analytic products historically produced, those FinCEN should produce, and those requested by law enforcement. FinCEN officials reported that it would consult with law enforcement partners to refine its recommendations, and then categorize and describe the types of analytic products for law enforcement.

In April 2010, we obtained updated information from FinCEN on the status of its efforts to address our recommendations. Specifically, FinCEN officials stated that its Office of Law Enforcement Support (OLE) created a draft “Menu of Products and Services” which is intended to clarify the types of products and services FinCEN’s analytical operation can provide. According to FinCEN officials, OLE also created a draft “Menu of Resources” which describes the data sources and other tools available to FinCEN analysts that can be utilized in the course of their analytical support operations. These officials explained that, while these documents are still in draft form, once they are finalized, they will be distributed to its law enforcement customers through FinCEN’s Secure Outreach Portal, on their intranet, and through direct and e-mail contact between FinCEN personnel and external agencies.

Defining the types of requests for complex analytic support that FinCEN will accept could also help law enforcement better utilize FinCEN’s expertise in analyzing the BSA data. While FinCEN has informed law enforcement that it is now focusing the support it provides predominantly on those requests that it considers to be for complex analytic support, we found that it could better inform law enforcement about its decision-making process regarding what requests it will accept or reject. Law enforcement agencies may submit requests for complex analysis in support of specific investigations;¹⁸ however, in interviews with

¹⁸ This type of support may involve large-scale, in-depth BSA data analysis related to specific law enforcement investigations.

officials from FinCEN's top five federal law enforcement customers, liaisons from two of these agencies stated that they did not fully understand what types of cases FinCEN is willing and able to support.¹⁹ Furthermore, in response to an open-ended survey question on FinCEN's analytic support, officials from two other law enforcement agencies reported that they do not fully understand FinCEN's decision-making process for accepting or rejecting requests for support. These agencies indicated that while they understand that FinCEN has limited staff and resources to dedicate to analytic support, FinCEN has not been consistent in responding to their requests for support and does not always provide explanations why specific requests were rejected.

In addition, in the internal report generated by ALD staff in August 2008, ALD officials acknowledged confusion among law enforcement customers about the types of requests FinCEN will accept, as well as law enforcement agencies' concern that FinCEN does not sufficiently explain the reasons for declining specific requests for support. Senior officials acknowledged the report's findings and as a first step, reorganized ALD in October 2009 in order to realign resources to better meet law enforcement's needs. For example, FinCEN officials reported that they created a new office within ALD that is responsible for providing proactive analysis of BSA data and communicating regularly with law enforcement agents in the field. The officials stated that they believe the creation of this office will allow them to leverage analytical assets and abilities across FinCEN to better inform all of their partners within the law enforcement, intelligence, regulatory, and financial communities. ALD also identified the development and implementation of processes to improve communication with its law enforcement customers as a 2010 priority. We recommended that FinCEN complete a plan, including identifying the specific actions FinCEN will take to better assess law enforcement needs, and make the division's operations more transparent to FinCEN's law enforcement customers. This plan should include a mechanism for FinCEN to communicate to law enforcement agencies its decision-making process for selecting complex analytic products to pursue and why FinCEN rejects a request. FinCEN agreed with our recommendation and stated that in October 2009, it began an effort to address communication with law enforcement on three levels: analytical products, workflow process, and outreach. The teams assessing workflow processes and

¹⁹ Because officials volunteered information about their concerns during interviews, we do not know the extent to which the other three agencies may have similar concerns.

outreach efforts will make recommendations that will include provisions for better assessment of law enforcement needs and more insight into FinCEN's decision-making on complex analytical products.

In April 2010, FinCEN officials reported that they have taken steps to collect information about law enforcement customer's priorities, needs, and plans. For example, FinCEN officials reported plans to create a survey to capture law enforcement agencies' specific investigative focus and needs. Furthermore, the officials stated that personnel from the Office of Law Enforcement Support working in consultation with law enforcement representatives drafted a new data collection form for documenting requests for analytic support from law enforcement. FinCEN officials also reported that they have established a process for reviewing and responding to requests and informing the requester of FinCEN's final decision. According to FinCEN officials, once requests have been reviewed, completed forms will be scanned and retained for future reference so that requestors may be informed as to why requests were accepted or denied.

Actively soliciting input on the development of complex analytic products could help FinCEN enhance their value to law enforcement agencies. While FinCEN communicates with its law enforcement customers about a variety of issues, we reported that the agency could enhance the value of its complex analytic work by more actively soliciting law enforcement's input about ongoing or planned analytic work. In interviews with officials from FinCEN's top five federal law enforcement customers, liaisons from all five agencies reported that FinCEN does not consistently seek their input about ongoing or planned analytic work. Four of the liaisons stated that, as a result, they do not have regular opportunities to provide FinCEN with meaningful input about what types of products would be useful to them, potentially creating a gap between the products the agency generates and the products that its law enforcement customers need and want. Similarly, three other law enforcement liaisons noted that FinCEN does not provide them with regular opportunities to make proposals regarding the types of complex analytic products FinCEN should undertake. According to FinCEN officials, while the agency primarily relies on ad hoc communication with law enforcement agencies—such as talking with law enforcement representatives located on-site, with law enforcement representatives at conferences, or with individual agents in the field—FinCEN does not have a systematic process for soliciting input from law enforcement agencies on the development of its complex analytic work.

In their August 2008 internal report, ALD officials acknowledged the concerns of its law enforcement customers regarding their lack of opportunities to provide input on FinCEN's planned complex analytic work, and that FinCEN does not always solicit or incorporate law enforcement input in the selection of these products. As a solution, the internal report recommended that the law enforcement roundtable be used as a forum to discuss proposals for analytic products with FinCEN's law enforcement customers.²⁰ While this is a productive step, relying solely on the roundtable may not allow opportunities for some of FinCEN's other law enforcement stakeholders to provide input because the roundtable is typically only attended by federal law enforcement customers. Furthermore, not all of FinCEN's federal law enforcement customers are able to regularly attend these meetings.²¹

FinCEN does use annual surveys and feedback forms to obtain feedback from law enforcement on the usefulness of some completed products, although these surveys and forms are not designed to obtain detailed information on the full range of services and products FinCEN provides. For example, the annual surveys do not cover other analytic products such as FinCEN's strategic analysis reports or its technical reference guides. Actively soliciting stakeholder input and providing transparency with regard to decision making are GAO-identified best practices for effectively meeting stakeholder needs. Incorporating these best practices could help FinCEN maximize the usefulness of its support. FinCEN officials emphasized that law enforcement also has a responsibility to provide constructive input on FinCEN's services and products. While we recognize that communication between FinCEN and its law enforcement customers is a shared responsibility, actively soliciting stakeholder input will allow FinCEN to capture stakeholder interests and better incorporate law enforcement perspectives into the development of complex analytic products. As a result, we recommended that FinCEN establish a systematic process for actively soliciting input from law enforcement agencies and incorporating this input into the selection and development

²⁰ FinCEN holds a series of bimonthly meetings with some federal law enforcement representatives, known as the law enforcement roundtable. The roundtable is primarily used for general information sharing, such as discussing the current missions of participating agencies or providing updates about the 314(a) process. According to FinCEN officials, the agency does not use the roundtable to discuss ongoing investigations or to solicit input from law enforcement about the development and prioritization of its complex analytic products.

²¹ FinCEN's state and local law enforcement customers do not attend the law enforcement roundtable.

of its analytic products. FinCEN agreed with this recommendation and outlined efforts it plans to undertake in response to our findings. In October 2009, according to FinCEN officials, ALD established an Office of Trend and Issue Analysis (OTI) which is to focus on the development of strategic-level analysis of Bank Secrecy Act data. FinCEN officials also reported that ALD reassigned a number of its field representatives to OLE in order to better utilize their experience and to enhance communication with law enforcement customers. Finally, FinCEN stated that it also plans to design an institutional process for collecting the kind of information required to gain broader insight into its law enforcement partners' priorities. In providing updates on their efforts to address our recommendations, FinCEN officials stated that they are making a concerted effort to engage their law enforcement customers at a variety of organization levels to determine their key priorities and how FinCEN can best support their priorities and strategic goals.

FinCEN has taken initial steps to more actively solicit law enforcement input on proposed regulatory actions, but lacks a mechanism for collecting sensitive information about these actions. Regulatory changes instituted by FinCEN can affect the content or structure of BSA data used in law enforcement investigations as well as law enforcement's efforts to indict and prosecute financial crimes. However, we reported that liaisons from four of FinCEN's top five federal law enforcement customers reported concerns that their agencies do not have sufficient opportunities to provide input when FinCEN is considering proposed regulatory changes. The internal report ALD generated in August 2008 also recognized that changes to BSA regulations have the potential to alter the kind of information that financial institutions report. The report also acknowledged federal law enforcement agencies' concerns that FinCEN does not generally engage them in the identification and resolution of regulatory issues that might influence law enforcement operations. According to senior FinCEN officials, the agency recognizes the need to do a better job of obtaining law enforcement input on proposed regulatory changes in the future and did so in one recent case. Specifically, in developing regulations in 2009 related to stored value cards, such as prepaid debit cards and gifts cards, FinCEN held multiple meetings with representatives from its top five federal law enforcement customers specifically designed to obtain their input and provide

recommendations on developing the proposed regulation.²² FinCEN also used the law enforcement roundtable to inform agencies about the planned regulatory changes. FinCEN's efforts to actively solicit law enforcement input in this case are encouraging, and continuing such efforts would help ensure that law enforcement input is considered before regulatory changes are made.

Once FinCEN has decided to move forward with a proposed regulatory change, it follows the process laid out in the Administrative Procedure Act (APA) for obtaining official comments on the proposal from interested stakeholders including regulators, financial institutions, and law enforcement agencies. The APA prescribes uniform standards for rulemaking and most federal rules are promulgated using the APA-established informal rulemaking process, also known as "notice and comment" rulemaking. Generally, a notice of proposed rulemaking (NPRM) is published in the Federal Register announcing an agency's intent to promulgate a rule to the public.²³ However, we reported that liaisons from four of FinCEN's top five federal law enforcement customers reported that the public record is not always the most appropriate venue for providing comments on proposed regulatory changes because their comments often contain law enforcement sensitive information. According to these officials, raising these concerns in a public forum may compromise key investigative techniques or strategies used in ongoing

²² Stored value cards are prepaid debit cards that use magnetic stripe technology to store information about funds that have been prepaid to the card. Payroll cards, government benefit cards, gift cards, and telephone cards are examples of stored value cards. Stored value cards often allow holders to transfer money values anonymously without being subject to the same controls required of institutions that deal with credit and debit cards. While there are many forms and uses of stored value cards in the marketplace, there are two main categories: (1) single-purpose or "closed-loop" cards, such as gift cards, which can only be used to purchase goods at particular retailers, or prepaid telephone cards, which can only be used to make telephone calls, and (2) multipurpose or "open-loop" cards, which can be used to make debit transactions at a wide variety of retail locations, as well as for other purposes, such as receiving direct deposits and withdrawing cash from ATMs.

²³ The APA requires that the NPRM include a statement of the time, place, and nature of the public rulemaking proceedings, reference to the legal authority under which the rule is proposed, and the terms or substance of the proposed rule or a description of the subjects and issues involved. The NPRM also generally includes the timing and manner in which the public may comment on the proposed rule. E.O. 12866 states that most rulemakings should include a comment period of 60 days, and most agencies do provide a 60-day or longer comment period for complex or controversial rules. After issuance of the NPRM, agencies are generally required to place public comments as well as other supporting materials in a rulemaking docket which must be available for public inspection.

investigations. According to FinCEN officials, at the time of our review, they did not have a systematic process for soliciting law enforcement-sensitive comments on proposed regulatory changes in a nonpublic docket. The importance of stakeholder input in the process of proposing regulatory changes is well established—it is the basis for the public comment period in the NPRM process. In order to improve FinCEN’s efforts to receive important information necessary to making decisions about proposed regulatory changes, we recommended that FinCEN develop a mechanism to collect law enforcement sensitive information from law enforcement agencies during the public comment period of the NPRM process. FinCEN agreed with our recommendation and stated that it would determine and implement appropriate ways to communicate to the law enforcement community its ability to receive and use law enforcement sensitive information in this context. In April 2010, FinCEN officials stated that they have developed an approach for collecting law enforcement sensitive information during the public notice and comment period of the NPRM process without making the comments publicly available. According to FinCEN officials, FinCEN will advise law enforcement, through the law enforcement liaisons, that they may provide law enforcement sensitive information at the time of publication of each NPRM and inform them that FinCEN will not post those comments or make them publicly available.

Mr. Chairman, this concludes my statement. I would be pleased to respond to any questions that you or other Members of the Subcommittee may have.

Contacts and Acknowledgements

For questions about this statement, please contact Eileen R. Larence at (202) 512-8777 or larencee@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement.

In addition to the contact above, individuals making key contributions to this statement include Kirk Kiester, Assistant Director; Samantha Carter, and Linda Miller. Additionally, key contributors to our December 2009 report include Hugh Paquette, Miriam Hill, David Alexander, George Quinn, Jr., Billy Commons, Jan Montgomery, and Sally Williamson.

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