

GAO

Report to the Chairman, Subcommittee  
on General Oversight and Investigations,  
Committee on Banking and Financial  
Services, House of Representatives

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June 1998

# MONEY LAUNDERING

## FinCEN Needs to Better Manage Bank Secrecy Act Civil Penalty Cases



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**United States  
General Accounting Office  
Washington, D.C. 20548**

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**General Government Division**

B-279254

June 15, 1998

The Honorable Spencer Bachus  
Chairman  
Subcommittee on General Oversight  
and Investigations  
Committee on Banking and Financial Services  
House of Representatives

Dear Mr. Chairman:

This report responds to your request regarding efforts of the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) to process civil penalty referrals for violations of the Bank Secrecy Act (BSA). At a recent hearing held by this Subcommittee, we testified on FinCEN's various roles, including the processing of civil penalty cases.<sup>1</sup> This report provides a more detailed analysis of BSA civil penalty cases and FinCEN's related efforts.

FinCEN receives civil penalty referrals for BSA violations from various sources, including the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), other federal banking regulatory agencies, and the Internal Revenue Service's (IRS) Examination Division. In February 1992, after analyzing statistics for calendar years 1985 through 1991 (as of October 24, 1991), we reported that civil penalty cases had not been processed in a timely manner by the then-responsible Treasury component, the Office of Financial Enforcement.<sup>2</sup> In May 1994, Treasury's Assistant Secretary for Enforcement transferred this responsibility within the Department from the Office of Financial Enforcement to FinCEN. In September 1994, Congress passed and the President signed the Money Laundering Suppression Act (MLSA).<sup>3</sup> Among other provisions, the MLSA required the Secretary of the Treasury to delegate authority to impose civil penalties for BSA violations to the appropriate federal banking regulatory agencies. The purpose of this delegation requirement was to increase efficiency by allowing these agencies to impose civil penalties directly, rather than referring violations to FinCEN.

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<sup>1</sup>Money Laundering: FinCEN's Law Enforcement Support, Regulatory, and International Roles (GAO/T-GGD-98-83, Apr. 1, 1998).

<sup>2</sup>Money Laundering: Treasury Civil Case Processing of Bank Secrecy Act Violations (GAO/GGD-92-46, Feb. 6, 1992).

<sup>3</sup>The Money Laundering Suppression Act is Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103-325, 108 Stat. 2160, 2243 (1994).

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As agreed with your office, in developing updated information on civil penalties for BSA violations, we focused our work on the following questions:

- How, if at all, has Treasury changed its policies and procedures for processing civil penalty cases since 1992?
- Based upon workload and related statistics, what was Treasury's performance in processing civil penalty cases during calendar years 1992 through 1997?
- What is the status of FinCEN's efforts to develop and issue a final regulation delegating the authority to assess civil penalties for BSA violations to the federal banking regulatory agencies, as required by the MLSA?

In addressing these questions, we interviewed cognizant FinCEN officials and reviewed relevant documentation on FinCEN's policies and procedures for processing civil penalty cases. Also, we reviewed civil penalty case inventory and processing timeliness data for calendar years 1985 through 1997. Further, to determine the status of the delegation of civil penalty authority, we interviewed Treasury and FinCEN officials to obtain their views on (1) when a final regulation is expected to be issued and (2) if applicable, whether any substantive or procedural issues must be resolved before a final rule can be promulgated.

We performed our work from December 1997 to May 1998 in accordance with generally accepted government auditing standards. Appendix I provides more details about our objectives, scope, and methodology.

We requested comments on a draft of this report from the Acting Director, FinCEN. A reprint of FinCEN's written comments can be found in appendix IV, and our evaluation of those comments follows our recommendation.

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## Results in Brief

Except for the May 1994 delegation to FinCEN, Treasury's policies and procedures for processing civil penalty cases generally have not changed since 1992. Also, the number of staff processing civil penalty cases has remained fairly constant, at about six, before and after the May 1994 delegation to FinCEN.

The problem of lengthy processing times for civil penalty cases is growing worse. For example, according to FinCEN's data for cases closed in calendar years 1985 through 1991, the average processing time to close a case was 1.77 years, and the most lengthy time was 6.44 years. In comparison,

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FinCEN's data for calendar years 1992 through 1997 indicate an average processing time was 3.02 years, and the most lengthy time was 10.14 years. For cases closed in the 2 most recent years, 1996 and 1997, the average processing times were 3.57 years and 4.23 years, respectively.

Lengthy processing can negatively affect the public's perception of the government's efforts to enforce the BSA, thereby lessening the credibility and deterrent effects of the act's provisions. Another result is that the 6-year statute of limitations for BSA civil penalties could expire. According to FinCEN's data, for the period January 1, 1992, through March 27, 1998, a total of 16 cases had one or more BSA violations that could not be pursued because the statute of limitations had expired. Insufficient management attention is a significant cause of the lengthy processing times for civil penalty cases. FinCEN officials told us, for example, that the agency has never set timeliness goals for processing civil penalty cases.

FinCEN has issued neither a notice of proposed rulemaking nor a final regulation to delegate civil penalty assessment authority to the banking regulatory agencies. FinCEN officials told us they have been working with the federal banking regulatory agencies for some time to devise an appropriate plan for delegating civil penalty assessment authority, but some issues still required resolution. FinCEN's current strategic plan indicates that such delegation may not occur before 2002. Thus, for several more years, FinCEN could still be responsible for processing civil penalty referrals. Therefore, to better manage the processing of such referrals, we are recommending that FinCEN set timeliness goals for evaluating and disposing of each civil penalty case, based on the complexity of the case, and monitor the progress of managers and staff responsible for meeting those goals.

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## Background

The BSA and its implementing regulations, in general, require financial institutions to maintain certain records and to file certain reports (e.g., currency transaction reports) that are useful in criminal, tax, or regulatory investigations, such as money laundering cases. Failure to file BSA reports can result in criminal and/or civil penalties, depending on the nature of the violation. Criminal investigations are the responsibility of IRS' Criminal Investigation Division. Civil penalties are currently assessed by FinCEN, and the agency is to send each referral to IRS for review before any administrative or civil enforcement action is taken.

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Treasury has issued guidelines to assist regulatory agencies in determining which BSA violations warrant referral to Treasury for consideration of criminal and/or civil penalties.<sup>4</sup> For example, according to the guidelines, violations customarily warranting referral include a pattern of failing to file currency transaction reports on applicable transactions.

After receiving a referral, FinCEN's role includes evaluating the circumstances of the alleged violation and determining whether some type of civil action, including seeking the imposition of a civil monetary penalty, should be taken against the person or financial institution. Generally, FinCEN disposes of the majority of its civil penalty cases with one of three courses of action: (1) close the case without contacting the subject of the referral, (2) issue a letter of warning to the subject institution or individual, or (3) assess a civil monetary penalty. The Director, FinCEN, makes the final decisions. Civil monetary penalties generally can range from \$25,000 to \$100,000 per willful violation. In addition, civil monetary penalties may be assessed for each negligent violation of the BSA up to \$500. Appendix II provides more information about FinCEN's procedures.

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## Treasury's Policies and Procedures Generally Unchanged Since 1992

Except for the delegation of responsibility to FinCEN in 1994, Treasury's policies and procedures for processing civil penalty referrals for BSA violations generally have remained unchanged since our 1992 report.

Treasury's Office of Financial Enforcement was established in 1985 to, among other things, develop referrals of alleged civil violations of the BSA and make recommendations as to whether civil penalties should be assessed against noncompliant financial institutions and their officers, directors, employees, and individuals, and if so, the amounts of the penalties. Treasury's Assistant Secretary for Enforcement was responsible for making the final decision to assess a penalty.

In May 1994, the Assistant Secretary for Enforcement delegated civil penalty authority to FinCEN. Presently, civil penalty referrals are processed by FinCEN's Office of Compliance and Regulatory Enforcement (OCRE). According to FinCEN, in processing civil penalty referrals, OCRE staff follow the same policies and procedures that existed before the 1994 delegation.

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<sup>4</sup>U.S. Department of the Treasury, Office of Financial Enforcement, "Bank Secrecy Act Referral Guidelines for Financial Institutions," October 31, 1990. At the time of our review, FinCEN officials told us that these guidelines were still applicable.

Also, the number of staff processing civil penalty referrals has remained fairly constant, at about six, before and after the 1994 delegation of authority to FinCEN. FinCEN officials told us that the staff of Treasury's Office of Financial Enforcement—the unit previously responsible for processing civil penalty referrals—was merged into OCRE in 1994. FinCEN officials noted, however, that none of OCRE's six staff work on civil penalty referrals on a full-time or exclusive basis; rather, they spend about one-half of their time performing other mission functions and responsibilities.

As a result of the merger, several staffing changes occurred. For example, four former Office of Financial Enforcement senior analysts who had worked on referral cases were transferred into other divisions within FinCEN, while four other FinCEN staff members, with no experience in administering the BSA, were transferred into OCRE.

FinCEN officials told us that there have been several personnel departures during the past year, which have affected the management and expertise in this area. For example, OCRE's chief and deputy chief left the agency. As of May 1998, these positions were still vacant.

## The Problem of Lengthy Processing Times for Civil Penalty Cases Is Growing Worse

In the past, civil penalty cases have not been processed in a timely manner. That was the conclusion we reached in our 1992 report, which analyzed Treasury's case inventories between 1985 and 1991. Our current work, which analyzed case inventory data provided by FinCEN for 1992 through 1997, shows that the problem of lengthy processing times is growing worse.

### Fewer Cases Closed in Recent Years

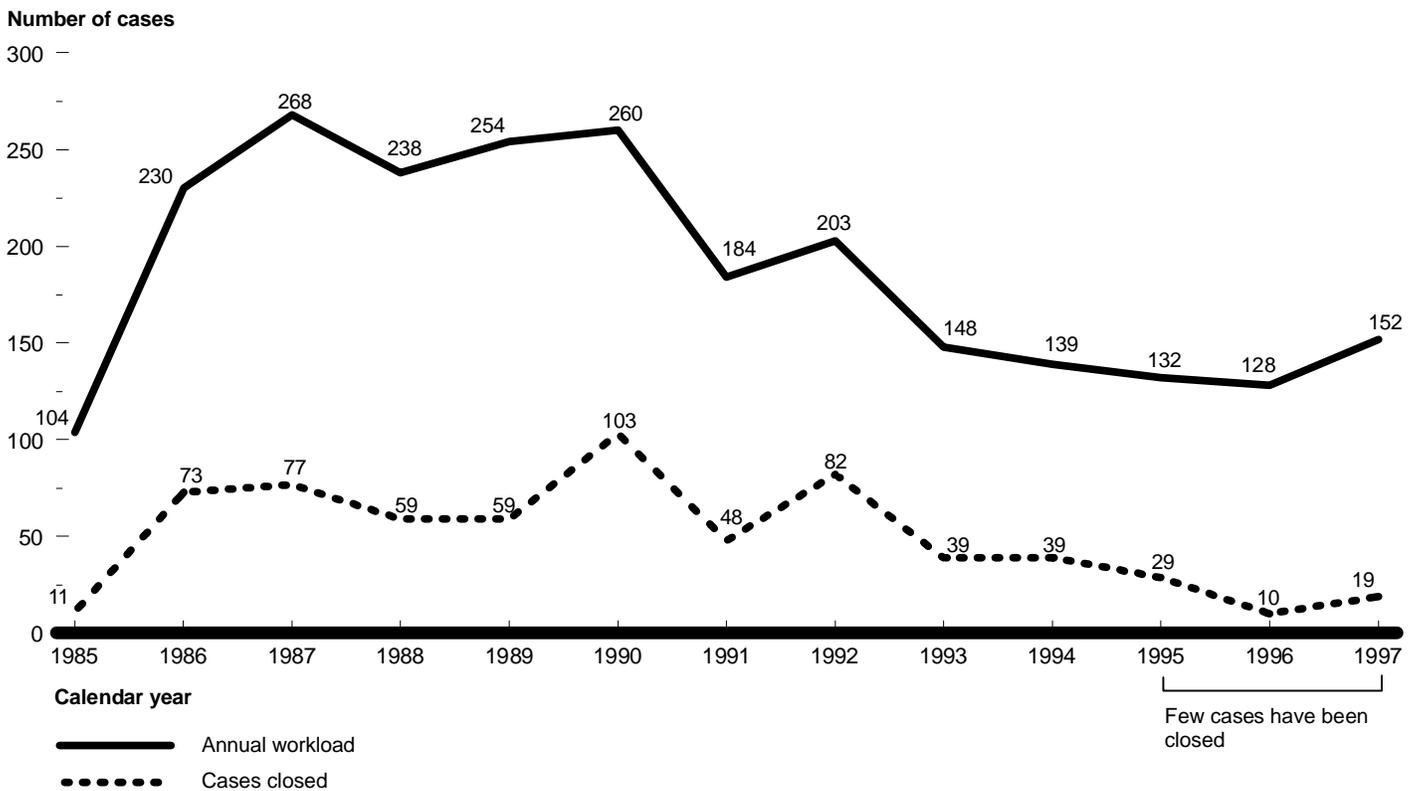
For the period 1985 through 1997, data from Treasury's Office of Financial Enforcement and/or FinCEN showed a total of 648 closed civil penalty cases. Of this total, 430 cases were closed during 1985 through 1991 (a 7-year period), and the remaining 218 cases were closed during 1992 through 1997 (a 6-year period).

Our analyses show that relatively few cases have been closed in recent years, particularly after 1994.

- Case closures in each of the 3 most recent years, 1995 through 1997, dropped below 30 for the first time since 1985 (see fig. 1).

- Civil penalty cases closed represented 22 percent, 8 percent, and 13 percent, respectively, of FinCEN’s annual workloads in 1995, 1996, and 1997 (see fig. 2).
- During each of these 3 years, the number of cases closed was fewer than the number of referrals received, which represented a reversal of the trend in 1990 through 1994 (see fig. 3). For example, in 1997, 19 cases were closed while 34 referrals were received. In contrast, in 1990, 103 cases were closed while 65 referrals were received.

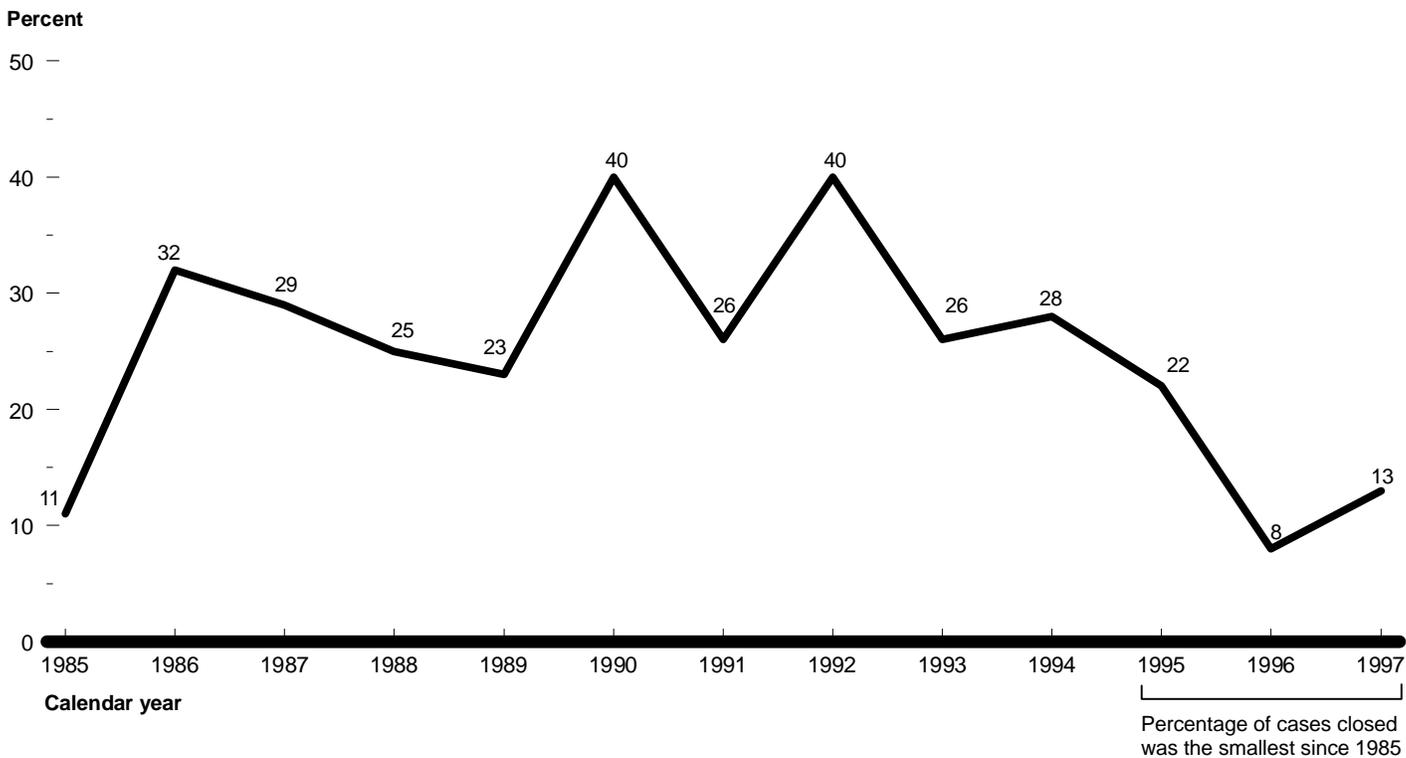
**Figure 1: Civil Penalty Annual Workload and Number of Civil Penalty Cases Closed, Calendar Years 1985 Through 1997**



Note: Annual workload consists of beginning inventory (as of Jan. 1) plus referrals received during the year.

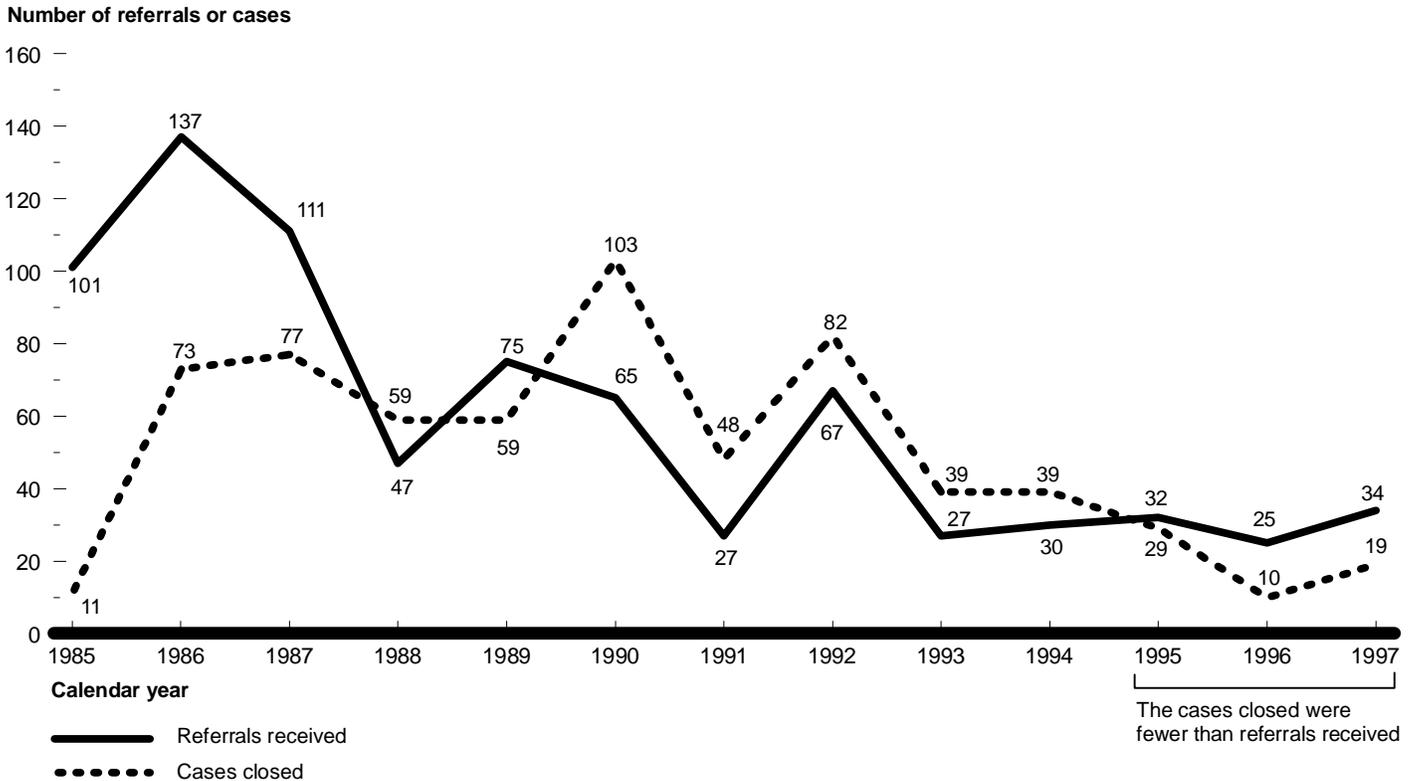
Source: GAO analysis of data from FinCEN's civil penalty tracking system. See table III.1 in appendix III.

**Figure 2: Civil Penalty Cases Closed as a Percentage of Annual Workload, Calendar Years 1985 Through 1997**



Source: GAO analysis of data from FinCEN's civil penalty tracking system. See table III.1 in appendix III.

**Figure 3: Number of Civil Penalty Referrals Received and Cases Closed, Calendar Years 1985 Through 1997**



Source: GAO analysis of data from FinCEN's civil penalty tracking system. See table III.1 in appendix III.

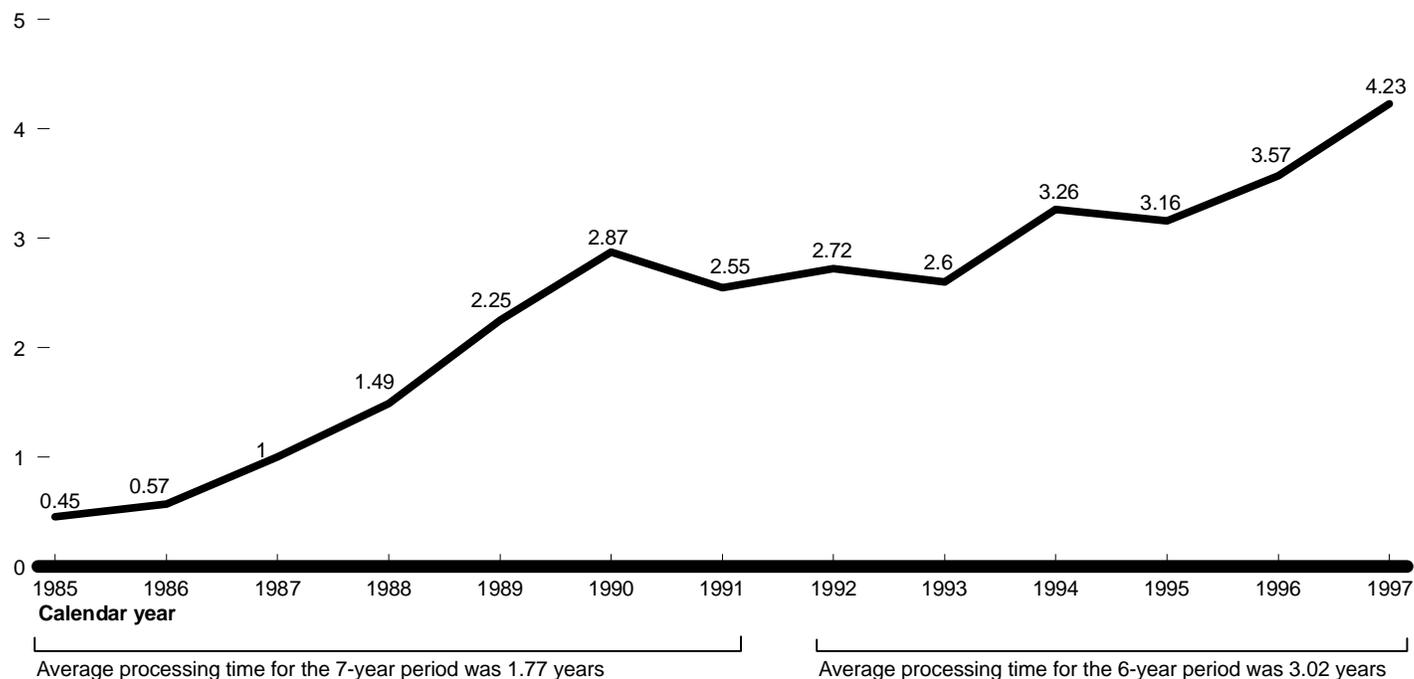
### Processing Times Slower in Recent Years

For 1985 through 1991, Treasury's data show that the average processing time to close a case was 1.77 years. Processing times for the 430 cases closed during this 7-year period ranged from 4 days to 6.44 years. According to FinCEN's data, the processing times have slowed during the more recent period, 1992 through 1997 (see fig. 4). Specifically, the average processing time to close a case was 3.02 years. Processing times for the 218 cases closed during this period ranged from 8 days to 10.14 years.

For cases closed in each of the 4 most recent years, 1994 through 1997, figure 4 shows that average processing times were 3 years or higher, a threshold not reached in any of the previous years.

**Figure 4: Average Processing Times for Civil Penalty Cases That Were Closed, Calendar Years 1985 Through 1997**

Average time to close case (in years)



Source: GAO analysis of data from FinCEN's civil penalty tracking system. See table III.2 in appendix III.

Lengthy processing times for civil penalty cases potentially can have various negative effects. For example, in 1992 congressional testimony, we stated that:

“Officials at 2 of...[the primary referring] agencies...told us that they believed—although it could not be proved or measured—that the lengthy processing times resulted in a decrease in enforcement efforts....

“We think it would be reasonable to assume that the effectiveness of any penalty as a deterrent to prevent future violations would be directly related to the length of time between the violation and the action taken. Given this assumption, lengthy processing times for civil penalty referrals could affect compliance with the Bank Secrecy Act.

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“Perhaps the most serious result of civil penalty cases remaining inactive for lengthy periods of time can be the expiration of the statute of limitations...”<sup>5</sup>

According to FinCEN’s data for the period January 1, 1992, through March 27, 1998, a total of 16 cases had one or more BSA violations that could not be pursued because the statute of limitations had expired.

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## Insufficient Management Attention to Civil Penalty Case Processing

Our 1992 report, which analyzed civil penalty case inventories between 1985 and 1991, concluded that cases had not been processed in a timely manner. More recently, as shown in figure 4, the average processing times for civil penalty cases closed since 1994 are higher than the average times for previous years.

There may be several reasons for this trend. Regarding recent years, for example, FinCEN officials mentioned staff inexperience and personnel departures as being reasons. Further, the officials noted a change in the kinds of cases being referred to FinCEN. Specifically, the officials said the majority of cases referred to FinCEN now involve nonbank financial institutions (i.e., casinos, check cashers, and currency exchangers). According to FinCEN officials, it generally is more difficult to obtain records and documentary evidence and to reconstruct transactions for these entities than for banks.

In addition, we believe that insufficient management attention has been a significant cause of the lengthy processing times for civil penalty cases. First, FinCEN and its predecessor, Treasury’s Office of Financial Enforcement, did not (1) set timeliness goals for civil penalty case processing and (2) monitor or measure performance against those goals. FinCEN officials told us that the agency has never set timeliness goals for civil penalty processing. The officials also said that any such goals would prove arbitrary since each case varies significantly based on complexity, volume of transactions, and other factors. However, those goals can be valuable performance management tools for improving overall results and can take into account the differences in cases. Moreover, goal setting and performance measurement are widely considered to be good management practices, and these practices are reflected in the Government Performance and Results Act of 1993.<sup>6</sup> Implementing such practices should help FinCEN (1) better identify the key factors that determine the

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<sup>5</sup>Money Laundering: Civil Penalty Referrals for Violations of the Bank Secrecy Act Have Declined (GAO/T-GGD-92-57, June 30, 1992), pp. 9-10.

<sup>6</sup>Government Performance and Results Act of 1993, Public Law 103-62, 107 Stat. 285 (1993).

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timeliness of processing civil penalty cases and (2) find ways to streamline the management and processing of cases to reverse the trend of increasingly lengthy processing times.

Second, FinCEN's civil penalty tracking system, which resides on a stand-alone microcomputer, has not been an effective management tool, according to a 1990 report by Treasury's Inspector General. Generally, the tracking system has remained unchanged since 1990, even though the Inspector General reported that database improvements were needed to assist in prioritizing, managing, and controlling civil penalty cases. The Inspector General's report noted, for example, that the database was not being used to track the age of referrals and cases nor to track statute of limitation expiration dates.

Third, as previously mentioned, according to FinCEN's data for the period January 1, 1992, through March 27, 1998, a total of 16 cases were affected by expiration of the statute of limitations. However, FinCEN did not close several of these cases until months or years after expiration of the statute of limitations. In fact, since our inquires about the status of case processing, FinCEN has closed 15 of these 16 cases involving expiration of the statute of limitations. For example, FinCEN's data for the 16 cases show the following.

- One case had a statute of limitations expiration date in 1993, but FinCEN did not close the case until November 1995.
- Two cases had statute of limitations expiration dates in 1995, and FinCEN closed one case in February 1998 and one case in March 1998.
- Five cases had statute of limitations expiration dates in 1996, but FinCEN did not close the cases until February 1998.
- Four cases had statute of limitations expiration dates in 1997, and FinCEN closed two cases in February 1998 and the other two cases in March 1998.
- Four cases had statute of limitations expiration dates in either January 1998 or February 1998, and FinCEN closed one case in February 1998 and the other three cases in March 1998.

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## FinCEN Has Not Issued a Regulation to Delegate Civil Penalty Authority

Section 406 of the MLSA directed the Secretary of the Treasury to delegate to appropriate federal banking regulatory agencies the authority to assess civil penalties for BSA violations. This statutory section further specified that the Secretary shall prescribe by regulation the terms and conditions that shall apply to any such delegation. The intent of such delegation, as described in the MLSA's conference report, is to increase efficiency by

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allowing the federal banking agencies to impose civil penalties directly rather than to make referrals to FinCEN. The conference report also noted that, after the delegation, FinCEN “would still be able to oversee the process and ensure that penalties are consistently imposed.”<sup>7</sup>

In February 1998, we reported to the Subcommittee that a notice of proposed rulemaking still had not been issued, and FinCEN had not established a projected issuance date.<sup>8</sup> In April 1998, a senior FinCEN official provided us the status of the agency’s efforts substantially as follows:

- FinCEN has had numerous meetings with federal bank regulators to begin the process of delegating some or all of FinCEN’s civil penalty enforcement authority. Much progress has been made, but some serious issues are unresolved.
- One issue is whether violations will be enforced under BSA provisions or under the bank regulators’ general examination powers granted by Title 12 of the U.S. Code. According to FinCEN, the bank regulators may be less inclined to assess BSA penalties and may instead use their non-BSA authorities under the general examination powers of Title 12. FinCEN prefers that the BSA provisions be used to ensure consistency of interpretation and sanctions for similar violations.
- Another issue involves oversight or monitoring by FinCEN. The details of Treasury’s continued oversight responsibility for BSA penalties, even after the delegation, have not yet been worked out.
- Further, while not required by the MLSA, FinCEN is studying the possibility of also delegating BSA civil penalty authority to IRS, which conducts BSA compliance examinations of nonbank financial institutions. FinCEN and IRS have engaged in several discussions concerning such a delegation. As a result, IRS is currently studying the relevant policy and resource considerations.

FinCEN’s current strategic plan indicates that delegation of civil penalty authority to the banking regulatory agencies may not occur before 2002.

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## Conclusions

Except for the delegation of civil penalty authority to FinCEN in 1994, Treasury’s policies and procedures for processing civil penalty referrals for BSA violations generally have not changed since our 1992 report. Also,

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<sup>7</sup>H.R. Conf. Rep. No. 103-652, at 190 (1994).

<sup>8</sup>Money Laundering: FinCEN Needs to Better Communicate Regulatory Priorities and Time Lines (GAO/GGD-98-18, Feb. 6, 1998), p. 15.

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the number of staff processing civil penalty referrals has remained fairly constant, at about six, before and after the May 1994 delegation to FinCEN. However, FinCEN officials noted that over the past year, personnel departures—including OCRE's chief and deputy chief—have affected management and expertise in this area. As of May 1998, these positions remained vacant.

The problem of lengthy processing times for civil penalty cases has grown worse since our 1992 report. Overall, FinCEN's data showed a smaller percentage of civil penalty cases being closed between 1992 and 1997 than 1985 and 1991, and the annual workload was smaller during the more recent years. Also, in the more recent years, the average processing times to close civil penalty cases are higher than in previous years. Among other reasons, insufficient management attention—as indicated by the absence of timeliness goals and monitoring, ineffective civil penalty tracking system, and 16 cases that could not be pursued because the statute of limitations had expired—contributed to lengthy processing times in recent years. Goal setting and performance measurement are widely considered to be good management practices, and implementing such practices may help FinCEN focus its attention on better managing and processing civil penalty cases and reverse the trend of increasingly lengthy processing times.

FinCEN's current strategic plan indicates that delegation of civil penalty authority to federal banking regulatory agencies may not occur for another 3 or 4 years. Pending such delegation, FinCEN is still responsible for processing civil penalties.

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## Recommendation to the Acting Director, FinCEN

To reduce the lengthy processing times associated with civil penalties, we recommend that the Acting Director, FinCEN, set average timeliness goals for evaluating and disposing of civil penalty cases, taking into account the varying complexity of the cases, and monitor the progress of managers and staff responsible for meeting those goals. We recognize that setting timeliness goals, by themselves, may not necessarily lead FinCEN to resolve all the problems that may have contributed to the lengthy processing times for evaluating and disposing of civil penalty cases. However, setting and managing to meet such goals should help FinCEN better focus its attention on processing civil penalty cases and provide a means to determine what corrective actions might be needed to decrease processing times in the future.

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## Agency Comments and Our Evaluation

In a letter dated May 20, 1998, FinCEN's Acting Director provided written comments on a draft of this report (see app. IV). The Acting Director concurred that greater or more diligent management oversight is needed to ensure that civil penalty cases are processed in an expeditious, yet thorough manner. To address the timeliness issue, the Acting Director noted that FinCEN has taken or has plans to take definitive steps, such as

- working with OCRE staff to identify individual training needs;
- assigning two non-OCRE employees the tasks of analyzing open civil penalty referrals, highlighting cases that warrant immediate attention, and providing oversight to ensure that progress continues on those referrals; and
- developing civil penalty referral procedures that include time lines and due dates.

The Acting Director commented that FinCEN plans to establish strict time lines for the initial assessment of civil penalty referrals, where such guidelines are practicable and predictable. Regarding the adjudicative or disposition phase of case processing, the Acting Director said that FinCEN favored more diligent management oversight (e.g., case reviews by the OCRE Assistant Director) rather than the establishment of strict or arbitrary time lines. However, to provide further management oversight, the Acting Director said that FinCEN had recently reinstated the use of quarterly reports showing the status of BSA referrals, including the number of cases received and closed during the reporting period. Moreover, we note that, at the April 1, 1998, hearing held by this Subcommittee, FinCEN agreed to provide quarterly reports to the Subcommittee.

Generally, if they are fully implemented, we believe that the various steps or initiatives presented by the Acting Director collectively meet the substantive intent of our recommendation. As this report indicates, our principal concern is that insufficient management attention has been a significant cause of the lengthy processing time for civil penalty cases. Agency recognition of the need for greater or more diligent management oversight, including the use of timeliness goals, is a key to corrective action. Nonetheless, we still believe that FinCEN should consider opportunities for using timeliness goals as guides for managing and monitoring all phases of civil case processing, not just the initial case assessment phase.

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We are sending copies of this report to the Subcommittee's Ranking Minority Member; the Chairman and Ranking Minority Member, House Committee on Banking and Financial Services; the Secretary of the Treasury; the Acting Director, FinCEN; and other interested parties. We will also make copies available to others on request.

Major contributors to this report are listed in appendix V. Please contact me on (202) 512-8777 if you or your staff have any questions.

Sincerely yours,

A handwritten signature in black ink that reads "Richard M. Stana". The signature is written in a cursive style with a prominent initial "R".

Richard M. Stana  
Associate Director  
Administration of Justice Issues

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## Abbreviations

BSA	Bank Secrecy Act
FDIC	Federal Deposit Insurance Corporation
FinCEN	Financial Crimes Enforcement Network
FRS	Board of Governors of the Federal Reserve System
IRS	Internal Revenue Service
MLSA	Money Laundering Suppression Act of 1994
NCUA	National Credit Union Administration
OCC	Office of the Comptroller of the Currency
OCRE	Office of Compliance and Regulatory Enforcement
OTS	Office of Thrift Supervision
SEC	Securities and Exchange Commission

# Objectives, Scope, and Methodology

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The Chairman, Subcommittee on General Oversight and Investigations, House Committee on Banking and Financial Services, asked us for information regarding efforts of the Treasury Department's Financial Crimes Enforcement Network (FinCEN) to process civil penalty referrals for violations of the Bank Secrecy Act (BSA). Generally, the request involved two objectives. The first was to update the BSA civil penalty case inventory and processing timeliness statistics that we presented in our 1992 report.<sup>1</sup>

The second was to determine the status of FinCEN's efforts regarding a provision of the Money Laundering Suppression Act of 1994 (MLSA).

More specifically, as agreed with the Chairman's office, we focused our work on the following questions:

- How, if at all, has Treasury changed its policies and procedures for processing civil penalty cases since 1992?
- Based upon workload and related statistics, what was Treasury's performance in processing civil penalty cases during calendar years 1992 through 1997?
- What is the status of FinCEN's efforts to develop and issue a final regulation delegating the authority to assess civil penalties for BSA violations to the federal banking regulatory agencies, as required by the MLSA?

Preliminarily, in addressing the Chairman's request, we reviewed our February 1992 report and our subsequent congressional testimony in June 1992 before the Subcommittee on Oversight, House Committee on Ways and Means.<sup>2</sup> Also, we reviewed a relevant 1990 report by Treasury's Inspector General.<sup>3</sup> In response to our inquiry, FinCEN officials told us that our 1992 report and the Inspector General's 1990 report were the only previous studies conducted of BSA civil penalty processing.

To address the first question, we interviewed officials in FinCEN's Office of Compliance and Regulatory Enforcement (OCRE), and we reviewed relevant documentation on policies and procedures (see app. II). Also, we reviewed guidelines that Treasury issued to assist regulatory agencies in determining which BSA violations warranted referral for possible

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<sup>1</sup>GAO/GGD-92-46. The report presented statistics covering calendar years 1985 through 1991, as of October 24, 1991.

<sup>2</sup>GAO/T-GGD-92-57.

<sup>3</sup>Department of the Treasury, Office of the Inspector General, Audit Report on the Office of Financial Enforcement's Implementation of the Bank Secrecy Act (OIG 90-024), January 10, 1990.

assessment of civil penalties.<sup>4</sup> Further, we obtained information about the number of OCRE staff involved in processing BSA civil penalty cases.

Regarding Treasury's performance in processing BSA civil penalty cases, we reviewed and compared data for two time periods covering a total of 13 years—(1) calendar years 1985 through 1991 and (2) calendar years 1992 through 1997. In so doing, we developed statistical tables showing annual workload (i.e., beginning inventory plus referrals received), cases closed, processing times, closures by type of action taken, penalty dollar amounts, and referral sources (see app. III).

For the more recent (1992 through 1997) of the two time periods, we selectively verified the data that FinCEN provided to us from its computerized civil penalty tracking system. Specifically, we judgmentally selected and reviewed 15 percent of the cases that were closed by type of action taken in this time period. In our judgmental selections, we included cases representing all three types of case-closure dispositions—(1) cases closed with no contact, (2) cases closed with a letter of warning, and (3) cases closed with a monetary penalty assessed. For each of the selected cases, we reviewed OCRE's hard copy case files to verify that applicable data had been accurately input into the computerized civil penalty tracking system. Further, we checked the accuracy of the specific query statements that OCRE used in providing us requested data from the computerized civil penalty tracking system. Our verification efforts found three minor discrepancies in the data contained in FinCEN's civil penalty tracking system. The correction of these discrepancies did not change the results of our analysis.

Also, according to FinCEN, a total of 16 cases during the period January 1, 1992, through March 27, 1998, were affected by expiration of the statute of limitations. We did not independently verify this total nor did we analyze these cases.

Regarding the last question (delegation of civil penalty authority), we interviewed FinCEN officials to update the status of information presented in our

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<sup>4</sup>U.S. Department of the Treasury, Office of Financial Enforcement, "Bank Secrecy Act Referral Guidelines for Financial Institutions," October 31, 1990. At the time of our review, FinCEN officials told us that these guidelines were still applicable.

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**Appendix I**  
**Objectives, Scope, and Methodology**

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- February 1998 report to the Subcommittee's Chairman and Ranking Minority Member<sup>5</sup> and
  - April 1998 testimony at a hearing held by the Subcommittee.<sup>6</sup>

Also, we reviewed FinCEN's multiyear strategic plan, which briefly discusses the delegation issue.<sup>7</sup>

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<sup>5</sup>GAO/GGD-98-18.

<sup>6</sup>GAO/T-GGD-98-83.

<sup>7</sup>FinCEN, Strategic Plan, 1997 - 2002 (undated), pp. 28 and 36.

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# Procedures for Processing BSA Civil Penalty Cases

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In May 1994, Treasury’s Assistant Secretary for Enforcement delegated BSA civil penalty authority to FinCEN. As a result, the Director of FinCEN is responsible for assessing civil penalties for BSA violations by banks and by certain nonbank financial institutions. Following is a description of the process of identifying and assessing penalties for the violations.

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## FinCEN Receives BSA Violation Referrals From Various Sources

FinCEN does not conduct BSA compliance examinations at either banks or nonbank financial institutions. Rather, such examinations are conducted by the following agencies:

- Compliance examinations of “banks” are conducted by the five federal bank supervisory or regulatory agencies: the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System (FRS), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA).
- IRS’ Examination Division conducts compliance examinations of nonbanks. This category includes casinos; money transmitters; check cashers; currency exchangers; security brokers and dealers; issuers or redeemers of money orders, traveler’s checks, and other similar instruments; and individuals who attempt to evade the BSA’s reporting requirements.
- Securities and Exchange Commission (SEC) conducts compliance examinations of securities brokers and dealers.

If warranted by the results of their examinations, these agencies refer their preliminary findings to FinCEN for appropriate action and disposition.

According to FinCEN officials, in addition to BSA violations referred by the various federal agencies, FinCEN also initiates civil investigations based on other sources, such as (1) voluntary disclosures from financial institutions or individuals; (2) formal advisories from IRS’ Detroit Computing Center, which processes currency transaction reports and other BSA-related information; and (3) reports of investigations from state and local law enforcement agencies.

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## Each Referral Is Reviewed by IRS for Criminal Potential

Initially, before any administrative or civil enforcement action is taken, FinCEN’s procedures call for sending each incoming matter to IRS’ Criminal Investigation Division for review of criminal potential. According to specified procedures, FinCEN should not proceed with evaluating a BSA civil

penalty referral until IRS or a U.S. Attorney's Office provides written approval for such action. By agreement, IRS has 120 days to complete its review of the matter.

FinCEN officials told us that FinCEN generally receives a clearance to proceed within 30 days. Further, the officials noted that, in cases requiring special or expeditious attention, FinCEN contacts a designated IRS official by telephone to obtain clearance from the Criminal Investigation Division.

After FinCEN receives a clearance from IRS, the matter is assigned a formal case number and given to a financial enforcement specialist within FinCEN's OCRE.

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## **FinCEN Develops Information to Evaluate the Case**

The duties of the financial enforcement specialist are to conduct a preliminary review of the information presented in the referral and, if needed, to contact other sources to develop further information on the circumstances of the violation and/or the subject of the referral. According to FinCEN, these sources may include one or more of the following:

- the law enforcement or regulatory agency that discovered and referred the alleged BSA violations to FinCEN,
- any law enforcement or regulatory authority that has jurisdictional concerns or relevant information on the subject,
- the financial institution's primary regulator,
- IRS' Detroit Computing Center (to obtain BSA records and background on the subject),
- the local U.S. Attorney's Office or IRS office, and
- the financial institution or person who is the subject of the alleged BSA violations.

According to FinCEN, the financial enforcement specialist is to consider the results of any internal or external audits, any corrective action taken, the institution's written compliance program and training and instructional materials, and other information relevant to the questioned transactions. Also, FinCEN noted that, to obtain a fuller perspective on the alleged BSA violation, the specialist may ask for and review relevant information that goes beyond just the specific transactions cited in the referral. That is, the specialist may review other account and transaction activity information regarding the subject institution or individual.

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## Disposition of Cases

On the basis of the information in the referral and that developed by OCRE, the financial enforcement specialist is to recommend a course of civil or administrative action to the Assistant Director, OCRE, who reviews and decides whether to approve the recommended action. The case is disposed of with one or a combination of the following administrative or civil actions.

- The federal regulator may issue a cease and desist order or other sanction.
- The subject financial institution may make corrections to any deficient BSA systems and/or backfile any delinquent BSA reports.
- FinCEN may close the case without further action or contact with the subject institution or individual.
- FinCEN may issue a letter of warning.
- FinCEN may assess a civil monetary penalty.

FinCEN officials told us that, if a civil monetary penalty seems appropriate, FinCEN grants the subject institution or individual an opportunity to dispute the allegations and offer a defense of the alleged actions. The officials added that financial institutions and individuals are encouraged to submit any available mitigating evidence in advance of BSA case settlement negotiations with FinCEN. Also, the officials noted that FinCEN's final disposition of a BSA case, including the dollar amount of the civil penalty, is to be determined by considering the following factors:

- the severity, volume, and longevity of the BSA violations;
- the subject's overall BSA compliance program;
- self discovery and acknowledgment of the BSA violations to Treasury versus external discovery and notification;
- cooperation with FinCEN and other applicable agencies;
- prompt correction of the BSA deficiencies that caused the violations;
- the outcomes of any prior or subsequent BSA compliance examinations;
- and
- any other valid aggravating or mitigating factors, including the subject's ability to pay the BSA penalty.

According to FinCEN officials, due to the complex nature of BSA cases, FinCEN does not use rigid formulas to determine the appropriate BSA penalty. Rather, all such decisions are to be made on a case-by-case basis and are to reflect consideration of the factors presented above. Also, FinCEN officials noted that the agency does not set timeliness goals for processing civil penalty cases.

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**Appendix II**  
**Procedures for Processing BSA Civil Penalty**  
**Cases**

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According to FinCEN, if a subject refuses to settle the case, FinCEN formally assesses the maximum BSA civil monetary penalty allowed by law for the violations. The matter is then to be referred for internal legal review. Thereafter, if deemed warranted, procedures call for FinCEN to submit the matter to the Department of Justice's Civil Division to seek collection of the unpaid penalty. After FinCEN assesses a BSA civil penalty, the government has 2 years to initiate collection litigation against the subject. FinCEN officials told us that, to avoid litigation and exposure to the maximum penalty allowed by law, subjects of a BSA action are almost always amenable to settling their BSA liability with FinCEN.

# Data on BSA Civil Penalty Cases

This appendix presents various tables of BSA penalty statistics for calendar years 1985 through 1997. More specifically, the tables show annual workload (i.e., beginning inventory plus referrals received) and cases closed (table III.1); processing times (tables III.2, III.3, and III.4); closures by type of action taken (table III.5); penalty dollar amounts (table III.6); and referral sources (table III.7).

**Table III.1: BSA Civil Penalty Annual Workload and Cases Closed, Calendar Years 1985 Through 1997**

Calendar year	Case workload			Cases closed <sup>b</sup>	Ending inventory <sup>c</sup>	Cases closed as a percentage of annual workload
	Beginning inventory	Referrals received	Annual workload <sup>a</sup>			
1985	3	101	104	11	93	11%
1986	93	137	230	73	157	32
1987	157	111	268	77	191	29
1988	191	47	238	59	179	25
1989	179	75	254	59	195	23
1990	195	65	260	103	157	40
1991	157	27	184	48	136	26
1992	136	67	203	82	121	40
1993	121	27	148	39	109	26
1994	109	30	139	39	100	28
1995	100	32	132	29	103	22
1996	103	25	128	10	118	8
1997	118	34	152	19	133	13
<b>Total</b>		<b>778</b>		<b>648</b>		

<sup>a</sup>Annual workload consists of beginning inventory (as of January 1) plus referrals received during the year.

<sup>b</sup>For the 648 cases that were closed during calendar years 1985-1997, tables III.2, III.3, and III.4 present processing time statistics. Table III.5 shows type of disposition for the closed cases, and table III.6 shows penalty dollar amounts.

<sup>c</sup>Ending inventory (as of December 31) consists of annual workload minus cases closed.

Source: GAO analysis of data from FinCEN's civil penalty tracking system.

**Appendix III  
Data on BSA Civil Penalty Cases**

**Table III.2: Average and Range of Processing Times for the 648 Civil Penalty Cases That Were Closed During Calendar Years 1985 Through 1997**

Calendar year	Number	Cases closed	
		Average time to close case (in years) <sup>a</sup>	Range of time to close case
1985	11	0.45	83 days to 260 days
1986	73	0.57	5 days to 1.51 years
1987	77	1.00	9 days to 2.69 years
1988	59	1.49	4 days to 3.69 years
1989	59	2.25	56 days to 4.92 years
1990	103	2.87	38 days to 5.31 years
1991	48	2.55	138 days to 6.44 years
<b>Subtotal for 1985-1991</b>	<b>430</b>	<b>1.77</b>	<b>4 days to 6.44 years</b>
1992	82	2.72	8 days to 7.26 years
1993	39	2.60	28 days to 7.64 years
1994	39	3.26	108 days to 6.88 years
1995	29	3.16	41 days to 6.81 years
1996	10	3.57	65 days to 8.65 years
1997	19	4.23	1.31 years to 10.14 years
<b>Subtotal for 1992-1997</b>	<b>218</b>	<b>3.02</b>	<b>8 days to 10.14 years</b>
<b>Overall</b>	<b>648</b>	<b>2.19</b>	<b>4 days to 10.14 years</b>

<sup>a</sup>The median response times for the periods 1985-1991 and 1992-1997 were similar to the average response times for these periods. For instance, the median response time for 1985-1991 was 1.34 years, and the median response time for 1992-1997 was 2.78 years.

Source: GAO analysis of data from FinCEN's civil penalty tracking system.

**Appendix III  
Data on BSA Civil Penalty Cases**

**Table III.3: Processing Times (by Time Period) for the 648 Civil Penalty Cases That Were Closed During Calendar Years 1985 Through 1997**

Processing time	1985 through 1991		1992 through 1997		1985 through 1997	
	Number of cases closed	Percent	Number of cases closed	Percent	Number of cases closed	Percent
Less than 1 year	162	38%	40	18%	202	31%
1 to less than 2 years	122	28	25	11	147	23
2 to less than 3 years	60	14	61	28	121	19
3 to less than 4 years	40	9	26	12	66	10
4 to less than 5 years	37	9	33	15	70	11
5 to less than 6 years	8	2	17	8	25	4
6 years or over	1	0	16	7	17	3
<b>Total</b>	<b>430</b>	<b>100%</b>	<b>218</b>	<b>99%<sup>a</sup></b>	<b>648</b>	<b>101%<sup>a</sup></b>

<sup>a</sup>Percentages do not add to 100 percent due to rounding.

Source: GAO analysis of data from FinCEN's civil penalty tracking system.

**Table III.4: Average and Range of Processing Times by Type of Action Taken for the 648 Civil Penalty Cases That Were Closed During Calendar Years 1985 Through 1997**

Action taken on cases closed	1985 through 1991			1992 through 1997			1985 through 1997		
	Number	Processing time for cases closed		Number	Processing time for cases closed		Number	Processing time for cases closed	
		Average (in years)	Range		Average (in years)	Range		Average (in years)	Range
No contact made	147	2.09	12 days to 5.36 years	65	2.73	17 days to 7.64 years	212	2.36	12 days to 7.64 years
Warning letter sent	235	1.69	5 days to 6.44 years	95	2.94	8 days to 10.14 years	330	2.05	5 days to 10.14 years
Penalty assessed	48	1.18	4 days to 4.58 years	58	3.22	41 days to 8.65 years	106	2.30	4 days to 8.65 years

Source: GAO analysis of data from FinCEN's civil penalty tracking system.

**Appendix III**  
**Data on BSA Civil Penalty Cases**

**Table III.5: Closed Penalty Cases by Type of Action Taken, Calendar Years 1985 Through 1997**

Calendar year	Number of cases closed			Total
	No contact made	Letter of warning issued	Penalty assessed	
1985	0	0	11	<b>11</b>
1986	4	56	13	<b>73</b>
1987	19	46	12	<b>77</b>
1988	14	40	5	<b>59</b>
1989	34	21	4	<b>59</b>
1990	46	55	2	<b>103</b>
1991	30	17	1	<b>48</b>
<b>Subtotal for 1985-1991</b>				
Number	147	235	48	<b>430</b>
Percentage of cases closed	34%	55%	11%	<b>100%</b>
1992	32	37	13	<b>82</b>
1993	9	17	13	<b>39</b>
1994	6	16	17	<b>39</b>
1995	6	14	9	<b>29</b>
1996	3	3	4	<b>10</b>
1997	9	8	2	<b>19</b>
<b>Subtotal for 1992-1997</b>				
Number	65	95	58	<b>218</b>
Percentage of cases closed	30%	44%	27%	<b>101%<sup>a</sup></b>
Overall:				
Number	212	330	106	<b>648</b>
Percentage of cases closed	33%	51%	16%	<b>100%</b>

<sup>a</sup>Percentages do not add to 100 percent due to rounding.

Source: GAO analysis of data from FinCEN's civil penalty tracking system.

**Appendix III  
Data on BSA Civil Penalty Cases**

**Table III.6: Average and Range of Penalty Dollar Amounts, Calendar Years 1985 Through 1997**

Calendar year	Number of cases closed with penalty assessed	Total penalty dollar amount	Average dollar amount per penalty	Median dollar amount per penalty	Range of penalty dollar amount	
					Lowest	Highest
1985	11	\$5,117,640	\$465,240	\$269,940	\$121,750	\$2,250,000
1986	13	9,274,160	713,397	220,000	3,000	4,750,000
1987	12	1,542,980	128,582	143,000	32,000	295,000
1988	5	3,287,000	657,400	95,000	22,000	3,010,000
1989	4	1,121,000	280,250	270,500	80,000	500,000
1990	2	378,000	189,000	189,000	10,000	368,000
1991	1	54,600	54,600	54,600	54,600	54,600
<b>Subtotal for 1985-1991</b>	<b>48</b>	<b>\$20,775,380</b>	<b>\$432,820</b>	<b>\$196,000</b>	<b>\$3,000</b>	<b>\$4,750,000</b>
1992	13	\$2,637,930	\$202,918	\$65,000	\$5,000	\$950,000
1993	13	2,315,389	178,107	80,000	15,000	1,182,639
1994	17	3,094,300	182,018	20,000	2,000	1,950,000
1995	9	405,600	45,067	20,000	600	115,000
1996	4	195,000	48,750	20,000	5,000	150,000
1997	2	188,000	94,000	94,000	88,000	100,000
<b>Subtotal for 1992-1997</b>	<b>58</b>	<b>\$8,836,219</b>	<b>\$152,349</b>	<b>\$50,000</b>	<b>\$600</b>	<b>\$1,950,000</b>
<b>Overall</b>	<b>106</b>	<b>\$29,611,599</b>	<b>\$279,355</b>	<b>\$92,500</b>	<b>\$600</b>	<b>\$4,750,000</b>

Source: GAO analysis of data from FinCEN's civil penalty tracking system.

**Appendix III  
Data on BSA Civil Penalty Cases**

**Table III.7: Number of Civil Penalty Referrals by Source, Calendar Years 1985 Through 1997**

Calendar year	Sources of referrals									Total
	Federal banking regulatory agencies					Other entities				
	FDIC	FRS	NCUA	OCC	OTS	IRS <sup>a</sup>	SEC	Voluntary <sup>b</sup>	Other <sup>c</sup>	
1985	3	0	0	14	1	1	0	70	12	<b>101</b>
1986	0	0	0	73	0	0	0	36	28	<b>137</b>
1987	9	1	0	41	0	8	2	21	29	<b>111</b>
1988	3	1	0	8	0	12	4	6	13	<b>47</b>
1989	4	0	0	8	3	39	4	7	10	<b>75</b>
1990	3	0	0	7	4	39	1	5	6	<b>65</b>
1991	6	0	0	4	0	8	1	4	4	<b>27</b>
<b>Subtotal for 1985-1991</b>										
Number	28	2	0	155	8	107	12	149	102	<b>563</b>
Percent	5.0%	0.4%	0%	27.5%	1.4%	19.0%	2.1%	26.5%	18.1%	<b>100%</b>
1992	10	2	0	13	3	17	0	16	6	<b>67</b>
1993	7	1	0	4	1	8	0	4	2	<b>27</b>
1994	12	0	0	2	1	8	0	3	4	<b>30</b>
1995	6	0	0	3	0	17	0	2	4	<b>32</b>
1996	5	0	0	1	0	18	0	0	1	<b>25</b>
1997	1	0	0	0	0	29	1	1	2	<b>34</b>
<b>Subtotal for 1992-1997</b>										
Number	41	3	0	23	5	97	1	26	19	<b>215</b>
Percent	19.1%	1.4%	0%	10.7%	2.3%	45.1%	0.5%	12.1%	8.8%	<b>100%</b>
Overall:										
Number	69	5	0	178	13	204	13	175	121	<b>778</b>
Percent	8.9%	0.6%	0%	22.9%	1.7%	26.2%	1.7%	22.5%	15.6%	<b>100%</b>

<sup>a</sup>IRS' Examination Division conducts compliance examinations of nonbank financial institutions.

<sup>b</sup>Voluntary disclosures from financial institutions or individuals.

<sup>c</sup>This category includes referrals from U.S. Attorney Offices, the Customs Service, and IRS' Criminal Investigation Division. Also, according to FinCEN officials, the agency initiates civil investigations based on other sources, such as reports of investigations from state and local law enforcement agencies.

Source: GAO analysis of data from FinCEN's civil penalty tracking system.

# Comments From the Financial Crimes Enforcement Network



FINANCIAL CRIMES  
ENFORCEMENT NETWORK  
2070 Chain Bridge Road, Suite 200, Vienna, VA 22182, Telephone (703) 905-3520



MAY 20 1998

Mr. Norman J. Rabkin  
Director  
Administration of Justice Issues  
United States General Accounting Office  
General Government Division  
441 G Street, NW  
Washington, DC 20548

Dear Mr. Rabkin:

Thank you for the opportunity to comment on the Draft GAO Report entitled MONEY LAUNDERING: FinCEN Needs to Better Manage Bank Secrecy Act Civil Penalty Cases. The Report contains a detailed and comprehensive discussion of the procedures FinCEN uses to process civil penalty referrals for violations of the Bank Secrecy Act (BSA). Specifically, it addresses GAO's concerns regarding the timely processing and disposition of civil penalty referrals within FinCEN's Office of Compliance and Regulatory Enforcement (OCRE).

To reduce the lengthy processing times associated with civil penalties, the Report recommended that the Acting Director, FinCEN, set average timeliness goals for evaluating and disposing of civil penalty cases, taking into account the varying complexity of the cases, and then monitor the progress of managers and staff responsible for meeting those goals. We concur that greater oversight is needed to ensure that civil penalty cases are processed in an expeditious, yet thorough manner.

An effective application of time management of civil penalty cases requires a careful balance of timetables, management oversight, and consideration of the uniqueness of the cases. To accommodate those demands, we plan to establish strict timelines during the initial assessment of civil penalty referrals, where such guidelines are practicable and predictable. Applying similar standards during the disposition phase of a case, however, is not appropriate, given that each case is unique and demands varying resources and time. We favor more diligent management oversight (e.g., case reviews by the OCRE Assistant Director) rather than arbitrary timeliness goals during the adjudicative phase. As GAO's report suggests, imposition of average timeliness goals would require incorporating the varying complexity of the cases.

During the past few months we have taken definitive steps to address the timeliness issue. These initiatives include conducting an objective, comprehensive assessment of our current open inventory, reducing the open inventory, establishing enhanced operating procedures, strengthening management oversight practices, and assessing training needs.

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**Appendix IV  
Comments From the Financial Crimes  
Enforcement Network**

Since January 1998 we have closed over fifty civil penalty referrals, after carefully reviewing them for civil penalty potential. Several cases, many of which did not warrant civil penalty action, were closed with the issuance of warning letters to the financial institutions. In doing so, we communicated our continued, strong commitment to BSA compliance regulations.

We dedicated two non-OCRE FinCEN employees to conduct a critical analysis of the remaining open civil penalty referrals. Their mission, which is ongoing, is to highlight the open cases that warrant immediate attention and to provide the necessary oversight to ensure that progress continues on those referrals.

In addition, these employees, with input and assistance from the OCRE staff, are developing detailed civil penalty referral procedures to be implemented in the near future. These procedures will include timelines, due dates, and assessment guidelines that we believe will ensure the expeditious and thorough processing of civil penalty cases.

To provide further oversight, we recently reinstated OCRE's Quarterly Report of Referrals of BSA Violations for Civil Action. This document, which is provided to the Director, FinCEN, reports the status of BSA referrals, including the number of cases received and closed during the reporting period, along with the collective status of those cases.

Another area that we intend to assess in the near future is training. We are working with the OCRE employees to identify individual training needs, as they relate to the Bank Secrecy Act and civil penalty cases. We will provide critical continuing education to these employees to ensure that they stay abreast of changing BSA regulations and interpretations.

Through our efforts to date, we have made significant progress in addressing the timeliness concerns reported by GAO. We are committed to continuing this progress and feel confident that our initiatives will be successful.

Sincerely,



William F. Baity  
Acting Director

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