Audit Report



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BANK SECRECY ACT: Major Challenges Faced by FinCEN in Its Program to Register Money Services Businesses

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Abbreviations

BSA	Bank Secrecy Act
DOJ	Department of Justice
FBI	Federal Bureau of Investigation
FTEs	Full-time equivalents
FY	Fiscal Year
FinCEN	Financial Crimes Enforcement Network
IRS	Internal Revenue Service
MLSA	Money Laundering Suppression Act of 1994
MOU	Memorandum of Understanding
MSBs	Money Services Businesses
NBFI	non-bank financial institutions
SB/SE	Small Business/Self Employed
TIGTA	Treasury Inspector General for Tax Administration

September 27, 2005

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The Money Laundering Suppression Act of 1994 (31 U.S.C. 5330) requires certain Money Services Businesses (MSBs) to register with the Secretary of the Treasury. At the time of the law's enactment, it was generally believed that a national registration list would enhance federal oversight of the MSB industry's compliance with the Bank Secrecy Act (BSA). Financial Crimes Enforcement Network (FinCEN) has primary responsibility for administering Treasury's MSB registration program. The FinCEN issued the implementing regulations, and directs the BSA compliance examination process and supervisory enforcement efforts through delegated authority to the Internal Revenue Service (IRS).

FinCEN regulation, 31 C.F.R. 103.11(uu), broadly defines MSBs to include five distinct types of financial services providers and the U.S. Postal Service: (1) currency dealers or exchangers; (2) check cashers; (3) issuers of traveler's checks, money orders, or stored value cards; (4) sellers or redeemers of traveler's checks, money orders, or stored value cards; and (5) money transmitters. Unlike commercial banks and thrifts, MSBs do not offer federally insured accounts such as savings or checking accounts. FinCEN's final rule implementing the 1994 law became effective in September 1999, and existing MSBs were required to register on or before December 31, 2001 (new businesses, which are established after that date and subject to the requirement, must register within 6 months). Excluded from the registration requirement are U.S Postal Service outlets; agents of MSBs, unless engaged in money services

apart from their capacities as agents;[1] businesses that conduct transactions under a dollar threshold; and issuers, sellers, or redeemers of stored value cards.

As of January 2004 when we began our fieldwork, approximately 16,100 MSBs had registered with FinCEN. As of January 2005, the number of registered MSBs reported on FinCEN's website was approximately 22,000, an increase of 37 percent.

Our audit objective was to determine whether FinCEN had adequate management systems and controls to ensure industry compliance with the statutory registration requirement. We conducted our fieldwork at FinCEN Headquarters in Vienna, Virginia, and met with representatives of the company originally contracted by FinCEN to begin the initial registration outreach campaign. We interviewed IRS personnel involved in administering the MSB compliance program. We also interviewed law enforcement officials from the Department of Justice (DOJ), the Federal Bureau of Investigation (FBI), a local U.S. Attorney's Office, and the Department of Labor to gain insights into their respective supervisory and enforcement efforts with respect to the MSB industry. In addition, we contacted 15 state regulatory agencies to discuss their level of coordination with FinCEN, and we obtained information on MSBs licensed in their states to gauge the completeness of FinCEN's list of registered MSBs. Furthermore, we contacted MSB trade associations to obtain their views on the federal registration requirement. A more detailed discussion of our audit objectives, scope, and methodology is provided in Appendix 1.

Results in Brief

FinCEN faces several major challenges to better ensure that MSBs comply with the registration mandate. We found indicators that many MSBs required to register have not done so. We also found

[1] By regulation, MSB principals are required to maintain a list of their agents, which is to be revised every January 1st to cover the preceding 12-month period. These agent lists are not filed with FinCEN, but MSB principals are required to make the lists available to FinCEN and other appropriate law enforcement agencies upon request.

that the IRS (FinCEN's primary vehicle for examining MSBs) may not have sufficient resources to conduct timely MSB BSA examinations and, as of our audit period, there have been no enforcement action taken against MSBs. Furthermore, we believe that FinCEN needs to develop and track performance indicators to measure how registration is improving BSA compliance by the MSB industry, consider clarifying guidance regarding the dollar threshold for MSB designation, and continue efforts to address data quality issues with the publicly available MSB registration list.

Indicators of Unregistered MSBs

Approximately 16,100 MSBs had registered with FinCEN by January 2004, 2 years after the registration went into effect. Although by January 2005 the number of registrants increased over 36 percent to approximately 22,000, the number of MSBs that are subject to registration could potentially be much greater. As indicators of this condition: (1) a 1997 FinCEN-commissioned study estimated that there were approximately 122,000 business locations, excluding U.S. Postal Service outlets, engaged in one or more money services activities (i.e., check cashing, money transmission, money orders, travelers checks, and/or retail foreign currency exchange), which we consider to be a raw indicator of the size of the MSB industry only; (2) in 2000 a FinCEN consultant estimated the total around 100,000; (3) in fiscal year (FY) 2003, IRS identified 2,340 potentially unregistered MSBs from a one-time sample of nearly 9,500 entities from its non-bank financial institutions (NBFI) database; (4) our inquiries at 15 states identified 404 state-licensed but unregistered MSBs; (5) representatives of trade associations we contacted opined that the number of MSBs subject to registration exceeded the approximately 16,100 registered as of January 2004; (6) an IRS official estimated the total unregistered as being closer to 160,000; and (7) several law enforcement agencies with ongoing MSB money laundering cases indicated that failure to register was a common characteristic in these cases.

FinCEN believes that a large part of the discrepancy between the number of MSBs registered and the estimated total number of MSBs is due to the requirement that not all MSBs must register. For example, agents of MSBs are not required to register unless

they are separately engaged in money services activities outside their capacity as agents. However, several reasons were cited for potential unregistered MSBs. First, FinCEN officials stated that they have devoted resources to exploring and analyzing this issue and the most important reason for non-registration by MSBs subject to the requirement is that there are entities that seek to avoid government regulation of any kind. Second, IRS representatives told us that some MSBs either abused or misunderstood the regulations and did not qualify for the registration exemption accorded MSBs operating as agents for principal MSBs. Third, law enforcement officials suggested that many small MSBs did not fully understand the implementing regulations due to language barriers and or the lack of financial proficiency. The latter arose when financial services were provided as an incidental service to the MSBs' primary business, such as a food market or convenience store.

The Director of FinCEN characterized one purpose of registration as "knowing who are MSBs and where they are located." In this regard, the Director told us that the registration program has not yet been successful at achieving this goal. For example, agents of MSBs are not required to register (unless separately engaged in money services activities outside their agency capacity) and while principals are to maintain lists of agents, agents often change from one MSB principal to another.

FinCEN officials told us they are considering the need to issue a Notice of Proposed Rule-Making to expand the definition of MSBs for registration purposes. One change under consideration is addressing the current complex distinction between MSB agents, who are currently not subject to the registration requirement, and MSB principals.

As a recent and significant action that could result in improved compliance by the MSB industry with the registration requirement, FinCEN and the federal banking agencies jointly issued interpretative guidance in April 2005 to clarify the requirements for, and to assist, banking organizations in appropriately assessing and minimizing risks posed by providing banking services to MSBs. Among other things, the guidance advises banking organizations that it is reasonable and appropriate to insist that MSB customers

provide evidence of registration or demonstrate that they are not subject to the registration requirements.

IRS MSB Examinations

The Secretary of the Treasury delegated to IRS examination authority of the MSB industry for BSA compliance, including registration.[2] IRS conducts onsite examinations throughout the country. In this regard, IRS selects MSBs for examinations from an IRS database of approximately 81,000 NBFI. IRS examination officials told us that the examinations were identifying unregistered MSBs. However, the IRS was not tracking the actual numbers of unregistered MSBs identified from its BSA examination program or referring unregistered MSBs to FinCEN for penalty consideration.

IRS had not yet established an expected or desired cycle for MSB examinations. Based on the current number of examinations completed each year, we estimate it could take IRS as much as 24 years before all 81,000 businesses currently in its NBFI database are examined for BSA compliance, including registration. It should be noted that for FY 2006, IRS requested funding to add 60 full-time equivalents (FTEs) to augment revenue agent positions, specifically for BSA compliance.

In terms of FinCEN's management oversight of IRS's BSA examinations, we found that FinCEN was only obtaining limited information as to IRS's BSA examination program during our audit period. Quarterly IRS reports provided to the FinCEN consisted largely of examination activity data, such as the number of completed examinations. Not included in these quarterly reports was analytical information, such as examination findings, the number of unregistered MSBs or other non-compliance found, whether emerging non-compliance risks existed, or whether there were common attributes among unregistered MSBs.

[2] Examples of other BSA requirements include developing and implementing an anti-money laundering program, filing certain reports such as Suspicious Activity Reports, and record keeping for certain types of transactions.

Plans are underway for FinCEN's newly established Office of Compliance to work more closely with the IRS, including the specific sharing of information concerning institutions identified as having BSA deficiencies or violations. Among other things, FinCEN executed a Memorandum of Understanding (MOU) with the IRS in April 2005 that is expected to dramatically improve the sharing of information between the bureaus.[3] FinCEN officials stated that they are also working with the IRS to improve its BSA examination procedures, examiner training, and examination targeting.

Enforcement Actions

We also found that FinCEN had not taken any enforcement actions against MSBs for failure to register. This was due to several factors, which include: (1) the MSB regulatory agencies (e.g., IRS or the states) had apparently made few referrals to FinCEN of non-compliance with the registration requirement and the few made contained insufficient information to pursue an enforcement action; and (2) a concern by FinCEN that an indiscriminately aggressive enforcement approach against unregistered MSBs could drive them underground, thus undermining a principal goal of the registration program to promote transparency through compliance.

At our June 2005 exit conference on this audit, FinCEN officials again stressed the importance of striking an appropriate balance between education/outreach versus aggressive enforcement to obtain compliance. FinCEN officials also told us that their approach to enforcement was changing, as reflected by the MOU with the IRS as well as similar MOUs that have been executed to date with 30 states and Puerto Rico to obtain more complete and current information about BSA deficiencies and violations. The FinCEN officials indicated that going forward they would use the

[3] The MOU with the IRS is similar to the MOU FinCEN entered into with the five federal banking agencies in September 2004. Pursuant to a congressional mandate, we reviewed FinCEN's Office of Compliance and the level of cooperation being achieved under this MOU. As discussed in our March 2005 report, we found that the level of cooperation at the time was satisfactory as of the time of our review but it was early in the life of the MOU. However, we also reported that the MOU with these agencies, as with the MOU with the IRS, contained no provision or consideration for noncompliance by the parties to the agreement (i.e., no penalty). (*TERRORIST FINANCING: Status Report on the Establishment of the Financial Crimes Enforcement Network Office of Compliance*; OIG-05-030).

enforcement actions available to them for non-registration, when appropriate.

As a general observation, by not taking enforcement action when appropriate, FinCEN runs the risk that the MSB industry may perceive that registration is unimportant and there is no penalty for non-compliance.

Other Challenges to Enhance Registration Program

We noted other areas where FinCEN could improve the registration program. These areas relate to (1) measuring how registration is improving BSA compliance by the MSB industry, (2) guidance on the dollar threshold for meeting the definition of MSB, and (3) the reliability of the publicly available MSB registration list.

In concert with planned and ongoing program enhancements, we believe that FinCEN should develop and track specific performance indicators as to how the MSB registration program is enhancing federal oversight of the MSB industry or raising the level of industry compliance with the BSA. These performance indicators could be useful to FinCEN managers in determining where to expend its resources to obtain the best results to improve the MSB industry's compliance with the BSA, including registration. While identifying and developing such performance measures can be difficult, there needs to be some level of gauging the effectiveness of the registration program. Currently, without such measures, FinCEN cited several anecdotal benefits, such as how the MSB registration assists banking organizations in meeting enhanced customer due diligence procedures required by the USA PATRIOT Act; provides law enforcement with a legal basis to pursue a criminal proceeding, such as asset seizures; and results in a higher overall level of industry BSA compliance.

Businesses whose daily money services transactions are less than $1,000 per day per person are generally not considered to be an MSB and are therefore not subject to the registration requirement. As with the agent exemption, the dollar threshold is also difficult to verify other than through an onsite examination. We believe that the related guidance, as currently written, is unclear and could be misinterpreted, and therefore may result in some businesses not

knowing whether they meet the definition of a MSB subject to registration.

Furthermore, data quality problems with the publicly available FinCEN MSB registration list (at www.msb.gov) limit its usefulness to banking organization due diligence purposes. We found, for example, over 1,000 duplicate registrants as well as registrants that had gone out of business. In this respect, FinCEN cautions on its website that the list is intended only as general reference for the public and should not be treated as definitive or determinative of an MSB's registration status, and that FinCEN is working with the IRS to address the data quality problems.

Recommendations

As discussed above, FinCEN has taken or planned a number of actions to improve the registration program. As further actions, we are making three recommendations that FinCEN (1) develop and track performance indicators that measure how registration is enhancing BSA compliance by the MSB industry, including registration; (2) develop and implement a strategy to take enforcement actions when appropriate, including working with the IRS and the states to ensure timely and quality referrals of unregistered MSBs are made; and (3) assess the need to clarify guidance on the dollar threshold for designation as an MSB.

Management Response

In its written response, FinCEN management generally concurred with our recommendations. FinCEN management commented the response that:

- The importance of an effective federal registration system is underscored by recent challenges faced by the MSB industry in securing appropriate access to banking services.

- FinCEN is reexamining the current distinction in the registration requirement between principals and agents. It has begun the process of drafting a proposal to modify the current registration system to require all locations providing these services to register. According to FinCEN, an enhanced registration requirement, coupled with the development of a better system for tracking

registration, are critical steps to enhancing the effectiveness of the federal registration system.

- FinCEN has and will continue steps to enhance the ability to oversee MSBs. For example, FinCEN established the Office of Compliance in 2004 to support and oversee the BSA examination process. FinCEN also entered into the MOU with IRS to facilitate information sharing so as to identify MSBs and other financial institutions that are not in compliance with the BSA. Similar information sharing agreements have been executed with 33 states to date. Additionally, FinCEN is also working with the IRS to strengthen its examination processes.

- FinCEN has transitioned its approach to enforcement to ensure that civil money penalties are assessed against MSBs that willfully disregard the requirements of the BSA. FinCEN noted, however, that a balanced approach in the use of civil enforcement authority is still essential to prevent businesses from operating "underground." FinCEN is working closely with the IRS – and soon with state regulatory agencies – to enhance the referral of appropriate cases for potential enforcement action.

The complete text of FinCEN management's response is provided in Appendix 2.

OIG Comment

The OIG believes FinCEN's planned management corrective actions adequately meet the intent of the recommendations if properly implemented.

Background

In the early 1990s, Congressional hearings surfaced a growing concern over an emerging group of businesses known as money service businesses that were being used in money laundering schemes. Yet, it was viewed that, unlike commercial banks, the MSB industry was neither uniformly regulated nor regulated at the federal level. As a result, Congress included as a part of the

Money Laundering Suppression Act (MLSA) of 1994 certain amendments to the BSA, which included requiring certain MSBs to register with the Secretary of the Treasury. The implementing regulation was issued in August 1999,[4] and existing MSBs were required to register on or before December 31, 2001. New MSB businesses established after that date and subject to the requirement must register within 6 months. Registrants must also renew their registration every 2 years.

The implementing regulation defined the term money services businesses to include entities that transmit money; cash checks; issue, sell, or redeem traveler's checks, money orders, or stored value cards; and deal or exchange currency. All money transmitters are defined as MSBs; whereas other types of entities are subject to a minimum $1,000 transaction threshold per day per person in one type of activity before being defined as a MSB. Many MSBs are not required to register. MSBs exempted from registration include U.S. Postal Service outlets, branch offices of MSBs, and agents of MSBs.[5] For example, Western Union serves as a lead or principal MSB with over 200,000 agents worldwide. If they are solely Western Union agents or agents of other MSBs, they are not required to register with FinCEN.

FinCEN was established in April 1990 by Treasury Order 105-08 as the BSA administrator, and thus responsible for the federal MSB registration program. This included promulgating the implementing regulations, maintaining oversight of the registration process, and supervising MSBs for overall BSA compliance. FinCEN, however, does not directly examine MSBs for compliance, but instead the examination authority is delegated to the IRS. The actual registration processing of MSB registration forms has also been delegated to the IRS and is administered at the IRS computing center in Detroit, Michigan. Processing includes collecting and maintaining registration forms filed by MSBs.

[4] The timeliness of issuing the implementing regulations was the subject of a February 1998 GAO report entitled *Money Laundering: FinCEN Needs to Better Communicate Regulatory Priorities and Timeliness*, GAO/GGD-98-18.

[5] See 31 CFR §103.41(a)(2) pertaining to agents, 31 CFR 103.41(a)(1) for the other types of MSBs that are not required to register.

Besides federal registration, section 407 of the MLSA tasked the National Conference of Commissioners on Uniform State Laws to develop a uniform model statute for licensing MSBs. The idea was to have federal registration working in concert with uniform state licensing statutes. An official for the state uniform law group advised us that a model licensing statute had been developed, but that as of 2004 only three states had adopted it. We found that state licensing requirements varied widely as to which types of MSBs were covered. Some states required federal registration as a condition to obtaining a state license, while at least four states currently do not license MSBs.

Although the federal registration law coupled with the desired state licensing framework has not fully materialized, it is widely viewed that MSBs provide a needed financial service for large segments of the population, particularly those that either choose to or are unable to make use of commercial banking services and products.

FinCEN estimated that the implementation of the two MSB-related regulatory programs (i.e. MSB registration and suspicious activity reporting requirements) has cost approximately $22 million in FYs 2000 through 2004. The $22 million is largely comprised of direct costs for a contractor and reoccurring cost for IRS FTEs reimbursements and IRS registration processing costs. Estimated costs did not include an overhead allocation for common shared costs such as FinCEN personnel, facilities and supporting overhead. We did not validate FinCEN's estimated program costs.

Findings and Recommendations

Finding 1 Indicators of Unregistered MSBs

As of January 2004, 16,142 MSBs had registered with FinCEN. By January 2005, the number of registered MSBs had increase over 36 percent to approximately 22,000. However, we found indicators that potentially large numbers of MSBs had not registered. Specifically:

- A 1997 FinCEN-commissioned study estimated that number of business locations engaged in one of more money services

activities (i.e., check cashing, money transmission, money orders, travelers' checks, and/or retail foreign currency exchange) nationwide to be approximately 122,000, excluding U.S. Postal Service outlets.[6] It should be recognized, however, that this estimate was a raw indicator of the size of the MSB industry, not the number of MSBs that would later be required to register.

- In 2000, a FinCEN consultant placed the initial estimate at around 100,000. In developing the initial registration database, the consultants used five main sources, including: Dun & Bradstreet; commercially available directories (Info USA); federal agency lists; state licensing lists; and field research, which included contacting local governments and coordinating with community leaders.

- In 2003 IRS surveyed nearly 9,500 potential MSBs and determined that (1) 2,340 (24 percent) had not registered and (2) about 5,000 (53 percent) had either registered or were not required to do so. At the end of our field work, IRS was still determining the status of the remaining 2,200 MSBs (23 percent).

- From 15 state licensing agencies contacted,[7] we identified 404 MSBs that were state-licensed but not registered as MSBs with FinCEN. Because of the differences in the federal registration statute and the states' licensing statutes, it should be noted that not all state-licensed entities may need to register.

- Representatives at three MSB trade associations we contacted opined that the number of MSBs subject to registration is significantly higher than the approximately 16,100 registered at the time of our inquiry. These representatives, however, were

[6] The study, entitled *Non-Bank Financial Institutions: A Study of Five Sectors*, was prepared before the regulations implementing the MSB registration requirement were issued. It did not provide estimates as to the breakdown of MSB principals and agents of MSBs who are not required to register. The study is available through FinCEN's website at www.fincen.gov/cooply.html.

[7] We selected 15 from the 46 states that license MSBs. For details on our methodology in selecting the 15 states, see Appendix 1.

unable to provide us with estimates as to the number of MSBs required to register, but that had not.

- Based on BSA onsite examinations conducted to date and FinCEN's 1997 study, an IRS official told us that the number of MSB subject to registration was closer to 160,000.

- Several law enforcement agencies we contacted with ongoing MSB money laundering cases also indicated that the associated institutions had failed to register. One case in California involved a grocery store that allegedly laundered as much as $70 million in one year from a check cashing scheme. The business was not licensed with the state or registered with FinCEN. An FBI agent told us of two cases in Colorado, one involving a grocer and another running a money transmitter business out of his home, where entities were both unlicensed and unregistered. Finally, a DOJ official discussed with us three other money laundering cases that involved unregistered MSBs.

Additionally, the FinCEN Director testified before Congress in September 2004 that FinCEN believed there were a significant number of MSBs required to register that have failed to do so.

Contributing Factors and Causes for Unregistered MSBs

At the inception of the registration requirement, FinCEN undertook several initiatives to enhance compliance. These initiatives included hiring a public relations firm to engage in multi-year outreach to educate the industry, conduct media outreach targeted to selective ethnic audiences, and create a website containing downloadable information.

Notwithstanding FinCEN's outreach efforts, various sources cited several possible reasons for the potential high number of unregistered MSBs. For example, from their onsite MSB BSA examinations, IRS officials were of the view that some MSBs either abused or misunderstood the regulatory exemption for registering agents of MSBs. The IRS officials believed that many agents ignored or did not understand the provision of the regulation that effectively disallowed the agent exemption if the agent also conducted other money services business on its own behalf.

Several law enforcement agencies contacted also cited the misapplication of the agent exemption as a reason for some MSBs not registering.

Law enforcement officials we interviewed also indicated language barriers as a reason why some MSBs may not fully understand the regulatory registration requirements. These officials said many of the smaller MSBs are owned and operated by people whose primary language is not English. A related aspect to language barriers was a perceived lack of financial proficiency of many small businesses, which only provide financial services, such as check cashing, as an incidental service to their non-financial primary line of business. These small MSBs include travel agencies, convenience stores, groceries, and liquor stores.

On-going and Planned Initiatives

FinCEN recently commissioned a consulting survey to be sent to 24,000 randomly selected MSBs nationwide. In part, this study, entitled *2005 MSB Industry Study*, is intended to gauge the number of MSBs subject to registration, which should be helpful to FinCEN in evaluating overall industry compliance with the registration requirement among other things. We were told that the study is expected to be completed in September 2005.

FinCEN officials also stated that they are considering the need to issue a Notice of Proposed Rule-Making to expand the definition of MSBs for registration purposes. Under consideration is changing the current complex distinction between MSB agents, who are generally not now subject to the register requirement, and MSB principals. In this regard, the Director of FinCEN has stated one purpose of registration is knowing who are MSBs and where they are located. At present, this is difficult with the current agent exemption.

As a recent and significant action that could result in improved compliance by the MSB industry with the registration requirement,

FinCEN and the federal banking agencies[8] jointly issued interpretative guidance in April 2005 to clarify the requirements for, and to assist, banking organizations in appropriately assessing and minimizing risks posed by providing banking services to MSBs. Among other things, the guidance advises banking organizations that it is reasonable and appropriate to insist that MSB customers provide evidence of registration or demonstrate that they are not subject to the registration requirements.

Finding 2 FinCEN Has Recently Taken Steps to Improve Oversight of IRS Examinations of MSBs

FinCEN relies on the IRS as the primary means of examining the MSB industry for BSA compliance. IRS has delegated authority under Treasury Directive 15-41, *Bank Secrecy Act – Internal Revenue Service*, (issued in December 1992) to conduct compliance examinations of MSBs. IRS's Small Business/Self Employed (SB/SE) unit conducts these onsite examinations to ensure MSBs comply with the anti-money laundering regulations, including trends, patterns, or schemes devised to avoid the filing of required reports. As of March 2004, IRS had 354 examiners located throughout the country conducting MSB BSA examinations.

Each year, IRS selects MSBs for examination from a database containing non-bank financial institutions, including 81,000 MSBs; this automated data system is referred to as the NBFI.[9] Based on quarterly examination workload reports, we estimated that IRS completes about 3,600 MSB examinations annually. At that rate of coverage, we estimate it could take IRS as much as 24 years

[8] The federal banking agencies are the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the National Credit Union Administration.

[9] The NBFI is an internal IRS-operated system and is used to establish the universe to schedule their BSA examinations. The sources used to identify NBFIs include, for example field contacts, physical observation, trade associations, and telephone books. As of June 30, 2003, IRS's NBFI File contained about 85,700 entities. Of that number, approximately 4,700 entities were casinos/card clubs, agents of foreign bank, and unregulated banks and credit unions. The other approximately 81,000 entities were MSBs comprised of currency exchangers, check cashers, issuers of monetary instruments, seller/redeemer of monetary instruments, and money transmitters.

before it will have examined all 81,000 businesses listed in the NBFI.[10]

We found that the IRS had not yet established expected or desired examination cycles (i.e., the elapsed time between examinations). Assuming static staffing, we believe the estimated IRS 24-year examination cycle could even be further prolonged given its delegated responsibility to examine other financial institutions, including casinos, gem and precious metal dealers, and certain types of insurance companies.[11] The President's Budget for FY 2006 includes an IRS initiative for an increase of 60 FTEs to enhance BSA compliance, including increased Title 31 examinations. [12]

As for the effectiveness of IRS BSA examinations, a March 2004 Treasury Inspector General for Tax Administration (TIGTA) report raised two areas warranting IRS's attention. Specifically, TIGTA reported that the IRS BSA examinations needed to be risk-based, and management information system data was not being fully analyzed.[13]

IRS officials advised us that their BSA examinations were identifying unregistered MSBs, but that they were not yet tracking this type of examination results information and thus were unable to provide us with either an actual or an estimated number of unregistered MSBs identified from a BSA examination.

[10] Our estimate assumes continued staffing at the 354 level, as well as a static universe of 81,000 businesses. No adjustments were made for the likely turnover due to MSBs closing and new ones opening during the 24-year period.

[11] The five federal banking agencies have been delegated authority to examine the depository institutions for BSA compliance. Securities broker-dealers, mutual funds, and futures commission merchants/introducing brokers are regulated by the Securities and Exchange Commission and the Commodity Futures Trading Commission, from authority delegated by FinCEN. IRS examines all other financial institutions that are not regulated by a federal functional regulator.

[12] In support of the BSA program, FinCEN provides IRS supplemental funding ($16 million in FYs 2000-2004) the majority of which are earmarked for onsite BSA examinations.

[13] *Additional Efforts are Needed to Improve the Bank Secrecy Act Compliance Program* (2004-30-0680).

The IRS did, however, attempt to quantify the number of unregistered entities during a one-time sample in 2003. Of the nearly 9,500 entities sampled, IRS found 2,340 MSBs (24 percent) had met the requirements, but were not registered. IRS selected the sampled MSBs using a risk-based approach and analysis of information from another database called the Currency Banking and Retrieval Systems.

In terms of FinCEN's management oversight of the IRS's BSA compliance program, we believe FinCEN's effectiveness was lessened by the data it received from the IRS to monitor its BSA examinations during our audit period. We found the quarterly IRS reports titled *Anti-Money Laundering, Quarterly Activity Report National Summary* provided to FinCEN consisted of examination activity data, such as number of examinations started and finished during the quarter. The quarterly report, however, lacked information on the results of the BSA examinations, such as the types of BSA violations or related problem areas, and the number of unregistered MSBs. The quarterly report also lacked analytical information, such as emerging non-compliance risks or common attributes among unregistered MSBs.

According to FinCEN officials, FinCEN had engaged in considerable oversight activities with respect to the IRS and MSB examination cycle and additional activities are planned. The activities cited by FinCEN officials include:

- Re-establishing, in November 2003, regular monthly meetings with IRS SB/SE to discuss the examination issue, during which FinCEN provided direction, advice, and analysis on where to focus and target examination resources in the MSB industry. According to FinCEN officials, it focused on rebuilding the relationship with IRS SB/SE, while seeking to bring IRS into alignment with FinCEN objectives.

- Working with the IRS to plan and execute a joint exam of a national MSB at the corporate level, with one purpose that FinCEN train IRS examiners on the appropriate approach.

- Working with the IRS to conduct "saturation examinations" of financial institutions in targeted areas to better focus examination resources.

- Reviewing IRS examiner training materials and examination manuals as well as materials used for education and outreach. However, the FinCEN officials stated that while suggested revisions to these materials were provided to the IRS, they were unsure whether the IRS had adopted the recommended changes, including comprehensive revisions recommended in 2004 to the examination manual.

- Participating in an IRS working group that was formed to build the analytical infrastructure at the IRS to engage in risk-based examination targeting.

To improve on its oversight responsibility over the federal functional regulators including the IRS, FinCEN recently created an Office of Compliance. The new office has been authorized 22 FTE positions, and as of the end of our audit fieldwork, FinCEN was in the process of hiring 18 analysts.

In April 2005, FinCEN also executed an MOU with the IRS that is expected to improve the sharing of information between the bureaus. This exchange of information is intended to help FinCEN fulfill its role as administrator of the BSA and to assist the IRS in conducting examinations to assess BSA compliance. We believe that the MOU is an important step that could potentially lead to better coordination between the two agencies. However, it is early in the life of the MOU and the document contains no provision or consideration for noncompliance by IRS or FinCEN (i.e., no penalty).

Finding 3 Absence of Enforcement Actions to Date for Non-compliance with Registration Requirement

MSBs failing to register with FinCEN are subject to enforcement actions, including civil money penalties,[14] and/or criminal proceedings[15] if the unregistered MSBs are engaged in money transmitting business.

At the time of our audit fieldwork, FinCEN had not taken any enforcement actions against MSBs for failure to register although over three years had passed since the registration requirement came into effect. In this regard, states and the IRS apparently made few referrals to FinCEN for penalty consideration, and the referrals that had been made contained insufficient information to take enforcement action.

For example, our inquiries with two state regulatory agencies revealed that they had identified unregistered MSBs. We were told by one state agency that it had referred a case to FinCEN but was never advised what, if any, enforcement action had been taken. When we inquired about the case, a FinCEN enforcement official stated that enforcement action had not been pursued due to the lack of sufficient information from the state. However, FinCEN did not follow-up with the referring state agency to either seek additional information or advise them of FinCEN's regulatory response.

With respect to IRS, a FinCEN enforcement official advised us that the few IRS referrals received lacked the evidentiary documentation necessary to assess or to proceed with a formal enforcement action. This issue was also raised in the March 2004 TIGTA audit report, which concluded that IRS BSA examinations lacked sufficient documentation to proceed with an assessment of civil penalties. According to the TIGTA report, FinCEN advised TIGTA that poor referral documentation was a major reason for FinCEN

[14] 31 U.S.C. §5330(e) provides for significant civil monetary penalties for failure to register--$5,000 a day.

[15] 18 U.S.C. §1960.

not assessing civil penalties. Exacerbating this situation, TIGTA noted that IRS examiners believed that referring cases was not necessary because FinCEN did not pursue penalties.

FinCEN officials told us that, in general, they were concerned that an indiscriminately aggressive enforcement approach against unregistered MSBs could drive them underground, thus undermining a principal goal of the registration program to promote transparency through compliance. Management also considered that, as opposed to banks or other institutions more experienced with regulation, this previously unregulated and relatively unsophisticated industry needed time to understand and adjust to the regulatory requirements and to implement appropriate controls. However, FinCEN management emphasized that it would have moved against an unregistered MSB that should have known about the requirement or intentionally violated it.

At our June 2005 exit conference on this audit, FinCEN officials again stressed the importance of striking an appropriate balance between education/outreach versus aggressive enforcement to obtain compliance. FinCEN officials also told us that their approach to enforcement was changing, as reflected by the MOU with the IRS as well as similar MOUs that have been executed to date with 30 states and Puerto Rico to obtain more complete and current information about BSA deficiencies and violations. The FinCEN officials indicated that going forward they would use the enforcement actions available to them for non-registration, when appropriate.

As a general observation, by not taking enforcement actions when appropriate, FinCEN runs the risk that the MSB industry may perceive that federal registration is unimportant and there is no penalty for non-compliance. Based on our review of the MOUs with the IRS and the State of New York, we believe that they provide a good framework to provide FinCEN with more timely and complete information on BSA violations, including failure to register. However, as stated previous, it is early in the life of these MOUs and it is too soon to tell how well they will result in enforcement actions when appropriate.

Finding 4 Other Challenges to Enhance Registration Program

We noted other areas where FinCEN could improve the registration program. These areas relate to (1) measuring how registration has improved BSA compliance by the MSB industry, (2) guidance on the dollar threshold for meeting the definition of MSB, and (3) the reliability of the publicly available registration list.

Measuring the Benefits of Registration

During our audit, we made inquiries as to how MSB registration has resulted in enhanced federal oversight of the MSB industry or raising the level of industry compliance with the BSA. We found that FinCEN had not developed specific performance indicators, in line with the Government Performance and Results Act, nor had it collected any related underlying information that would provide data as to the benefits arising from the registration program.

We canvassed officials of FinCEN, law enforcement, states, and trade groups as to their perspectives on how federal registration has enhanced federal oversight over the MSB industry's compliance with the BSA. FinCEN officials cited several: (1) the fact that by January 2004, over 16,100 MSBs had registered, (2) the Internet availability of the MSB registration list to assist banking organizations in meeting due diligence requirements under the USA PATRIOT Act, (3) the legal basis afforded to law enforcement for pursuing a civil or criminal proceeding against unregistered MSBs, and (4) the prospect that overall industry BSA compliance is generally higher as a result of the registration requirement.

Although the approximately 16,100 registered MSBs at the time may reflect the results of FinCEN's outreach efforts, it was difficult to gauge contextual performance, in light of the indicators of possibly large numbers of unregistered MSBs. Furthermore, the overall level of BSA compliance by registered MSBs could not be assessed because IRS at the time was not collecting summary information on the results of their BSA examinations.

With respect to enhancing law enforcement efforts, there is limited case history or actual cases at the time of our audit. We met with several different law enforcement agencies to inquire about using

the registration mandate as a basis for pursuing a criminal proceeding against unregistered MSBs. We found that while a few unregistered MSBs had been indicted, none had been convicted. DOJ officials involved with asset forfeitures (arising from criminal money laundering cases) provided us with 5 cases which they felt illustrated the application of the registration mandate. The 5 cases, all involving money transmitters, were currently in the indictment stage. However, in only 1 case was the indictment based on the registration mandate; the other 4 cases appeared to be based primarily on violations of state licensing requirements.

We believe that going forward FinCEN should develop and track specific performance indicators to gauge whether MSB registration is enhancing federal oversight of the MSB industry or raising the level of industry compliance with the BSA, including registration. While developing such indicators can be difficult, we believe they would be useful for FinCEN management to determine where and how to expend its resources, as well as those of the IRS and the states, to improve the MSB industry's compliance with the registration requirement and the BSA in general. In this regard, the MOUs with the IRS and the states, if properly implemented as intended, should provide FinCEN with considerably more information about industry compliance than previously available, and could provide a basis for developing performance indicators and tracking results.

Guidance on the Dollar Threshold for MSB Designation

Another aspect of the registration requirement that could be confusing to the MSB industry is the minimum $1,000 transaction threshold per person per day provision to be designated an MSB.[16] We believe that the guidance on this provision, as currently written, is unclear and could be misinterpreted.

Specifically, following is guidance on the MSB dollar threshold on FinCEN's website for MSBs (www.msb.gov):

[16] All money transmitters are defined as an MSB regardless of the $1,000 transaction threshold. In addition, only money transmitters are required under federal law to be licensed when the applicable state requires a license (18 USC §1960).

> "An activity threshold of greater than $1,000 per day per person in one or more transactions applies to the definitions of: currency dealer or exchanger; check casher; issuer of traveler's checks, money orders or stored value; and seller or redeemer of travelers' checks, money orders or stored value. The threshold applies separately to each activity -- if the threshold is not met for the specific activity, the person engaged in that activity is not an MSB on the basis of that activity."

We believe the above guidance could be misunderstood particularly by MSBs with language barriers and those whose primary business is non-financial, such as convenience stores, markets, and liquor stores. For example, these entities would not know if they qualify as MSBs if they have just one or more transactions in one single day over the dollar threshold per person or whether they need to meet the transaction threshold each and every day. Accordingly, we believe that FinCEN should consider clarifying guidance in this area.

Reliability of the Publicly Available MSB Registration List

As provided in the April 2005 interpretive guidance issued by FinCEN and the federal banking agencies, banking organizations are expected to check the registration status of their MSB customers as a minimum due diligence procedure.[17] While the banking organizations should principally rely on the IRS acknowledgement letter as proof of registration when required, in the case of new registrants the guidance also directs bank organizations to the website MSB registration list as an alternative in the event IRS has not yet provided the acknowledgement letter.[18]

[17] Due diligence is defined as exercising care in the examination and evaluation of risks affecting a business transaction. Banks are required to have due diligence policies, procedures and processes in place to identify customers that may pose higher risk for money laundering or terrorist financing.

[18] The guidance noted that it may take 60 or more days after an MSB files its registration form for the business to receive an acknowledgment letter from the IRS.

However, we found certain data limitations with the publicly available MSB registration list that diminished its usefulness for this purpose, a problem that FinCEN readily recognized on the website. For example, the latest registration list posted on the website at the end of August 2005 was as of April 15, 2005. From a limited review, we noted that the list that was posted in January 2004 contained:

- Over 1,000 entities with identical names, with about 10 percent having identical addresses;
- One entity that was registered 65 times; and
- Over 130 registrants that were no longer in business according to IRS records we reviewed.

According to IRS registration processing officials, the registration process also did not provide for internal controls to prevent or detect inappropriately filed registrations.

For the April 15, 2005, registration list, FinCEN noted on the website that the list is intended only as general reference for the public and should not be treated as definitive or determinative of an entity's registration status, and that the only determinative evidence of registration is the IRS acknowledgement letter. FinCEN also noted that the list may contain incorrect or inaccurate filings as well as omissions, such as the existence of 2-year update forms when initial registrations were never filed. Furthermore, FinCEN stated that it is continuing to work with the IRS to address these and other data quality issues.

Recommendations

As discussed in the findings, FinCEN has taken or planned a number of actions to improve the MSB registration program. These actions include: (1) executing MOUs with the IRS and most states and Puerto Rico (with plans to execute similar agreements with the remaining states) intended to increase information sharing among the parties; (2) issuing interpretive guidance to banking organizations on due diligence with respect to MSBs, including the registration requirement; (3) assessing whether agents of MSBs

should be required to register; and (4) working with the IRS to address data quality issues with the publicly available MSB. Accordingly, we are not making specific recommendations in these areas. We, however, make the following recommendations related to measuring the benefits of registration, taking enforcement actions, and clarifying MSB guidance.

1. The FinCEN Director should develop and track performance indicators that measure how registration is enhancing BSA compliance by the MSB industry. Among other things, such information should be useful to FinCEN to (a) improve the registration program and (b) inform the Congress as to whether MSB registration is serving the intent of the underlying legislation, and as appropriate, how that intent could be better achieved.

   Management Response FinCEN concurred with comment. It believes that performance measures are only effective when those measures can track performance against specific, quantifiable objectives, and the results of the measures accurately reflect a long-term trend instead of a snapshot of activity. FinCEN is preparing a proposal to expand the registration requirement to all MSBs' locations, which requires FinCEN first completing the rulemaking process to institute the changes to the registration requirements for MSBs. FinCEN will define a performance measure for FY 2008 Budget and will be establishing the baseline in FY 2008. The target date for completion is June 2006.

   OIG Comment We believe FinCEN's planned management corrective action adequately meets the intent of the recommendation if properly implemented.

2. As discussed in Finding 3, FinCEN has not taken enforcement action against unregistered MSBs for a variety of reasons. Now that the registration requirement has been in effect for more than 3 1/2 years and MOUs with the IRS and most states have recently been put in place, the Director of FinCEN should develop and implement a strategy to take enforcement actions when appropriate, including working with the IRS and the states

to ensure timely and quality referrals of unregistered MSBs are made.

Management Response FinCEN concurred with comment. It believes that has taken a number of steps to encourage referrals of appropriate enforcement cases against MSBs. FinCEN expects to produce a written strategy for civil enforcement efforts against MSBs and will work with the IRS and the states to help these partners understand what constitutes a quality referral. The target completion date is March 31, 2006.

OIG Comment We believe FinCEN's planned management corrective action adequately meets the intent of the recommendation if properly implemented.

3. The FinCEN Director should assess whether the guidance on the dollar transaction threshold definition of an MSB requires clarification so as to reduce the risk of misinterpretation.

Management Response FinCEN concurred and will provide clarification in the form of guidance, regulatory refinements, dollar threshold definitions, and circumstances under which the dollar thresholds are applied. The target completion date is December 31, 2005.

OIG Comment We believe FinCEN's planned management corrective action adequately meets the intent of the recommendation if properly implemented.

* * * * * *

We like to extend our appreciation to FinCEN for its cooperation and courtesies extended to our audit staff. If you have any questions, please contact me at (202) 927-5746. Major contributors to this report are listed in Appendix 3.

John F. Lemen
Acting Director, Western Field Audit Office

Our overall audit objective was to determine if FinCEN had adequate controls and systems to ensure that all applicable MSBs are registering with Treasury, as required by 31 U.S.C. 5330. We focused on FinCEN's program management oversight and monitoring aspects of the MSB registration requirement. We did not address enforcement aspects in terms of IRS' programs aimed at BSA compliance.

We conducted fieldwork from December 2003 to July 2004 at FinCEN offices in Vienna, VA and Washington D.C. While preparing the draft report we continued to update certain information. In addition, we included information in the draft report concerning FinCEN's activities since the completion of our fieldwork. In most instances, we included FinCEN's recent activities, however, we did not validate these activities, such as agreements with IRS, federal banking agencies, and several states, because they were not in place long enough for us to determine whether they would be effective as FinCEN believes.

Because the MSB registration enforcement authority is delegated to the IRS, we interviewed several IRS personnel involved in administering the MSB compliance program. We also obtained from an IRS official a list of the MSBs they contacted as part of their one-time sample. The IRS information indicated that over, 2,300 MSBs meet the registration requirements but had not yet registered.

We coordinated with TIGTA prior to our discussions with the IRS. We also visited the outside consultant hired by FinCEN in Alexandria, VA to determine how they identified the potential MSB universe and conducted outreach. To obtain information on state-licensed entities, we visited and interviewed selected states. In addition, we interviewed personnel with several law enforcement agencies to obtain their perspective on FinCEN's MSB database. Finally, we interviewed representatives of several trade associations to obtain perspective on the outside industry views of the new MSB registration regulation.

We reviewed: (1) general background information on the MSB program, including the MSB registration law and regulation; (2) FinCEN files containing information on the contract with the

outside consultant; and (3) reimbursable agreements between FinCEN and the IRS. We also reviewed TIGTA audit reports pertaining to IRS's BSA compliance program, anti-money laundering referrals, and Detroit Computing Center processing of BSA documents.

Additionally, we selected 15 of the 46 states that currently license MSBs and compared information in their licensing databases to the FinCEN database of registered MSBs. This resulted in over 400 MSBs that were licensed with the states but not registered with FinCEN. The 15 states were: Arizona, California, Colorado, Connecticut, Delaware, Florida, Idaho, Illinois, Nebraska, New York, Rhode Island, Tennessee, Texas, Virginia, and Wisconsin. We selected these particular states based on certain factors. Specifically, we focused on those states: (1) in high-intensity money-laundering and related financial crimes areas, (2) with very low or high volume of suspicious activity reporting under the BSA, and (3) with large number of MSB licensees. We based our work on the licensed entities posted to the states' web-sites. We interviewed personnel from these 15 states to obtain: the states' criteria for licensing entities, a complete list of all licensed entities, and information about their MSB examination compliance efforts.

We interviewed two law enforcement agency officials: (1) an investigator with the Department of Labor's Office of Inspector General, and (2) an FBI special agent in Denver, CO. The purpose of our interviews was to discuss three specific money laundering cases involving unregistered MSBs. We also interviewed an attorney at the Department of Justice to determine if they had any prosecutions in process or finalized regarding unregistered MSBs.

We conducted interviews with officials at three MSB trade associations to get their views on the new MSB registration regulation and FinCEN's performance in identifying and registering required MSBs. The trade associations we contacted were representatives at the National Conference of Commissioners on Uniform State Laws, National Money Transmitters Association, and Non-Bank Funds Transmitters Group.

We conducted our audit in accordance with generally accepted government auditing standards.

September 26, 2005

MEMORANDUM FOR ACTING DIRECTOR LEMEN
(WESTERN FIELD AUDIT OFFICE)

FROM: William J. Fox, Director

SUBJECT: *Management Response to Audit of Financial Crimes Enforcement Network's Management Systems and Controls to Ensure Compliance with the Money Services Business Registration Requirement*

The Financial Crimes Enforcement Network welcomes the work of the Office of the Inspector General in reviewing the administration of the Money Services Business registration program. In particular, we appreciate your efforts to evaluate our management systems and controls in the context of the many significant changes that we have made since the audit field work was completed.

The importance of an effective federal registration system has been underscored by the recent challenges faced by the money services business industry in securing appropriate access to banking services. The quality of regulation, as well as the *perceived* quality of regulation, of this industry is an integral part of ensuring that money services businesses have access to banking services. Effective regulation of the money services business industry begins with a comprehensive registration requirement that identifies those businesses subject to regulation and enables their examiner, the Internal Revenue Service, to appropriately carry out its examination functions.

We agree fully that there is opportunity to revise and strengthen the regulations governing registration of money services businesses. We seek to enhance our ability to identify and to locate money services businesses subject to regulation through the registration process by reexamining the current distinction in the registration requirement between principals and agents. Accordingly, as we discussed with you, we have already begun the process of drafting a proposal to modify the current registration system to require all locations providing these services to register with the Financial Crimes Enforcement Network. An enhanced registration requirement, coupled with the development of a better system for tracking registration, is critical to increasing the effectiveness of the federal registration system.

Beyond the registration requirement, we have and will continue to take a number of steps to enhance our ability to oversee the money services business industry. For example, in 2004, we established the Office of Compliance within our Regulatory Policy and Programs

Division to support and to oversee the Bank Secrecy Act examination process, coordinating with the federal and state agencies that examine financial institutions for compliance. This year we executed a Memorandum of Understanding with the Internal Revenue Service to facilitate streamlined information sharing that would identify money services businesses and other financial institutions that are not in compliance with the Bank Secrecy Act. Additionally, for the first time, we have executed similar information sharing agreements with 33 state regulatory agencies and are pursuing similar agreements with the others. Although states have always played an important role in the regulation of this industry, until now we have not created the relationships to leverage our respective resources. Equally as important, we have and will continue to work with the Internal Revenue Service to strengthen its examination processes through better procedures and better examination targeting.

Finally, we have transitioned our approach to enforcement to ensure that civil money penalties are assessed against money services businesses that willfully disregard the requirements of the Bank Secrecy Act. It is essential that we continue to take a balanced approach to the use of our civil enforcement authority. Balance is vital in the money services business industry in particular, as one of our greatest challenges is to prevent such businesses from operating "underground." Given the complexities of our regulatory regime, coupled with the reality of the money services business industry, our focus began with education and outreach. We are also reinforcing our message that *compliance matters* through the use of our civil enforcement authorities when we identify instances of willful non-compliance. Accordingly, we are working closely with the Internal Revenue Service – and soon with the state regulatory agencies – to enhance the referral of appropriate cases for potential enforcement action.

Attachment

Responses by the Financial Crimes Enforcement Network to the Office of the Inspector General Recommendations

Recommendation 1: The Director of the Financial Crimes Enforcement Network should develop and track performance indicators that measure how registration is enhancing compliance by the Money Services Business industry. Among other things, such information should be useful to the Financial Crimes Enforcement Network to (a) improve the registration program and (b) inform the Congress as to whether Money Services Business registration is serving the intent of the underlying legislation, and as appropriate, how that intent could be better achieved

Response: Concur with comment. Performance measures are only effective when those measures can track performance against specific, quantifiable objectives and the results of the measures are obtained over sufficient time to obtain meaningful data instead of a snapshot of activity that may not accurately reflect longer-term trends. In addition, the performance measures must necessarily reflect the changes to the registration requirement that the Financial Crimes Enforcement Network proposes to implement. We are presently preparing a proposal to expand the registration requirement to all money services business locations. As we have noted, this fundamental change in the registration requirement is necessary to achieve the goals of federal registration and, ultimately, to enhance compliance with the Bank Secrecy Act. Accordingly, we must first complete the rulemaking process to institute the changes to the registration requirements for money services businesses. We will define a performance measure in the FY 2008 budget and will be establishing the baseline in FY 2008.

Status: Target completion: June 2006

Recommendation 2: As discussed in Finding 3, the Financial Crimes Enforcement Network has not taken enforcement actions against unregistered Money Services Businesses for a variety of reasons. Now that the registration requirement has been in effect for more than 3 ½ years and Memoranda of Understanding with the Internal Revenue Service and most states have recently been put into place, the Director of the Financial Crimes Enforcement Network should develop and implement a strategy to take enforcement actions when appropriate, including working with the Internal Revenue Service and the states to ensure that timely and quality referrals of unregistered Money Services Businesses are made

Response: Concur with comment. As discussed above, we have taken a number of steps to encourage referrals of appropriate enforcement cases against money services businesses. For much of the past two years, we have worked with the Internal Revenue Service to refine its approach to conducting Bank Secrecy Act examinations and to refer cases involving money services businesses with systemic or pervasive compliance issues.

We have consistently stated that we would take action against money services businesses that should have known about the Bank Secrecy Act regulatory framework, or intentionally

violated the registration requirements. To ensure that this approach is understood going forward, we will work with the Internal Revenue Service and the states to help our partners understand what constitutes a quality referral. We expect to produce a written strategy for civil enforcement efforts against money services businesses that incorporates all aspects of the process within the next six months.

Status: Target completion: March 31, 2006

Recommendation 3: The Director of the Financial Crimes Enforcement Network should assess whether the guidance on the dollar transaction threshold definition of a Money Services Business requires clarification so as to reduce the risk of misinterpretation.

Response: Concur. We believe that an opportunity exists to enhance compliance with the money services business regulatory framework by providing clarification, in the form of guidance, regulatory refinements, and otherwise, concerning the dollar thresholds set forth in the definitions and concerning the circumstances under which the dollar thresholds are applied. We are in the process of drafting guidance for publication on this topic

Status: Target completion: December 31, 2005

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Office of Strategic Planning and Performance Management
Office of Accounting and Internal Controls

Financial Crimes Enforcement Network

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