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Money Laundering: The Anti-Structuring Laws

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I. Introduction

Several money laundering laws do not apply until the amount of money involved exceeds $10,000. The laws include three reporting requirements and one substantive crime. Launderers have responded to these laws in part by "structuring" their transactions—breaking them up so the amount involved in each transaction is less than $10,000. This Article collects and analyzes the laws that make structuring a crime. I have discussed one such

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law, the cash transaction report (CTR) anti-structuring statute, in a previous article.[1] This Article analyzes the anti-structuring provisions of the three other money laundering laws that use numerical thresholds.[2] It also examines how the CTR anti-structuring statute is developing, both for its own sake and because it anticipates issues for the other anti-structuring laws.

II. Threshold Laws and the Growth of Structuring

A $10,000 threshold is used for three reporting requirements and for the crime of engaging in monetary transactions in property derived from specified unlawful activity. These laws, along with evidence that launderers structured transactions to avoid them, are discussed below.

A. *Cash Transaction Reports*

A CTR must be filed with the government when a domestic financial institution[3] is involved in a currency transaction over $10,000.[4] The duty to file is on the institution,[5] and failure to file a CTR is a crime.[6]

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1. *See* Sarah N. Welling, *Smurfs, Money Laundering, and the Federal Criminal Law: The Crime of Structuring Transactions*, 41 U. Fla. L. Rev. 287 (1989).

2. Using a numerical threshold to distinguish prohibited from acceptable conduct is unusual in criminal law because a slight distinction in conduct results in a dramatic distinction in consequences. The $10,000 threshold in the reporting laws means that failing to file a report on a transaction involving $9999 is not criminal, but failing to file a report on a transaction involving $10,001 is a felony.

These statutes use numerical lines to eliminate de minimis transactions. The government is not interested in these relatively small transactions for two reasons. First, the transactions are not suspicious—use of cash in small amounts is not indicative of criminal activity. Second, the government does not want reports on smaller transactions in order to avoid being inundated with reports which would make the reporting law less effective. Nonetheless, a reporting blizzard has already begun, with CTR filings topping 7.4 million in 1991 compared with only 369,000 in 1981. *Statistical Indicators: Bank Secrecy Act/8300 Filings*, FinCEN Trends, (Fin. Crimes Enforcement Network, Arlington, Va.) Apr. 1992, at 12. Similarly, Form 8300 filings increased from 12,000 in 1986 to 66,000 in 1991. *Id.*

3. The definition of financial institution is broad. "Financial institution" includes, *inter alia*, banks, brokers or dealers in securities, check cashers, telegraph companies, casinos, the United States Postal Service, and any person subject to the supervision of any state or federal bank supervisory authority. 31 C.F.R. § 103.11(i) (1992).

4. 31 U.S.C. § 5313(a) (1988); 31 C.F.R. § 103.22(a)(1) (1992).

5. 31 C.F.R. § 103.22(a)(1), (2) (1992).

6. 31 U.S.C. §§ 5313(a), 5322 (1988).

The first case revealing that launderers were structuring transactions to avoid filing CTR's involved a banker who gave a customer a cash loan arranged in five notes for $9000 each rather than a single note for $45,000.[7] Soon other structuring cases appeared,[8] and the schemes revealed were sometimes comical.[9] Structuring was clearly a problem because it was becoming more frequent,[10] and the government began to lose when it prosecuted the cases as failure-to-report crimes.[11]

B. Import/Export Reports

The import/export reporting law requires persons transporting monetary instruments totalling over $10,000 into or out of the United States at one time to report that transaction to the government.[12] This reporting requirement is broader than the CTR law because it covers not only cash but other monetary instruments.[13] A report is required only if physical transportation occurs; no report is required for wire transfers.[14]

Cases involving structuring to avoid this reporting requirement were slower to appear than those under the CTR law, but the practice did eventually surface.[15] One case involved four travelers who divided $20,000 so that each person carried only $5000 when crossing the border into the United States from Mexico. To further avoid discovery, each person hid his $5000 in his underwear when

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7. United States v. Thompson, 603 F.2d 1200, 1202 (5th Cir. 1979).

8. *See, e.g.*, United States v. Heyman, 794 F.2d 788 (2d Cir.), *cert. denied*, 479 U.S. 989 (1986); United States v. Cook, 745 F.2d 1311 (10th Cir. 1984), *cert. denied*, 469 U.S. 1220 (1985).

9. United States v. Tobon-Builés, 706 F.2d 1092, 1095 (11th Cir. 1983) (involving two defendants followed and arrested after they spent half an hour at K-Mart checking the phone book to locate additional banks).

10. *See* Welling, *supra* note 1, at 296-98. It was the abundance of structuring schemes that prompted the name "smurfs." *See, e.g., Tax Evasion, Drug Trafficking and Money Laundering as They Involve Financial Institutions: Hearings Before the Subcomm. on Financial Institutions Supervision, Regulation and Insurance of the House Comm. on Banking, Finance, and Urban Affairs*, 99th Cong., 2d Sess. 68, 71-72 (1986) (statement of Hon. J.J. Pickle).

11. *See, e.g.*, United States v. Denemark, 779 F.2d 1559 (11th Cir. 1986); United States v. Anzalone, 766 F.2d 676 (1st Cir. 1985).

12. 31 U.S.C. § 5316 (1988).

13. *Id.*

14. *Id.*

15. *See, e.g.*, United States v. Morales-Vasquez, 919 F.2d 258 (5th Cir. 1990).

crossing the border. When asked if any of them carried monetary instruments over $10,000, each answered no. Based on this scheme with the "BVD bailees" (the name coined by the court), the defendant was prosecuted for attempting to transport cash exceeding $10,000 into the United States without reporting it.[16] The court held that he was liable for failure to file because a person who, intending to evade the reporting requirement, divides money into amounts less than $10,000 and gives it to bailees has committed a crime.[17] Although the cases are not as numerous, structuring does occur under the import/export report law as it does under the CTR law.

C. *Section 6050I—Trade or Business Transaction Reports*

26 U.S.C. § 6050I requires persons who receive $10,000 in cash in the course of their trade or business to report this transaction to the government.[18] Although one might assume that "cash" means currency, for this section cash is defined to include cashier's checks, traveler's checks, and money orders.[19]

This reporting requirement was not adopted until 1984, fourteen years after the other two, and structuring under this law did not have as much time to develop.[20] It is likely that structuring would have arisen under this reporting requirement as it did under the other two, but the government launched a preemptive strike.[21] Based on its experience with the other reporting laws, the govern-

16. *Morales-Vasquez*, 919 F.2d at 260.

17. *Id.* at 260. The defendant was charged with

> "knowingly about to transport, at one time, monetary instruments, namely United States currency, in excess of $10,000.00 from a place in the United States to a place outside the United States, without filing the Currency and Monetary Instruments Report, Form CF-4790, required to be filed by the provisions of Title 31, United States Code, Section 5316(b), well knowing the requirement of filing such a report."

Id. at 260 n.2 (quoting the indictment).

18. 26 U.S.C. § 6050I (1988 & Supp. III 1991).

19. 26 C.F.R. § 1.6050I-1(c)(1)(ii) (1992). The government requires the report to be filed on Internal Revenue Service Form 8300. 26 C.F.R. § 1.6050I-1(e)(2) (1992).

20. Congress inserted a provision that specifically addressed structuring and made structuring subject to the same civil and criminal penalties as failure to file. 26 U.S.C. 6050I(f) (1988 & Supp. III 1991).

21. *Id.*

ment adopted anti-structuring rules for section 6050I before evidence of structuring in the form of reported cases appeared.[22]

D. *Section 1957—Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity*

The substantive crime with a $10,000 threshold is section 1957,[23] which makes it illegal to knowingly engage in a monetary transaction involving criminally derived property that was derived from a specified unlawful activity and has a value exceeding $10,000.[24] The statute makes it criminal to knowingly engage in a financial transaction involving money generated by certain crimes.[25]

Few cases have been prosecuted under section 1957,[26] and no prosecutions involving structuring have been reported. Yet, such cases are predictable. Assume Katherine writes a personal check to her broker. If the check is over $10,000 and Katherine knows the funds behind the check are derived from specified unlawful activity, the act of depositing the check is a crime. If the broker knows the facts, she too is liable. If the check is under $10,000, however, there is no crime. Aware of this, Katherine and her broker might agree to write each of her checks for amounts under $10,000.[27] Similarly, imagine a borrower who wishes to make a payment on his line of credit at a bank. If the payment is over $10,000 and is derived from specified unlawful activity and he knows this, he has violated section 1957. If the bank knows that the payment is criminally derived, it has violated section 1957 as well. But if the payment is under $10,000, section 1957 does not apply. As a final example, assume a lawyer is retained by a client who wants to pay the fee with a check drawn on funds derived from specified unlawful activity, and the lawyer is aware of this. If the lawyer takes a

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22. *Id.*

23. 18 U.S.C. § 1957 (1988).

24. *Id.*

25. *Id.*

26. *See generally* Emily J. Lawrence, Note, *Let the Seller Beware: Money Laundering, Merchants and 18 U.S.C. §§ 1956, 1957*, 33 B.C. L. REV. 841, 861-77 (1992) (discussing the government's reluctance to prosecute under § 1957 and possible explanations thereof).

27. This agreement does not violate 31 U.S.C. § 5324, the CTR anti-structuring provision, because CTR requirements apply only to transactions in cash. *See* 31 U.S.C. §§ 5313, 5324 (1988); 31 C.F.R. § 103.22(9)(1) (1992).

check over $10,000 before the client is indicted, she commits a crime when she deposits it. To avoid this, the lawyer might set a fee in some amount less than $10,000 for preindictment representation, with an additional amount to be paid in the event of indictment and trial. Arguably, this payment structure would not violate section 1957 because the initial payment was below the threshold amount and any subsequent payments would be made in postindictment safety. Thus, the $10,000 line of section 1957, like those of the reporting laws, can be expected to generate structured transactions.

Case law showed that launderers were structuring transactions to avoid two of the reporting requirements. To combat these schemes, the government adopted anti-structuring laws.

III. The Anti-Structuring Laws

The laws that prohibit structured transactions rely on aggregation requirements supplemented by anti-structuring rules.

A. *Cash Transaction Reports*

To stop structuring under the CTR law, the government added aggregation requirements for purposes of meeting the $10,000 threshold. The regulations were changed so the definition of financial institution now includes all domestic branch offices.[28] Further, the regulations were amended to require aggregation of transactions if the institution knew that they resulted in cash in or cash out for one person totalling $10,000 in one business day.[29]

These aggregation regulations could still be avoided,[30] so the anti-structuring statute was adopted. This statute, section 5324, makes it a crime to structure transactions to evade the CTR reporting requirement.[31] The statute closed the remaining loop-

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28. *See* 31 C.F.R. § 103.22(a)(4) (1992).

29. § 103.22(a)(1).

30. The regulations could be avoided by keeping the cash transactions below $10,000 per day, by using different accounts and agents so the institution does not recognize that the transactions are for one person, or by using different financial institutions. *See* Welling, *supra* note 1, at 303.

31. 31 U.S.C. § 5324(a) (1988).

holes because it is based on the intent of the parties rather than on a time period.[32]

Of the anti-structuring laws, this statute has generated the most prosecutions. One controversial issue is whether the defendant must have knowledge of the law. The anti-structuring statute applies only when a defendant structures in order to evade the CTR reporting requirement.[33] The defendant surely must know of this requirement and intend to evade it.[34] However, most courts have agreed that knowledge of the anti-structuring statute is not required for conviction, so the defendant's ignorance of the anti-structuring law is no defense.[35] On the other hand, one court has held that a defendant's ignorance of the anti-structuring law is a defense, as long as the ignorance was not intentional or reckless.[36]

Courts have usually endorsed the conclusion that ignorance of the law is not a defense, and this is consistent with my own view.[37] Yet the issue is not simple. Some defendants are obviously caught

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32. *See* Welling, *supra* note 1, at 303. The crime of structuring is not limited to transactions accomplished in a particular time period, so transactions that would avoid aggregation under the regulations because $10,000 or less was transferred during one day would still qualify as structured transactions prohibited by clause (3). Also, the crime of structuring is not dependent on the institution's knowledge, so using multiple agents and multiple accounts to keep the institution ignorant of the total picture would not avoid liability under clause (3). Finally, the crime of structuring includes transactions accomplished at "one or more domestic financial institutions," so using multiple institutions will not avoid liability. In short, clause (3) prohibits structuring without regard to whether the institution has a duty to file a CTR.

33. 31 U.S.C § 5324(a) (1988). *But see* United States v. Ratzlaf, 976 F.2d 1280 (9th Cir. 1992) (confirming that the government does not have to prove that the defendant knew structuring was illegal in order to convict him under § 5324), *cert. granted*, 113 S. Ct. 1942 (1993).

34. 31 U.S.C. § 5324 (1988); United States v. Dollar Bank Money Mkt. Account No. 1591768456, 980 F.2d 233 (3d Cir. 1992) (holding that in a structuring prosecution a defendant has specific intent to evade the reporting requirements only if defendant knows that the requirements exist and are imposed by law rather than merely a bank policy); United States v. Davenport, 929 F.2d 1169, 1173 (7th Cir. 1991). *cert. denied*, 112 S. Ct. 871 (1992).

35. *See* United States v. Brown, 954 F.2d 1563 (11th Cir.), *cert. denied*, 113 S. Ct. 284 (1992); *Davenport*, 929 F.2d at 1173; United States v. Hoyland, 903 F.2d 1288 (9th Cir. 1990); United States v. Scanio, 900 F.2d 485 (2d Cir. 1990).

36. United States v. Aversa, 984 F.2d 493 (1st Cir. 1993) (en banc) (holding that willfulness criterion of § 5322 demands that the government prove either the violation of a known legal duty or a reckless disregard for a legal duty), *petition for cert. filed*, No. 92-8218 (U.S. Apr. 5, 1993).

37. *See* Welling, *supra* note 1, at 318-20.

off-guard by the law, as evidenced by their candid admissions.[38] Of course, to convict the defendant, the jury must necessarily conclude that the defendant structured the transactions specifically to defeat the reporting law. This is not sympathetic juror conduct. Because defendants are often so genuinely surprised that their conduct was a crime, maybe it is better to demand at least a *mens rea* of recklessness as to the law. I continue to think that knowledge of the anti-structuring law should not be required, but the question of whether defendants should be held strictly liable as to knowledge (actual or constructive) of the law or convicted only upon a showing of recklessness is still open. Just as this Article went to press, the Supreme Court granted certio in a case that will likely resolve the issue.[39]

Another issue under the CTR anti-structuring statute is how to define the unit of prosecution. The issue was first raised in a case where the defendant made ten separate deposits in a two week period, each in amounts less than $10,000, totalling $81,500.[40] One alternative would be to treat each deposit as a separate violation of the law.[41] At the other extreme, such conduct might be charged as just one count of structuring.[42] The best result might lie somewhere between these extremes.

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38. *See Davenport*, 929 F.2d at 1171 (involving defendant, a bank teller, who inquired about the bank's reporting procedures prior to making the deposits, and later "readily admitted that the, or at least one, purpose of making separate deposits had been to avoid triggering the banks' [sic] obligation to report a cash transaction to the Internal Revenue Service."); *see* United States v. Dashney, 937 F.2d 532, 534 (10th Cir.) (involving a defendant who repeatedly told bank tellers and cashiers that he wished to purchase cashier's checks under $10,000 in order to avoid having to fill out the CTR form), *cert. denied*, 112 S. Ct. 402 (1991); *Scanio*, 900 F.2d at 486 (upholding conviction of defendant who asked bank teller if a $13,000 loan payment would require the completion of a CTR form, and subsequently lowered the repayment to $9500, stating he wanted to avoid having the form filed).

39. United States v. Ratzlaf, 976 F.2d 1280 (9th Cir. 1992), *cert. granted*, 113 S. Ct. 1942 (1993).

40. *Davenport*, 929 F.2d at 1171.

41. This approach was taken by the government in *Davenport*. Since 10 deposits were made, the defendant was indicted for 10 counts of structuring under § 5324(a). However, the court refused to charge 10 separate counts and threw out the indictments. The court saw only *one* count of structuring. *Id.* at 1171-72; *see* United States v. Nall, 949 F.2d 301 (10th Cir. 1991) (upholding indictment of defendant on three counts of § 5324(a) violations because he made three separate deposits of less than $10,000 each totalling $24,000).

42. *See, e.g.*, *Dashney*, 937 F.2d at 533-35 (involving defendant indicted on one count even though the defendant conducted 11 cash transactions, each in amounts of less than $10,000, at different banks totalling $92,400).

The courts of appeal have defined the unit of prosecution three times.[43] The cases all involved breaking up specific lump sums, and the courts concluded that each lump sum constitutes one transaction being structured and should be charged as one count.[44] This conclusion makes sense when discrete, identifiable lump sums are involved.[45] But the question is more difficult if the case involves a continuous flow of cash which never coalesces into a lump sum. An example in my previous article assumed a continuous flow of small bills generated daily.[46] The smurf in charge of the flow converts it to the required number of $9000 cashier's checks. In a particular week, assume the smurf must purchase ten cashier's checks to handle the flow. Although this could be defined as one count of structuring for the $90,000 that week, the selection of one week as the critical time period is arbitrary and does not reflect dangerousness. On the other hand, it could be defined as ten counts, one for each transaction. This alternative is problematic because each transaction being structured is only $9000, an amount not even large enough to trigger reporting requirements. Moreover, as Judge Richard Posner points out, using the number of deposits as a criterion for the number of counts is a bad idea because the number of deposits does not reliably indicate dangerousness.[47]

The amount of money being structured and therefore not reported does indicate dangerousness. The amount of money involved should be reflected in the number of counts.[48] The number of transactions is not in itself significant; the number of

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43. *See, e.g.*, United States v. Nall, 949 F.2d 301 (10th Cir. 1991); United States v. Dashney, 937 F.2d 532 (10th Cir.), *cert. denied*, 112 S. Ct. 402 (1991); United States v. Davenport, 929 F.2d 1169 (7th Cir. 1991), *cert. denied*, 112 S. Ct. 871 (1992).

44. *Nall*, 949 F.2d at 309; *Dashney*, 937 F.2d at 542; *Davenport*, 929 F.2d at 1175.

45. *See* Welling, *supra* note 1, at 324-26.

46. *Id.*

47. *Davenport*, 929 F.2d at 1172. Judge Posner's conclusion that the number of deposits does not reflect dangerousness is correct. However, the larger the amount of money that needs to be laundered, the more deposits a defendant will have to make to stay under $10,000. Thus, the number of deposits is often related to the amount of money involved. To that extent, the number of deposits does reflect dangerousness.

48. This conclusion assumes the amount of money involved is not already sufficiently accounted for by the sentencing guidelines. The sentencing guidelines use a technique of grouping counts which makes the number of counts less significant. UNITED STATES SENTENCING COMMISSION, FEDERAL SENTENCING GUIDELINES MANUAL §§ 3D1.2-.3 (West 1993) [hereinafter SENTENCING GUIDELINES].

transactions is significant because it tends to coincide with the amount of money involved.[49] Time periods are likewise not important. To appropriately reflect dangerousness, the unit of prosecution in such continuous flow cases should be defined as one count of structuring each time the currency involved exceeds $10,000. Thus, in our example of ten cashier's checks to cover $90,000, five counts of structuring would be present.

Several other issues raised by the CTR anti-structuring law have been more easily resolved. The cash that is structured need not be criminally derived; it is illegal to structure even clean cash.[50] Constitutionally, the anti-structuring statute has encountered no trouble.[51] Also, the government is using the forfeiture sanction as part of the punishment for the crime.[52]

B. *Import/Export Reports*

Like the CTR laws, the import/export report laws include aggregation rules supplemented by anti-structuring rules. The aggregation rule that addresses structuring is the "at one time" language in the statute.[53] The regulations define "at one time" in two ways. First, if separate monetary instruments[54] totalling more than $10,000 have been transported on one calendar day, then the

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49. *See* Welling, *supra* note 1, at 324-26.

50. United States v. Dollar Bank Money Mkt. Account No. 1591768456, 980 F.2d 233, 242 (3d Cir. 1992) (Greenberg, J., dissenting) (stating that the anti-structuring statute applies even when "dealing with legitimate money earned by hard working people rather than criminals stashing profits from an illegal enterprise"). Although the statute applies to clean money under the sentencing guidelines, the longer sentence is imposed if the money is criminally derived. *See* SENTENCING GUIDELINES, *supra* note 47, § 2S1.3(b)(1).

51. *See, e.g.*, United States v. Dashney, 937 F.2d 532, 536 (10th Cir.), *cert. denied*, 112 S. Ct. 402 (1991); United States v. Davenport, 929 F.2d 1169 (7th Cir. 1991), *cert. denied*, 112 S. Ct. 871 (1992); United States v. Scanio, 900 F.2d 485 (2d Cir. 1990).

52. *See, e.g.*, United States v. Shirk, 981 F.2d 1382 (3d Cir. 1992); *Dollar Bank Money Market Account*, 980 F.2d at 233; *Dashney*, 937 F.2d at 536 n.3; United States v. 316 Units of Mun. Sec., 725 F. Supp. 172 (S.D.N.Y. 1989).

53. 31 U.S.C. § 5316(a)(1) (1988) ("[A] person or an agent or bailee of the person shall file a report . . . when the person, agent, or bailee knowingly — (1) transports, is about to transport, or has transported, monetary instruments of more than $10,000 at one time . . . .").

54. The term "monetary instrument" is defined to include currency, traveler's checks, all negotiable instruments, incomplete instruments, and securities or stock in bearer form. 31 C.F.R. § 103.11(m) (1992).

person responsible[55] for breaking the instruments into amounts less than $10,000 must aggregate them and report the transaction.[56] This aggregation provision is easily avoided by using two or more calendar days. Thus, the second definition of "at one time" covers situations where a person transports monetary instruments totalling more than $10,000 on one or more days "for the purpose of evading the reporting requirements."[57] Although this regulation does make evasion impossible, it is bad drafting to achieve that result through a definition of "at one time" that is unrelated to time. Therefore, in 1992, Congress amended the CTR anti-structuring statute to add a section making structuring of import/export transactions illegal.[58] The new section uses the same language to prohibit import/export structuring that is used to prohibit CTR structuring. The courts' interpretations of the CTR anti-structuring statute discussed above will be readily transferable to this new section.

C. *Section 6050I—Trade or Business Transaction Reports*

Like the other two reporting statutes, the rules designed to prevent structuring under section 6050I are based on aggregation requirements backed up by anti-structuring rules. Section 6050I[59] requires a report if more than $10,000 is received in one transaction or in two or more related transactions.[60] The regulations define related transactions in two ways. First, all transactions between the same parties within twenty-four hours are related.[61] Second, transactions between the same parties outside twenty-four hours are related if the recipient knows or has reason to know that each transaction is one of a connected series.[62]

55. Other people participating in the transaction will also be guilty of structuring by participating in the transaction. 31 C.F.R. § 103.11(a)(1) provides that it is a violation if a person "either alone, in conjunction with or on behalf of others" structures a transaction to avoid the reporting requirements. 31 C.F.R. § 103.11(a)(1) (1992).

56. 31 C.F.R. § 103.11(a)(1)-(6)(i) (1992). There is no requirement that the monetary instruments be related to each other in any way. The only requirement is that a person transport monetary instruments worth more than $10,000 on one calendar day. *Id.*

57. 31 C.F.R. § 103.11(a)(1)-(5), (6)(ii) (1992).

58. 31 U.S.C. § 5324(b) (1988).

59. 26 U.S.C. § 6050I(a)(2) (1988).

60. 26 C.F.R. § 1.6050I-1(a)(1) (1992).

61. 26 C.F.R. § 1.6050I-1(c)(7)(ii) (1992).

62. 26 C.F.R. § 1.6050I-1(a)(1) (1992).

These definitions of related transactions are the basis for the aggregation requirement of section 6050I. These aggregation rules, like those of the other statutes, can be avoided. For example, inside a twenty-four-hour period all transactions between the same payor and recipient are deemed related and are combined. However, a payor could defeat this provision by using multiple agents so the recipient does not know that one payor is involved in multiple transactions. As a practical matter, if the recipient has no knowledge of the payor's single identity, there will be no report filed. Outside each twenty-four-hour period, transactions are only combined if the same payor is involved and the recipient knows or has reason to know that each transaction is one of a "connected series." A payor can obscure the connection between transactions by using multiple agents to hide his or her identity or by otherwise structuring the transactions so the recipient has no reason to conclude that the transactions are "connected."

Because the aggregation rules can be avoided, section 6050I includes anti-structuring rules. There are two provisions. The regulations state that a transaction may not be divided into multiple transactions to avoid reporting.[63] In addition, the statute includes a subsection which is functionally identical to the other anti-structuring provisions.[64]

D. *Section 1957—Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity*

No statute or regulation explicitly prohibits structuring to avoid the $10,000 threshold of section 1957. It is unlikely the courts would find structuring illegal absent such a provision. Courts were reluctant to find this conduct criminal when a similar question arose under the CTR law before adoption of the anti-structuring statute.[65] Thus, section 1957 remains the only law based on a $10,000 threshold without any anti-structuring provisions. Congress would be wise to fix this hole before case law dramatizes it.

63. *Id.*
64. 26 U.S.C. § 6050I(f) (1988 & Supp. III 1991).
65. *See* Welling, *supra* note 1, at 298.

IV. Conclusion

Use of the $10,000 threshold to define criminal conduct is unusual in the criminal law, but for the reporting statutes, the threshold amount works well. The government does not want to receive reports of small cash transactions, and the $10,000 threshold winnows out such reports so the government receives only reports of more suspect transactions. However, the use of a numerical threshold invites easy avoidance through structuring.[66] When structuring cases first arose, the government's only recourse was to prosecute the defendants for failure to file. The courts often disallowed this approach, so the anti-structuring laws were adopted as an alternative cause of action.

The anti-structuring laws begin with aggregation requirements based on time periods. Because such time periods can be avoided, they are now supplemented by anti-structuring rules based on the parties' intent, regardless of the time involved. These latter rules make evasion of the reporting requirements impossible.

Only one of the anti-structuring laws has had a chance to develop any case law. The CTR anti-structuring provision has been interpreted several times; the most difficult issues are whether ignorance of the law is a defense and how to define the unit of prosecution. These questions will arise as well under the other anti-structuring provisions, and the courts will likely reach the same conclusions.

This Article has focused primarily on the reporting requirements. Section 1957 also relies on a $10,000 threshold, but it serves a different purpose. Rather than functioning as a sieve to eliminate unhelpful reports, it limits the government's ability to prosecute relatively minor transactions. Section 1957 is also different in that it has no anti-structuring provisions. When the inevitable structuring shows up in cases, the anti-structuring rules of the reporting laws will be good blueprints for section 1957.

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66. It is surprising that Congress did not anticipate this when the reporting requirements were first adopted.