



# Audit Report



OIG-17-016

FinCEN Needs to Improve Administration of Civil Monetary Penalty Cases

November 16, 2016

Office of  
Inspector General

Department of the Treasury

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## Abbreviations

BSA	Bank Secrecy Act
CMP	Civil Monetary Penalty
CMP SOP	Internal Guidance for Consideration of Civil Money Penalties and Other Remedies
FinCEN	Financial Crimes Enforcement Network
FIR	Financial Intelligence Repository
IRS	Internal Revenue Service
OIG	Office of Inspector General
SOL	Statute of Limitations
SOP	Standard Operating Procedure

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*The Department of the Treasury  
Office of Inspector General*

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November 16, 2016

Jamal El-Hindi  
Acting Director  
Financial Crimes Enforcement Network

This report presents the results of our audit of the Financial Crimes Enforcement Network's (FinCEN) administration and enforcement of the Bank Secrecy Act (BSA).<sup>1</sup> Institutions with significant BSA violations or deficiencies are referred to FinCEN by regulating agencies, law enforcement, financial institutions, and offices within FinCEN. FinCEN conducts case reviews based on the referred information, and based on the severity of the violations, determines if a civil monetary penalty (CMP) will be assessed. FinCEN may assess a penalty by itself or in a joint action with another regulator.

Our audit objective was to evaluate FinCEN's controls over the assessment and collection of CMPs for BSA violations. We interviewed officials from FinCEN and from regulatory agencies that coordinate with FinCEN on CMPs. Appendix 1 contains a more detailed description of our objective, scope, and methodology.

## Result in Brief

FinCEN needs to improve its administration of CMP cases. FinCEN underwent a reorganization in June 2013 and implemented the Financial Intelligence Repository<sup>2</sup> (FIR) to share work item information (including case information) across all FinCEN Divisions. FinCEN's Enforcement Division began using FIR in January 2014 despite known performance problems to replace the legacy Case Management System. Because FIR only had core functionality for case exchange and storage and the system was experiencing performance issues with its responsiveness, including the inability to open case documents within the system, and limited

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<sup>1</sup> Public Law.91-508 (October 26, 1970).

<sup>2</sup> FIR is part of the larger Broker Information Exchange project, which was intended to provide a mechanism to share case information among internal and external users.

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staffing, FinCEN did not track backlogged<sup>3</sup> CMP cases, including cases approaching their Statute of Limitations (SOL).<sup>4</sup>

FinCEN's CMP case files lacked full documentation and approvals as required by FinCEN's policies and procedures. FinCEN also did not have procedures for determining penalty amounts in consideration of aggravating and mitigating factors, and in some cases FinCEN did not document the rationale for assessed penalty amounts. In a few instances, caseworkers approved their own recommendations to close cases without action, which is contrary to good internal control and FinCEN policies and procedures. FinCEN attributed these issues to understaffing and an inadequate case management system (FIR).

Our interviews with other regulators revealed concerns about the lack of feedback from FinCEN on CMP case referrals, as described in the Other Matter section of this report.

We are recommending that FinCEN (1) ensure FIR performance deficiencies are identified and resolved; (2) review open FIR case records to ensure the accuracy and completeness of the data recorded; (3) require key relevant case information to be entered into FIR so that FinCEN can monitor areas such as the CMP case backlog and CMP cases approaching the SOL; (4) continue to refine the interim enforcement procedures currently used by FinCEN to, among other things, provide guidance for the consideration of aggravating and mitigating factors considered in CMP assessments, documentation requirements for CMP assessments, and provisions for proper segregation of duties, including supervisory reviews; and (5) develop and implement a process to periodically notify Federal and State regulators of the status of and action taken on referred cases.

In a written response, which is included in its entirety as appendix 2, FinCEN stated that case processing and documentation are important elements of its broad enforcement program and that many changes have occurred during the time of our audit, involving

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<sup>3</sup> FinCEN staff told us that a case was considered "backlogged" if the case was not being actively worked by the Enforcement Division.

<sup>4</sup> The SOL expires 6 years after the date of the violation but can be extended if agreed to by FinCEN and the institution. Upon expiration, FinCEN can no longer pursue a CMP for that particular violation.

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its people, processes and technology. FinCEN also stated that in conjunction with its 2013 reorganization, it implemented a new enforcement organization and made improvements to its policies and procedures.

It should be noted that the scope of our audit (January 1, 2008, through May 31, 2014) included a number of years prior to the 2013 FinCEN reorganization. FinCEN officials said that case processing improved after the reorganization. The officials also stated that they had addressed or were in the process of addressing the issues that we found.

FinCEN concurred with our recommendations. FinCEN took action to correct deficiencies prior to this report issuance, as we communicated issues to FinCEN throughout the audit. Its actions are summarized in the Recommendations section of this report and meet the intent of the recommendations. We will verify whether FIR performance deficiencies were corrected in future audits.

## Background

The BSA requires financial institutions to have BSA compliance programs. Financial institutions such as banks must keep records of cash purchases and file reports on cash transactions exceeding \$10,000. Institutions are also required to report to FinCEN any suspicious transaction that is indicative of a potential violation of law or regulation. Failure to comply with an applicable BSA regulation is considered a BSA violation or deficiency.

FinCEN is responsible for the overall administration and enforcement of the BSA. FinCEN delegated BSA compliance examination authority to the Federal banking agencies, the U.S. Securities and Exchange Commission, the Commodities Futures Trading Commission, and the Internal Revenue Service (IRS). These regulators, in addition to securities and futures self-regulatory organizations<sup>5</sup> and State agencies, use their independent authorities to examine entities under their supervision for compliance with the

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<sup>5</sup> Self-regulatory organizations include organizations such as the National Futures Association, Chicago Mercantile Exchange, and the New York Mercantile Exchange.

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BSA. FinCEN, however, retains enforcement authority, including authority to impose CMPs for violations.<sup>6</sup>

FinCEN investigates potential BSA violations or deficiencies referred by the regulators mentioned above as well as by the Department of Justice and State regulators.<sup>7</sup> Additionally, financial institutions self-report violations, and FinCEN personnel can refer potential violations to FinCEN's Enforcement Division to be investigated. After investigating a BSA case referral, FinCEN determines which enforcement action to pursue, if any. FinCEN typically resolves a case in one of three ways: (1) sending a warning letter to the violator, (2) assessing a CMP, or (3) taking no action.

During the period 2008 through 2014, FinCEN assessed 32 CMPs totaling \$1.19 billion.

## **Audit Results**

### **Finding 1      The Financial Intelligence Repository Was Not Adequate for Case Management**

FIR, the system that replaced the Enforcement Division's legacy Case Management System, was deficient in managing CMP cases.<sup>8</sup> FinCEN implemented FIR in 2014 despite known performance deficiencies. FinCEN was unable to track backlogged cases or cases approaching the SOL in FIR because of reporting and other system limitations. The data in FIR also contained many anomalies.

#### **CMP Case Backlog**

FinCEN could not rely on FIR to identify or track backlogged CMP cases. FinCEN officials told us that after FinCEN's reorganization in June 2013, they became aware of the CMP case backlog.

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<sup>6</sup> Some Federal and State regulators, such as the Office of the Comptroller of the Currency and Florida Office of Financial Regulation, have separate authority to issue civil penalties for BSA violations. In these instances, FinCEN strives to issue penalties jointly with those regulators.

<sup>7</sup> As of November 2015, FinCEN had entered into agreements with 66 State regulatory agencies.

<sup>8</sup> According to FinCEN, FIR does not include automated reporting capabilities for managing and tracking CMP caseloads.



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However, they could not categorize cases as backlogged or otherwise age them in FIR.

Knowing the status of all cases is important because of FinCEN's increasing case workload. Since FinCEN's reorganization, the number of open CMP cases increased. Between July 2013 and May 2014, the number of open cases as reported in FIR had increased from 343 to 444.<sup>9</sup> FinCEN officials told us that the increase was not unexpected with the creation of the Enforcement Division. Its mission was more focused on complex investigations that included enforcement of a wider range of financial entities, issuing injunctions barring individuals from working in the financial industry, and assessing CMPs against high-level executives. At the time of our audit, an Enforcement Division official told us that while case processing was not yet where it needed to be, the increase in the number of enforcement actions showed that improvements were being made.<sup>10</sup>

In January 2014, the Enforcement Division began using FIR despite known performance problems. As discussed in a September 2014 audit report by our office,<sup>11</sup> FIR only had core functionality for case exchange and storage and the system was experiencing performance issues with its responsiveness, including the inability to open case documents within the system.

As part of this audit, FinCEN personnel informed us that users had difficulty working in FIR due to system slowness and technical issues that prevented data and documents from saving. Staff could not track case workload using FIR because the system did not generate reports. FinCEN managers and staff also could not perform key case management functions in FIR, such as monitoring cases that were backlogged or approaching the SOL.

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<sup>9</sup> This information was obtained from a spreadsheet prepared by FinCEN in July 2013 and FinCEN's FIR database. As discussed later in the Finding, it is important to note that case data in FIR is inconsistent.

<sup>10</sup> At the time of our audit, FinCEN issued 8 CMPs in 2014, compared to 2 CMPs in 2013 and 2 CMPs in 2012.

<sup>11</sup> *FinCEN Completed the BSA Modernization Program Within Budget and Schedule* (OIG 14-048; issued Sep. 17, 2014).

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Because of system issues, the Enforcement Division staff primarily used FIR to determine which cases were open or closed. They also recorded other basic information for each case such as its referring agency, case description, and case opening and closure dates. FinCEN's Technology Division exported custom data extracts from FIR to Excel spreadsheets that the Enforcement Division used to track cases. The Enforcement Division also used what are called "hot" case spreadsheets that included all the cases they prioritized for CMP. These case tracking mechanisms outside of FIR did not contain sufficient detail to identify backlogged cases. In November 2015, FinCEN officials stated that they were in the process of refining requirements and evaluating appropriate technology solutions to meet the Enforcement Division's case management needs.

### **Statute of Limitations Not Tracked**

FinCEN did not have a reliable mechanism to track cases approaching their SOL or to prioritize cases in FIR. Based on our review of case closure descriptions in FIR, we identified 7 cases FinCEN closed because the SOL had expired. In another 13 cases, FinCEN notated in FIR that the age of the cases was the reason for closing them.

We could not determine how many cases were closed due to the SOL expiring because FIR did not have a field to track the SOL date, and FinCEN did not always document its reasons for closing cases in FIR. During January 2008 through May 2014, FinCEN closed 184 cases without documenting the reasons in FIR.

FIR also could not produce reports necessary to effectively monitor cases approaching the SOL. To determine the SOL dates, FinCEN officials told us that staff would have to review each case individually in FIR, which would be burdensome given the number of open cases (444 cases as of May 2014).

The dollar amount of potential CMPs forgone because of expired SOLs could not be estimated because FinCEN did not calculate the potential penalties on cases they closed without action. FinCEN officials told us that they did not document the statutory maximum penalty unless they pursued an enforcement action, and many

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cases may not have been severe enough to consider for an enforcement action.

### Data Anomalies

The FIR data associated with the 2,065 CMP cases referred to FinCEN from January 2008 through May 2014 was inconsistent and contained many anomalies. Accordingly, we consider the data within FIR to be unreliable. For example, the data showed 92 cases that were opened in FIR before the dates they were referred to FinCEN. We also had difficulty determining how cases were resolved based on the information available in FIR. FinCEN typically resolves a case in one of three ways: (1) sending a warning letter to the violator, (2) assessing a CMP, or (3) taking no action. However, 720 of 1,166 cases (62 percent) recorded as resolved in FIR had a resolution action classified as "Other."

Table 1 provides examples of the types of case data anomalies found from our analysis of FIR data.

**Table 1. FIR Case Data Anomalies**

<b>Description</b>	<b>Number of Cases</b>
Case showed as resolved but no resolution date	727
Resolution categorized as "Other"	720
Name of referring agency not recorded	487
Closed cases with blank conclusion description field	184
Case description blank or labeled "Placeholder"	100
Open date recorded is before the referral date	92
Case labeled "In Progress" but other narrative indicates case is closed	70
Resolution date recorded was before date case referred or opened	18
CMP was assessed but amount was missing or not correct	5

Source: Office of Inspector General (OIG) analysis of FIR data.  
A "Conclusion Description" narrative data field within FIR is intended to capture the reasons for which a case was closed as well as the actions taken.

In our review of the case files, we noted that the total CMP amounts associated with the 5 cases with CMP amounts missing or not correct in FIR were understated in FIR by approximately \$1 billion.

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FinCEN Enforcement Division representatives told us that certain incomplete and inaccurate information in FIR was the result of data conversion from the legacy Case Management System, case entry errors, or conscious decisions by staff such as entering "N/A" in the case description field. They told us that cleansing the FIR data was not a priority because they were understaffed.

FIR had core functionality for case exchange and storage; however with the limitations discussed above, it was not fully meeting the Enforcement Division's needs for a case management system.

The case management system that FinCEN uses should continue to be evaluated and meet the objectives as described in Government Accountability Office's (GAO) *Standards for Internal Control in the Federal Government*. It states that "management designs the entity's information system to obtain and process information to meet each operational process's information requirements and to respond to the entity's objectives and risks. An information system is the people, processes, data, and technology that management organizes to obtain, communicate, or dispose of information. An information system represents the life cycle of information used for the entity's operational processes that enables the entity to obtain, store, and process quality information." GAO also states that information processing objectives may include completeness, accuracy, and validity. "This involves processing data into information and then evaluating the processed information so that it is quality information." "Quality information is appropriate, current, complete, accurate, accessible, and provided on a timely basis." "Management uses the quality information to make informed decisions and evaluates the entity's performance in achieving key objectives and addressing risks." Further, GAO states "management identifies information requirements in an iterative and ongoing process that occurs throughout an effective internal control system. As change in the entity and its objectives and risks occurs, management changes information requirements as needed to meet these modified objectives and address these modified risks."

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## Case Referrals Not Recorded in FIR

FinCEN recorded in FIR all 106 CMP case referrals received from IRS but did not record 8 of the 97 referrals (8 percent) received from other regulators.<sup>12</sup> FinCEN officials told us that they did not know why these referrals were missing from FIR.

FinCEN created procedures to coordinate and forward referrals from IRS in response to a 2009 GAO audit recommendation, but it did not create similar procedures with other regulators.<sup>13</sup> We noted that IRS provided FinCEN with referrals using a standard form. Other regulators submitted referrals to FinCEN in various ways.

## Finding 2

### Enforcement Actions Lacked Full Documentation

FinCEN's case files supporting its enforcement actions lacked full documentation and approvals. At the time of our audit, FinCEN did not have standard procedures to determine CMP amounts and did not document the rationale for assessed penalty amounts. We also found a few instances where FinCEN caseworkers approved their own recommendations to close cases. Because of these weaknesses, FinCEN's case documentation could not demonstrate that enforcement decisions were approved and made in a consistent manner.

#### Case Files Lacked Full Documentation

We reviewed the case files for 21 enforcement actions in which a CMP was assessed. Of the 21 case files, 19 lacked one or more documents required by FinCEN's policies and procedures.<sup>14</sup> Additionally, all the case files lacked evidence of management review and approval at certain key points during the CMP assessment process. According to FinCEN Enforcement Division officials, 11 of these cases lacking documentation were concurrent with the Federal regulators. Officials stated that these cases were

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<sup>12</sup> The missing case referrals were from Commodities Futures Trading Commission (4 missing cases) and Massachusetts Division of Banks (4 missing cases).

<sup>13</sup> GAO, *Federal Agencies Should Take Action to Further Improve Coordination and Information-Sharing Efforts* (GAO 09-227; issued February 12, 2009).

<sup>14</sup> The other two cases files reviewed did not contain documentation supporting the rationale for assessing a CMP amount that was different from the amount initially proposed by the caseworker. This documentation is not required by FinCEN's policies and procedures.

worked cooperatively with other regulators throughout the process, relying on examination and other supervisory documentation to support the assessments. FinCEN could have supported its enforcement decisions regardless of whether a case was concurrent because FinCEN has separate enforcement authority. Table 2 identifies key documentation to be prepared for each enforcement case that was missing from the case files reviewed.

**Table 2: Examples of Key Documentation Missing From 21 Case Files Reviewed**

<b>Missing Documentation</b>	<b>Number of Cases</b>
Referral from regulator	7
Enforcement memorandum or comparable document*	12
Final Notice of Investigation**	12
Notice to regulator about FinCEN’s investigation	11
Rationale for changing CMP amount initially proposed by caseworker	7

Source: OIG analysis of FinCEN case files.

\* This memorandum contains factual background information and other analysis supporting the enforcement recommendation.

\*\* FinCEN sends a Notice of Investigation to the targeted entity. A copy of the Notice is also provided to the entity’s regulator(s) as a courtesy.

Most case files that did not contain key supporting documentation involved assessments that occurred before FinCEN’s 2013 reorganization. We found that FinCEN retained more supporting documentation in the 3 case files for enforcement actions that were taken after the reorganization, although the support for the final penalty amounts assessed was limited.

Enforcement Division officials told us that some of the missing documentation might have been saved in caseworkers’ own e-mails or backed-up computer files. We provided FinCEN officials a list of specific documents missing from the case files we reviewed, but the officials told us that they could not produce the documents because of limited staff. According to FinCEN most of these cases were worked cooperatively with other regulators and they relied on examination and other supervisory documentation to support the assessments. After our fieldwork, FinCEN provided additional

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documentation; however, these documents were not the documents we had identified as missing. Therefore, the materials provided did not change our conclusion that key documentation was missing.

*GAO's Standards for Internal Control in the Federal Government* requires managers to document internal controls, all transactions, and other significant events in a manner that allows for ready examination. Documentation and records should be properly managed and maintained.

FinCEN officials told us that the Enforcement Division formed a document retention working group to develop a formal document retention policy that will cover the appropriate type, method, and time period for retaining necessary case documentation. As of this report, FinCEN did not provide a date for completion of this policy.

#### **Rationale for Final Penalty Amounts Assessed Not Documented**

FinCEN's regulations provide for maximum CMP amounts for violations.<sup>15</sup> It is not unusual for regulatory agencies like FinCEN to assess a lower amount depending on the presence of aggravating and mitigating factors. At the time of our audit, we found that FinCEN did not have guidance for the consideration of aggravating and mitigating factors in establishing final CMP assessments. We did not see documentation of the rationale for reducing the penalty amounts in some case files.

For 9 of 21 enforcement actions we reviewed, FinCEN calculated and documented in the case files the maximum CMP amount that could be assessed for the violation(s); the case files for the other 12 enforcement actions did not contain a calculation of the maximum CMP amount or documentation for the rationale for the final assessed penalty amounts. For the 9 enforcement actions with a calculation of the maximum CMP amount documented, the final amounts assessed were substantially less than the maximum.

For 4 of these 9 enforcement actions, FinCEN did not fully document in the case files the rationale for the final assessed penalty amounts. For the other 5 enforcement actions that did

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<sup>15</sup> 31 CFR§1010.820.

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include documentation, we could not evaluate the appropriateness of FinCEN's mitigation of the CMPs assessed because FinCEN did not have guidance for determining penalty amounts.

In March 2016, FinCEN officials provided us with interim draft penalty procedures dated September 2015. FinCEN officials told us that they wanted flexibility when assessing penalties because of the various types of institutions FinCEN oversees. We agree such flexibility is integral to effective regulatory practice.

### **Duties Not Segregated**

Treasury Directive 40-04, "Treasury Internal (Management) Control Program" (January 2001) states that "key duties and responsibilities should be divided or segregated among different people to reduce the risk of error or fraud." GAO's *Standards for Internal Control in the Federal Government* states that "if segregation of duties is not practical within an operational process because of limited personnel or other factors, management should design alternative control activities to address those risks." FinCEN's interim draft policies and procedures state that an enforcement specialist recommends whether or not to pursue an enforcement action, and a section chief or office director then reviews and approves the recommendation. If the recommendation was to close the case without issuing a CMP, the office director would approve the recommendation but the case would not require the FinCEN Director's review.

Of the 2,065 CMP case referrals provided to us by FinCEN, we reviewed 48 cases FinCEN closed without pursuing a civil penalty. In 3 of the 48 cases (6 percent), there was no segregation of duties. That is, the same individual who recommended to not pursue a civil penalty also approved the case's closure.

Ensuring the segregation of duties and supervisory review in this area is critical given that, among other things, the enforcement decisions being made to pursue or not pursue CMPs for BSA violations can involve substantial sums of money.



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## Other Matter – Feedback to Referring Agencies

Several Federal and State regulators we interviewed told us that FinCEN did not routinely inform them of the status or resolution of CMP cases their respective agencies referred to FinCEN. Those regulators told us that they often had to initiate communication with FinCEN regarding the status of their referrals, and they thought that periodic status updates from FinCEN would enhance their contribution to BSA compliance by allowing them to evaluate their efforts. FinCEN officials stated that Federal and State regulators brought up this concern in the past, but they were not aware that this was still an issue. FinCEN provided IRS with a quarterly spreadsheet listing the status of all open IRS cases, as well as all IRS cases that closed during that quarter. We believe doing the same with other regulators would improve Federal and State regulators' efforts in referring cases to FinCEN and FinCEN's recording and monitoring of those referrals.

## Recommendations

We recommend the Director of FinCEN do the following:

1. Ensure FIR performance deficiencies are identified and resolved.

### Management Response

Management concurred with the recommendation. According to its response, through several application releases completed between February and June 2015, FinCEN resolved the performance deficiencies noted in the audit report.

### OIG Comment

FinCEN's response meets the intent of our recommendation.

2. Review open FIR case records to ensure the accuracy and completeness of the data recorded.

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### Management Response

Management concurred with the recommendation. According to its response, FinCEN's Enforcement Division identified key critical fields that must be completed in FIR, and then completed a review of the data for open cases to ensure those fields were populated. In addition, the FIR Case Processing Standard Operation Procedures (SOP) was developed and implemented on September 16, 2015.

### OIG Comment

FinCEN's response meets the intent of our recommendation.

3. Require key relevant case information to be entered into FIR so that FinCEN can monitor areas such as the CMP case backlog and CMP cases approaching the SOL.

### Management Response

Management concurred with the recommendation. According to its response, FinCEN's Enforcement Division reviewed all open cases and identified the SOL date, where available. The Enforcement Division, working with the Technology Division, modified existing fields in FIR to capture the SOL date and associated description. The Enforcement Division completed SOL data entry in FIR for all open cases where information was available in June 2016; entering SOL information remains ongoing as part of SOP for new cases. The FIR Case Processing SOP has been updated to include procedures for entering SOL data.

### OIG Comment

FinCEN's response meets the intent of our recommendation.

4. Continue to refine the interim draft enforcement procedures currently used by FinCEN. They should, among other things, provide (1) guidance for the consideration of aggravating and mitigating factors considered in CMP assessments; (2) documentation requirements for CMP assessments, including

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the rationale for assessments; and (3) provisions for proper segregation of duties and for higher-level management review when supervisors must directly work cases.

#### Management Response

Management concurred with the recommendation. According to its response, the Enforcement Division developed its Guidance for Case Processing SOP, and its Internal Guidance for Consideration of Civil Money Penalties and Other Remedies (CMP SOP), which were both implemented in September 2015. This CMP SOP outlines the aggravating and mitigating factors to be considered to ensure the CMP assessed is proportionate, consistent and fair. It also states that the factors are non-exhaustive. The Case Processing SOP requires the assigned Enforcement Specialist/Officer draft and submit an Information Memorandum through their management chain to the Associate Director of the Enforcement Division for approval prior to the commencement of any formal enforcement action. The Case Processing SOP requires the Enforcement Specialist/Officer to prepare a consent order and a penalty memorandum for approval through each level of their management chain to FinCEN's Director. The penalty memorandum is required to include a discussion of the factors outlined in the CMP SOP, along with any recommendation of a proposed CMP.

#### OIG Comment

FinCEN's response meets the intent of our recommendation.

5. Develop and implement a process to periodically notify Federal and State regulators of the status of and actions taken on referred cases.

#### Management Response

Management concurred with the recommendation. According to its response, FinCEN adheres to requirements and protocols outlined in the Information Sharing memoranda of understandings it has entered with each of its regulatory partners. Further, pursuant to its Guidance for Case Processing

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SOP implemented in September 2015, FinCEN's Enforcement Division notifies its referring partner (i.e. regulator, delegated examiner, or other referring agency) upon proceeding with a formal enforcement action that it may impose a CMP upon the referred institution or individual. The Case Processing SOP also provides that in all FinCEN enforcement actions taken in coordination with other government partners (including other regulators), the Enforcement Division will provide those partners with a copy of FinCEN's approved consent order, which details the violations, factual findings, and proposed settlement terms. In addition, the Enforcement Division will hold standing and ad hoc meetings with each of its regulatory partners to discuss, among other matters, the status of top priority case referrals.

OIG Comment

FinCEN's response meets the intent of our recommendation.

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We appreciate the cooperation and courtesies extended to our staff during the audit. Major contributors to this report are listed in appendix 3. A distribution list for this report is provided in appendix 4. If you wish to discuss the report, you may contact me at (617) 223-8638 or Mark Ossinger, Audit Manager, at (617) 223-8643.

/s/  
Sharon Torosian  
Audit Director

Our audit objective was to evaluate the Financial Crimes Enforcement Network's (FinCEN) controls over the assessment and collection of civil monetary penalties (CMP) for Bank Secrecy Act (BSA) violations. The scope of our review covered CMP cases referred to FinCEN from January 1, 2008, through May 31, 2014.

To accomplish our objective, we conducted our fieldwork from April 2014 through December 2014. We interviewed FinCEN officials and staff. In addition, we reviewed FinCEN's policies and procedures for processing CMP cases, cases referred to FinCEN by other regulators for processing, and cases for which FinCEN assessed a CMP. External to FinCEN, we interviewed representatives from various Federal and State regulatory agencies to understand their coordination with FinCEN and reviewed documentation provided by those entities.

#### FinCEN

- To understand CMP case processing and key controls, we interviewed the Associate Director, Enforcement Division; the Director, Office of Compliance and Enforcement; and a Section Chief and other staff responsible for case processing.
- To understand the coordination between FinCEN and other regulatory agencies, we interviewed the Director, Liaison Division, and Liaison Officers for Federal and State regulators.
- To understand existing and intended capabilities of the Financial Intelligence Repository (FIR), we interviewed the Chief Technology Officer, Technology Division, and specialists responsible for FIR.
- To understand the collection of CMPs, we interviewed the Director, Office of Financial Management, and the Office's accountants responsible for CMP collections.

### External to FinCEN

- To determine how assessed CMPs were accounted for and collected, we interviewed staff with the Bureau of the Fiscal Service's Accounts Receivable Branch.
- To obtain perspective on FinCEN's coordination of CMP referrals, we interviewed representatives from the Internal Revenue Service, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the U.S. Securities and Exchange Commission, the Federal Reserve Bank, the Commodity Futures Trading Commission, the National Credit Union Administration, and the Department of Justice Criminal Division and its Southern District of New York Office.
- To obtain perspective on FinCEN's coordination of CMP referrals with State regulators, we interviewed representatives from the Massachusetts Division of Banks, the Florida Office of Financial Regulation, and the California Division of Banks.

### **Case Sampling and Control Testing**

FinCEN provided us with an extract from the FIR database of 2,065 CMP cases referred to FinCEN between January 1, 2008, and May 31, 2014. To assess the effectiveness of CMP case processing controls, we reviewed 21 cases in which FinCEN assessed a CMP. We also reviewed 56 cases in which a CMP was not assessed, 48 of which were closed at the time of our audit.<sup>16</sup>

We selected from the FIR extract all 22 cases in which FinCEN assessed a CMP and excluded 1 grand jury sensitive case. After our review of the 21 cases, we identified 2 additional cases that resulted in a penalty assessment but were recorded in FIR as not having been assessed a CMP; we did not review those 2 cases.

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<sup>16</sup> The sample selected was non-statistical because given the uniqueness of each case we did not plan to project the results of our case review to the total universe.

We also selected from the FIR extract a sample of 54 cases referred to FinCEN that did not result in a CMP. We excluded 9 cases that either contained grand jury sensitive information or were included in our assessed penalty sample. We replaced them with 11 other cases, which increased the number of cases sampled and reviewed to 56.

We assessed the reliability of the FIR data extract FinCEN provided to us by comparing the case number documented in the file to the FIR database and found no discrepancies. We performed analytical procedures on the FIR data extract using analytical software and documented the anomalies identified. We obtained cases referred to FinCEN from other regulatory agencies and compared the case information to FIR data to determine if all cases were properly recorded in FIR. We reviewed case data to evaluate FinCEN's case processing and if cases were backlogged or approaching the statute of limitations.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.



**MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL HARKER**

**FROM:** Jamal El-Hindi, Acting Director /s/  
Financial Crimes Enforcement Network

**SUBJECT:** *Management Response to the Draft Report –FinCEN Civil Monetary Penalties*

Thank you for the opportunity to review the final report on FinCEN's Civil Money Penalty (CMP) audit, which covered cases from as early as January 2008 up to and including May 2014. We are pleased that the report recognized that FinCEN implemented revised procedures and, most importantly, agree that flexibility in assessing penalties is integral to an effective regulatory practice that must cover various types of financial institutions.

FinCEN fully recognizes that case processing and documentation are important elements of its broad enforcement program. Through the course of the six years included in the scope of this audit, many changes occurred at FinCEN involving people, processes and technology. Most notably, in conjunction with the reorganization in 2013, FinCEN has implemented a new enforcement organization, improved policies, and implemented new procedures to ensure accountability, proportionality, and fairness in its enforcement actions.

Since the audit covered such a broad timeframe, and parts were conducted while the organization was transitioning to its new structure, we continue to note that many of the findings and discussion points in the report are largely focused on outdated procedures and actions that were closed three to five years prior to the reorganization. Regardless, we appreciate the fact that the resulting recommendations are in line with the processes and procedures which have already been put in place with the new Enforcement Division and in fact, all of them are already closed.

Please find our responses to the report recommendations in the attachment. If you have any questions or need additional information, please contact Becky Martin, Deputy Chief Financial Officer on 703-905-3860.

**ATTACHMENT**  
FinCEN Corrective Actions

[www.fincen.gov](http://www.fincen.gov)



Appendix 2  
Management Response

Attachment

**FinCEN Correction Actions**

1. Ensure Financial Intelligence Repository (FIR) performance deficiencies are identified and resolved.

FinCEN Response: Concur. Over the course of several application releases, which were completed between February and June 2015, FinCEN resolved the performance deficiencies noted in the audit report.

Status: Closed

2. Review open FIR case records to ensure accuracy and completeness of the data recorded.

FinCEN Response: Concur. Enforcement Division identified the key critical fields that must be completed in FIR, and then completed a review of the data for open cases to ensure those fields were populated. In addition, the FIR Case Processing Standard Operating Procedures (SOP) was developed and implemented on September 16, 2015

Status: Closed

3. Require key relevant case information to be tracked or entered into FIR so that FinCEN can monitor areas such as the CMP case backlog and CMP cases approaching the statute of limitations (SOL).

FinCEN Response: Concur. Enforcement Division reviewed all open cases and identified the SOL date, where available. Enforcement Division, working with Technology Division, modified existing fields in FIR to capture the SOL date and associated description. Enforcement Division completed SOL data entry in FIR for all open cases where information was available in June 2016; entering SOL information remains ongoing as part of standard operating procedure for new cases. The FIR Case Processing SOP has been updated to include procedures for entering SOL data.

Status: Closed

4. Continue to refine the interim enforcement procedures currently used by FinCEN. They should, among other things, provide (1) guidance for the consideration of mitigating and aggravating factors considered in CMP assessments, (2) documentation requirements for CMP assessments, including the rationale for assessments, and (3) provisions for proper segregation of duties and for higher-level management review when supervisors must directly work cases.

FinCEN Response: Concur. The Enforcement Division developed its Guidance for Case Processing SOP, and its Internal Guidance for Consideration of Civil Money Penalties and Other Remedies (CMP SOP), which were both fully implemented in September 2015.

Appendix 2  
Management Response

Attachment

The CMP SOP outlines the aggravating and mitigating factors to be considered to ensure the CMP assessed is proportionate, consistent and fair. It also states the factors are non-exhaustive, and the OIG report agreed that flexibility in assessing penalties is integral to FinCEN's regulatory practice. The Case Processing SOP requires the assigned Enforcement Specialist/Officer draft and submit an Information Memorandum through their management chain to the Associate Director for approval prior to the commencement of any formal enforcement action. Likewise, this SOP requires the Enforcement Specialist/Officer to prepare a consent order and a penalty memorandum for approval through each level of their management chain to the Director. The penalty memorandum is required to include a discussion of the factors outlined in the CMP SOP, along with any recommendation of a proposed CMP.

Status: Closed

5. Develop and implement a process to periodically notify regulators of the status and actions taken on referred cases.

FinCEN Response: Concur. FinCEN adheres to the notification requirements and protocols outlined in the Information Sharing MOUs it has entered with each of its regulatory partners. Further, pursuant to its Guidance for Case Processing SOP implemented in September 2015, FinCEN's Enforcement Division notifies its referring partner (i.e. regulator, delegated examiner, or other referring agency) upon proceeding with a formal enforcement action that may impose a CMP upon the referred institution or individual. The Case Processing SOP also provide that in all FinCEN enforcement actions taken in coordination with other government partners (including other regulators), the Enforcement Division will provide those partners with a copy of FinCEN's approved consent order, which details the violations, factual findings, and proposed settlement terms. In addition, the Enforcement Division holds standing and ad hoc meetings with each of its regulatory partners to discuss, among other matters, the status of top priority case referrals.

Status: Closed

Appendix 3  
Major Contributors to This Report

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Mark Ossinger, Audit Manager  
Jason Madden, Auditor-in-Charge  
Anne Ryer, Auditor  
Michael Levin, Referencer

**The Department of the Treasury**

Deputy Secretary  
Under Secretary for Terrorism and Financial Intelligence  
Chief Information Officer  
Office of Strategic Planning and Performance Improvement  
Office of the Deputy Chief Financial Officer, Risk and Control  
Group

**Financial Crimes Enforcement Network**

Director  
OIG Audit Liaison

**Office of Management and Budget**

OIG Budget Examiner



## **Treasury OIG Website**

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**Gulf Coast Restoration Hotline** – Call toll free: 1-855-584.GULF (4853)

Email: [Hotline@oig.treas.gov](mailto:Hotline@oig.treas.gov)

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