

**FINANCIAL CRIMES ENFORCEMENT
NETWORK
OFFICE OF COMPLIANCE AND
REGULATORY ENFORCEMENT**

OIG-00-014

NOVEMBER 5, 1999



Office of Inspector General

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OFFICE OF
INSPECTOR GENERAL

DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

November 5, 1999

MEMORANDUM FOR JAMES F. SLOAN, DIRECTOR
FINANCIAL CRIMES ENFORCEMENT NETWORK

FROM: Dennis S. Schindel *Dennis Schindel*
Assistant Inspector General for Audit

SUBJECT: Financial Crimes Enforcement Network
Office of Compliance and Regulatory
Enforcement

This memorandum transmits the above subject final audit report. In June 1998, the General Accounting Office reported a substantial backlog in the Financial Crime Enforcement Network's (FinCEN) inventory of open civil monetary penalty (CMP) cases because the cases had not been processed in a timely manner. The objectives of our audit were to determine whether FinCEN's Office of Compliance and Regulatory Enforcement (OCRE) had: (1) taken action to reduce the CMP case backlog; and (2) implemented action(s) to ensure timely processing of future CMP cases.

Rather than generalizing all work as CMP cases, during Fiscal Year 1999, OCRE adopted the term "matters" to be more descriptive of the type of work included in OCRE's inventory. This term was selected since not all matters had civil penalty potential.

The audit disclosed that FinCEN reduced the number of open matters referred to OCRE and took positive actions to ensure matters are timely processed. In the first 3 months of 1999, OCRE closed more matters than in all of 1995 and 1996, combined. This improvement is attributed to revised procedures and the assignment and initiatives of a new Assistant Director (AD) of OCRE. However, to ensure OCRE's recent momentum in closing matters is maintained, we are making a recommendation to continue utilizing the AD's initiatives to improve OCRE operations. Additionally, action needs to be taken on the AD's request to reassign the compliance workload to another FinCEN division.

Our findings are summarized in the Overview and explained in further detail in the Audit Results section of the report. Your response to our draft report indicated that you concur with the findings and have already taken corrective actions in accordance with our recommendations. These actions

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should ensure the timely processing of matters referred to OCRE. We have summarized your actions to implement the recommendations in the Audit Results section of the attached report and included a complete text of the response to our report as Appendix 2.

We appreciate the courtesies and cooperation provided to our auditors during the audit. If you wish to discuss this report, you may contact me at (202) 927-5400 or a member of your staff may contact Barry L. Savill, Director, Program Audits at (202) 283-0151.

Attachment

cc: James E. Johnson
Under Secretary of the Treasury for Enforcement

Overview

This report presents the results of the Office of Inspector General (OIG) audit to determine whether the Financial Crimes Enforcement Network (FinCEN) Office of Compliance and Regulatory Enforcement (OCRE) reduced its inventory backlog of civil monetary penalty (CMP) cases and implemented action(s) to ensure timely processing. In June 1998, the General Accounting Office (GAO) reported that FinCEN had a substantial backlog of these cases, now referred to as Bank Secrecy Act (BSA) related matters.¹ Rather than generalizing all work as a CMP case, OCRE adopted the term "matter" during Fiscal Year 1999 to be more descriptive of the type of work included in the inventory, since not all matters had civil penalty potential.

Our audit revealed that FinCEN made significant improvements in OCRE's operations resulting in a reduction of open matters in its inventory. In response to GAO's report, FinCEN issued internal processing procedures on June 23, 1998 that incorporated timeliness guidelines and increased management oversight. Also, a new Assistant Director (AD) was assigned to manage OCRE on December 7, 1998. Upon arrival, the AD conducted a preliminary assessment of OCRE's functions and identified immediate and future initiatives to build a solid enforcement process, enhance the OCRE compliance program, and address personnel and systems needs. Since taking over OCRE and instituting some of the initiatives, a total of 44 matters were closed as of March 31, 1999. This figure represents more closures in 3 months than in all of 1995 and 1996, combined.

To ensure OCRE's continued progress in reducing the backlog and processing future matters timely, the AD's planned initiatives relative to OCRE's primary function of enforcing the BSA needs to be implemented. Also, prompt action should be taken on the AD's request to reassign OCRE's workload of addressing compliance issues to another FinCEN division. Reassigning this work would afford OCRE analysts sufficient time to focus on enforcing BSA violations. Examples of compliance issues are providing assistance on filling out forms and guidance on compliance with BSA regulations to financial institutions.

¹ Matters, as defined by OCRE, are a: (1) referral from any regulatory agency to evaluate for a CMP or other enforcement action; (2) request for a determination on whether it is necessary to backfile a Currency Transaction Report (CTR) or Suspicious Activity Report (SAR) that was not previously filed; (3) voluntary disclosure of a potential BSA violation; and (4) matter initiated by OCRE to review for potential enforcement sanctions.

Background

Treasury's Office of Financial Enforcement was established in 1985 to, among other things, evaluate 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, and employees, 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. BSA violations include, but are not limited to, the failure to file a CTR on a cash transaction over \$10,000 and a SAR on any suspicious transaction that may be relevant to a possible violation of law or regulation.

In May 1994, the Assistant Secretary for Enforcement delegated civil penalty authority to FinCEN. FinCEN receives civil penalty referrals from various sources, such as the Internal Revenue Service (IRS), Office of the Comptroller of the Currency, Office of Thrift Supervision, and the Federal Deposit Insurance Corporation. Presently, the civil penalty referrals are processed by FinCEN's OCRE. After receiving a referral, OCRE's role includes evaluating the circumstances of the alleged violation and determining whether some type of civil action, including seeking the imposition of a CMP, should be taken against the financial institution.

FinCEN disposes of the majority of its civil penalty referrals with one of three courses of action: (1) close without contacting the subject of the referral; (2) issue a letter of warning to the subject institution; or (3) assess a CMP. The Director of FinCEN makes the final decision as to whether a CMP should be assessed.

In June 1998, GAO issued report GAO/GGD-98-108, *BSA Civil Penalty Case Processing*. The report was critical of FinCEN and the civil penalty process. The report stated "Except for the May 1994 delegation to FinCEN, Treasury's policies and procedures for processing civil penalty cases generally have not changed since 1992." GAO concluded "The problem of lengthy processing times for civil penalty cases is growing worse. Annual case closures in each of the 3 most recent years, 1995 through 1997, dropped below 30 for the first time since 1985." OCRE closed 29 cases in 1995, 10 cases in 1996, and 19 cases in 1997. GAO stated "Insufficient management attention was the cause of the lengthy processing times for civil penalty cases."

Objectives, Scope and Methodology

The objectives of our audit were to determine whether FinCEN: (1) took action to reduce CMP case backlog; and (2) implemented action(s) to ensure timely processing of future CMP cases. We conducted audit field work from February 1999 to April 1999 at FinCEN's headquarters in Vienna, VA and OCRE in Washington, DC. Our work focused on the current backlog of matters in OCRE and the actions taken to reduce the backlog. We conducted interviews at headquarters and with OCRE management and staff. In addition, we reviewed all matters closed by OCRE during the first 2 months of 1999.

This audit was conducted in accordance with the *Government Auditing Standards* issued by the Comptroller General of the United States, and included such tests as were deemed necessary.

Audit Results

Improvements Made to Reduce OCRE Inventory

During the first 3 months of 1999, OCRE made substantial progress in reducing its inventory. Over this period, OCRE closed 44 of 122 matters, totaling more closures than in all of 1995 and 1996. This reduction was attributed to revised procedures and the efforts of a new AD assigned to OCRE in December 1998.

In response to GAO's report on the lengthy processing time for civil penalty cases, FinCEN's Acting Director internally issued *Procedures for Processing Civil Penalty Referrals and Related Correspondence* on June 23, 1998. The procedures included timeliness guidelines and increased management oversight. Additionally, upon arrival, the new AD conducted a preliminary assessment of OCRE priorities, and at the conclusion of this assessment, the AD set forth key strategic objectives outlined below. Furthermore, the AD revised the processing procedures for immediate implementation.

Preliminary Assessment of OCRE

To improve OCRE's operations, the AD identified and established strategic objectives to:

1. rebuild OCRE staff by providing enforcement related skills and abilities and a knowledge of both bank and nonbank² financial institutions;
2. rebuild the OCRE processes by establishing an updated enforcement framework (e.g., when to assess penalties² or issue warning letters) and continuing to evaluate OCRE's processing procedures;
3. be proactive in initiating enforcement matters by rebuilding enforcement relationships with other Government agencies, better utilizing information from regulatory agencies, and building a mechanism to internally generate matters; and
4. be proactive in implementing enforcement related functions by providing advisories on the most common errors and developing a better use of warning letters.

The AD also established target dates to perform OCRE's primary function of enforcing BSA. By June 30, 1999, OCRE plans to reduce pending matters to a more current status and a number that is manageable by its limited resources. The AD anticipates this will be in the range of 20 to 30 matters depending on the complexity. By December 31, 1999, the AD plans to focus the resources solely on performing enforcement functions, rebuilding existing enforcement processes, and addressing remedial actions identified in the preliminary assessment.

Revised Procedures

To expedite processing, the AD set up a process to triage the backlog "to weed out the ones that are not worth pursuing." This would leave only "the best" matters to go forward. According to the AD, it was the only way the office would be able to reduce the current backlog and get to a point where it can handle the current workload while at the same time enforce BSA rules. The triage worked as follows: (1) pick the easiest matters first so employees can learn how to evaluate matters; and (2) if matters were referred prior to and including 1995, no work would be performed unless subsequent problems occurred. The AD also provided

² The term nonbank covers a wide variety of financial services providers such as State licensed casinos, tribal casinos, card clubs, securities broker dealers, check cashiers, money transmitters, currency exchangers and issuers, and sellers and redeemers of travelers checks and money orders.

sample form letters to be forwarded to institutions on issues warranting a cautionary letter, back filing letter or letter of warning.

Furthermore, the AD instituted a three stage process. Stage I requires all incoming matters to be evaluated, researched, analyzed, and documented using the Stage I Situational Analysis Sheet. Matters are either closed out after Stage I or moved to Stage II for further processing. Stage II requires further research and an evaluation as to whether IRS Criminal Investigations Division (CID) involvement is necessary. A matter reaching Stage III requires making a CMP determination, negotiating or assessing the penalty, and closing the matter.

Under the revised procedures, we determined that the process is effective. Also, as discussed in the following sub-section, OCRE made the proper determination in each of the 27 matters we reviewed. The analyst entered current matters into a database for tracking purposes and reviewed the database to determine if prior violations were reported to FinCEN. Also, for financial institutions, the analyst contacted the Federal regulatory agency on recent examinations to determine whether the problem still existed or the financial institution corrected its error since the referral was forwarded to FinCEN. Finally, the AD reviewed the completed Stage I analysis sheet submitted by the analysts. The AD either agreed with the analysis conducted on the matter and signed off, or returned the matter to the analyst with comments on the disagreed area and requested further work. Through the use of this form, the AD had already identified improvements where steps could be accomplished better and the form was revised.

Continued Improvement of OCRE's Operations is Needed

Backfiling requests made up a significant portion of the backlog of matters in OCRE. Of the 27 matters we reviewed, 13 (48 percent) were backfiling requests. Backfiling requests are considered informational requests from institutions and are rarely situations involving CMPs. For example, a backfiling request typically comes in from a bank that recently had an audit. The audit revealed that a CTR was not filed on a particular customer the bank believed to be exempt from CTR filings. The bank then sends a letter to FinCEN explaining that it did not file a CTR and requests FinCEN to make a determination if they should indeed now backfile a CTR. In this example, no violation of the BSA occurred. According to the AD and our review of 31 USC 5311, the intent of the BSA is to bring about compliance. The Secretary may assess a penalty for any willful violation. Failure to file a CTR may be excused from liability if the violation is not willful or if mitigating circumstances exist.

Due to the recent and planned changes in OCRE and progress in reducing the inventory of matters, we ceased our current audit effort. A more comprehensive review of this area will be performed after FinCEN has had sufficient time to fully implement the AD's initiatives. However, based on interviews with the AD and our review of closed matters, it will be a challenge for the current staff to handle a large number of significantly harder referrals as opposed to the easier backfiling matters that were initially closed out. Therefore, to accomplish OCRE's primary function of enforcing the BSA, it is important for FinCEN to continue to improve OCRE's operations.

Recommendation 1

To effectively and efficiently eliminate the backlog of matters and for OCRE to achieve its primary function of enforcing the BSA, FinCEN's Director should continue utilizing the AD's initiatives to improve OCRE operations to reach the key strategic objectives and established target dates.

Management Response and OIG Comment

FinCEN concurred with the recommendation. The AD in charge of regulatory enforcement has been given the authority to implement the stated initiatives. Progress continues on many initiatives. For example, 52 enforcement matters were processed and resolved from March 1 through July 31, 1999, including 1 where a CMP was negotiated, and at least 10 matters are in the pipeline for the assessment or negotiation of CMPs.

The OIG concurs with the above action.

Reassigning the BSA Compliance Function

Action on the AD's request to have the BSA's compliance workload reassigned to another FinCEN division is needed. This shift was under consideration by the Director's predecessor, but formal action was not taken. Reassigning the compliance workload was based on the results of the AD's preliminary assessment of OCRE priorities and resources. According to the AD, over 50 percent of the staff's time would be spent on OCRE's compliance workload if OCRE staff handled all phone calls and compliance correspondence. The compliance function includes responding to phone calls or correspondence requesting regulatory assistance, interpretation of regulations, and assistance on filling out forms, as well as responding to general questions regarding compliance with BSA regulations and requests for publications. The AD believes that

reassigning the compliance workload would free up half of the limited staff's time to allow the office to concentrate on reducing and keeping the matters at a manageable level. In addition, the office would be able to concentrate on its primary function of enforcing the BSA and reestablishing ties with the Federal agencies involved in BSA.

Currently, OCRE has two BSA functions - enforcement and compliance. The AD stated that OCRE's primary function is to enforce the BSA by: investigating record keeping and reporting violations of the BSA by bank and nonbank financial institutions; evaluating the appropriate sanctions to support law enforcement and BSA regulatory objectives; and administering sanctions by assessing CMPs or taking other appropriate action.

Recommendation 2

To effectively enforce the BSA, FinCEN's Director should evaluate and take prompt action on the AD's request to reassign the compliance workload to another FinCEN division.

Management Response and OIG Comment

FinCEN concurred with the recommendation. The compliance workload has already been reassigned, months ahead of schedule, to another FinCEN division.

The OIG concurs with the above action.

ABBREVIATIONS

Assistant Director	AD
Bank Secrecy Act	BSA
Criminal Investigations Division	CID
Civil Monetary Penalty	CMP
Currency Transaction Report	CTR
Financial Crimes Enforcement Network	FinCEN
General Accounting Office	GAO
Internal Revenue Service	IRS
Office of Compliance and Regulatory Enforcement	OCRE
Office of Inspector General	OIG

MANAGEMENT RESPONSE



DEPARTMENT OF THE TREASURY
FINANCIAL CRIMES ENFORCEMENT NETWORK

AUG - 4 1999

MEMORANDUM FOR DENNIS S. SCHINDEL
ASSISTANT INSPECTOR GENERAL FOR AUDIT

FROM:

James F. Shear
Director

SUBJECT:

Draft Audit Report "Financial Crimes Enforcement Network
Office of Compliance and Regulatory Enforcement"

This memorandum provides the Management response to the recommendations contained in the draft audit report transmitted by your cover memorandum dated June 24, 1999 regarding the above subject.

Concur with Recommendation 1, which states:

To effectively and efficiently eliminate the backlog of matters and for OCRE to achieve its primary function of enforcing the Bank Secrecy Act, FinCEN's Director should continue utilizing the AD's initiatives to improve OCRE operations to reach the key strategic objectives and established target dates.

Corrective Action:

The Assistant Director in charge of regulatory enforcement has been given the authority to implement the stated initiatives. Progress continues on many initiatives; for example, the compliance workload was reassigned months ahead of its target date. 52 enforcement matters were processed and resolved from March 1 through July 31, including one where a civil money penalty was negotiated. In addition, there are at least 10 enforcement matters in the pipeline for the assessment or negotiation of civil money penalties.

Recommendation 2, which states:

To effectively enforce the Bank Secrecy Act, FinCEN's Director should evaluate and take prompt action on the AD's request to reassign the compliance workload to another FinCEN Division.

MANAGEMENT RESPONSE

Corrective Action:

The compliance workload has already been reassigned, months ahead of schedule, to another FinCEN division.

Since my appointment as Director in April, I have been working with the Treasury's Office of Enforcement and the senior management officials at FinCEN to re-structure, where necessary, the functions and responsibilities of the various FinCEN program offices. The final outcome of that process may involve changes in the organizational structure of FinCEN's regulatory responsibilities. Your recommendations and our corrective actions are important elements in the process.

We thank the professional approach taken by the Inspector General's Office in conducting the audit and for the recommendations contained in the report. If you have any questions, please feel free to contact Christine E. Carnavos, Assistant Director, Office of Compliance and Regulatory Enforcement, at (202) 216-2870 or my office at (703) 905-3591.

cc: Elizabeth A. Bresee
Assistant Secretary (Enforcement)

James E. Johnson
Under Secretary for Enforcement

MAJOR CONTRIBUTORS TO THIS REPORT

Audit Directorate

Barry Savill, Director, Program Audits

Jean Purcell, Audit Manager

Jim Hagen, Auditor-in-Charge

Melinda Rose, Senior Auditor

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