

GAO

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

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February 1998

# MONEY LAUNDERING

## FinCEN Needs to Better Communicate Regulatory Priorities and Time Lines



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**General Government Division**

B-276891

February 6, 1998

The Honorable Spencer Bachus  
Chairman  
The Honorable Maxine Waters  
Ranking Minority Member  
Subcommittee on General Oversight  
and Investigations  
Committee on Banking and Financial Services  
House of Representatives

This report responds to your March 24, 1997, request that we review the regulatory role of the Financial Crimes Enforcement Network (FinCEN), which is a Department of the Treasury organization established in April 1990 to support law enforcement agencies by analyzing and coordinating financial intelligence information to combat money laundering.<sup>1</sup> In a May 1994 delegation memorandum, Treasury expanded FinCEN's anti-money laundering role to include responsibility for promulgating regulations under the Bank Secrecy Act (BSA), which has been amended various times since its enactment in 1970.<sup>2</sup> Recent amendments were made by the Money Laundering Suppression Act of 1994 (MLSA).<sup>3</sup> The MLSA, in general, directed Treasury to take certain actions regarding the use of money transmitting businesses by criminals involved in money laundering. Because you were concerned whether FinCEN had made progress in addressing this threat and accomplishing other directives of the MLSA, you asked us to assess FinCEN's efforts to issue regulations pursuant to the BSA, as amended. In so doing, this report addresses the following questions, particularly in reference to the MLSA:

- What process did FinCEN follow for developing and issuing BSA regulations?
- What is the current status of FinCEN's efforts to develop and issue BSA regulations? More specifically, what regulations has FinCEN developed thus far, and what regulations has the agency been authorized or required to develop but has not done so?

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<sup>1</sup>Money laundering, in general, is the disguising or concealing of illicit income to make it appear legitimate. U.S. criminal anti-money laundering law encompasses the money generated from numerous different crimes—e.g., drug trafficking, murder for hire, racketeering, tax evasion, prostitution, and embezzlement.

<sup>2</sup>Public Law 91-508, 84 Stat. 1114 (1970). BSA's implementing regulations are promulgated by the Department of the Treasury at 31 C.F.R. Part 103.

<sup>3</sup>The MLSA is Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994 (P.L. 103-325, 108 Stat. 2160, 2243 (1994)).

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To identify the regulatory or rulemaking process that FinCEN followed, we interviewed FinCEN officials who are responsible for preparing BSA regulations and reviewed related agency documents. We also interviewed Treasury and Office of Management and Budget (OMB) officials about their procedures for reviewing drafts of FinCEN's regulations before publication. We examined relevant sections of the Administrative Procedure Act (APA)<sup>4</sup> and Executive Order 12866<sup>5</sup> prescribing procedures that federal agencies are to follow when developing and issuing regulations. However, the scope of our work did not constitute a review of FinCEN's compliance with applicable statutory and executive order guidance.

To determine the status of FinCEN's efforts to develop and issue regulations, as agreed with your offices, we focused on eight regulatory initiatives<sup>6</sup> that are authorized or required by MLSA amendments to the BSA:

- designate a single recipient for suspicious activity reports (SAR)<sup>7</sup> to help law enforcement agencies make more effective use of these reports (by statute, to be completed by Mar. 23, 1995);
- extend BSA currency reporting and recordkeeping requirements to certain gaming institutions operated on tribal lands;
- extend BSA currency reporting and recordkeeping requirements to card clubs;
- specify selected entities as being exempt (mandatory exemptions) from filing currency transaction reports (CTR)<sup>8</sup> to substantially reduce the number of CTRs filed by depository institutions<sup>9</sup> and to enhance the usefulness of CTRs to law enforcement;

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<sup>4</sup>Public Law 79-404, 60 Stat. 237 (1946) (codified as amended in scattered sections of 5 U.S.C.).

<sup>5</sup>Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, Oct. 4, 1993).

<sup>6</sup>Appendix I provides further details about the eight regulatory initiatives.

<sup>7</sup>SARs, in general, must be filed by financial institutions when they know, suspect, or have reason to suspect that a crime has occurred or that a transaction is suspicious. FinCEN regulations provide, for example, that a SAR shall be filed for a transaction that has no business or apparent lawful purpose or that is not the sort in which the particular customer would normally be expected to engage, and the bank knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

<sup>8</sup>Financial institutions and certain types of businesses must file a CTR with the Internal Revenue Service for each deposit, withdrawal, exchange, or other payment or transfer by, through, or to such financial institutions or businesses that involves more than \$10,000 in currency.

<sup>9</sup>FinCEN noted in the Federal Register (61 FR 18205, Apr. 1996) that approximately 11.2 million CTRs were filed between September 24, 1993, and September 23, 1994. Thus, FinCEN stated that the statute contemplated a reduction of approximately 3.3 million filings per year.

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- define certain types of businesses that can be exempted (discretionary exemptions) from filing CTRs to further reduce the number of CTRs filed and enhance the usefulness of these reports to law enforcement (by statute, to be completed by Sept. 23, 1996);
  - extend BSA reporting requirements to certain negotiable instruments drawn by foreign banks to address the potential use of “foreign bank drafts” in money laundering schemes;
  - require certain money transmitting businesses, which FinCEN has proposed to redefine as “money services businesses” (MSB),<sup>10</sup> to register with Treasury to address concerns that these entities are particularly vulnerable to money laundering schemes (by statute, to be completed by Mar. 23, 1995); and
  - delegate authority to assess a civil monetary penalty on depository institutions under the BSA to the appropriate federal banking regulatory agencies to increase efficiencies by allowing these agencies to impose civil penalties directly, rather than make referrals to FinCEN.

In focusing on the eight regulatory initiatives, we reviewed all notices of proposed and final rulemaking issued by FinCEN since 1994, as published in the Federal Register.<sup>11</sup> Furthermore, regarding FinCEN’s efforts to develop and issue regulations, we interviewed FinCEN officials and 6 of the 35 members of the BSA Advisory Group,<sup>12</sup> which includes representatives from the law enforcement, regulatory, and financial services communities. Also, we reviewed relevant literature and our past reports<sup>13</sup> to identify any potential best practices for developing and issuing regulations.

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<sup>10</sup>The proposed definition of MSBs would include money transmitters; currency dealers, or exchangers; check cashers; issuers of traveler’s checks, money orders, or stored value (under the proposed rule, stored value is defined as funds or monetary value represented in digital electronics format, whether or not specifically encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferable electronically); sellers or redeemers of traveler’s checks; and the U.S. Postal Service (except regarding the sale of postage or philatelic products). For additional information, see appendix I, footnote 1.

<sup>11</sup>Appendix II provides a time line of all of FinCEN’s rulemaking issuances since 1994.

<sup>12</sup>In March 1994, pursuant to the Annunzio-Wylie Anti-Money Laundering Act (P.L. 102-550, 106 Stat. 4044 (1992)), the Secretary of the Treasury announced the establishment of the BSA Advisory Group, whose purpose is to provide Treasury and FinCEN with advice and expertise on BSA-related matters, including prospective regulations. Appendix III provides additional information about the BSA Advisory Group. Appendix IV discusses the criteria we used to judgmentally select BSA Advisory Group members to interview.

<sup>13</sup>Clear Air Rulemaking: Tracking System Would Help Measure Progress of Streamlining Initiatives (GAO/RCED-95-70, Mar. 2, 1995) and Regulatory Review: Information on OMB’s Review Process (GAO/GGD-89-101FS, July 14, 1989).

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We performed our work from April to December 1997, in accordance with generally accepted government auditing standards. Appendix IV provides further details about our objectives, scope, and methodology.

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

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## Background

The U.S. government's framework for preventing and detecting money laundering efforts is the BSA, which was enacted in 1970, in part, in response to concern over the use of financial institutions by criminals to launder the proceeds of their illicit activity. Despite its name, the BSA, among other things, is a disclosure law. As originally enacted, the BSA required, for example, the maintenance of records by financial institutions and the reporting of certain domestic currency transactions and cross-border transportation of currency. One purpose of such records and reports was to create a paper trail for investigators' use in tracing illicit funds. The MLSA amendments to the BSA are, among other things, intended to improve upon this paper trail. For example, one benefit intended by the MLSA is to enhance the usefulness of CTRs to law enforcement agencies. Another benefit is to register MSBs, which are entities reportedly vulnerable to money laundering schemes.

According to FinCEN, its regulatory program priorities and outlines of specific regulatory projects can originate from various sources. These sources include statutory mandates or authorities; deficiencies in the present rules identified by enforcement officials; and suggestions from financial institutions (e.g., withdrawal of the requirement that would have mandated certain financial institutions to file CTRs on magnetic media).

The APA establishes certain procedures that an agency must follow when promulgating rules. Informal rulemaking<sup>14</sup> under the APA generally requires such actions as notification of proposed rulemaking by publication in the Federal Register, involvement of interested persons through notice and comment, and publication of a final rule at least 30 days before it becomes effective.

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<sup>14</sup>Most rulemaking proceedings involve "informal rulemaking," in contrast to "formal rulemaking," which generally requires that an agency use trial-type hearing procedures, keep a formal record, and base its decision on data compiled in that record.

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FinCEN is a relatively small agency with a fiscal year 1997 budget of about \$23 million and an on-board staffing level of about 160 employees.<sup>15</sup> Created in 1990, FinCEN's original mission centered on supporting law enforcement agencies' anti-money laundering efforts. Investigative case support included, for example, accessing numerous databases and using advanced technology to identify and analyze relevant financial transactions. Over the years, FinCEN's mission has become more multifaceted, including assumption of a leadership role in international efforts to combat money laundering. For instance, besides heading the U.S. delegation to the Financial Action Task Force,<sup>16</sup> FinCEN has assisted other nations to establish financial intelligence units, which are intended to serve as focal points for these countries' anti-money laundering efforts.

In May 1994, Treasury expanded FinCEN's anti-money laundering role to include responsibility for administration of the BSA. In this role, besides promulgating BSA regulations, FinCEN interprets the BSA and assesses civil monetary penalties for BSA violations. FinCEN officials told us that about 10 staff worked on BSA regulations in recent years. FinCEN officials noted, however, that none of these 10 staff had worked on regulations on a full-time or exclusive basis; rather, the staff had also been involved in other mission functions and responsibilities. Notices of proposed rulemaking and final rules are prepared by FinCEN's Office of Legal Counsel, with the participation of staff from FinCEN's Office of Program Development and Office of Compliance and Regulatory Enforcement.

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## Results in Brief

FinCEN's process for developing and issuing regulations generally consisted of determining what regulations were required or needed, establishing priorities for which regulations it would promulgate first, and then promulgating the regulations within the context of applicable statutory and executive branch guidance. FinCEN published its annual regulatory priorities each fiscal year since 1995. FinCEN also published notices of proposed rulemaking and final rules in the Federal Register. Overall, FinCEN's regulatory process was designed to reflect APA standardized procedures that federal agencies are to follow when developing and issuing regulations. Moreover, FinCEN follows a "partnership strategy," which emphasizes frequent consultations with representatives of the law enforcement, regulatory, and financial services communities.

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<sup>15</sup>Appendix V shows FinCEN's organizational structure and its on-board staffing as of December 1997.

<sup>16</sup>Comprised of 26 member nations and headquartered in Paris, France, the Financial Action Task Force is dedicated to promoting the development of effective anti-money laundering controls and enhanced cooperation among all countries.

Regarding the status of FinCEN's efforts to develop and issue regulations, as of December 1997, more than 3 years since passage of the MLSA, FinCEN had not promulgated final regulations for five of eight regulatory initiatives related to the 1994 BSA amendments. As shown in table 1, FinCEN has issued final regulations for three initiatives, has proposed regulations for four initiatives, and has not yet taken regulatory action on one initiative. The table also shows that FinCEN missed all three statutory deadlines imposed by the MLSA.

**Table 1: Status of FinCEN's Regulatory Issuances for MLSA-Related Provisions (as of Dec. 1997)**

Regulatory initiative	Status of regulatory issuances/rule			Statutory deadlines	Most recent regulatory action
	Final	Proposed	None		
<b>Suspicious Activity Reports:</b> designate a single recipient	x			03/23/95	02/05/96
<b>Tribal Casinos:</b> make tribal gaming subject to the BSA	x			none	02/23/96
<b>Mandatory CTR Exemptions:</b> specify selected entities as exempted from filing CTRs	x			none	09/08/97 <sup>a</sup>
<b>Discretionary CTR Exemptions:</b> define certain types of businesses as exempted from filing CTRs		x		09/23/96	09/08/97
<b>Card Clubs:</b> make card clubs subject to the BSA		x		none	12/20/96
<b>Foreign Bank Drafts:</b> impose reporting requirements		x		none	01/22/97
<b>Money Services Businesses:</b> require registration of money services businesses		x		03/23/95	05/21/97
<b>Civil Penalties:</b> delegate to federal banking regulatory agencies the authority to assess civil penalties			x	none	none
<b>Total</b>	<b>3</b>	<b>4</b>	<b>1</b>	<b>n/a</b>	<b>n/a</b>

<sup>a</sup>On April 24, 1996, FinCEN issued an interim rule with a request for comments. A final rule that incorporated comments received on the interim rule was subsequently issued on September 8, 1997.

Source: Developed by GAO on the basis of MLSA provisions and Federal Register publications.

Generally, until final regulations are promulgated, many of the intended benefits of the MLSA cannot be fully achieved. For example, until the discretionary CTR exemptions are defined by regulation, the reduction in



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the number of CTRs that is intended to enhance their usefulness to law enforcement agencies cannot be fully realized.

FinCEN officials concluded that the need to issue quality regulations—i.e., substantively effective regulations—was important. The officials said that they recognized that the emphasis on issuing quality regulations had the effect of extending the time needed to develop and issue regulations. Thus, FinCEN followed a regulation-development process that emphasized quality over timeliness. A majority of the members of the BSA Advisory Group with whom we spoke generally concurred with this characterization of FinCEN's regulatory process. Furthermore, FinCEN officials told us that as part of its process, the agency prioritized its workload to work on two or three regulatory issues at a time because of the complexities of the issues and the number of agency staff with regulatory expertise. As previously mentioned, FinCEN officials told us that the agency had about 10 staff with regulatory expertise who had worked on BSA regulations in recent years and none of these 10 staff had worked on the regulations exclusively.

Congress' inclusion of statutory deadlines with respect to the MLSA provisions shows that it is intended that those initiatives be completed in a timely manner. We believe that FinCEN could better inform appropriate congressional committees of its rulemaking plans or, where delays would be significant, it could also include a request for legislation to extend the statutory deadlines, especially when the agency's plans will result in FinCEN's failing to meet statutory completion dates.

Although we found that FinCEN had presented its fiscal year regulatory priorities in annual plans, which were published in the Federal Register, these plans did not provide stakeholders with FinCEN's estimated dates for issuing final rules for all MLSA-related amendments to the BSA, particularly those with development phases exceeding 1 year. In commenting on a draft of this report, FinCEN said that it communicated the agency's regulatory plans to Congress by various means, including testimony at congressional hearings. Our review of FinCEN's testimonies at hearings over the past calendar year found, however, that FinCEN did not provide specific target dates for issuing final rules for MLSA-related directives.

Thus, congressional committees were not in a good position to assess FinCEN's regulatory program, including the agency's prioritization of regulatory initiatives, the time lines for issuing final regulations, and the allocation of resources necessary for completing these initiatives. A case in point is the Subcommittee's request for this review, which was made

because it lacked information about FinCEN's rulemaking plans. Therefore, we are recommending that FinCEN prepare and submit to the appropriate congressional committees target dates for issuing final regulations (and notices of proposed rulemaking, as applicable) for all relevant statutory BSA-related directives.

## FinCEN's Regulatory Process Was Designed to Reflect Standardized Procedures

FinCEN's regulatory process was designed to reflect standardized procedures that have governmentwide applicability under the APA. The APA establishes certain procedures that an agency must follow when promulgating rules. Informal rulemaking under the APA generally requires such actions as notification of proposed rulemaking by publication in the Federal Register, involvement of interested persons through notice and comment, and publication of a final rule at least 30 days before it becomes effective. Concerning the involvement of interested persons, the APA generally requires that agencies give such persons an opportunity to participate in the rulemaking process through submission of written data, views, or arguments. The APA also requires that agencies incorporate into each rule a concise general statement of its basis and purpose. Our review showed that FinCEN published notices of proposed rulemaking and final rules in the Federal Register.

Also, as an additional means of enhancing public visibility, FinCEN presented its fiscal year regulatory priorities in annual plans, pursuant to Executive Order 12866 requirements. Under this executive branch guidance, each fiscal year, federal agencies are to prepare a regulatory plan presenting, among other things, the respective agency's regulatory priorities and the most significant regulatory actions that the agency reasonably expects to issue in proposed or final form during the year.<sup>17</sup> In its regulatory plan for fiscal year 1996,<sup>18</sup> for example, FinCEN listed three priority regulatory initiatives related to provisions of the MLSA—mandatory CTR exemptions, suspicious activity reporting (to designate a single recipient for these reports), and tribal casinos—and one initiative to modify two final rules related to wire transfers. During fiscal year 1996, FinCEN issued an interim rule and two final rules, respectively, for the three MLSA-related priorities.

<sup>17</sup>Federal agencies' regulatory plans are compiled into the fall edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions, which is published in the Federal Register. A purpose of the Unified Agenda is to provide uniform reporting of data on regulatory activities under development throughout the federal government.

<sup>18</sup>60 FR 59653, November 28, 1995.

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FinCEN's fiscal year 1997 regulatory plan<sup>19</sup> accorded priority to issuing notices of proposed rulemaking for five topics: (1) registering of MSBs; (2) reporting of the cross-border transportation of certain monetary instruments (i.e., foreign bank drafts); (3) extending to securities brokers and dealers and casinos the requirement to report suspicious transactions; (4) requiring financial institutions to carry out certain anti-money laundering programs;<sup>20</sup> and (5) delegating civil penalty authority to bank regulatory agencies. FinCEN accomplished the first two priorities during fiscal year 1997, but not the last three priorities. Instead, FinCEN found it necessary to issue additional regulations related to MSBs and issue regulations related to mandatory (final rule) and discretionary (notice of proposed rulemaking) CTR exemptions.

According to FinCEN, the reason a priority was placed on the exemption regulations was to give the banking industry regulatory relief before adding additional requirements. FinCEN officials said that the proposed MSB regulations were given priority because FinCEN concluded that Treasury needed to pay more attention to updating the way the BSA applies to MSBs and to equalize the money laundering controls to which various types of financial institutions are subject. According to FinCEN, the need was identified on the basis of the success of law enforcement efforts in New York, which used special reporting requirements that were similar to the proposed regulations.

In addition to standardized procedures, a significant aspect of FinCEN's regulatory process is its partnering strategy.<sup>21</sup> This strategy emphasized frequent interaction and consultation with affected public and private sector representatives in the law enforcement, regulatory, and financial services communities.

As previously mentioned, one forum that FinCEN used to operationalize its partnership strategy was the BSA Advisory Group. Generally, the members we interviewed were complimentary of FinCEN's participation in and use of this forum. A majority of the members commented that FinCEN's process, rather than focusing on timeliness, was properly focused on

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<sup>19</sup>61 FR 62132, November 29, 1996.

<sup>20</sup>FinCEN was authorized in a 1992 amendment to the BSA to require financial institutions to carry out anti-money laundering programs.

<sup>21</sup>Building partnerships is one of three goals specified in FinCEN's multiyear strategic plan (1996-2001), which was developed to meet the requirements of the Government Performance and Results Act of 1993. The plan's other goals focus on increasing international awareness of the impact of money laundering and applying technology.

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quality—specifically, on developing and issuing substantively effective regulations. More specifically, one member noted that FinCEN’s regulations are excellent and are worth the time invested. A second member noted that FinCEN has taken some innovative approaches, such as holding public meetings to discuss proposed regulations. A third member noted that, while it would be nice to have a faster process, FinCEN’s partnership approach is good, even though such an approach may increase the time taken to develop regulations.

FinCEN officials also told us that developing quality regulations takes time. A FinCEN official said that, to promulgate regulations that can be effectively implemented, the agency needed to take the time to develop expertise in particular subject areas and to consult with various stakeholders during the development process. FinCEN officials believe this approach is important to help ensure that issued regulations have credibility with law enforcement agencies, federal regulators, and affected industries.

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## FinCEN’s Prioritization of Work Deferred Issuance of Final Rules for Several MLSA-Related Regulatory Initiatives

In fiscal year 1995, FinCEN began taking action to develop regulations addressing MLSA provisions; but, as of December 1997, final rules were pending for five of the eight regulatory initiatives we reviewed. FinCEN officials told us that, given the number of regulatory initiatives requiring action, the number of staff with the expertise to develop regulations, and other reasons, the agency had to prioritize its work. FinCEN’s prioritization of initiatives resulted in final regulatory actions related to several of the 1994 amendments being deferred into fiscal year 1997 and beyond. While we have no basis to criticize FinCEN’s regulation-development process or its resource allocation decisions, we note in this report that FinCEN missed all three statutory deadlines imposed by the MLSA.

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## FinCEN Prioritized Regulatory Needs

According to FinCEN officials, since being delegated the responsibility for BSA regulations, the agency has worked on only two or three regulatory issues at a time because of the complexities of the issues, the coordination required with the affected parties, competing mission demands, and the number of agency staff with regulatory expertise. As previously mentioned, FinCEN officials told us that its regulatory program priorities are influenced by various sources, including statutory mandates or authorities as well as needs identified by FinCEN or others.

We requested information from FinCEN on the amount of time that FinCEN staff devoted to developing and issuing regulations. FinCEN officials told us

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that the agency does not track staff use by specific functions or strategic goals and objectives. According to the officials, 10 staff worked on developing regulations, but none of the 10 staff worked exclusively on regulatory efforts. These 10 staff, based upon our rough estimate, represented about 6 percent of FinCEN's total staff resources.<sup>22</sup>

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**FinCEN Issued Final Rules for Some of the MLSA-Related Provisions, but Actions Are Pending for Others**

FinCEN produced its first rulemaking actions related to the MLSA late in fiscal year 1995, when FinCEN issued notices of proposed rulemaking to extend BSA reporting and recordkeeping requirements to tribal casinos (Aug. 1995) and to designate a single recipient for reporting of suspicious activities (Sept. 1995). FinCEN issued final rules for these two regulatory initiatives in fiscal year 1996 (Feb. 1996). Also, during fiscal year 1996, FinCEN issued an interim rule related to exemption of certain transactions from CTR requirements. A final rule that incorporated comments received on the interim rule was issued in fiscal year 1997 (Sept. 1997). During fiscal year 1997, FinCEN issued five notices of proposed rulemaking that related to BSA amendments made by the MLSA. No issuances have been made for one initiative related to the MLSA—delegation of civil penalty authority to federal banking regulatory agencies.

As of December 1997, FinCEN had not issued final rules for five regulatory initiatives related to the MLSA. However, as shown in table 2, FinCEN has issued notices of proposed rulemaking for four of the five pending regulatory initiatives. For example, FinCEN issued a notice of proposed rulemaking related to foreign bank drafts on January 22, 1997. According to a FinCEN official, comments were received, and, as of October 1997, a final rule was being developed. As presented in the fiscal year 1997 Unified Agenda, FinCEN had estimated that a final rule for this initiative would be issued in August 1997. However, in September 1997, a FinCEN official told us that developing final MSB regulations will be given priority over efforts to develop the final rule related to foreign bank drafts. Also, regarding the latter, the FinCEN official noted that senior Treasury managers will need to be involved. As a result, the FinCEN official said that he was uncertain as to when a final rule for foreign bank drafts would be published.

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<sup>22</sup>The 6-percent figure is our estimate which is based on 10 of FinCEN's total staff of 162 people working on regulations. During fiscal year 1997, FinCEN added three more attorneys to its staff. However, during the same year, two other staff who had previously worked on the development of regulations left the agency. These two positions were vacant as of December 1997.

**Table 2: Pending Regulatory Initiatives for MLSA-Related Provisions (as of Dec. 1997)**

Pending rulemaking	Notice of proposed rulemaking date	Date written comments were requested
Card clubs	December 20, 1996	March 20, 1997
Foreign bank drafts	January 22, 1997	April 22, 1997
Registration of MSBs	May 21, 1997	September 30, 1997
Discretionary CTR exemptions	September 8, 1997	December 8, 1997
Delegation of civil penalty authority	No notice issued	n/a

Source: Developed by GAO on the basis of Federal Register publications and discussions with FinCEN officials.

Regarding the registration of MSBs and related issues, FinCEN published a set of three notices of proposed rulemaking on May 21, 1997.<sup>23</sup> Treasury's Under Secretary for Enforcement had asked that FinCEN try to publish final rules for these three issues by the end of December 1997.<sup>24</sup> FinCEN officials told us that these regulations, given their usefulness to law enforcement, have a high priority. According to FinCEN officials, adherence to the December 1997 schedule would have meant that the registration of existing MSBs would have been accomplished about 6 months later (i.e., by the end of June 1998).

Another regulatory initiative under development, as table 2 shows, involves discretionary CTR exemptions. FinCEN issued a notice of proposed rulemaking on September 8, 1997, and requested that written comments be provided by December 8, 1997. Subsequently, FinCEN extended the comment period to January 16, 1998.

Also, table 2 shows that FinCEN has not issued a notice of proposed rulemaking to delegate to federal banking regulatory agencies the authority to assess civil monetary penalties for BSA violations. Currently, such assessment authority is vested solely in FinCEN. In April 1997, in response to questions we asked in initiating our review, FinCEN officials told us they had been working with the banking agencies for over a year to

<sup>23</sup>One notice of proposed rulemaking was in response to the MLSA requirement to register MSBs. The other two notices of proposed rulemaking were not required by the MLSA.

<sup>24</sup>In January 1998, in response to our inquiry, a FinCEN official told us that final rules for these initiatives had not been published because of funding issues involving, among other things, data collection requirements at the Internal Revenue Service's Detroit Computing Center. The official noted that funding issues could impact the scope and parameters of the final regulations, and the official said that FinCEN had not established a date for issuing the final rules.

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devise an appropriate plan for delegating civil penalty assessment authority, but some issues still required resolution.

In our follow-up discussions in July and September, 1997, FinCEN officials described the unresolved issues largely as establishing a common frame of reference for evaluating BSA violations and, in turn, for determining the appropriate penalty amounts. Additionally, FinCEN officials noted that, even with the delegation of assessment authority to the banking agencies, another unresolved issue is FinCEN's role in monitoring the various agencies' use of that authority. FinCEN also indicated that the federal banking regulatory agencies may be less inclined to assess BSA penalties and will instead use their present non-BSA authorities under the general examination powers granted to them (i.e., Title 12 of the U.S. Code).

Accordingly, FinCEN officials told us they believe oversight of the delegated authority is necessary, and they are considering proposing that each banking regulatory agency prepare and submit to FinCEN quarterly reports of its efforts to enforce the BSA. FinCEN officials told us that they had not reached a mutual agreement with the federal banking regulators regarding proposed monitoring requirements. According to a FinCEN official, these unresolved issues are policy-oriented and will require consultation with Treasury officials. Also, the FinCEN official noted that the delegation issue has lower priority than other issues, such as the development of final MSB rules. As of December 1997, FinCEN had not established a projected issuance date for either a notice of proposed rulemaking or a final rule. According to FinCEN officials, the agency's disinclination to move quickly in this area reflects its sense that more needs to be learned about the implications of various approaches for cost-effective enforcement of banking regulation before the ultimate policy choices are made. FinCEN officials stated that the issues raised by delegation of civil penalty authority ultimately go beyond purely enforcement concerns. According to FinCEN officials, a briefing paper describing the issues for senior-level Treasury officials is to be prepared and submitted to Treasury by the end of February 1998.

Another open issue for FinCEN, at the time of our review, involved a requirement that Treasury publish (1) written rulings interpreting the BSA

and (2) annual staff commentaries on the BSA regulations.<sup>25</sup> To assist FinCEN, the BSA Advisory Group formed a working group to prepare summaries that were provided to FinCEN for its use in meeting the requirement to publish commentaries. According to a FinCEN official, the agency has begun to review its written rulings to identify information that can and cannot be made public. This official estimated that redacted versions of the rulings may be published during the first quarter of calendar year 1998. On the other hand, the FinCEN official said that 2 or 3 years may be needed to write the commentaries because they involve more complicated issues.

## FinCEN Did Not Fully Communicate Its Regulatory Priorities and Time Lines

FinCEN prepared annual (fiscal year) plans presenting its priorities and regulatory agenda for the most significant regulatory actions that it expected to issue in proposed or final form during the applicable 12-month period. However, a limitation of FinCEN's annual plans is that they do not always present what is not being accomplished. For example, FinCEN's fiscal year 1996 regulatory plan accorded priority to three MLSA-related regulatory initiatives (mandatory CTR exemptions, suspicious activity reporting, and tribal casinos), but the plan did not mention that FinCEN would not be giving priority to other regulatory initiatives (e.g., registration of MSBS) requiring action under the MLSA.

A limitation of the regulatory agenda is that it may not always present estimated dates for issuing final rules, particularly if a regulatory initiative involves a period beyond 12 months. For example, FinCEN's fiscal year 1995 regulatory agenda did not provide estimated dates for issuing final rules for any of the eight MLSA-related regulatory initiatives we reviewed. In fact, 2 years later, the fiscal year 1997 regulatory agenda represented FinCEN's first publication of estimated dates for issuing final rules involving any of these eight initiatives. The 1997 regulatory agenda provided estimated final rule issuance dates for three of the eight regulatory initiatives—mandatory CTR exemptions, card clubs, and foreign bank drafts.

Although FinCEN's 1995 plan did not address final rules, it did present estimated dates for issuing notices of proposed rulemaking for seven of the eight regulatory initiatives. In subsequent annual plans, FinCEN extended some of these dates. An example is the regulatory initiative

<sup>25</sup>These publications were required under Title III of the Riegle Community Development and Regulatory Improvement Act of 1994 (P.L. 103-325, 108 Stat. 2160 (1994)). The Secretary is to (1) publish all of Treasury's written rulings interpreting BSA requirements and (2) issue, on an annual basis, a staff commentary on the BSA regulations. According to the Conference Report on the act, these publications are to ease the burden on banking institutions and promote compliance with the BSA.



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involving the delegation of civil penalty assessment authority to the federal banking regulatory agencies. In the 1995 plan, FinCEN estimated that it would issue a notice of proposed rulemaking in July 1995. Later, FinCEN extended the estimated issuance date several times—that is, to March 1996, then to September 1996, and then to February 1997. At the time of our review, a notice of proposed rulemaking still had not been issued, and FinCEN had not established a projected issuance date.

Another mechanism that FinCEN has used to inform Congress of its regulatory agenda has been congressional hearings. We reviewed FinCEN's testimony given at hearings held during 1997 and found that agency officials generally discussed either final rules that had already been issued or regulatory initiatives that were currently under development. However, the testimonies did not discuss the MLSA-related directive related to delegating authority to federal banking agencies to assess civil penalties. Furthermore, with one exception—a July 1997 hearing that focused on MSB regulations—none of the testimonies provided specific target dates for issuing final rules or discussed why statutory deadlines had not been met.

In addition to hearings, FinCEN officials believe that their briefings with congressional Members and staff have kept appropriate committees informed of the agency's regulatory agenda. However, FinCEN officials were unable to provide us with specific information about whether the implementation of all of its MLSA-related directives, including specific target dates for issuing final rules, had been discussed.

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## Conclusions

FinCEN's process for developing and issuing BSA regulations was generally designed to reflect applicable procedures set forth in the APA and Executive Order 12866. For example, FinCEN published notices of proposed rulemaking and final rules. In addition, FinCEN used a partnering approach to actively seek input from the law enforcement, regulatory, and financial services communities.

Since 1994, when it was delegated responsibility for administering the BSA, FinCEN has issued a number of proposed and final rules pursuant to MLSA amendments to the BSA. At the time of our review, however, several final regulations related to the MLSA were still pending, including two regulations (discretionary CTR exemptions and registration of MSBs) that had statutory deadlines for implementation of over a year ago. In recognizing that development of quality regulations can be time consuming, FinCEN prioritized its regulatory program initiatives by

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considering, among other things, the number of experienced staff available.

FinCEN did not meet any of the three statutory deadlines imposed by the MLSA. Clearly, Congress' inclusion of statutory deadlines with respect to the MLSA provisions shows that it intended that those initiatives be completed in a timely manner. We note in this report that the intended law enforcement benefits of the MLSA amendments cannot be fully achieved until all of the regulations are implemented.

FinCEN published its annual regulatory plans in the Federal Register. However, the annual plans do not (1) cover regulatory initiatives that are not under development but that need to be addressed; (2) prioritize among all of the open statutory directives and other identified needs; (3) set target dates for issuing both notices of proposed rulemaking and final rules; and (4) provide a means for obtaining input on long-range priorities from the appropriate congressional committees. FinCEN also said that it communicated the agency's regulatory plans through various other means, including testimony at congressional hearings. However, we found that FinCEN's testimonies during 1997 generally did not provide specific target dates for issuing final rules or discuss why statutory deadlines had not been met.

Thus, congressional committees have not been in a good position to assess FinCEN's regulatory program, including the agency's prioritization of regulatory initiatives, the time lines for issuing final regulations, and the allocation of resources necessary for completing these initiatives. An illustration of this point is our review, which was requested because the Subcommittee lacked information about FinCEN's rulemaking plans.

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## Recommendations to the Director, FinCEN

We recommend that the Director, FinCEN, establish target dates for implementing all relevant statutory BSA-related regulatory directives and provide the appropriate congressional committees with information on the status of FinCEN's implementation efforts. This information should include FinCEN's plans, priorities, target dates for issuing notices of proposed rulemaking and final rules, and accomplishments. Where delays would be significant, it could also include a request for legislation to extend the statutory completion date. Furthermore, recognizing that circumstances can change, we recommend that the Director periodically update this information and transmit it to the appropriate congressional committees.

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## Agency Comments and Our Evaluation

In a letter dated January 8, 1998, FinCEN's Director provided written comments on a draft of this report (see app. VI). The Director noted that the draft report contained a detailed and comprehensive discussion of the process that FinCEN used to develop and issue regulations and the status of those regulations. However, the Director had two main disagreements with the draft report.

First, he commented that the draft report did not accurately describe the level of effort FinCEN devoted to its regulatory initiatives or reflect the agency's other money laundering missions. We believe this report adequately addresses FinCEN's efforts to develop regulations and carry out its other missions. We describe FinCEN's multiple missions; the number of staff the agency had working on developing regulations; and its coordination efforts with the law enforcement, regulatory, and financial services communities. However, as mentioned in this report, FinCEN does not track the amount of time staff spend on specific functions or strategic goals and objectives. Thus, FinCEN could not provide us with, and we could not report on, more specific information on the level of effort FinCEN expended on its regulatory initiatives.

Second, the Director commented that the draft report did not describe the extent to which FinCEN informs Congress of its objectives. According to the Director, the agency has adequately communicated its rulemaking agenda to appropriate congressional committees. Furthermore, the Director commented that the results of our audit work did not support the recommendation that FinCEN needed to better communicate its regulatory priorities as indicated in the report and the draft report's title. In his comment letter, the Director mentioned that FinCEN had informed Congress of its work through various hearings, briefings, and other communications or interactions involving congressional committees and subcommittees and/or their staff.

We recognize that FinCEN, at various times, has informed certain committees and subcommittees or their staffs of the progress made on a number of regulatory initiatives, and we expanded our discussion of these communications in this report (see pp. 14 and 15). However, these communications were neither systematic in providing uniform information to all interested congressional parties nor done on any periodic basis. A consequence of this type of ad hoc communication is to make it more difficult for Members of Congress and staff who are not directly involved in congressional testimonies and briefings to effectively perform their oversight responsibilities. Moreover, at the time of our review, FinCEN

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could not provide us with any evidence that it had—through the means described by the Director or through its annual plans—communicated time-specific goals for implementing all relevant statutory BSA-related directives. For example, FinCEN had not communicated to Congress estimated completion dates for final rules for five of the eight statutory directives that we reviewed, two of which had statutory deadlines. Clearly, Congress’ inclusion of statutory deadlines with respect to such MLSA provisions shows an interest in implementing these initiatives in a timely manner.

The Director attached to his January 8, 1998, letter a summary of the status of the implementation of MLSA initiatives (“Summary of Status under the MLSA”), which he offered as an example of the kind of information provided by FinCEN to Congress. FinCEN added a column labeled “Proposed Action and Date” to the summary in response to December 1997 discussions with us on a draft of this report. This summary, with the recently added information, represents progress toward meeting the intent of our recommendation. Nonetheless, while the additional information is helpful, the summary still does not provide expected dates for issuing final rules for three statutory provisions—the discretionary CTR exemption system (phase II), delegation to federal banking regulatory agencies the authority to assess civil penalties, and registration of money services businesses. Two of these—the CTR exemption system and registration of MSBS—are past their statutory deadlines by more than a year.

In his letter, the Director stated that “it is unprecedented that an agency should be mandated to provide such a level of detail as to its regulatory operations in absence of any findings of serious deficiency.” In addressing this comment, we want to emphasize three points. First, we did not intend that our recommendation be adopted as a legislative mandate. Rather, we consider it to be good management practice to provide timely and useful information for congressional oversight when statutorily mandated activities have not been achieved in the required time frame. We modified the wording of the recommendation and the report title to clarify our intention in this regard.

Second, including estimated completion dates in the regulatory program status summary that FinCEN provided with its letter would not seem to be a document that calls for an unwarranted “level of detail.” FinCEN’s ability to update and modify this existing summary in the short period between our meeting on December 31, 1997, and the issuance of its letter to us on

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January 8, 1998, is evidence that the preparation and maintenance of such a report is not an unreasonable burden.

Finally, observers may differ as to whether our finding that FinCEN did not systematically and periodically inform Congress of when statutory deadlines, which were not met, and other statutory requirements would be met describes a “serious deficiency.” From our perspective, however, FinCEN has the key responsibility of keeping the appropriate congressional committees informed about its plans, priorities, target dates, and accomplishments concerning these important statutory directives. Furthermore, BSA regulations unquestionably are the core of Treasury’s anti-money laundering efforts, and the intended law enforcement benefits of the MLSA amendments are being delayed pending the promulgation of final rules. For these reasons, we continue to believe that FinCEN should systematically and periodically communicate its plans, priorities, target dates, and accomplishments concerning relevant statutory BSA-related directives to all of the appropriate congressional committees.

FinCEN officials also offered several suggestions regarding technical clarifications, which we incorporated where appropriate in this report.

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As agreed with the Subcommittee, we plan no further distribution of this report until 30 days from its issue date. At that time, we will send copies of this report to the Senate Banking, Housing, and Urban Affairs Committee; the Subcommittee on Treasury, Postal Service, General Government, and Civil Service (Senate Appropriations Committee); the Subcommittee on Treasury, Postal Service, and General Government (House Appropriations Committee); the Assistant Secretary of the Treasury (Enforcement); the Director, FinCEN; the Director, OMB; the BSA Advisory Group; and other interested parties. We will also make copies available to others on request.

Major contributors to this report are listed in appendix VII. If you have any questions about this report, please contact me on (202) 512-8777.



Richard M. Stana  
Associate Director  
Administration of Justice Issues

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**Abbreviations**

APA	Administrative Procedure Act
BSA	Bank Secrecy Act
CMIR	Report of International Transportation of Currency or Monetary Instruments
CTR	Currency Transaction Report
FinCEN	Financial Crimes Enforcement Network
MLSA	Money Laundering Suppression Act of 1994
MSB	money services business
OMB	Office of Management and Budget
SAR	suspicious activity report

# Regulatory Initiatives Related to Provisions of the Money Laundering Suppression Act of 1994

This appendix discusses various regulatory initiatives related to provisions of the Money Laundering Suppression Act of 1994 (MLSA). Specifically, the sections below respectively discuss selected provisions of the MLSA in relation to the following eight regulatory initiatives: (1) designation of a single recipient for suspicious activity reports (SAR), (2) mandatory exemptions from filing currency transaction reports (CTR), (3) discretionary exemptions from filing CTRs, (4) registration of money services businesses (MSB),<sup>1</sup> (5) reporting and recordkeeping requirements for tribal casinos, (6) reporting and recordkeeping requirements for card clubs, (7) reporting requirements for certain negotiable instruments drawn by foreign banks, and (8) delegation of civil penalty authority.

## Single Recipient for SARs

Section 1517 of the Annunzio-Wylie Anti-Money Laundering Act (1992 Act) authorized the Secretary of the Treasury to require the reporting of suspicious transactions. The MLSA, section 403, subsequently required that the Secretary designate (by Mar. 23, 1995) a single officer or agency of the United States to which SARs can be filed. The designated agency is, in turn, responsible for referring any report of a suspicious transaction to any appropriate law enforcement or federal banking regulatory agency.

In discussing the need for a single recipient for reporting suspicious transactions, the Conference Report accompanying the MLSA provided that:

“Reporting suspicious currency transactions is a key ingredient in the anti-money laundering effort . . . The Conferees believe that Treasury has not capitalized on the potential of suspicious transaction reporting . . . Currently, many financial institutions are asked to file the same report with several different law enforcement agencies . . . The Conferees believe that a single collection point . . . [should] . . . be established to improve coordination among the law enforcement agencies.”<sup>2</sup>

On February 5, 1996, the Financial Crimes Enforcement Network (FinCEN) issued a final rule. Generally, under the provisions of the final rule, (1) a suspicious activity shall be reported by completing a SAR; (2) the SAR shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions for the SAR; (3) a bank is required to file a SAR

<sup>1</sup>The MLSA used the term “money transmitting business” to name those businesses subject to registration. However, the Financial Crimes Enforcement Network (FinCEN) believes that the statute’s use of this term to refer to all of the types of businesses subject to registration and the statute’s later use of the nearly identical term “money transmitting service” to refer to a particular type of business subject to registration may lead to confusion. Therefore, FinCEN has proposed that the term “money services business” be used in reference to businesses subject to registration in place of the term “money transmitting business.”

<sup>2</sup>H.R. Conf. Rep. No. 103-652, at 187-88 (1994).



no later than 30 calendar days after the date of initial detection by the bank of facts that may constitute a basis for filing a SAR; (4) a bank shall maintain a copy of any SAR filed and the original or business record equivalent of any supporting documentation for a period of 5 years from the date of filing the SAR; and (5) no bank or other financial institution, and no director, officer, employee, or agent of any bank or other financial institution, which reports a suspicious transaction may notify any person involved in the transaction that the transaction has been reported.<sup>3</sup>

The new reporting system went into effect in April 1996. SARs are to be sent to the Internal Revenue Service's Detroit Computing Center, which is to process the forms for FinCEN. Paper forms are accepted, but banks are encouraged to file electronically.

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## **Mandatory and Discretionary CTR Exemptions**

MLSA section 402 requires the Secretary to issue rules exempting certain transactions from CTR requirements. The MLSA also provides that, in implementing the new mandatory and discretionary CTR exemption procedures, the Secretary shall seek to reduce, within a reasonable period, the number of reports filed (in the aggregate) by depository institutions by at least 30 percent compared with the number filed during the year preceding the date of enactment of the act.

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## **Mandatory CTR Exemptions**

In general, the Department of the Treasury must exempt a depository institution from the requirement to report currency transactions concerning those between the depository institution and the following categories of entities: (1) another depository institution; (2) a department or agency of the United States, any state, or any political subdivision of any state; (3) any entity established under the laws of the United States, any state, or any political subdivision of any state or under an interstate compact between two or more states, which exercises governmental authority on behalf of the United States or any such state or political subdivision; and (4) any business or category of business the reports on which have little or no value for law enforcement purposes.

FinCEN issued an interim rule (effective May 1, 1996) and a final rule on September 8, 1997. According to FinCEN, the format and substance of the interim rule and final rule were generally the same. The objectives

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<sup>3</sup>FinCEN and the Securities and Exchange Commission are working together to develop SAR regulations for broker/dealers, according to officials from both agencies. FinCEN has also issued a notice of proposed rulemaking to require money transmitters to file SARs, and it plans to issue regulations requiring casinos to file SARs.

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identified in the interim rule were to reduce the burden upon financial institutions of currency transaction reporting and to increase the cost-effectiveness of Treasury's counter money laundering policies by requiring the reporting of information that is of value to law enforcement and regulatory authorities.

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## Discretionary CTR Exemptions

In addition to mandatory CTR exemptions, section 402 of the MLSA also provided for discretionary exemptions. The Secretary was authorized to phase in the discretionary exemption process over 2 years.

In general, the Secretary may exempt a depository institution from filing CTRs for transactions between the depository institution and qualified business customers of the institution. As defined in the statute, a "qualified business customer" is a business that (1) maintains a transaction account at the depository institution, (2) frequently engages in transactions (with the depository institution) that are subject to the reporting requirements, and (3) meets the criteria that the Secretary determines are sufficient to ensure that the CTR exemption is carried out without requiring a report concerning such transactions.

FinCEN issued a notice of proposed rulemaking in September 1997. In general, under the proposed rule, a bank would not be required to file a report regarding any currency transaction between the bank and an exempt person. The rule would add the following two new classes of exempt persons: nonlisted business and payroll customers. Generally, the definition of a nonlisted business details certain commercial enterprises with a recurring need to deal with currency that are not listed companies, such as those listed on a national stock exchange. A payroll customer is generally defined as a person who (1) withdraws solely for payroll purposes, (2) has been a bank customer for at least 12 months, (3) operates a firm that regularly withdraws more than \$10,000 to pay its U.S. employees in currency, and (4) is a U.S. resident.

As proposed, banks would be required to provide an annual report to Treasury for those customers designated as a nonlisted business or a payroll customer. For example, the annual report would require certain information regarding the exempt person's annual currency deposits and withdrawals through all transaction accounts. Any transaction, whether involving currency or not, must still be reported if the transaction appears suspicious.

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## Registration of MSBs

MLSA section 408 requires the Secretary to implement regulations requiring any person who owns or controls a money transmitting business<sup>4</sup> (whether the business is licensed as a money transmitting business in any state or not) to register that business with the Secretary. By statute, registration was to begin no later than March 23, 1995. However, final regulations need to be issued before registration can be implemented. In May 1995, FinCEN published a notice (FinCEN Notice 95-1) stating that regulations prescribing the form and manner of registration would not require initial registration of MSBs before the 90th day following the effective date of the implementing regulations.

In addition, section 408, in general, required the Secretary to issue regulations requiring money transmitting businesses to maintain lists containing the names and addresses of their agents and to make those lists available on request to appropriate law enforcement agencies. The MLSA also required the Secretary to issue regulations establishing a dollar threshold for treating an agent of a money transmitting business as a registrable money transmitting business. Regarding the threshold determinations for agents, the intent of the conferees was to eliminate the need for all agents of money transmitting businesses to register with the Secretary, since such a massive registration of thousands of agents would create a costly administrative burden.

Regarding the registration requirement, the conferees intended for such a requirement to apply only to money transmitting businesses that are not already regulated by other agencies. The conferees also added that this provision of the MLSA does not require the registration of persons or entities registered with, and regulated or examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission.

Under FinCEN's proposed rule, issued May 21, 1997, a new category of regulated entities called "money services businesses"<sup>5</sup> would be required to register with Treasury and to maintain a current list of their agents for examination on request by any appropriate law enforcement agency. As defined by FinCEN, MSBs, in general, would include currency dealers or exchangers; check cashers; issuers of traveler's checks, money orders, or stored value; sellers or redeemers of traveler's checks, money orders, or

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<sup>4</sup>The law defines "money transmitting business," in general, as any business that provides check cashing, currency exchange, or money transmitting or remittance services or issues or redeems money orders, traveler's checks, and other similar instruments. However, depository institutions are to be excluded from the registration requirement.

<sup>5</sup>FinCEN has adopted the term "money service business" in place of the term "money transmitting business." For additional information, see footnote 1 of this appendix.

stored value; money transmitters; and the U.S. Postal Service (except regarding the sale of postage or philatelic products). The proposed rule generally would treat most of these entities as financial institutions only if they engage in transactions involving more than \$500 for any person on any day.

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## Reporting and Recordkeeping Requirements for Tribal Gaming and Card Clubs

MLSA section 409, in general, expanded the statutory definition of a financial institution subject to the Bank Secrecy Act's (BSA) reporting and recordkeeping requirements to cover Indian gaming operations and certain other gaming establishments that have an annual gaming revenue of more than \$1 million. According to the Conference Report on the MLSA, expanding the definition of financial institution to tribal gaming was

“ . . . necessary to eliminate confusion about which currency reporting system applies to Indian casinos. The confusion originated in 1988, when Congress enacted the Indian Gaming Regulatory Act, 25 U.S.C. 2701 *et seq.* This act governs gaming operations conducted on Indian lands. Section 20(d)(1) of the act provides that certain provisions of the Internal Revenue Code, including section 6050I, shall apply to Indian gaming operations. As a result of the act, Indian casinos are presently subject only to the limited currency reporting requirements under Section 6050I. In comparison, the BSA mandates a comprehensive currency reporting and detailed recordkeeping system with numerous anti-money laundering safeguards.

“IRS . . . [the Internal Revenue Service] . . . recommended that Congress adopt a statutory amendment to the BSA to specify that Indian Gaming operations are subject to that law's requirements . . . . IRS stated that the comprehensive nature of the BSA would provide additional safeguards to the tribes, while providing law enforcement the paper trail necessary to conduct financial investigations.”<sup>6</sup>

FinCEN issued a final rule in February 1996 amending the BSA's implementing regulations to extend the reporting and recordkeeping requirements and anti-money laundering safeguards of the BSA to tribal casinos. The rule, in part, amended the definition of “casino” to explicitly include casinos operating on Indian lands. More specifically, the term “casino” includes any casino duly licensed or authorized to do business in the United States under the Indian Gaming Regulatory Act or other federal, state, or tribal law or arrangement affecting Indian lands. The notice of proposed rulemaking for this rule referenced the preamble of a 1985 final rule bringing casinos within the BSA, which stated that:

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<sup>6</sup>H.R. Conf. Rep. No. 103-652, at 193 (1994).

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“[I]n recent years Treasury found that an increasing number of persons are using gambling casinos for money laundering and tax evasion purposes. In a number of instances, narcotics traffickers have used gambling casinos as substitutes for other financial institutions in order to avoid the reporting and recordkeeping requirements of the BSA.”

Also, in December 1996, under the authority of MLSA section 409, FinCEN issued a proposed rule that would expand the range of gaming establishments to which the BSA applies to include “card clubs.”<sup>7</sup> As proposed, this term would, in general, include any establishment referred to as “card room,” “gaming club,” or “gaming room” or any similar gaming establishment that is duly licensed or authorized to do business either under state law; under laws of a particular political subdivision within a state; under the Indian Gaming Regulatory Act; or under other federal, state, or tribal law or arrangement affecting Indian lands. Generally, under the proposed rule, card clubs would be subject to the same rules as casinos.

In the proposed rule, FinCEN noted that card clubs are a fast-growing segment of the gaming industry. The rule further noted two primary reasons for extending BSA reporting and recordkeeping requirements to card clubs: (1) many of these entities now offer their customers a wide range of financial services and (2) card clubs are at least as vulnerable as other gaming establishments to being used by money launderers and those seeking to commit tax evasion or other financial crimes because of the card clubs’ size and lack of regulatory controls.

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## Reporting Requirements for Certain Negotiable Instruments Drawn by Foreign Banks

BSA regulations have long required that the transportation—either into or out of the United States—of currency or certain other monetary instruments exceeding \$10,000 must be reported to Treasury. This reporting procedure is generally referred to as the “CMIR” requirement, which is a reference to the Report of International Transportation of Currency or Monetary Instruments.

The CMIR requirement is a component of the BSA’s anti-money laundering structure, which enables law enforcement agencies to “follow the money trail.” For example, a cross-border money laundering cycle may involve smuggling criminally derived funds from the United States into another country and then seeking a means for reentering the funds with an apparently foreign origin. As reported by law enforcement officials, one

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<sup>7</sup>Under the proposed rule, BSA reporting and recordkeeping requirements would cover all applicable card clubs, not just those on tribal or Indian lands.

money laundering technique found on the southwest border is the use of U.S. currency smuggled into Mexico to purchase Mexican bank drafts, which then are subsequently negotiated in U.S. banks.

For purposes of the CMIR requirement, MLSA section 405, in general, expanded the definition of “monetary instrument” to include instruments drawn by foreign banks on accounts in the United States. As explained in the Conference Report on the MLSA:

“The Conferees’ concern about these instruments stems from reports by Treasury that they are frequently used in money laundering schemes . . . . These drafts are U.S. dollar-denominated checks drawn by the foreign bank on its own account at a U.S. bank and sold to customers like cashier’s checks.”<sup>8</sup>

FinCEN issued a notice of proposed rulemaking on January 22, 1997. Reflecting MLSA section 405, the proposed rule would expand the definition of monetary instrument to include official bank checks, cashier’s checks, drafts, and similar instruments issued or made out by a foreign bank on an account in the name of, or maintained on behalf of, such a foreign bank in the United States.

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## Delegation of Civil Penalty Authority

The BSA, as amended, requires financial institutions to maintain certain records and to file certain reports (e.g., CTRs) that are useful in criminal, tax, and regulatory investigations, such as money laundering cases. Failure to file BSA reports can result in criminal and/or civil penalties, depending on the nature of the violation. Generally, civil penalties can range from \$25,000 to \$100,000 per willful violation.

In May 1994, the Assistant Secretary (Enforcement) of the Treasury delegated civil penalty authority to the Director of FinCEN. The disposition of BSA civil penalty matters is conducted within FinCEN’s Office of Compliance and Regulatory Enforcement. Among other things, FinCEN’s role includes receiving and assessing referrals<sup>9</sup> of alleged civil violations of the BSA by banks; casinos; money transmitters; check cashers; currency exchangers; security brokers and dealers; issuers or redeemers of money orders, traveler’s checks, and other similar instruments; and individuals who attempt to evade the reporting requirements of the BSA. FinCEN’s Office of Compliance and Regulatory Enforcement determines whether civil

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<sup>8</sup>H.R. Conf. Rep. No., 103-652, at 189 (1994).

<sup>9</sup>Referrals are received from the Internal Revenue Service, the federal banking regulatory agencies, and other entities.

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**Appendix I**  
**Regulatory Initiatives Related to Provisions**  
**of the Money Laundering Suppression Act of**  
**1994**

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penalties should be assessed against individuals or financial institutions and their officers, employees, and individuals, and if so, the amount of the penalty.

Historically, there have been concerns about the timely processing of BSA civil penalty cases. For example, according to the Conference Report on the MLSA:

“In the past, OFE . . . [Treasury’s Office of Financial Enforcement]<sup>10</sup> . . . did not process BSA civil penalty cases in a timely manner. In some instances, OFE was so slow that cases had to be closed because the statute of limitations expired. From 1985-1991, case processing times averaged 21 months, according to GAO.<sup>11</sup> While OFE’s record has improved substantially in the last few years, the Conferees believe that it would be more efficient to allow the Federal banking agencies to impose civil penalties directly.”<sup>12</sup>

MLSA section 406 directed the Secretary to delegate by regulation to appropriate federal banking regulatory agencies the authority to assess civil monetary penalties for BSA violations. The intent of such delegation, as described in the MLSA’s conference report, is to increase efficiency by allowing the federal banking agencies to impose civil penalties directly, rather than to make referrals to FinCEN.

During our review, FinCEN officials told us that they have been working with the federal banking regulatory agencies for some time to devise an appropriate plan for delegating civil penalty assessment authority. However, these officials noted that certain policy issues must be resolved by Treasury before assessment authority can be delegated.

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<sup>10</sup>In May 1994, the Office of Financial Enforcement was merged with FinCEN.

<sup>11</sup>See Money Laundering: Treasury Civil Case Processing of Bank Secrecy Act Violations (GAO/GGD-92-46, Feb. 6, 1992) and Money Laundering: Civil Penalty Referrals for Violations of the Bank Secrecy Act Have Declined (GAO/T-GGD-92-57, June 30, 1992).

<sup>12</sup>H.R. Conf. Rep. No. 103-652, at 190 (1994).

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# FinCEN's Rulemaking Issuances Since 1994

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Two recent acts amending the Bank Secrecy Act (BSA) are the Annunzio-Wylie Anti-Money Laundering Act (1992 Act) and the Money Laundering Suppression Act (MLSA). Since 1994, the Financial Crimes Enforcement Network (FinCEN) has promulgated regulations pursuant to specific provisions in the 1992 Act and MLSA as well as under its broad BSA authority.

FinCEN has promulgated 19 regulatory issuances since May 1994, which is when the agency was delegated responsibility for BSA regulations. Figure II.1, which presents a time line of these rulemaking issuances, shows that FinCEN had eight regulatory issuances in fiscal year 1995, four in fiscal year 1996, and seven in fiscal year 1997.

As shown in the figure, several of FinCEN's regulatory issuances in fiscal year 1995 involved needs that existed before 1994. For example, FinCEN's two October issuances in fiscal year 1995 involved topics dating back to at least 1990, and the December issuance involved modification of a final rule published in March 1993.



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**Appendix II**  
**FinCEN's Rulemaking Issuances Since 1994**

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**Appendix II**  
**FinCEN's Rulemaking Issuances Since 1994**

**Figure II.1: Time Line of Rulemaking Issuances by FinCEN Since Being Delegated Responsibility for Developing BSA Regulations**

Month	Fiscal year	Subject	Legal basis		
			1992 Act	MLSA	BSA
October	1995	Withdrawal of a notice of proposed rulemaking (published in Sept. 1990) that would have required aggregation of currency transactions for certain financial institutions and magnetic media reporting of currency transaction reports. (59 FR 52275)			●
		Rescission of parts of a final rule (published in May 1990) requiring that financial institutions verify and record certain identifying information when issuing or selling bank checks or drafts, cashier's checks, money orders, or traveler's checks in amounts of \$3,000 or more in currency. (59 FR 52275)		●	●
December		Modification of a final rule (published in Mar. 1993) related to reporting and recordkeeping requirements for casinos. (59 FR 61660)		●	●
January		Final rule (the "recordkeeping rule") requiring enhanced recordkeeping for certain wire transfers (which include funds transfers and transmittals of funds) by financial institutions. (60 FR 220)	●		
		Final rule (the "travel rule") requiring banks and nonbank financial institutions to include certain information in transmittal orders sent to receiving financial institutions. (60 FR 234)	●		
August		Actions to delay the effective dates of the recordkeeping rule (60 FR 44144) and the travel rule (60 FR 44144) and to amend the recordkeeping rule (60 FR 44146) and the travel rule (60 FR 44151).	●		
		Notice of proposed rulemaking that would extend BSA reporting and recordkeeping requirements and anti-money laundering safeguards to tribal casinos. (60 FR 39665)		●	
September		Notice of proposed rulemaking related to banks' and other depository institutions' reporting of suspicious transactions and designation of a single recipient for such reports. (60 FR 46556)	●	●	

**Appendix II**  
**FinCEN's Rulemaking Issuances Since 1994**

Month	Fiscal year	Subject	Legal basis		
			1992 Act	MLSA	BSA
February	1996	Final rule relating to the reporting of suspicious transactions by banks and other depository institutions and the designation of a single recipient for such reports. (61 FR 4326)	●	●	
		Final rule related to tribal casinos. (61 FR 7054)		●	
April		Amendment of the recordkeeping rule (61 FR 14383) and the travel rule (61 FR 14386) to reflect amended definitions and to reduce the cost of complying with the rules' requirements.		●	
		Interim rule <sup>a</sup> related to the exemption of certain transactions from currency transaction reporting requirements. (61 FR 18204)		●	
December	1997	Notice of proposed rulemaking to extend BSA reporting and recordkeeping requirements to card clubs. (61 FR 67260)		●	
January		Notice of proposed rulemaking related to the reporting of cross-border transportation of certain monetary instruments, i.e., foreign bank drafts. (62 FR 3249)		●	
May		Notice of proposed rulemaking for registration of certain money services businesses. (62 FR 27890)		●	
		Notice of proposed rulemaking for suspicious activity reporting by money transmitters and by issuers, sellers, and redeemers of money orders and traveler's checks. (62 FR 27900)	●	●	
September		Notice of proposed rulemaking to require money transmitters and their agents to report and retain records of certain transactions in currency or monetary instruments. (62 FR 27909)			●
		Final rule related to the exemption of certain transactions from currency transaction reporting requirements. (62 FR 47141)		●	
		Notice of proposed rulemaking for certain discretionary exemptions from the requirement to report transactions in currency -- Phase II. (62 FR 47156)		●	

Legend:

1992 Act = Annunzio-Wylie Anti-Money Laundering Act of 1992  
 BSA = Bank Secrecy Act (refers to FinCEN's general regulatory authority under the act)  
 MLSA = Money Laundering Suppression Act of 1994

<sup>a</sup>FinCEN issued an interim rule (with a request for comments), instead of issuing a notice of proposed rulemaking with a comment period. A final rule was issued September 8, 1997.

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Source: Developed by GAO on the basis of Federal Register information and discussions with FinCEN officials.

As figure II.1 further shows, FinCEN's two final rule issuances in January 1995 and one set of issuances in August 1995 involved provisions related to 1992 legislation. Specifically, for the two January issuances, one final rule required enhanced recordkeeping for certain wire transfers, and the other final rule related to orders for transmittals of funds by financial institutions. The August issuances amended the two previous rules and extended the effective date for each of them. FinCEN's last two issuances in fiscal year 1995 were notices of proposed rulemaking for tribal casinos and suspicious activity reports (SAR), respectively.

In fiscal year 1996, three of FinCEN's four regulatory issuances addressed provisions related to the MLSA. As figure II.1 shows, the two issuances in February 1996 represented FinCEN's first issuances of final rules under the MLSA.

In fiscal year 1997, six of the seven FinCEN's regulatory issuances involved provisions related to the MLSA. Five of these six issuances were notices of proposed rulemaking rather than final rules. Under the MLSA, a final rule was issued in September 1997 related to exemption of certain transactions from currency transaction reporting requirements. Under its general BSA authority, FinCEN had a seventh issuance in May 1997. Specifically, a notice of proposed rulemaking (to require that money transmitters and their agents report and retain records of certain transactions in currency or monetary instruments) was developed and issued on the basis of a deficiency identified by FinCEN.

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# Purposes and Membership of the Bank Secrecy Act Advisory Group

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The Annunzio-Wylie Anti-Money Laundering Act (1992 Act) directed that the Secretary of the Treasury establish (within 90 days after the date of the act's enactment) a Bank Secrecy Act (BSA) Advisory Group consisting of representatives from the Department of the Treasury, the Department of Justice, the Office of National Drug Control Policy, and other interested persons and financial institutions subject to the currency reporting requirements of the BSA or section 6050I of the Internal Revenue Code. The 1992 Act further provided that the Federal Advisory Committee Act<sup>1</sup> shall not apply to the BSA Advisory Group.

The BSA Advisory Group is to serve as a means by which the Secretary

- informs private sector representatives, on a regular basis, of the ways in which information from currency transaction reports, suspicious activity reports, and other reports submitted pursuant to BSA requirements have been used and
- receives advice on the manner in which the BSA reporting requirements should be modified to enhance the ability of law enforcement agencies to use the information for law enforcement purposes.

According to FinCEN officials, the BSA Advisory Group also discusses issues related to domestic and international money laundering and the programs created to fight financial crimes. Furthermore, the BSA Advisory Group is a forum that allows the Secretary to advise the financial services industries of anticipated changes in Treasury's anti-money laundering programs, and that, in turn, provides members the opportunity to share with the Secretary their thoughts and expertise on BSA matters. At times, the BSA Advisory Group forms subgroups to discuss specific issues, such as the (1) impact that the fight against money laundering may have on the privacy of U.S. citizens or (2) revisions needed in reporting forms.

After the 1992 Act was passed, Treasury held discussions about how the BSA Advisory Group should be created, the size of the group, and how to determine membership. In June 1993, Treasury published a notice in the Federal Register<sup>2</sup> to solicit applications for participation in the BSA Advisory Group. The notice stated that the BSA Advisory Group was to be

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<sup>1</sup>Passed in 1972, the Federal Advisory Committee Act (P.L. 92-463, 86 Stat. 770), as amended, governs the establishment of advisory committees and places various procedural requirements on advisory committee operations. For example, the act provides, in general, that meetings are to be open to the public and that detailed minutes are to be kept. The act also contains provisions relating to the termination, renewal, or continuation of advisory committees.

<sup>2</sup>"Intent to Establish a Treasury Bank Secrecy Act Advisory Group on Reporting Requirements" (58 FR 31785 (June 4, 1993)).

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**Appendix III  
Purposes and Membership of the Bank  
Secrecy Act Advisory Group**

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convened by the Secretary on a regular basis in Washington, D.C., and that members were not to be reimbursed for their time, services, or travel. Also, the notice stated that Treasury was seeking broad-based representation from all aspects of the industries affected by the BSA reporting requirements.

In March 1994, the Secretary announced the establishment of the BSA Advisory Group, and its first meeting was held on April 8, 1994. The BSA Advisory Group has met about two or three times a year.

Table III.1 shows that, as of December 1997, the BSA Advisory Group had 35 members representing federal and state law enforcement and federal regulatory agencies and the private sector. Except for the Chairman and one Co-Vice Chairman (i.e., the Director, FinCEN), the members are selected on an individual basis rather than on the basis of being the incumbent in a given organization or position.

**Appendix III  
Purposes and Membership of the Bank  
Secrecy Act Advisory Group**

**Table III.1: Membership of the BSA Advisory Group (as of Dec. 1997)**

<b>Membership</b>	<b>Organization</b>	<b>Title</b>
Chairman	Department of the Treasury	Under Secretary (Enforcement)
Co-Vice Chairmen	FinCEN, Department of the Treasury Bank of America Wachovia Corporation	Director Executive Vice President Chairman of the Board
Federal law enforcement and regulatory agency members	Department of the Treasury  Department of the Treasury FinCEN, Department of the Treasury  Internal Revenue Service Internal Revenue Service  Department of the Treasury  Department of Justice  Department of Justice  Federal Deposit Insurance Corporation Board of Governors of the Federal Reserve System Securities and Exchange Commission Office of National Drug Control Policy	Deputy Assistant Secretary, Financial Institutions Policy General Counsel Associate Director, Regulatory Policy and Enforcement Assistant Commissioner (Examination) Assistant Commissioner (Criminal Investigation) Deputy Chief Counsel, Office of the Comptroller of the Currency Office of the Deputy Assistant Attorney General, Criminal Division, Chief, Asset Forfeiture-Money Laundering Section, Criminal Division Deputy General Counsel Special Counsel, Special Investigations and Examinations Section Director, Division of Market Regulation Money Laundering Analyst
State government members	National Association of Attorneys General Florida Department of Banking and Finance Florida Department of Banking and Finance	Executive Director and General Counsel  Director, Division of Financial Investigations Assistant Director, Division of Banking
Industry and other members	American Bankers Association America's Community Banks Atlantic Bank, N.A. Citibank Cattaraugus County Bank First Union National Bank of Florida  Merrill Lynch Co.  GE Capital Services  Thomas Cook, Inc.  National Check Cashers Association Coopers and Lybrand New Jersey Casino Association Sutherland, Asbill & Brennan Howrey and Simon Gibson, Dunn & Crutcher College of Law, University of Kentucky	Senior Legislative Counsel Program Manager President and Chief Executive Officer Vice President, Legal Affairs President and Chief Executive Officer Vice President, Loss Prevention, Mortgage Backed Securities, Custody First Vice President and Assistant General Counsel Senior Vice President and Director Global Compliance Senior Vice President and General Counsel General Counsel Director Attorney at Law Attorney at Law Attorney at Law Attorney at Law Professor of Law

Source: FinCEN.

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# Objectives, Scope, and Methodology

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In a letter dated March 24, 1997, the Chairman and the Ranking Minority Member of the Subcommittee on General Oversight and Investigations, House Committee on Banking and Financial Services, requested that we review the Financial Crimes Enforcement Network's (FinCEN) progress in promulgating regulations under the Bank Secrecy Act (BSA).<sup>1</sup> As agreed with the requesters' offices, we focused our work on the following questions, particularly in reference to the Money Laundering Suppression Act of 1994 (MLSA)<sup>2</sup> amendments to the BSA:

- What process did FinCEN follow for developing and issuing BSA regulations?
- What is the current status of FinCEN's efforts to develop and issue BSA regulations? More specifically, what regulations has FinCEN developed thus far, and what regulations has the agency been authorized or required to develop but has not done so?

In addressing these questions, we initially conducted a literature search of information on FinCEN and BSA regulations (including Federal Register publications of BSA-related proposed and final rules). Also, we reviewed the minutes of all the BSA Advisory Group<sup>3</sup> meetings since its inception in 1994.

Moreover, we interviewed six members of the BSA Advisory Group to obtain their perspectives on FinCEN's regulatory process and its efforts to develop and issue regulations. We judgmentally selected these 6 members from the BSA Advisory Group's 35-person membership (see app. III) to ensure that we interviewed at least 1 member from each of the 3 relevant communities—law enforcement, regulatory, and financial services. Specifically, from the law enforcement community, we interviewed the Chief, Asset Forfeiture-Money Laundering Section, Criminal Division, U.S. Department of Justice. According to the Criminal Division official, this section of Justice works closely with FinCEN on money laundering issues. We interviewed two members from the regulatory community—(1) the Special Counsel, Special Investigations and Examinations Section, Board of Governors of the Federal Reserve System and (2) the Deputy Chief Counsel, Office of the Comptroller of the Currency, Department of the

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<sup>1</sup>Public Law 91-508, 84 Stat. 1114 (1970).

<sup>2</sup>The MLSA is Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994 (P.L. 103-325, 108 Stat. 2160, 2243 (1994)).

<sup>3</sup>The BSA Advisory Group—which represents a partnering of industry and government expertise to help combat financial crime while reducing regulatory burdens—includes members from the financial services industry as well as from federal and state law enforcement and federal regulatory agencies. The Secretary of the Treasury announced the establishment of the BSA Advisory Group in March 1994, pursuant to the Annunzio-Wylie Anti-Money Laundering Act (P.L. 102-550, 106 Stat. 3672, 4044 (1992)).



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Treasury. These agencies, in general, have primary responsibility for ensuring that national and certain state banks, respectively, comply with BSA regulations. From the financial services community, we interviewed the Senior Federal Legislative Counsel, American Bankers Association, and two attorneys with law firms in Washington, D.C., who represent financial services businesses.

More details about the scope and methodology of our work regarding each of our objectives is presented in separate sections as follows.

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## Scope and Methodology of Our Work Regarding FinCEN’s Regulatory Process

As a preparatory step, we familiarized ourselves with selected portions of the Administrative Procedure Act<sup>4</sup> and Executive Order 12866<sup>5</sup> that prescribe procedures federal agencies are to follow when developing and issuing regulations. To specifically determine the process that FinCEN followed for developing and issuing BSA regulations, we interviewed FinCEN officials within the component offices—primarily the Office of Legal Counsel and the Office of Program Development (see app. V)—that are responsible for preparing and interpreting BSA regulations. Also, to obtain an understanding of the “review and clearance” steps involved in developing and issuing BSA regulations, we interviewed the appropriate Treasury and Office of Management and Budget (OMB) officials.

During our interviews with officials at FinCEN, Treasury, and OMB, we solicited comments on FinCEN’s “regulatory performance,” including suggestions for improving the agency’s policies and procedures. Similarly, we solicited such comments and suggestions from the six selected BSA Advisory Group members previously listed. Also, we reviewed relevant literature and our past reports<sup>6</sup> to identify any potential best practices for developing and issuing regulations.

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<sup>4</sup>P.L. 79-404, 60 Stat. 237 (1946) (codified as amended in scattered sections of 5 U.S.C.).

<sup>5</sup>Executive Order 12866, “Regulatory Planning and Review,” was issued on September 30, 1993 (58 FR 51735, Oct. 4, 1993). This executive order was intended to improve regulatory planning and coordination.

<sup>6</sup>Clear Air Rulemaking: Tracking System Would Help Measure Progress of Streamlining Initiatives (GAO/RCED-95-70, Mar. 2, 1995) and Regulatory Review: Information on OMB’s Review Process (GAO/GGD-89-101FS, July 14, 1989).

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## Scope and Methodology of Our Work Regarding the Status of Regulations

To identify FinCEN's regulatory initiatives and progress since May 1994, when FinCEN was first delegated the responsibility for BSA regulations, we reviewed applicable sections of the Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions.<sup>7</sup> The Regulatory Plan serves as a statement of the administration's regulatory and deregulatory policies and priorities. The Unified Agenda, which is maintained by the Regulatory Information Service Center, provides uniform reporting on regulatory activities under development throughout the federal government. Although the Service Center is an organizational component of the General Services Administration, it is responsible for tracking federal agencies' rulemaking activities (e.g., by maintaining the Unified Agenda) for OMB's Office of Information and Regulatory Affairs.

As agreed with the requesters' offices, our detailed analyses of FinCEN's efforts focused on eight regulatory initiatives mandated or authorized by the MLSA.<sup>8</sup> In determining the status of FinCEN's efforts to develop and issue relevant regulations, we (1) interviewed appropriate FinCEN officials, (2) reviewed applicable Federal Register notices of proposed and final rulemaking, and (3) developed a time line of FinCEN's regulatory issuances. Also, because several provisions of the MLSA have statutory completion dates, we reviewed relevant conference and committee reports in the act's legislative history to ascertain if there was a stated basis for the respective dates. Furthermore, we interviewed FinCEN officials to obtain their views on the statutory completion dates set out in the MLSA.

In addition, following FinCEN's issuance of three notices of proposed rulemaking (in May 1997), we attended the first two of five public meetings that FinCEN scheduled for obtaining comments on the proposed rules. The first public meeting was held on July 22, 1997 (Vienna, VA), and the second meeting was held on July 28, 1997 (New York, NY). Also, we reviewed copies of the transcripts prepared for these two meetings and for the two meetings held in August 1997.

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<sup>7</sup>The Regulatory Flexibility Act (P.L. 96-354, 94 Stat. 1164 (1980)), in general, requires agencies to publish semiannual regulatory agendas, in October and April, describing regulatory actions that they are developing. (Executive Order 12866 directs that, as part of their submissions to the October edition of the Unified Agenda, agencies are to prepare a Regulatory Plan of the most important regulatory actions that the agency reasonably expects to issue in proposed or final form during the upcoming fiscal year.)

<sup>8</sup>Appendix I provides further details about the eight regulatory initiatives.

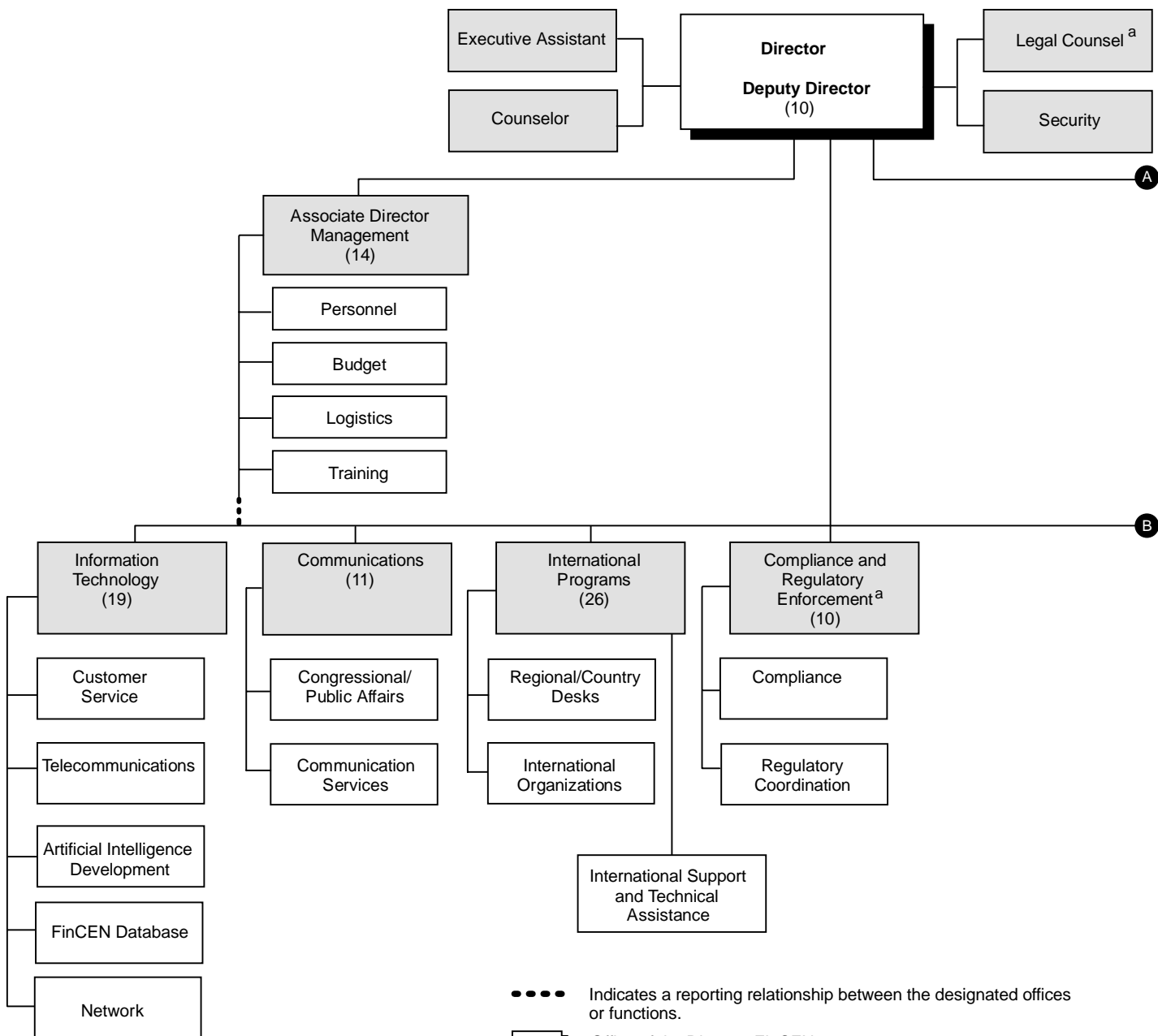
# FinCEN Organizational Structure and On-Board Staffing

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Figure V.1 depicts FinCEN's organizational structure and on-board staffing as of December 1997. As shown in the figure, 13 offices report directly to the Office of the Director. Also, the figure shows the distribution of FinCEN's 162 total staff. The numbers in parentheses represent the total number of on-board staff for the principal office and its components. For example, the 10 staff shown for the Office of the Director include the staff in four component offices—the Executive Assistant, Counselor, Legal Counsel, and Security. As another example, the 14 staff shown for the Associate Director for Management include the Director for Management and the personnel, budget, logistics, and training offices.

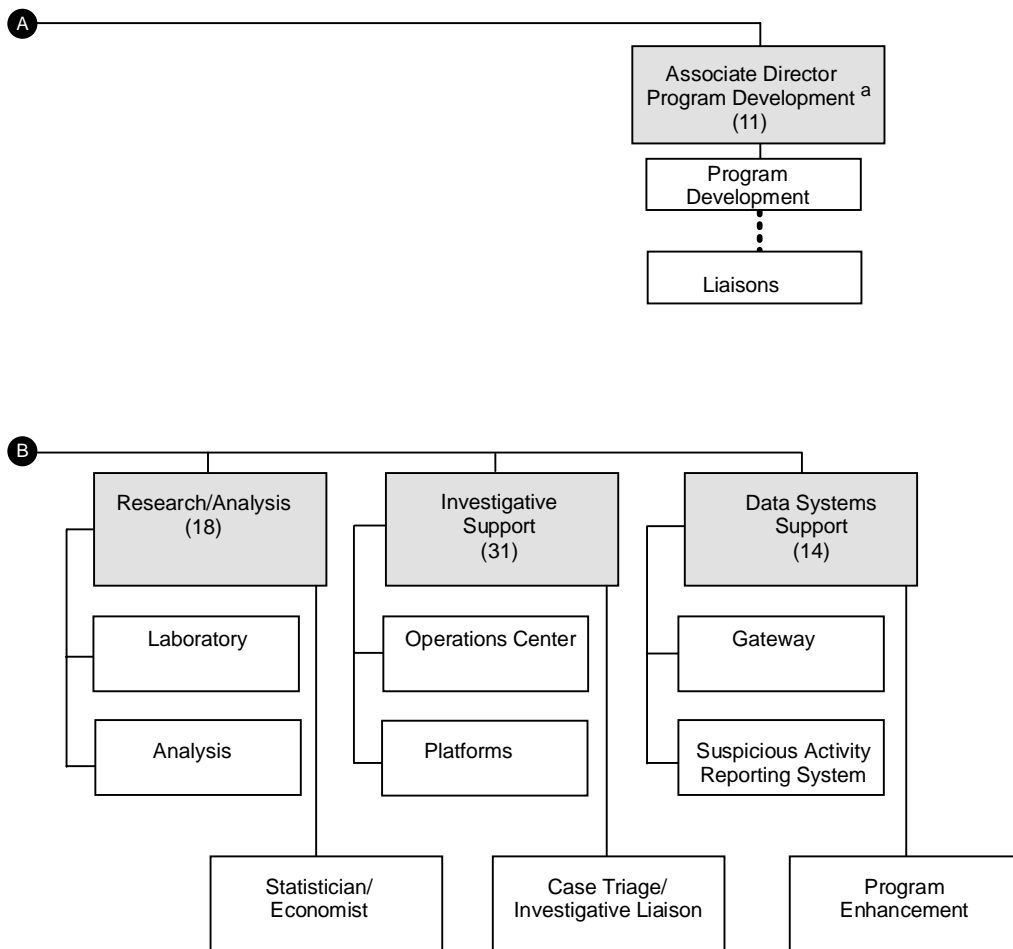
**Appendix V  
FinCEN Organizational Structure and  
On-Board Staffing**

**Figure V.1: FinCEN Organization Chart and On-Board Staffing** (as of Dec. 1997)



- Indicates a reporting relationship between the designated offices or functions.
- Office of the Director, FinCEN
- Thirteen offices report directly to the Office of the Director
- ( ) Numbers in parentheses represent the total number of on-board staff for the principal office and its components.

**Appendix V  
FinCEN Organizational Structure and  
On-Board Staffing**



Note: As of December 7, 1997, FinCEN had 162 total staff on board.

<sup>a</sup>About 10 staff in FinCEN's Offices of Legal Counsel, Program Development, and Compliance and Regulatory Enforcement promulgate regulations.

Source: FinCEN.

# Comments From the Financial Crimes Enforcement Network



FINANCIAL CRIMES  
ENFORCEMENT NETWORK

2070 Chain Bridge Road, Suite 200, Vienna, VA 22182. Telephone (703) 905-3520



JAN 8 1998

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

Dear Mr. Rabkin:

Thank you for the opportunity to comment on the Draft GAO Report entitled MONEY LAUNDERING: FinCEN Needs a Multiyear Action Plan to Communicate Regulatory Priorities. The Report contains a detailed and comprehensive discussion of the process and procedures FinCEN uses to develop and issue regulations and the status of these regulations. However, in our opinion, the Report does not accurately describe the level of effort FinCEN devotes to its regulatory initiatives or the extent to which FinCEN informs the Congress of our objectives.

The Report's sole recommendation is that FinCEN submit, to the appropriate Congressional committees, a multi-year action plan for its regulatory program with target dates for issuing notices of proposed rulemaking and final rules. This plan, which is not required by law or regulation, would be in addition to the annual plan that FinCEN, as well as other federal agencies, is already required to prepare. We agree with the GAO that Congress should be kept informed of our regulatory progress, and we have actively endeavored to meet that responsibility as outlined below. However, this recommendation not only goes beyond the statutory requirements of the Money Laundering Suppression Act (MLSA), but it is unprecedented that an agency should be mandated to provide such a level of detail as to its regulatory operations in absence of any findings of serious deficiency.

A review of the results of the audit work reveals no findings of any such deficiency. The Report states that GAO "has no basis to criticize FinCEN's regulation development process or its resource allocation decisions..." but then concludes that, lacking a multiyear plan, "...congressional committees have not been in a good position to assess FinCEN's overall regulatory program, including the agency's prioritization of regulatory initiatives, the time lines for issuing final regulations and the allocation of resources necessary for completing these initiatives." However, the only evidence the Report offers to support this conclusion is the fact that GAO was requested to provide the Subcommittee with information about FinCEN's rulemaking plans.

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

FinCEN is concerned about, and disagrees with, the implication in the Report that the Congress has not been kept informed adequately about its rulemaking agenda. The Report, for example, states on page 13 that the reason why the Subcommittee requested that GAO review FinCEN's regulatory program is because it "lacked information about FinCEN's rulemaking plans."

FinCEN's record in this area began as early as 1993 even before it assumed Bank Secrecy Act (BSA) regulatory responsibilities. The issue of money laundering had become a topic of Congressional interest in 1993 when Chairman Gonzalez of the House Banking Committee held a hearing in San Antonio in July which subsequently led to two additional hearings in the fall of 1994. FinCEN was invited to testify at these hearings to provide insight on the complexities of money laundering and how to combat it. In the fall of 1994, FinCEN helped prepare the regulatory strategy described in then Under Secretary Noble's testimony. Testimony from these earlier hearings was used to assist the Committee in drafting the MLSA which was passed by the Congress in September of 1994.

Six months after the MLSA was passed, FinCEN advised the Senate Appropriations Committee during a March 1995 hearing that it had released final rules pertaining to casinos, as well as rules requiring that all financial institutions, including non-bank financial institutions (NBFIs), maintain standardized and retrievable records of wire transfers in amounts of \$3,000 or more. The Committee was further informed about FinCEN's on-going efforts to clarify the definition of the NBFI, and to proceed with mandatory reporting of suspicious activity. In addition, FinCEN's Legal Counsel provided a comprehensive oral briefing to staff members of the House Banking Committee's Oversight and General Investigations Subcommittee in the spring of 1996 and supplied a status timeline of regulations to the Subcommittee in March of 1997. Staff members of the Subcommittee personally visited FinCEN at its headquarters during the early spring of 1996 and were again briefed on the status of FinCEN's regulatory efforts.

As important, FinCEN staff has and continues to be in frequent contact with appropriate Subcommittee staffs. FinCEN constantly stresses its availability to provide information upon request in addition to that which is proactively supplied to the Committees. Numerous documents and oral briefings have been generated with the primary purpose of keeping the Committees informed of FinCEN's progress. One document in particular outlined the steps FinCEN has taken to satisfy the requirements of the MLSA. This summary was provided directly to Chairman Bachus by my staff and me during a meeting with the Chairman on March 12, 1997.

To further update the Congress, we have taken this summary and updated it by adding a timetable of proposed actions to be taken. It also addresses priorities and reasons for delay in certain areas. The augmented summary is attached. It is our intention to use this summary as well as other means to continue to update the Congress.

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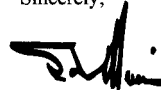
**Appendix VI**  
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Throughout FinCEN's many presentations, it has emphasized that the BSA is a statute whose successful administration requires a careful balancing of the interests of many portions of the nation's financial services industry, as well as the interests of the many regulatory and enforcement agencies that audit for and investigate violations of the statute and its implementing rules. FinCEN's success has been in redirecting the scope and impact of the BSA. Building new working relationships among the many BSA stakeholders has taken time, but it was necessary. The Congress has itself seen the results of that effort. Indeed, this is reflected in the record of hearings before the Banking Committees during the past two years. We are disappointed that the Report pays little attention to these issues.

Further, the report concentrates on FinCEN's regulatory process with respect to eight particular statutory requirements. We understand that GAO has decided to concentrate on FinCEN's other areas of significant responsibilities in separate reviews. However, limiting the document to eight initiatives does not accurately reflect the agency's mission or accomplishments. FinCEN has lead the international community in assisting in the development of over 40 Financial Intelligence Units around the world to share information in the fight against money laundering. Further, FinCEN was one of the first government agencies to study the implications of new emerging electronic payments systems which were neither in existence nor contemplated when the 1994 legislation was drafted, yet have had a major impact on FinCEN's regulatory initiatives and programs.

And finally, with respect to the Report's title, it is based on a recommendation that is unsupported by the audit work. Consequently, we believe that it is misleading as it does not reflect the scope nor the findings of the review.

Sincerely,



Stanley E. Morris  
Director

Attachment



**Appendix VI  
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Enforcement Network**

**Summary of Status under the MLSA**

Virtually every section of the Money Laundering Suppression Act of 1994 (the "MLSA")<sup>1</sup> imposed requirements upon FinCEN, as administrator of the Bank Secrecy Act (the "BSA"). Those requirements, and the steps FinCEN has taken to satisfy those requirements, are outlined in the following table along with a column addressing proposed action and date.<sup>2</sup> A more detailed narrative follows the table.

**MLSA Status Table**

MLSA Requirement	Action Taken	Citation and Date	Proposed Action and Date
MLSA § 402(a): <u>Revision of CTR Exemption System</u> 31 U.S.C. 5313(d)	Interim Rule: banks, government agencies, and public company transactions	Effective May 1, 1996 (61 FR 18204 April 24, 1996)	Completed
	Final Rule reflecting comments on Interim Rule	Published September 8, 1997 (62 FR 47141); Effective January 1, 1998	Completed
	Phase II Relief - scrapping of present exemption system	Published September 8, 1997 (62 FR 47156)	Comment period closes January 16; swift publication of final regulation expected.
MLSA § 402(b)(3): <u>Annual Reports</u>	Report to Congress for 1996-1997	In preparation	Report expected by mid-1998
MLSA § 402(c): <u>Streamlining CTR Form</u>	Redesigned Form - reducing information collection by 1/3	Effective October 1995	Completed

<sup>1</sup> The MLSA is Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103-325 (September 23, 1994).

<sup>2</sup> External factors outside FinCEN's control can affect target dates.

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MLSA § 403(a): <u>Single designee for reporting of suspicious transactions</u>	Included in SAR rules	February 5, 1996 (effective, April 1, 1996), 61 FR 4326. (NPRM, September 7, 1997, 60FR 46556)	Completed
MLSA § 403(b): <u>Reports</u>	Annual Report on SARs	In preparation for 1996-97 (first year of reporting)	Publication of report scheduled for February 1998.
MLSA § 404: <u>Identification of Money Laundering Schemes by Banking Agencies</u>	No direct FinCEN action required		N/A
MLSA § 405: <u>Negotiable Instruments drawn on Foreign Banks</u>	Proposal to require CMIR reporting of foreign bank drafts	Notice of Proposed Rulemaking published Jan. 22, 1997 (see 62 FR 3249); comment period closed April 22, 1997	In preparation; publication of final regulation expected in March 1998.
MLSA § 406: <u>Imposition of Civil Money Penalties by Banking Agencies</u>	Continuing discussion with banking agencies on terms of delegation		Policy issues will be raised with Treasury in February 1998.
MLSA § 407(a-c): <u>Uniform State Licensing of Money Transmitting Businesses</u>	Continuing discussion with state authorities and National Conference of Comm'rs on Uniform State Laws	NCCUSL Drafting Group has begun meeting. Next meeting in early March.	Funding obtained in FY 98 Budget. Date of publication of Model Law uncertain.
MLSA § 407(d-e): <u>Reports on Progress and Funding</u>	In preparation	In preparation for delivery in Fall 1997	In preparation for delivery in mid-1998

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MLSA § 408: <u>Registration of Money Transmitting Businesses</u>	Registration of money services businesses; keeping of current lists of agents	Notice of proposed rulemaking on registration of MSBs published May 21, 1997 (62 FR 27890). Two other Notice of proposed rulemaking on MSBs also published May 21, 1997 (62 FR 27900 and 62 FR 27909)	Final rules are pending Treasury policy and related administrative decisions necessary for publication of final rules.
MLSA § 409: <u>Uniform Regulation of Casinos</u>	Tribal Casinos Brought within BSA; notice of proposed rulemaking on card clubs	Effective August 1, 1996 (see 61 FR 7054).	Final rule on card clubs published January 1998.
MLSA § 410: <u>Codified Exemption Authority</u>	Continued FinCEN cooperation with Nevada authorities to update Nevada regulatory system	May 1, 1997, Nevada overhauled its anti-money laundering casino regulations (Nev. State Gaming Reg. 6A). October 1, 1997, Nevada issued a rule requiring its casinos to file SARs with FinCEN (Nev. State Gaming Reg. 6A 100).	Completed
MLSA § 411: <u>Structuring Penalties</u>	Self-executing		N/A
MLSA § 412: <u>GAO Study of Cashiers Checks</u>	FinCEN Cooperated with GAO		Completed

**Appendix VI  
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**Additional Narrative**

1. Revision of CTR Exemption System. Section 402 of the MLSA amends 31 U.S.C. 5313 to require that Treasury issue rules exempting transactions with depository institutions by certain customers from the currency transaction reporting ("CTR") requirements (for currency transactions with financial institutions in excess of \$10,000), and to authorize rules permitting exemption from the CTR requirements of still more transactions, with a goal of securing at least a 30 percent reduction in CTR volume.

FinCEN issued an Interim Rule in April 1996 on the subject. The Interim Rule went beyond the Congressional mandate to automatically exempt from CTR filing transactions by most public companies listed on the New York and American Stock Exchanges and in the NASDAQ National Market. See 31 CFR 103.22(h), 61 Fed. Reg. 18204 (April 24, 1996).

A rule finalizing the Interim Rule, and a notice of proposed rulemaking outlining a second round of extensive burden reduction for CTR filers that will completely scrap the existing exemption system and the administrative superstructure built on the existing system were published September 8, 1997 (62 FR 47141; 62 FR 47156).

The MLSA requires a report to Congress each year of the steps taken to reduce CTR filing volume. No formal reports were made in past years. A report is in preparation for the years 1996-97, and is expected by mid-1998.

In addition to requiring changes to the CTR exemption system, section 402 of the MLSA calls for the streamlining of the CTR form itself. A redesigned form went into effect in October 1995; the new form reduced by 30 percent the amount of information required to complete the form.

2. Single Designee for Reporting of Suspicious Transactions. Section 403 of the MLSA requires the designation by the Secretary of a single agency to whom reports of suspicious transactions shall be made. That designation was included in the rules that implemented the suspicious activity reporting system; those rules were issued by FinCEN on February 5, 1996 and became effective on April 1, 1996. See 31 CFR 103.21(a)(2), 61 Fed. Reg. 4326 (February 5, 1996).

Section 403 requires an annual report to the Congress. The 1996-7 report is in preparation and will be published in February 1998.

3. Improvement of Identification of Money Laundering Schemes. Section 404 of the MLSA requires each federal banking agency, in consultation with the Secretary of the Treasury and other appropriate law enforcement agencies, to review and enhance training of examiners and the examination system to identify money laundering schemes at depository institutions, as well as enhanced

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procedures for referring such cases to appropriate law enforcement agencies. FinCEN has no direct responsibilities under section 404, but it routinely provides training to the bank examiners and support materials. In addition, FinCEN worked with the banking agencies on a letter they sent to the Congress in late 1995 that in their view satisfied their obligations under the statute. Of course, the suspicious activity reporting system is also a key element in carrying out the Congressional intent of section 404.

4. Negotiable Instruments Drawn on Foreign Banks. Section 405 of the MLSA authorizes the addition of checks, drafts, and similar instruments drawn on foreign banks (but not in bearer form) to the classes of instruments covered by the CMIR reporting requirement (for cross-border transportation of more than \$10,000 in currency or certain monetary instruments).

A notice of proposed rulemaking, using the authority granted by section 405, to add a class of foreign bank drafts to the instruments subject to the CMIR reporting requirement, has been published in the Federal Register [Jan, 22, 1997 (see 62 FR 3249)]; the comment period expired on April 22, 1997. A rule finalizing the notice of proposed rulemaking is being prepared.

5. Imposition of Civil Money Penalties by Appropriate Federal Banking Agencies. Section 406 of the MLSA addresses the delegation to the appropriate federal banking agencies of the authority to assess civil money penalties under the BSA.

FinCEN has been working with the banking agencies for over a year in an attempt to devise a workable scheme for such delegation. A number of difficult issues still require resolution. Policy issues will be raised with Treasury in February 1998.

6. Uniform State Licensing and Regulation of Check Cashing, Currency Exchange and Money Transmitting Businesses. Section 407 of the MLSA is a sense of the Congress provision that uniform state licensing and regulation of the core groups of non-depository institution and broker dealer financial institutions is required. The provision instructs Treasury to assist in the steps appropriate to foster such a system. FinCEN is working closely with the National Conference of Commissioners of Uniform State Laws ("NCCUSL"), which has started a project to draft a model law contemplated by section 407; NCCUSL is one of the organizations specifically named in section 407. With the support of the Treasury's Office of Enforcement, the Department of the Treasury's budget for FY 1998 includes \$100,000 to permit FinCEN to pay a part of the cost of the drafting project. NCCUSL requested this funding as a condition to the project's initiation.

7. Registration of Money Transmitters. Section 408 of the MLSA requires the federal registration of money transmitters, currency exchange houses, check cashers, and issuers and redeemers of money orders and travelers checks. A notice of proposed rulemaking requiring such registration was published May 21, 1997 (62 FR 27890). A second notice of proposed rulemaking, requiring suspicious activity reporting by money transmitters and issuers, sellers, and redeemers of money orders and travelers checks was also published May 21, 1997 (62 FR 27900), as was a set of special currency transaction reporting rules for money transmitters

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(62 FR 27909). (To avoid a confusion between the statutory terms "money transmitting businesses" and "money transmitting services" the proposed rules refer to the former, that is the total group of businesses involved, as "money services businesses." The term "money transmitter" is used to refer to the businesses described in 31 U.S.C. 5330(d)(2) as "money transmitting services.")

8. Tribal Casinos. Section 409 of the MLSA codifies the reach of the BSA to gaming institutions operated on tribal lands.

Rules bringing tribal casinos within the BSA were issued in final form in February 1996 and became effective on August 1, 1996. See 31 CFR 103.11(n)(7) and 61 Fed. Reg. 7054 (February 23, 1997). Rules bringing card clubs, some of which are operated on tribal lands, within the BSA, were proposed in late December, see 61 Fed. Reg. 67260 (December 20, 1996) and will be finalized in January 1998.

9. Codification of Exemption Authority. Section 410 of the MLSA codifies the exemption authority of the Department of the Treasury. The section concerns Treasury's authority to exempt from the BSA classes of transactions within a particular state that are subject to state requirements that are "substantially similar" to the BSA.

This provision is aimed at embodying, in statutory language, the authority used e.g. to exempt casinos in Nevada from the BSA. (Section 410 was introduced in the Senate to reverse a House provision that would have barred any state-based exemptions, thus voiding the exemption for Nevada gaming institutions.) The exemption, which was granted by the Treasury in January 1985, is still in force. FinCEN officials have been working intensively with Nevada authorities to assure that the conditions for the exemption continue to be satisfied by Nevada's gaming control rules. As a result, on May 1, 1997, Nevada modified and updated its anti-money laundering casino regulations to substantially conform to the corresponding BSA requirements (Nevada State Gaming Regulation 6A). In addition, on October 1, 1997, Nevada issued a rule requiring its casinos to file suspicious activity reports with FinCEN (Nevada State Gaming Regulation 6A 100).

10. Other Provisions of the MLSA. Sections 411 and 412 of the MLSA which, respectively, amend the penalties applicable to structuring and authorize a study by the General Accounting Office of cashiers checks, do not call for Treasury action. Section 413 of the MLSA contains conforming amendments.

Other Provision:

BSA Publication Requirements. As indicated above, the MLSA is found in Title IV of Public Law 103-325. A provision of Title III of that statute, although not part of the MLSA, also amends the BSA. That provision, in section 311 of P.L. 103-325, requires

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publication of all written rulings interpreting the BSA and publication of annual commentaries on the meaning of the BSA. FinCEN is working actively with the BSA Advisory Group to implement both of these rules. Notices concerning the process of publication of all written rulings and the publication of annual commentaries should be issued during the first quarter of 1998.

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