BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Bank Secrecy Act Reporting Requirements Have Not Yet Met Expectations, Suggesting Need For Amendment

After 10 years, the reports required by the 1970 Bank Secrecy Act are not widely used by law enforcement agencies. Further, it is uncertain how well financial institutions and individuals comply with the act's reporting requirements. Until these issues are resolved, there will not be a sound basis for judging whether the act's demands on the private sector are commensurate with the benefits obtained by the Federal Government.

Recent initiatives by the Department of the Treasury and other agencies seek to improve the act's implementation and more widely test the reporting requirements' usefulness. However, there is still no assurance that the act can or will achieve its intended purpose in a cost-effective manner. Unless this can be de-ated in the next 2 to 3 years, the act's g requirements should be repealed.

ingly, GAO recommends that the Con-nend the act to require reauthorization reporting requirements in 1984. In the Treasury should comprehensively as-costs and benefits of the act to assist the s in its reauthorization deliberations.

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JULY 23, 1981

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

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To the President of the Senate and the
Speaker of the House of Representatives

Annually our country loses hundreds of lives and billions of tax dollars to criminal activities. One of the most effective ways to curtail these criminal activities is identifying and confiscating the financial resources that keep them going. The Congress envisioned that the Bank Secrecy Act's reporting requirements would greatly assist in this effort.

This report discusses the implementation of the Bank Secrecy Act's reporting requirements and their usefulness to law enforcement efforts. It points out the problems that have limited the act's implementation and the recent initiatives that seek to correct some of these problems. The report also recommends further actions that need to be taken to effectively implement the act and test its overall usefulness.

The report was done at the request of the Chairman of the Subcommittee on General Oversight and Renegotiation, House Committee on Banking, Finance and Urban Affairs. It is addressed to the Congress because of the broad interest in the act's requirements as indicated by the number of hearings held by various committees in the last 5 years.

We are sending copies of this report to the Director, Office of Management and Budget; the Secretary of the Treasury; the heads of other responsible regulatory and law enforcement agencies; and interested members and committees of the Congress.

Milton J. Socolar

Acting Comptroller General
of the United States

COMPTROLLER GENERAL'S REPORT TO THE CONGRESS

BANK SECRECY ACT REPORTING REQUIREMENTS HAVE NOT YET MET EXPECTATIONS, SUGGESTING NEED FOR AMENDMENT

D I G E S T

The Congress envisioned that the reporting requirements of the Currency and Foreign Transactions Reporting Act (Title II, Public Law 91-508), commonly known as the Bank Secrecy Act of 1970, would be very useful for tracking the financial resources associated with criminal activities such as drug trafficking, and for investigating persons using foreign bank accounts to conceal the profits gained from these illegal activities. Today, however, over 10 years after the law's enactment, the reports required under the act are not widely used and their potential utility as an investigative tool is unknown. Furthermore, no one knows how well financial institutions and individuals are complying with the act's reporting requirements.

Prompted by continuing congressional oversight, the Department of the Treasury, responsible for implementing the act, and other agencies have initiated actions to correct many of the problems hindering use of reports mandated by the act. But, further improvements are needed if the act is to be effectively implemented and the usefulness of required reports adequately tested. Also, it is time for an overall assessment of the costs and benefits of the act's reporting requirements so that critical decisions can be made concerning their continuing need.

BANK SECRECY ACT REPORTS HAVE NOT BEEN WIDELY USED AND THEIR POTENTIAL UTILITY IS UNKNOWN

The three reports required by the Bank Secrecy Act's implementing regulations--(1) the currency transaction report, for cash transactions exceeding $10,000; (2) the report of international transportation of currency or monetary instruments, for the export or import of more than $5,000; and (3) the report of bank, securities, and other financial account holdings in foreign institutions--have not been widely used by Federal law enforcement and regulatory investigators. Thus, their potential utility as an investigative tool is unknown.

Investigators in only 9 of 27 Federal law enforcement agency field offices GAO visited indicated they used the report information in five or more cases. These offices were primarily IRS and U.S. Customs Service field offices, the two agencies which have the easiest access to the report data. In 18 offices, investigators made limited or no use of the report information. In six of these offices, investigators either were not aware of the reports or did not know how to obtain them. (See p. 7.)

About two-thirds of the 59 investigators GAO interviewed did not use the reports, and about 30 percent did not think the reports provided anything that could not be obtained as easily through a subpoena. About half of the investigators questioned the quality and completeness of the reports. (See p. 10.)

GAO could not determine the potential overall usefulness of the reports but found examples in which they were useful for (1) identifying investigative targets, (2) determining the extent and location of financial assets, (3) establishing secondary criminal violations, and (4) developing stronger court cases. (See p. 11.)

Most recently, in Florida, the act has been used to identify and arrest individuals attempting to circumvent the currency transaction reporting requirement. However, these efforts did nothing to substantiate the reports' investigative usefulness. (See p. 13.)

LEVEL OF COMPLIANCE WITH THE ACT'S REQUIREMENTS IS UNKNOWN

After 10 years, it is uncertain how well financial institutions and individuals are complying with the act's reporting requirements. The bank regulatory agencies' examination results indicate that fewer than 2 percent of the financial institutions fail to comply with the reporting requirements. However, studies by the Treasury Department and Customs' Reports Analysis Branch showed that a significant number of transactions may go unreported. (See p. 16.)

GAO found that the compliance monitoring practices of the responsible regulatory agencies

were generally inadequate to detect nonreporting: practices were either cursory or nonexistent. (See pp. 17 to 19.)

TREASURY DID NOT AGGRESSIVELY AND EFFECTIVELY IMPLEMENT THE ACT'S REQUIREMENTS

The Treasury Department is primarily responsible for these conditions because it has not aggressively and effectively implemented the Bank Secrecy Act reporting requirements. Treasury was slow in initiating actions to (1) promote and facilitate use of data generated pursuant to the act, (2) strengthen the act's regulations, and (3) initiate more effective compliance enforcement. One of the principal causes of inadequate administration has been Treasury's failure to commit adequate resources. (See p. 21.)

However, implementing the act poses difficult management and evaluation problems over which Treasury has limited or no control. To carry out many of its responsibilities, the Department depends on the commitment and initiative of other Federal agencies. For example, Treasury depends upon the financial institution regulatory agencies for compliance monitoring. However, these agencies have displayed a reluctance to improve ineffective compliance examination procedures. (See p. 31.)

Also, using Bank Secrecy Act data in criminal investigations is principally a function and responsibility of law enforcement agencies. These agencies have not always valued the potential contribution of the report data. Moreover, their investigative activities have not always been oriented toward effective use of the data. (See p. 32.)

RECENT INITIATIVES TO IMPROVE BANK SECRECY ACT REPORTING REQUIREMENTS FALL SHORT OF GOAL

Recent initiatives by Treasury and the responsible regulatory agencies should improve the quality and timeliness of Bank Secrecy Act reports and enhance their usefulness to law enforcement investigators. For example:

--Treasury revised the act's regulations to eliminate problems with the filing, exemption, and retention of currency transaction reports. (See p. 39.)

--Customs' Reports Analysis Branch improved its computer program and plans to add staff to correct problems with compiling and distributing current, meaningful report information. (See p. 40.)

--IRS implemented a program to perfect report data which should resolve some of the problems detracting from the quality of currency transaction data. (See p. 40.)

--The financial institution regulatory agencies changed their examination procedures to strengthen report compliance monitoring. (See p. 41.)

--Treasury, in coordination with the Department of Justice and several other agencies, has initiated special investigative projects which should further test the usefulness of the reporting requirements. (See pp. 43 to 44.)

However, these actions will not eliminate all the problems associated with implementing the act's reporting requirements. Further action is needed to (1) develop a workable compliance enforcement policy, (2) assure effective compliance monitoring, and (3) make report data readily available and useful to investigators. (See p. 45.)

Treasury alone cannot resolve all these problems. Nevertheless, it can take certain actions to assure that the report data is as available and useful as possible. Concurrently, the Federal financial regulatory agencies, IRS, and Customs need to be more responsive to Treasury directives. Additionally, law enforcement agencies must use the report data in investigations and prosecutions for the act to demonstrate its value.

After 10 years, the Bank Secrecy Act has not been used sufficiently to demonstrate whether the demands it places on the private sector, especially financial institutions, are commensurate with the benefits obtained by the Federal Government. Also, there is no certainty that

financial institutions are complying with the law and that the reporting requirements are identifying individuals which the act was intended to identify. However, recent investigations and arrests in Florida of individuals attempting to circumvent the currency reporting requirement indicate the act should have a beneficial effect in promoting compliance. (See pp. 43 to 44.)

In GAO's opinion, the next 2 to 3 years will be crucial to demonstrating the cost effectiveness of the Bank Secrecy Act reporting requirements. Recent actions by Treasury and the regulatory agencies to improve implementation and compliance, coupled with a greater emphasis on financial investigations by law enforcement agencies, suggest the act's requirements now may be receiving the attention the Congress envisioned. However, as law enforcement agencies focus more on detecting the financial resources of organized criminals, and as more attention is given to the effects of Federal regulatory activities on the national economy, Treasury will have to better demonstrate that the usefulness of the Bank Secrecy Act reports justifies the costs. If this cannot be demonstrated, then the act's reporting requirements, in part or in total, should be repealed. (See pp. 56 to 57.)

RECOMMENDATION TO THE CONGRESS

Accordingly, GAO recommends that the Congress amend the Bank Secrecy Act to require a reauthorization of the act's reporting requirements in 1984. On the basis of current progress, GAO believes Treasury should be able to provide sufficient data before then for the Congress to make a decision on the act's continuation, modification, or elimination. (See p. 57.)

RECOMMENDATIONS TO THE SECRETARY OF THE TREASURY

GAO recommends that the Secretary of the Treasury initiate, and submit to the Congress within 2 years, a comprehensive assessment of the act's reporting requirements. Such an assessment should include

--the administrative and respondent costs of the reporting requirements;

--the reports' value to criminal, tax, and regulatory investigations; and

--recommendations for legislative or program changes.

An assessment such as this could demonstrate whether the act is cost-beneficial and could highlight changes needed to make the act's requirements more effective.

In the interim, to more aggressively and effectively implement the reporting requirements of the Bank Secrecy Act, GAO recommends that the Secretary:

--Allocate, within Treasury, the staff necessary to effectively implement, monitor, and evaluate the act's reporting requirements; and assure that Customs' commitments to increase staff in its Reports Analysis Branch are fulfilled.

--Revise the Department's Bank Secrecy Act data dissemination guidelines to provide (1) law enforcement investigators easier access to Bank Secrecy Act report data and (2) regulatory examiners data to verify financial institutions' report filings.

--Work with the financial institution regulatory agencies in (1) developing a workable compliance enforcement policy specifying penalties to be applied for noncompliance; (2) establishing effective compliance monitoring procedures that provide for each regulatory agency to extensively test some portion, perhaps as much as 10 percent, depending on resource availability, of the institutions examined each year; and (3) designating a single supervisory examiner in each district or region to review Bank Secrecy Act examinations.

--Develop, in cooperation with Customs' Reports Analysis Branch and the financial institution regulatory agencies, the capability to identify financial institutions which may not be complying, so that the regulatory agencies can most effectively focus their limited examination resources.

--On a test basis, obtain and distribute the names of retail businesses exempted from filing currency transaction reports to determine if such data is useful to law enforcement agencies.

--Establish a system to obtain the data necessary to make a comprehensive assessment of the costs and benefits of the act's reporting requirements. (See p. 57.)

AGENCY COMMENTS AND GAO'S EVALUATION

Treasury and the responsible regulatory and law enforcement agencies agreed with GAO's conclusion that the effectiveness of the act has been hampered by many problems. They also generally agreed that, although recent actions by several agencies have been directed at correcting some of these problems, more needs to be done.

However, Treasury officials and officials of the bank regulatory agencies disagree with certain of GAO's conclusions and recommendations. Treasury officials disagreed with (1) GAO's conclusion that the act's reporting requirements have not demonstrated their usefulness and (2) GAO's recommendation that the Congress amend the act by requiring reauthorization. GAO recognizes and includes in this report examples of the Bank Secrecy Act reports' usefulness, but GAO does not believe these are sufficient to demonstrate the reporting requirements' potential overall usefulness as envisioned by the Congress. Further, many of the cases Treasury refers to are recent and have yet to be successfully completed. It is in consideration of this uncertainty over usefulness and the uncertainty about the costs associated with implementing the act, after 10 years, that GAO recommends the Congress amend the act to require reauthorization of the reporting requirements. Recent actions indicate the reporting requirements' potential, but unless their overall usefulness can be demonstrated at an acceptable cost, the act's reporting requirements should not be continued.

Officials of the bank regulatory agencies disagreed with GAO's recommendation for extensive examination, each year, of a randomly selected sample of banks. GAO does not argue that the

regulatory agencies' plan to geographically target potential noncomplying financial institutions is an unreasonable approach to compliance examination. However, GAO does not believe this is the most balanced approach to assessing compliance because criminal activity is a national problem that seldom limits itself to one or two geographical areas.

GAO believes the most effective and efficient approach to checking compliance would be one based on targeting financial institutions using data received by Customs' Reports Analysis Branch. However, that capability has not been developed. Until such capability exists, GAO believes a random selection of financial institutions nationwide would provide the best picture of financial institutions' compliance with the act's reporting requirements.

In their comments, several agencies referred to additional actions taken since the completion of GAO's review. These actions, as well as other points raised by the agencies, are discussed in appropriate places throughout the report and in greater detail at the close of chapters 2 and 3.

The Justice Department's and Securities and Exchange Commission's comments were received too late to be evaluated and included in the text of the report. However, their comments, along with the comments of all other agencies that responded, are included in their entirety in appendixes IV through XI.

Contents

ABBREVIATIONS

BATF	Bureau of Alcohol, Tobacco and Firearms
CMIR	Report of International Transportation of Currency or Monetary Instruments

CTR	Currency Transaction Report
DEA	Drug Enforcement Administration
FBAR	Report of Foreign Bank, Securities, and Other Financial Accounts
FBI	Federal Bureau of Investigation
FDIC	Federal Deposit Insurance Corporation
FHLBB	Federal Home Loan Bank Board
FRS	Federal Reserve System
GAO	General Accounting Office
IRS	Internal Revenue Service
NCUA	National Credit Union Administration
OCC	Office of the Comptroller of the Currency
SEC	Securities and Exchange Commission

CHAPTER 1

INTRODUCTION

The Currency and Foreign Transactions Reporting Act (Title II, Public Law 91-508), commonly referred to as the Bank Secrecy Act, was enacted in October 1970. The act requires that certain large currency transactions and interests in foreign financial accounts be reported to the Federal Government. The Congress envisioned that this reporting would be highly useful to Federal law enforcement and regulatory authorities for (1) tracking the financial resources associated with criminal activities, such as drug trafficking, smuggling, and racketeering; and (2) investigating persons using foreign financial accounts to conceal profits gained from these activities. The Secretary of the Treasury was assigned responsibility for implementing the act.

This report, which was done at the request of the Chairman of the Subcommittee on General Oversight and Renegotiation, House Committee on Banking, Finance and Urban Affairs, is the most recent result of continuing congressional and General Accounting Office review of the Bank Secrecy Act. It follows our October 1, 1980, testimony before the subcommittee in which we described problems confronting the act and discussed the usefulness of its required reports to law enforcement investigators. This report discusses actions which are underway or need to be taken to resolve those problems.

CONGRESSIONAL INTEREST IN THE BANK SECRECY ACT

Since 1977 several congressional committees have held hearings on the Bank Secrecy Act's implementation and its use in combatting illegal activities. The chronology of the act's implementation, as depicted in appendix I, shows that this continuing congressional oversight coincided with much of the progress to date. In addition to the October 1980 hearings cited above, the act's reporting and recordkeeping requirements were discussed, directly or indirectly, in the following hearings:

--March 1977 hearings before the Subcommittee on Commerce, Consumer, and Monetary Affairs, House Committee on Government Operations, on "Currency Transaction and Transportation Reporting Requirements of the Bank Secrecy Act";

--April 1979 hearings before the Subcommittee on Oversight, House Committee on Ways and Means, on "Offshore Tax Havens";

--November 1979 hearings before the Subcommittee on General Oversight and Renegotiation, House Committee on Banking,

Finance and Urban Affairs, on "Patterns of Currency Transactions and Their Relationship to Narcotics Traffic";

--December 1979 hearings before the Permanent Subcommittee on Investigations, Senate Committee on Governmental Affairs, on "Illegal Narcotics Profits"; and

--June 1980 hearings before the Senate Committee on Banking, Housing and Urban Affairs, on "Banks and Narcotics Money Flow in South Florida."

Our testimony at the April and November 1979 hearings was based primarily on our April 6, 1979, report "Better Use Of Currency And Foreign Account Reports By Treasury And IRS Needed For Law Enforcement Purposes" (GGD-79-24). In that limited scope report, we concluded that Bank Secrecy Act reports had not been as useful as the Congress might have expected when it established the reporting requirements. We recommended that the Secretary of the Treasury evaluate the usefulness of the required currency reports to determine their continued viability as a law enforcement tool. The subcommittee's request during the November 1979 hearings for an overall assessment of the implementation of the act's currency transaction reporting requirements led to our October 1980 testimony and this report.

REPORTS REQUIRED PURSUANT TO THE ACT

The regulations (31 CFR 103) implementing the Bank Secrecy Act require that three types of reports be filed.

--The Currency Transaction Report (CTR), IRS Form 4789, generally must be filed by financial institutions on each deposit, withdrawal, exchange of currency or other payment or transfer by, through, or to such financial institution, whenever a transaction involves currency of more than $10,000. In 1980, more than 220,000 CTRs were filed.

--The Report of International Transportation of Currency or Monetary Instruments (CMIR), U.S. Customs Service Form 4790, must be filed by any person who transports, mails, or ships, or causes to be transported, mailed, or shipped into or out of the United States, more than $5,000 in currency or bearer monetary instruments on any one occasion. In 1980, more than 100,000 CMIRs were filed.

--The Report of Foreign Bank, Securities, and Other Financial Accounts (FBAR), Treasury Department Form 90-22.1, must be filed annually by certain individuals who have a financial interest in or signature authority over bank accounts, security accounts, or other financial accounts in a foreign country which exceeded $1,000 in aggregate value during the calendar year. In 1980, more than 173,000 FBARs were filed.

SEVERAL FEDERAL AGENCIES HAVE A ROLE IN IMPLEMENTING THE ACT

The Department of the Treasury has overall responsibility for (1) prescribing the types of transactions which must be reported under the Bank Secrecy Act, as well as the format and circumstances of such reporting; (2) monitoring and enforcing compliance with the reporting requirements; and (3) assuring that information generated by the reporting requirements is disseminated and useful to law enforcement and regulatory agencies.

The Secretary of the Treasury has delegated authority for supervising compliance with the reporting requirements to several Federal regulatory agencies.

--Office of the Comptroller of the Currency (OCC) for all National banks.

--Federal Reserve System (FRS) for all State-chartered Federal Reserve member banks.

--Federal Deposit Insurance Corporation (FDIC) for all other federally insured banks and branches of foreign banks operating in the United States.

--Federal Home Loan Bank Board (FHLBB) for all federally insured savings and loan associations.

--National Credit Union Administration (NCUA) for all federally chartered credit unions.

--Securities and Exchange Commission (SEC) for securities brokers and dealers.

--Internal Revenue Service (IRS) for all other financial institutions set forth in the regulations.

--U.S. Customs Service for CMIR reports.

Treasury has designated a separate unit--the Reports Analysis Branch within the U.S. Customs Service--to collect and disseminate all data reported pursuant to the Bank Secrecy Act.

The law was enacted to assist law enforcement and regulatory agencies in criminal, tax, and other regulatory investigations. Data reported under the act is potentially useful to a number of Federal agencies. Some of the agencies that have received data from Bank Secrecy Act reports are

--Drug Enforcement Administration (DEA);
--Federal Bureau of Investigation (FBI);
--Bureau of Alcohol, Tobacco and Firearms (BATF);

--Department of the Treasury;
--Department of Justice;
--Immigration and Naturalization Service;
--IRS;
--SEC; and
--U.S. Customs Service.

REVIEW OBJECTIVES, SCOPE, AND METHODOLOGY

The specific objectives of our review were to determine:

--Treasury's effectiveness in enforcing compliance with the reporting requirements of the Bank Secrecy Act.

--Treasury's effectiveness in compiling and disseminating data required by the act.

--The use of the act's reports by law enforcement agencies and the reports' overall usefulness.

Since the House Banking Subcommittee on General Oversight and Renegotiation expressed specific interest in the Bank Secrecy Act reporting requirements relating to domestic currency transactions in excess of $10,000, our review and this report deal primarily with the CTR filing requirement. Accordingly, unless otherwise noted, all references in this report are to the CTR reporting requirements.

The scope of our review, in terms of the number of agencies reviewed and locations visited, was broad. We met with officials of the Treasury Department and the following financial institution regulatory agencies: OCC, FDIC, FHLBB, FRS, and NCUA. We also met with officials of the following law enforcement and regulatory agencies: BATF, IRS, U.S. Customs Service, Department of Justice, DEA, FBI, and SEC.

Our review was performed between April and December 1980 primarily in Los Angeles, San Diego, and San Francisco, California; Jacksonville, Tampa, Orlando, and Miami, Florida; Atlanta, Georgia; New York City; Austin, Dallas, El Paso, Houston, Fort Worth, Laredo, and San Antonio, Texas; and Washington, D.C. Most of the locations outside Washington, D.C., were visited at the request of the House Subcommittee on General Oversight and Renegotiation primarily on the basis of specific money flow characteristics for those areas.

To assess Treasury's effectiveness in enforcing compliance with the act, we (1) reviewed policies, procedures, correspondence and examination reports of Treasury and the regulatory agencies; (2) discussed actual practices and results with several regulatory officials and examiners; (3) discussed compliance and compliance problems with managers of 33 financial institutions;

and (4) observed, first-hand, ongoing regulatory examinations of 17 financial institutions.

To determine Treasury's effectiveness in processing and disseminating data required by the act we (1) reviewed the policies, procedures, and reporting statistics of the Department of the Treasury, IRS, and Customs' Reports Analysis Branch; and (2) discussed processing and dissemination practices and problems with several officials of Treasury, IRS, DEA, FBI, BATF, Customs, and SEC, who had management responsibilities for the Bank Secrecy Act.

To determine Bank Secrecy Act data use by and usefulness to law enforcement agencies, we (1) analyzed Customs' Reports Analysis Branch statistics on data disseminated; (2) discussed use and usefulness with numerous law enforcement officials and investigators; and (3) analyzed and discussed specific law enforcement investigations in which Bank Secrecy Act reports were used. Also, at six locations we interviewed officials with the Office of the U.S. Attorney regarding efforts to use Bank Secrecy Act report data in prosecutions.

Our review was hampered by our not being able to conduct independent examinations of financial institutions without the written approval of the bank regualtory agencies and the banks involved. The regulatory agencies did agree to our auditors accompanying their examiners on bank examinations. In this respect, as in other phases of our audit, the agencies were fully cooperative. Although this was not the audit approach preferred by our staff, it was agreed to in order to expedite the audit. Although FDIC and OCC expressed concern over our raising this point, it is our understanding that the agencies' policies remain that of not allowing our auditors independent access to bank records.

This restriction, along with limited dissemination records at Customs' Reports Analysis Branch and the various law enforcement agencies, and the time-consuming nature of compliance monitoring examinations, limited our review. Accordingly, our evaluation was based primarily on interviews with officials and investigators and review of available records. While our work does not have statistical validity, the combined results of the interviews and review of the records provide what we believe to be an accurate assessment of the status of the implementation of the act's reporting requirements. In this regard Treasury and the bank regulatory agencies substantially agree with our assessment as presented in testimony in October 1980.

CHAPTER 2

OVERALL COMPLIANCE WITH AND USEFULNESS OF BANK SECRECY ACT REPORTING REQUIREMENTS ARE UNKNOWN DUE TO INEFFECTIVE IMPLEMENTATION

Reports required by the Bank Secrecy Act were intended to be very useful to law enforcement agencies in investigating the financial aspects of illegal activities. Ten years after the law's enactment, however, the reports have not been widely used and their potential utility as an investigative tool is unknown. Although the reports have been useful in investigating and prosecuting certain criminal cases, thus far they have not been used enough to adequately assess their potential overall value.

Moreover, how well financial institutions and individuals are complying with the reporting requirements is uncertain. Problems related to monitoring and enforcing reporting compliance preclude accurately determining the extent of compliance.

The Treasury Department is primarily responsible for these conditions because it did not aggressively and effectively implement the Bank Secrecy Act reporting requirements. Treasury was slow in instituting actions to (1) promote and facilitate use of data generated pursuant to the Bank Secrecy Act and (2) strengthen the act's regulations and initiate more effective compliance enforcement. One of the principal causes of inadequate administration has been Treasury's failure to commit adequate resources.

Other factors have also contributed to the slow progress in effectively implementing the Bank Secrecy Act reporting requirements. The act poses difficult management and evaluation problems over which Treasury has only limited or no control. The Department has to depend on the commitment and initiative of other Federal agencies to enforce and monitor compliance. Yet, these agencies have different philosophies concerning the extent and scope of compliance monitoring and enforcement necessary to carry out these responsibilities. Furthermore, use of the data greatly depends on the practices of various law enforcement agencies. These agencies have not always valued the potential contribution of data generated under the act. Also, their investigative activities have not always been oriented toward effective use of the data.

As discussed in chapter 3, Treasury and other agencies have recently taken initiatives to improve implementation of the Bank Secrecy Act reporting requirements. However, these agencies need to do more, including conducting an overall evaluation of the usefulness of and the need for the reports.

THE ACT'S REPORTS HAVE NOT BEEN WIDELY USED; POTENTIAL UTILITY IS UNKNOWN

After 10 years, the reports required by the Bank Secrecy Act are still mostly unused by law enforcement and regulatory agencies. Although investigators in some agencies have used Bank Secrecy Act reports and believe they were or could be useful, investigators in most of the offices we visited had made little or no use of data from the reports. Further, while a few examples demonstrate the reports' potential as an investigative tool, there has been insufficient experience to demonstrate the reports' overall usefulness. Thus, to date there has been no meaningful evaluation of the reports, and the reports' potential utility as a law enforcement tool is unknown.

Law enforcement agencies have made only limited use of reports

In the law enforcement and regulatory offices we visited, investigators generally had made only limited use of Bank Secrecy Act reports. Customs and IRS investigators were the principal users of information, primarily because of the investigative emphasis, training, and quick access to report data at these agencies. However, most of the investigators in the law enforcement offices we visited did not use the act's report data because they were not sure of, or doubted, the reports' usefulness.

Investigators in only 9 of the 27 law enforcement and regulatory offices we visited indicated they had made much use of Bank Secrecy Act reports. Even in the nine offices, use of the reports was only moderate. Of the nine offices that had indicated more than limited use of the reports, eight were either Customs or IRS offices. Additionally, the reports used by these offices were, for the most part, the reports filed with their respective agencies--CTRs for IRS and CMIRs for Customs. Neither agency's offices had made much use of the reports filed with the other agency.

DEA's Miami office had also indicated a moderate use of the reports. This was primarily in conjunction with a special project in which Treasury took the lead in providing report data. Subsequent use of the reports by this DEA office has been limited.

Of the remaining 18 offices, officials in 6 either were unaware of the reports or did not know how to obtain them. Officials in the other 12 offices were generally familiar with the reports but had used them on only a limited basis or not at all. In addition, moderate use of the reports had been made in only one of six U.S. attorneys' offices.

The following table shows the use of Bank Secrecy Act reports as characterized and documented by regional officials of the various agencies we visited.

Bank Secrecy Act Reports' Use
By Agency For The Offices Visited

Agency	Number of offices visited	Moderate use	Limited use	No use
IRS	5	4	1	-
Customs	6	4	2	-
DEA	7	1	1	5
FBI	4	-	3	1
SEC	3	-	-	3
BATF	2	-	-	2
Total	27	9	7	11

Moderate use indicates a generally continuing effort by that office to use the reports. It also indicates that Bank Secrecy Act reports had been used in some manner in more than five cases. Limited use indicates isolated instances when the data was used and that in five or fewer investigations (normally one or two) the reports were used. No use indicates the reports were not used in any cases and that generally no emphasis was placed on using the reports.

IRS and Customs offices which used the report data generally did so after 1977. IRS' Jacksonville district office (which includes Miami) only began routinely using the report data in 1980. The number of cases in which it could be demonstrated that Bank Secrecy Act reports were used varied from 4 cases over the last 3 years in IRS' Dallas office, to 28 cases over the last 3 years in IRS' Jacksonville office. The number of Customs' cases in which the reports (CMIRs and CTRs) were used varied from 1 each in the Laredo and Dallas offices since 1974, to more than 60 in the Miami office in the last 30 months. However, even in the offices reporting the most use, Bank Secrecy Act related cases represent only about 2 percent of the offices' cases.

The limited use of reports by other law enforcement offices took place for the most part after 1978. Usually the report data that was used by these offices was referred to them by their headquarters or another agency. More than half of the DEA, FBI, SEC, and BATF offices we visited had never requested the report data. National statistics on requests for, and disseminations of, the report data by Customs' Reports Analysis Branch are shown in appendix II.

Use by Customs and IRS facilitated by investigative emphasis, training, and quick access to report data

Greater use of the report data by IRS and Customs investigators reflects the two agencies' investigative emphasis, their efforts to train investigators on the use of the reports, and systems whereby their investigators can easily obtain the reports. In Customs and IRS, greater emphasis has been placed on financial investigations. IRS investigators now consider CTRs in all new investigations. Also, these agencies, in the last 2 years, have provided increased training to investigators on the use of the reports. Finally, as the custodians of CTRs and CMIRs, IRS and Customs have systems whereby investigators can quickly obtain report data. In most other law enforcement agencies, these conditions do not exist and use has not been as great.

Since 1978, the Customs Service has emphasized the enforcement of CMIR reporting as an investigative priority. Beginning in late 1979, Customs began providing week-long felony currency seminars for selected Customs agents. One group supervisor told us that, prior to attending one of these seminars, his agents were not really aware of the Bank Secrecy Act reports or how the reports could be used.

IRS has recently placed emphasis on providing printouts of CTR data to district offices. In some offices, a complete printout of monthly activity is provided. In other offices, investigators receive printouts of CTR data as part of the file information initiating a new investigation. IRS investigators receive training on the use of Bank Secrecy Act reports as part of basic investigator's training. Investigators can request CTR data directly from the IRS report processing center in Ogden, Utah. We were told that, beginning in 1980, IRS investigators usually checked CTR data when conducting new tax investigations.

The conditions that have facilitated the recent use of the data at IRS and Customs offices generally did not prevail at most other law enforcement offices and the report data was used much less. With the exceptions of IRS and Customs, DEA's Miami office had made the most use of Bank Secrecy Act report data. This was mainly in conjunction with a special DEA-FBI task force called Operation Banco. In that investigation, CTRs were the foundation of the data base used to pursue drug traffickers. The use of the CTRs in the Banco investigation resulted primarily from an aggressive report distribution effort by Treasury. Subsequent to this special investigation, DEA's Miami office has made little use of the reports. Officials in that office cited difficulties in routinely obtaining the report data through the formally established report dissemination system.

Officials in the other DEA offices, and in the FBI, BATF, and SEC offices we visited, made limited use of the reports; in some instances, they were not aware of the reports or how to obtain them. Typically, investigators in these offices had received limited training on the reports' use and expressed difficulty in obtaining useful CTR information. Also, in these offices financial investigations had received a limited or only recent agency emphasis. Most of these field offices were not advised by their respective headquarters until late 1979 or 1980 that they had access to the Bank Secrecy Act report data.

Some investigators doubt the reports' quality and usefulness

About two-thirds of the 59 law enforcement officials we interviewed said they were familiar with the reports but had not made much use of them because of reservations about their quality and usefulness. They indicated that they prefer other investigative methods, question the quality of the reports filed, and believe that the act's reporting requirements can be circumvented.

About 30 percent of the law enforcement officials told us that Bank Secrecy Act report data was often not essential because once they developed a specific criminal violation, such as drug trafficking, they generally could identify related financial resources through such means as grand jury or administrative subpoenas. Some typical comments we received from law enforcement officals at various locations were:

--Once an alleged criminal violation has been established, subpoenas are the most direct way to proceed to obtain financial records.

--The routine investigation of a subject will normally locate the individual's financial assets.

--Bank Secrecy Act reports would rarely provide information which could not be obtained satisfactorily through subpoenas.

About one-third of the officials doubted the reports' usefulness because they were skeptical of the quality of the reports that are filed. Specifically, they stated that filed reports are often incomplete, inaccurate, or illegible.

Almost half of the officials doubted the reports' usefulness because they believed that the Bank Secrecy Act reporting requirements could be circumvented. Twenty percent cited circumstances in which multiple cash transactions below $10,000 were conducted in connection with alleged criminal activity to avoid detection. One-third referred to foreign nationals and persons on law enforcement intelligence lists being exempted by banks

from the act's reporting requirements. IRS criminal investigators pointed out that businesses, such as restaurants, race tracks, and other retail establishments allegedly associated with organized crime could be exempted even under Treasury's revised regulations.

Potential utility of Bank Secrecy Act report data is unknown

Because of the limited use of the reports, no one knows how useful they are or can be. While some examples demonstrate the reports' potential, experience to date has been insufficient to demonstrate potential overall usefulness. Even in Customs and IRS, where use of the reports has been greater than in other agencies, investigators in some offices are just learning of the act's potential. After 10 years, there still has been no meaningful assessment of the act's usefulness.

Some cases demonstrate reports' potential usefulness

Some investigators in the four regions we visited were familiar with Bank Secrecy Act reports and described cases in which the reports had been useful. Investigators who had successfully used the reports described situations in which the reports had been useful for

--identifying investigative targets,

--determining the extent and location of financial assets,

--establishing secondary criminal violations, and

--developing stronger court cases.

In some cases, Bank Secrecy Act reports were used to initiate investigations, or to identify previously unknown suspects. For example:

--Two CTRs showed that a foreign national deposited over $1 million cash in a 3-day period. Yet no CMIR was on record. Further investigation revealed the subject received narcotics money in the United States and allegedly passed it to foreign drug sources. Further analysis of CTRs showed the subject deposited approximately $3 million in cash in various U.S. banks.

--A review of CTRs revealed that the subject withdrew $300,000 in cash from a bank. A corresponding CMIR could not be located. An inquiry at the bank revealed that the subject, a foreign national with no U.S. address, was to depart for his home country after leaving the bank.

In other cases, the reports provided information which helped investigators further develop their efforts against previously known investigative targets. For example:

--In the two cases arising from the DEA-FBI BANCO operation which have been successfully prosecuted, the key investigative targets were previously known to DEA. However, DEA was not aware of the dimension of their operations until CTRs and subsequent investigations identified the large amounts of cash generated by their drug business.

--Review of CTRs by a financial investigation task force determined that over $1 million had been handled by a drug trafficker. Although DEA was performing two investigations on the individual, without the CRT, it could not develop information on the extent of the individual's financial operations.

In other cases, law enforcement officials said that the data helped determine the extent and location of illegal financial resources. For example:

--An investigation initiated on the basis of a tip from a confidential source led to the discovery of over $3 million in currency. Using part of a name given by one of two foreign nationals who were suspects, Customs agents performed an extensive analysis of the CTR data file and identified about 200 CTRs related to the alleged criminal activity. They revealed about $74 million in a number of accounts in several banks in another section of the country. Seven additional suspects were identified despite the fact that most of the CTRs were not properly completed. A grand jury subpoena was obtained to gain access to additional bank records.

--After a jury was unable to reach a verdict on an alleged class I drug violator, a financial investigations task force in another area of the country developed CTR-supplied information regarding a large cash transaction made by the defendant. The Federal prosecutor plans to prosecute the defendant again later this year, believing that the new financial information will be very useful.

Also, the Bank Secrecy Act reports and other financial data demonstrating significant, unexplainable income by defendants have been helpful in obtaining more substantial sentences and higher bails. An Assistant U.S. Attorney in the Central District of California told us that financial information was instrumental in influencing judges to impose substantial sentences on drug traffickers who were first offenders. For example:

--Financial evidence showing that a drug trafficker spent more than $350,000 in 2 years while employed

as a newspaper truck driver contributed to the imposition of a 17-year prison term and a $45,000 fine.

--After a man was arrested with a large quantity of cocaine, the prosecutor was able to use financial information to have his bail set at $2.5 million.

In addition to use of the reports as an investigative tool, the Bank Secrecy Act provides criminal penalties for failure to file the required reports. If the failure to report can be shown to be connected with any other Federal felony violation or pattern of illegal activity which involves more than $100,000 in a 12-month period, a criminal penalty of not more than a $500,000 fine and/or 5 years imprisonment and a civil penalty of not more than the monetary value of the item not reported can be imposed. False statements or misrepresentations in reports may be punishable by fines of not more than $10,000 and/or imprisonment of not more than 5 years.

From February 1978 through September 1979, attorneys in the Department of Justice's Fraud Section used the CMIR filing requirement provision to obtain convictions for illegal transportation of currency in connection with improper overseas payment cases. In eight such cases during this period, currency violations were charged and $443,670 in penalties were assessed. Substantial fines were obtained in these cases because the currency violations were connected with other felony convictions.

Most recently, the failure-to-file provision of the act has been the basis for arrests in three cases in Florida pursuant to Treasury's Project Greenback (described on page 43). Each case involved the depositing of large sums of cash without the filing of CTRs, purportedly in cooperation with bank personnel.

No demonstration of reports' overall usefulness

Although these examples demonstrate the reports' potential, their overall usefulness has not yet been demonstrated because many law enforcement investigators still do not use the report data. At DEA, participants in the Banco project found the reports useful, but most other DEA officials were not that enthusiastic about the reports' value. Even investigators within IRS and Customs, the agencies that most use the reports, are not sure of the reports' usefulness.

At IRS offices, the assessment of the reports' value by IRS special agents ranged from enthusiastic to skeptical. IRS special agents in the Jacksonville, Florida, regional office seemed most enthusiastic, although one group manager said that CTRs do not generate many cases on their own. In contrast, a branch chief in the Manhattan office characterized the data as a "secondary financial tool," and a group manager in the Los

Angeles district office characterized opening cases on the basis of CTRs as being a high-risk proposition.

In our April 1979 report, 1/ we concluded that currency reports were not a particularly productive basis for initiating IRS criminal investigations, audit, and collection actions. While Treasury states that from 1974 to 1980 IRS initiated 400 criminal investigations on the basis of CTR data, conversations with IRS group managers and special agents during our current review gave us no reason to believe that this approach was that productive. Instead, investigators often saw the data as useful after an investigation was initiated, as a means to corroborate other information, or as a check to determine the location of financial accounts.

Customs has had a major cash flow investigation task force operating in the Miami area since July 1978. Officials in Washington and Miami associated with this project said that they are only in the early stages of discovering the potential usefulness of the reports.

Also, even though Customs has had success in establishing misdemeanor cases for failure to file CMIRs, it has not had great success in achieving one of its principal objectives for using the reports--establishing felony currency violations. Of 190 arrests made in currency cases between October 1977 and July 1980, only 18 felony convictions resulted. Customs also reports that just 15 percent of its currency seizures pertain to cases where the currency can be related to criminal activity.

A summary of the Customs Service's enforcement of the CMIR requirements, as reported to us by Treasury, shows that cumulatively through the second quarter of fiscal year 1981 CMIR enforcement has resulted in

--684 seizures related to other criminal activity;

--726 arrests and 344 convictions;

--$7.4 million in mitigated seizures;

--$6.1 million in fines; and

--$2.2 million in civil penalties

We did not analyze these statistics to determine the specific circumstances supporting them.

1/"Better Use Of Currency And Foreign Account Reports By Treasury And IRS Needed For Law Enforcement Purposes" (GGD-79-24, Apr. 6, 1979).

But, despite Customs' objective of focusing on organized crime figures, rather than on ordinary U.S. citizens and foreign nationals who may be unaware of the law, none of the 15 closed cases provided to us by Customs agents as examples of the usefulness of Bank Secrecy Act data involved individuals who were subject to the felony provisions of the act. Information furnished by Customs personnel in Houston and Los Angeles indicates that a large percentage of currency seizures involves foreign nationals who may be hesitant to report, fearing confiscation similar to border practices in their home countries. Finally, a Miami Cash Flow Investigations Task Force created in July 1978, with the objective of focusing on violations of the currency law in conjunction with felonies, had yet to obtain a felony conviction at the time of our review.

LEVEL OF COMPLIANCE WITH THE ACT'S REPORTING REQUIREMENTS IS UNKNOWN

Opinions vary on the level of compliance with the Bank Secrecy Act reporting requirements and no precise measurement exists. Compliance monitoring by bank regulatory agencies generally has been cursory. Officials at Treasury, the bank regulatory agencies, and SEC generally believe compliance is good, although they acknowledge that some financial institutions may not be fully complying. On the other hand, law enforcement officials generally believe compliance is deficient and seriously detracts from the act's usefulness.

Serious concerns about compliance were raised in June 1980 during hearings on "Banks and Narcotics Money Flow in South Florida" before the Senate Committee on Banking, Housing and Urban Affairs. In those hearings, a former Assistant U.S. Attorney stated that in the Miami area there were multimillion dollar discrepancies between banks' total cash flows and the cash transactions accounted for by CTRs. Information presented by the Committee Chairman showed that in 1979, three banks had cash deposits of $25, $24.6, and $39 million to the Miami Federal Reserve Bank that were not accounted for on CTRs. Regulatory officials explained that such discrepancies, in some cases, were the result of deposits by correspondent banks for which no CTRs are required.

A study performed in 1979 by Customs' Reports Analysis Branch indicated significant nonreporting has probably gone undetected. The study, based on a query of the unit's automated data base, sought to determine the amount of CTR reporting by the Nation's Federal Reserve member banks for the first 3 months of 1978. However, the computer listing which was produced led the chief of the unit to conclude that as many as 50 percent of the banks were not filing reports and that the proportion of required forms not being filed, although unknown, could be anywhere from 10 to 90 percent. While recognizing that many of the smaller banks in

the country may indeed have had no reportable transactions, the branch chief nonetheless expressed the belief that the study had surfaced the existence of some compliance problems.

Treasury officials expressed doubts about the validity of the study. They cited such factors as (1) some bank officials' liberal interpretation of the exemption provision which would account for some lack of reporting and (2) the incompleteness of many of the CTRs that were received, making computer identification of the filing institutions difficult and unreliable.

While discounting the study, Treasury officials could not provide their own estimate of reporting compliance, nor were they were they confident that the compliance monitoring process was detecting most of the nonreporting. This was reflected in the statement of the Assistant Secretary for Enforcement and Operations during an October 1980 hearing before the House Banking Subcommittee on General Oversight and Renegotiation. The Assistant Secretary stated that Treasury's past reliance on the bank supervisory agencies to detect violations had led Treasury officials to believe that banks have been in substantial compliance. He stated, however, that more recently "it has become apparent that serious violations at a number of banks have not been detected by the bank examiners." He added that the violations generally have come to light as a result of investigations and analyses by other agencies, principally IRS.

Examination results since 1977, as shown below, indicate generally good compliance with the act by financial institutions.

Number Of Examinations Performed And Nonreporting Institutions Detected By Financial Institution Regulatory Agencies--1977 Through 1980

Supervisory agency	Calendar year 1977			Calendar year 1978			Calendar year 1979			Calendar year 1980		
	Exams	CTR	CMIR	Exams	CTR	CMIR	Exams	CTR	CMIR	Exams	CTR	CMIR
OCC	1,923	4	6	3,429	35	11	3,998	19	1	3,965	49	3
FRS	1,006	21	-	950	14	8	1,031	16	2	1,031	50	9
FDIC	6,949	83	7	6,316	123	7	4,799	93	1	6,548	182	8
FHLBB	3,273	18	2	3,336	17	3	3,465	17	-	3,227	12	-
NCUA	11,480	(a)	(b)	10,098	(a)	(b)	12,646	(a)	(b)	(c)	(c)	(c)

a/Prior to 1981 the checklist used by NCUA examiners did not contain an item for recording CTR reporting violations.

b/Prior to 1981 NCUA's data system did not distinguish between Bank Secrecy Act recordkeeping violations and CMIR reporting violations. Total violations detected were: 1977, 47; 1978, 31; and 1979, 60.

c/NCUA has not reported the results of its 1980 examinations to Treasury.

Only about 1 percent of the institutions examined in the past 4 years were cited for failure to file a CTR or CMIR. However, this is seemingly

contradictory to (1) the 1979 Reports Analysis Branch study which indicated that as many as 50 percent of the Federal Reserve System's member banks had not filed any CTRs for the first 3 months of 1978; and (2) a Treasury initiated cash flow study in 1979 which showed that millions of dollars, apparently unreported on CTRs, were flowing through banks in various sections of the country and particularly in southern Florida.

The 1979 cash flow study on banks in southern Florida caused Treasury officials to doubt the effectiveness of compliance examination procedures. So in August 1979, Treasury asked the bank regulatory agencies to implement more thorough examination procedures. This is discussed in more detail in chapter 3.

Monitoring of compliance with the reporting requirements has been inadequate

Compliance monitoring has been insufficient to detect nonreporting where it exists and has been unevenly applied so that results in different areas are not comparable. In addition, where nonreporting is detected, enforcement actions have been too infrequent to strongly deter it.

Cursory compliance checking did not detect much nonreporting

Treasury has relied primarily upon the agencies to which it has assigned compliance monitoring responsibilities to detect nonreporting. However, the compliance examination procedures used by these agencies have, for the most part, been cursory in nature and applied unevenly. Reliance on these procedures has resulted in the detection of few compliance problems. Indications from other sources, such as law enforcement agencies' investigations and Treasury's cash flow study, are that substantial noncompliance has gone undetected.

In the regulations implementing the Bank Secrecy Act, the Secretary of the Treasury assigned compliance monitoring responsibilities to the agencies listed on page 3 of this report. Since Treasury envisioned that the Nation's banks would conduct the largest number of reportable currency transactions, Treasury worked most closely with the three agencies responsible for supervising these institutions--FDIC, FRS, and OCC--to develop examination guidelines. In May 1973, Treasury transmitted a checklist to the three banking agencies and the FHLBB to be used when examining banks and savings and loan institutions for compliance with the act.

As reported in congressional hearings in March 1977 and as shown below, examinations using these guidelines did not surface many violations and perhaps inaccurately led the Treasury

Department to believe financial institutions were generally complying with the reporting requirements.

Institutions Cited For Violating Reporting Requirements Of The Bank Secrecy Act--May 1973 to December 1976

Type of violation	Number of violations cited by agency					
	FDIC	FHLBB	FRS	NCUA	OCC	Total
Failure to file CTR	92	32	53	-	20	197
Failure to file CMIR	28	12	10	-	11	61

We could not determine how many institutions were examined during this period, but supervisory responsibilities at that time included about 15,000 banks; 4,000 savings and loan associations; and 13,000 credit unions. The regulators' goals were to examine every institution at least once every 18 months.

Discoveries of substantial noncompliance at some financial institutions by DEA and IRS in 1975 and 1976 showed that examinations to date had been inadequate, and led Treasury to develop new examination guidelines. The new guidelines issued in 1976 supplemented the checklist used since 1973. Besides providing additional requirements to spot check transactions and currency shipment documents, the guidelines also provided requirements to check an institution's internal controls, reporting procedures, and personnel training. As discussed earlier, implementation of the guidelines did not result in a substantial increase in violations identified. The guidelines remained in effect at the banking agencies and NCUA until January 1981, and have just recently been revised by FHLBB.

Our review of the agencies' examination procedures and their implementation at 17 financial institutions showed the examination practices to be incomplete and inconsistent. We noted that the procedures themselves contained no provision for the examiners to actually review CTRs, either to check for completeness or to provide some idea of the amount of cash transactions the bank reports. The procedures contained no reference to the possibility that the examiner might contact either IRS or the Reports Analysis Branch to determine if a particular transaction had been reported. In addition, the procedures provided no guidance concerning the depth of transaction and record checking which could be considered adequate.

The examinations we observed varied in thoroughness of transactions testing, resulting from (1) the examiners' judgment concerning the adequacy of the banks' internal controls,

(2) the examiners' interpretation of the compliance procedures, and (3) the amount of time and staff resources available. We concluded that the procedures were not consistently applied, and with the exception of the Federal Reserve System's New York district, they did not normally go far enough to effectively determine compliance.

Although most of the emphasis on ineffective compliance monitoring has been centered on FDIC, FRS, and OCC, other agencies with compliance monitoring responsibilities have been similarly ineffective. NCUA, for example, did not have a specific examination question to test compliance with CTR reporting on the checklist used by its examiners. NCUA officials were unaware of the checklist deficiency prior to our review. Additionally, Treasury Department officials were not aware of the problem until we brought it to their attention in February 1981.

Also, broker-dealer firms' compliance with the act's requirements has not been adequately tested. The Bank Secrecy Act regulations assign compliance responsibility for broker-dealers to SEC. Although SEC routinely examines a portion of broker-dealers, self-regulatory organizations, such as the New York Stock Exchange and the National Association of Securities Dealers, are responsible for the routine examination of a majority of broker-dealers for compliance with the Federal securities laws. This is required by specific provisions in the securities laws; however, the Bank Secrecy Act's regulations place no comparable obligation on the self-regulatory organizations.

SEC examinations include procedures for checking Bank Secrecy Act compliance, but the self-regulatory organizations examinations do not. During our review, SEC officials contacted the self-regulatory organizations concerning the absence of such procedures from their examinations. Officials of the self-regulatory organizations expressed uncertainty, however, as to whether there was a legal basis for them to check compliance with Bank Secrecy Act reporting requirements. SEC officials brought the matter to the attention of Treasury but they had received no guidance on the possible resolution of it by the completion of our review.

IRS' compliance monitoring program for other financial institutions, such as travel agencies and pawn brokers, has been hampered because Treasury has not answered IRS' questions concerning its regulatory and enforcement authority over these institutions. One question involves the definition of "financial institutions" and whether the statutory definition is broader than the definition contained in the implementing regulations. Additionally, even for those financial institutions specifically mentioned in the regulations, IRS is unsure of what enforcement action it can take to gain access to their financial records.

Travel agencies and pawn brokers are specifically mentioned in the Bank Secrecy Act as being financial institutions required to file CTRs; however, the regulations' definition does not specifically refer to these types of businesses. IRS chose to follow the definition in the law. However, some business operators challenged IRS examiners who sought to check them for compliance. The business operators contended that they were not "financial institutions" because their types of businesses were not specifically mentioned in the regulations.

On February 14, 1980, IRS issued a directive to its examiners to discontinue compliance examinations at travel agencies, pawn brokers, and any other businesses not clearly within the definition of "financial institutions" as stated in the regulations. Since IRS had already contacted or examined a substantial number of these businesses, discontinuance represented a considerable reduction in IRS' compliance monitoring program.

On July 1, 1980, IRS requested that Treasury provide advice as to whether IRS should follow the definition as stated in the Public Law or the more limited definition found in the regulations. At the time of our report, Treasury had not responded to the IRS request for advice.

IRS is not granted summons authority by the Bank Secrecy Act or the Treasury regulations, and it is unsure of its authority to gain access to necessary records. On April 24, 1979, IRS requested Treasury guidance on what enforcement action IRS should take if a financial institution refuses an Internal Revenue agent access to its records during a routine compliance check. IRS renewed its request for guidance from Treasury in a memorandum dated June 13, 1980, in which it noted that a number of financial institutions had refused examiners access to needed records.

The absence of effective compliance monitoring has had at least two ill effects. First, there is no reliable estimate of the level of reporting compliance. This absence precludes any dependable assessment of the data's potential usefulness and inhibits decisionmaking as to the level of monitoring and enforcement effort that is warranted. Second, confidence in the integrity of the data base is undermined. Doubts concerning the data's usefulness are reinforced when noncompliance that was overlooked by the monitoring agencies is discovered by law enforcement agencies.

In response to a draft of this report, only OCC disagreed with our assessment that compliance monitoring has been cursory, even though the procedures followed by its examiners were basically the same written procedures followed by FDIC and FRS. While we recognize that weaknesses in the regulations limited the examination process (see pp. 23 and 24), our assessment of the agencies' procedures prior to revision in 1981 and our

observation of examinations led us to conclude that the procedures did not normally go far enough to effectively determine compliance. This was further demonstrated, in at least one instance, at an OCC supervised institution when OCC tested the extensive FRS-New York procedures. Five consecutive examinations using the older, more cursory procedures had surfaced no Bank Secrecy Act violations at the institution. However, the extensive FRS-New York procedures which OCC tested identified several instances in which the institution failed to file CTRs.

Problems monitoring compliance with outbound CMIR requirements

Despite their recognizing that a major intent of the Bank Secrecy Act was to trace the movement, out of the country, of currency resulting from illicit activities in the United States, Customs officials have placed only minimal emphasis on enforcing the outbound CMIR reporting requirement.

In visits to airports, seaports, and land border points, we generally found Customs officials making minimal efforts to enforce the CMIR outbound reporting requirements. They cited inadequate resources as one reason, saying that they had insufficient staff to assign inspectors at outbound flights. They also commented that airport personnel resist the placement, in departure areas, of Customs posters notifying travelers of the reporting requirements. Even when Customs officials told us that posters were in place, in some locations, such as John F. Kennedy Airport in New York, we found no evidence of them. Customs officials at land border points said they could do little to check passengers in outbound vehicles for compliance with the reporting requirements.

Customs officials cited legal restraints as the main obstacle to aggressive enforcement of the outbound reporting requirements. The courts have interpreted the law to mean that a violation is not committed until a person leaves the country. Efforts to prosecute an individual for attempting to leave the country with large sums of unreported currency generally have not been successful.

TREASURY HAS NOT AGGRESSIVELY AND EFFECTIVELY IMPLEMENTED THE REPORTING REQUIREMENTS

The Treasury Department is primarily responsible for the above conditions because it did not aggressively or effectively implement the Bank Secrecy Act reporting requirements. Since the law was enacted, Treasury has not committed the attention and resources necessary to effectively implement it. As a result, although the initial regulations proved inadequate for guiding respondents and ineffective for assisting compliance monitoring, Treasury delayed revising the regulations until long after the

need was recognized. It did not develop an effective compliance monitoring and enforcement program. Furthermore, it did not establish an effective system to compile and distribute complete, accurate report data.

Treasury has not committed needed attention and resources to the act

Only one Treasury staff member has been assigned full-time to manage the act's implementation. At times, other higher priority issues have diverted Treasury officials' attention away from needed actions to strengthen administration of the Bank Secrecy Act.

Treasury does not separately budget for the management of the Bank Secrecy Act, and today Treasury still has only one full-time staff member under the Deputy Assistant Secretary for Enforcement managing the act's implementation. His various responsibilities include:

--Corresponding with financial institution officials to explain regulations, request information, or discuss problems.

--Responding to congressional and press inquiries about Bank Secrecy Act implementation and Treasury's Project Greenback.

--Reviewing, evaluating, and following up on violations referred by other regulatory agencies.

--Monitoring the examination practices of the agencies which have been delegated compliance monitoring responsibility.

--Monitoring the operations of the Reports Analysis Branch.

--Coordinating the implementation of Treasury's Project Greenback.

--Planning and managing special currency studies.

--Monitoring the IRS' CTR data perfection program.

--Assisting the compliance monitoring agencies in developing new examination procedures.

--Resolving implementation problems raised by agencies assigned responsibilites under the act.

The full-time Treasury staff member admits that he cannot effectively perform all these duties without additional staff. As a result, problems that are surfaced go unresolved for extended

periods of time, frustrating the effective implementation of the act.

The long delays in revising the original implementing regulations perhaps best illustrate the nature of the problem. Treasury was aware of the regulation problem as early as October 1975 and on three occasions between October 1975 and March 1977 wrote or testified of intentions to revise the regulations. However, it did not implement needed changes until July 1980. The Treasury official who was designated to coordinate revision of the regulations was the only person specifically assigned to administer the Bank Secrecy Act. In addition to improving the regulations, it was this official's duty until 1978 to receive and review reports filed pursuant to the act and serve as a focal point for disseminating information. He explained that although efforts to revise the regulations were underway as early as 1975, other issues, such as gun control legislation, were assigned higher priorities within Treasury and took precedence in resource commitment.

Requests for additional staffing to the Assistant Secretary for Enforcement and Operations, to whom the Secretary has assigned oversight responsibilities for the act, have been denied. As recently as October 1980, he said he does not believe additional Treasury resources should be committed to the act. This belief underscores Treasury's continuing lack of commitment to the act.

Unclear regulations set the tone for ineffective implementation

Treasury's regulations implementing the act were neither thorough nor precise. The regulations' exemption provisions gave institutions wide discretion in exempting customers' transactions from the reporting requirements. The regulations were silent on the propriety of a customer's conducting multiple transactions to avoid reporting. Further, the regulations did not require financial institutions to retain copies of filed CTRs or maintain a list of exempted customers. These flaws in the regulations fostered various interpretations and practices by financial institutions and created difficulties for bank examiners trying to verify compliance with the act's requirements. Further, even though Treasury was aware of the flaws in the regulations as early as 1975, it did not correct them until 1980.

Broad discretion allowed in exempting of transactions

Perhaps the most serious deficiency of the implementing regulations involved the granting of exemptions from the CTR filing requirement. That section stated that banks could exempt their established customers' transactions which were in amounts commensurate with the customary conduct of the customers' business, industry, or profession. No guidance was provided as to what

types of businesses and professions might qualify, or the possibility that any might not. We found that, because of this lack of guidance, financial institutions employed a variety of exemption and reporting practices. For example:

--Two New York City banks, each with assets in excess of $20 billion and with similar types of customers, had contrasting filing patterns. Although the two banks had similar policies for granting exemptions, the smaller bank filed about 5,000 CTRs in 1979, while the larger bank filed about 2,000 CTRs.

--A financial institution in Florida filed no reports and officially exempted no one, but instead recorded every reportable transaction in a log. It was subsequently determined that about 50 of the individuals listed in the log were allegedly involved in narcotics trafficking.

--Three Texas banks had contrasting policies regarding the Bank Secrecy Act. One exempted only commercial businesses from reporting; another exempted all customers and, in fact, recruited large cash deposits from foreign nationals across the Mexican border; a third exempted no customers but allowed them to split transactions so that a CTR would not have to be filed.

--Three banks had varying exemption verification practices. A Florida bank exempted customers only if bank management personally knew the individual. One New York bank exempted customers only after bank personnel obtained specific information concerning the nature of the customers' businesses. Another New York bank reviewed all exemptions on a 6-month basis to verify the need for the exemption.

Failure to prohibit splitting transactions allowed some to circumvent reporting requirement

Similarly, although the regulations required reporting for each single transaction above $10,000, they did not specifically prohibit dividing a large transaction into several smaller transactions to circumvent the reporting requirement. While law enforcement officials asserted that sophisticated criminals often split transactions to avoid reporting, we could not determine if such practices were prevalent. However, as shown in the case of the Texas bank in the third example above, the conducting of multiple smaller transactions has occurred.

Failure to require retention of records frustrated compliance monitoring

The regulations' failure to require institutions to retain copies of CTRs filed with IRS and to maintain lists of exempted customers deprived examiners of necessary aids for monitoring

compliance. While the rationale for not requiring record retention may have been to avoid imposing an undue burden on financial institutions, the effect was limited documentation upon which to determine compliance with the act's requirements.

Although the regulatory agencies which were delegated compliance monitoring responsibility did not aggressively pursue compliance monitoring, as discussed previously, the regulations' failure to require record retention greatly impaired any serious attempt to verify compliance. With no current record of exemptions maintained and the nonrestrictive language of the exemption provision, bank examiners questioning a banker about possible negligence for a particular transaction could always be told that the transaction had been exempted by the bank. Furthermore, without evidence of a bank's reporting, an examiner could always be told that the particular transaction was "probably" reported. Confirming or refuting such a claim would require the examiner to check with IRS or Customs. However, this could not be done in a timely manner because of the cumbersome process for requesting and obtaining report data.

Revision of regulations was not given a high priority

Even though Treasury was aware of the flaws in the regulations in 1975, it did not publish, for comment, a proposal for needed revisions until September 1979; and Treasury did not implement revised regulations until July 7, 1980. Furthermore, despite the Secretary of the Treasury's commitment to a congressional committee in 1977 to revise the regulations, this was not done.

The first time that Treasury published proposed changes to the CTR reporting sections was September 7, 1979. According to Treasury's Deputy Assistant Secretary for Enforcement, a contributing factor to the decision to propose the modifications at that time was the cash flow study completed by Treasury in August 1979. That study, conducted with the help of the Federal Reserve System, indicated that Treasury's expectations of extensive CTR reporting compliance were not being met.

Although the cash flow study may have provided the final impetus for assigning a higher priority to revising the regulations, Treasury officials were aware of the need for the revision well before August 1979. As illustrated below, officials of several agencies had pointed out the need for the revision to Treasury officials.

--In February 1979 a Reports Analysis Branch report to the Deputy Assistant Secretary of the Treasury enumerated many of the deficiencies of the CTR reporting requirements and made specific recommendations to revise the regulations.

--In January 1978 a letter to the Chairman of the House Select Committee on Narcotics Abuse and Control from the Acting Commissioner of IRS noted that "Under present Treasury regulations, several checks purchased by one individual cannot be aggregated to require the filing of a Form 4789." He added that the Office of the Secretary of the Treasury had already been contacted and was considering revising the regulations to prevent the use of multiple transactions to circumvent the reporting requirement.

--In May 1977, the House Committee on Government Operations, in its report on the act's implemention, recommended revising the regulations to clarify compliance monitoring responsibilities.

--In October 1975, an FDIC official wrote to Treasury officials advising them of the problem with the regulations' failure to require banks to maintain a list of customers whose transactions were exempted from CTR reporting.

The July 1980 revisions to the regulations resolved some of the deficiencies limiting the act's effectiveness. (See p. 38.) However, the revised exemption provision continues to be somewhat of a problem because it allows exemptions for retail institutions which could be used as fronts for criminal activity. Also, the propriety of multiple transactions still has not been addressed in the regulations. Moreover, the Treasury Department committed itself to revising the regulations in 1977 in response to the House Committee on Government Operations' recommendation. The 1980 revision did not accomplish the clarification of compliance monitoring responsibilities to which Treasury was committed, and, according to its program administrator, the need for such a revision still exists.

Treasury has not established an effective compliance monitoring and enforcement program

The Treasury Department has displayed a predisposition to believe that financial institutions will willingly comply with the reporting requirements. As discussed earlier, this outlook has led to the adoption of monitoring procedures which are highly dependent on officials of the institutions being monitored. It is also reflected in Treasury's reluctance to assess penalties for noncompliance.

Treasury has, through its inadequate regulations and delayed policy decisions, provided the monitoring agencies valid excuses for failing to detect nonreporting and for not recommending penalties when nonreporting has been detected. No mechanism or system has been implemented to help monitoring agencies target their

efforts against institutions likely to have reporting compliance problems.

Compounding the compliance monitoring problems is Treasury's failure to develop uniform policies for enforcing compliance with the Bank Secrecy Act reporting requirements. The basic guidance provided the bank regulatory agencies regarding the act's penalty provisions is contained in a document dated May 9, 1973. This document advises bank examiners to (1) refer to Treasury violations for possible civil penalties when the bank is willingly or deliberately violating the regulations, and (2) refer to Treasury violations for possible criminal investigation when there is a strong indication that the bank's management had prior knowledge of the regulations.

This guidance has proved to be inadequate for conveying to the agencies with compliance monitoring responsibilities Treasury's intentions concerning use of the act's penalty provisions. Treasury's Assistant Secretary for Enforcement and Operations testified at an October 1980 congressional hearing that one of Treasury's biggest problems in applying the penalty provisions lies in getting the bank supervisory agencies to make recommendations for civil penalties. However, officials at OCC, FDIC, and FRS told us that the guidelines provided by Treasury require too much subjective judgment of examiners, and lack the specificity necessary to assure consistent application. Consequently, these agencies have referred fewer than five institutions to Treasury for civil penalties. SEC, FHLBB, and NCUA have never referred any such cases to Treasury.

On the other hand, IRS, using the same guidelines, has recommended to Treasury that civil penalties be levied in 12 instances. Treasury did not assess civil penalties on any of those 12 institutions, however, and Treasury's Bank Secrecy Act administrator contends that civil penalties would not have been appropriate in those instances. Thus, the guidelines' impreciseness has not only discouraged some compliance monitoring agencies from recommending penalties, but it has also resulted in Treasury's having to decline all recommendations that have been made by IRS.

OCC has referred 25 cases to Treasury. However, the wide range of matters that these referrals encompass reflects a lack of clear guidance from Treasury. In some instances, institutions were referred and in other cases individual bank depositors were referred. For the most part, OCC referrals were for criminal penalty consideration, although since September 1980 two specific referrals were made for civil penalty consideration. Also, a number of OCC's referrals resulted from specific inquiries made by Treasury.

Treasury's Assistant Secretary for Enforcement and Operations informed the bank regulatory agencies in an October 1980

letter that, in the future, Treasury intends to scrutinize every violation and to impose civil penalties for all but clearly minor and inadvertent infractions. However, this letter added nothing to existing guidance on when examiners should recommend penalties

Some financial institutions have been successfully prosecuted under criminal provisions of the law for failing to file a CTR, and Treasury has greatly increased its use of IRS for criminal investigations in the past year. But, even in this regard, guidance is not clear on what cases to refer. Prior to June 30, 1980, Treasury had authorized just 22 criminal investigations of financial institutions for violation of the Bank Secrecy Act, with the first authorization in September 1975. Since June 30, 1980, Treasury has authorized 23 criminal investigations. More than half of these have been part of Operation Greenback. Although only three cases have so far resulted in convictions, most of the investigations are continuing and Treasury officials expect several more convictions in the future.

Failure to establish an effective system for compiling and disseminating data

Delays in establishing a formal organization to process and disseminate Bank Secrecy Act reports postponed effective implementation of the act. Without a mechanism to effectively compile and distribute reported data, the act's reports could not be used.

The first attempt to disseminate Bank Secrecy Act data outside of Customs and IRS was not made until 1977 when Treasury established an agreement with DEA. This led to the formation of BANCO, a joint DEA-FBI task force to explore the financial aspects of drug trafficking in the Miami, Florida, area.

Guidelines providing for broad dissemination of information pursuant to the act were not written until early 1979, and the first dissemination of CTR data to a law enforcement agency as a result of a specific request was not made until October 1978, 8 years after the law was enacted. Customs and IRS, both Treasury units, traded information beginning in 1976, and Treasury began distributing forms it thought useful to DEA in 1977. But there was no established mechanism to fill data requests from using agencies until July 1978. Formal agreements to disseminate Bank Secrecy Act data to most law enforcement agencies were not signed until 1979.

Further, once a system was established to compile and distribute reports, it took time to make it workable. In our April

1979 report, 1/ we pointed out deficiencies in the processing of CTRs and the exchange of Bank Secrecy Act data between IRS and Customs. Although many of our recommendations have been adopted, and other improvements have been made, some problems with the data base remain.

Because of processing problems and a lack of resources at Customs, the most current data has not always been available in the data base. Difficulty in maintaining a current data base greatly detracts from its usefulness. Without current CTRs, the data base is of little use to compliance monitoring agency examiners wanting to determine if a particular transaction has been properly reported. Any analyses which might be performed using available data would surely be of more value if they included more current information.

Poor report quality detracted from usefulness

Failure to obtain accurate, complete, and legible data on Bank Secrecy Act reports has further diminished the usefulness of the reporting requirements. Several investigators have cited these deficiencies as reasons for the act's reports not achieving their full potential.

There have been no statistically reliable studies performed to determine the proportion of CTRs which are either lacking in detail or illegible, but estimates run as high as 50 percent. IRS, which receives the CTRs initially, did an analysis of a random sample of the reports in October 1979. While the sample was small, it indicated that the quality of information received was in urgent need of improvement, with more than half the reports incomplete according to the official who performed the analysis.

The Chief of Customs' Reports Analysis Branch, which is responsible for analysis and dissemination of the CTRs, reported to Treasury in February 1979 that the proportion of CTRs filed without all the required information may be as high as 40 percent. He speculated that acceptance of these incomplete reports not only inhibits the analysis function but could also undermine the confidence of law enforcement officials.

About half of the law enforcement officials we interviewed mentioned imperfections in the reported data and illegibility of copies of CTRs they received as impediments to the use of Bank

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1/"Better Use Of Currency And Foreign Account Reports By Treasury And IRS Needed For Law Enforcement Purposes" (GGD-79-24, Apr. 6, 1979).

Secrecy Act reports. Both DEA and FBI officials cited these deficiencies during discussions of their respective agencies' limited use of Bank Secrecy Act data. IRS investigators have also found, in some cases, the CTR data disseminated by the Reports Analysis Branch to be inaccurate and incomplete. In evaluating the usefulness of a computer listing of CTR data, several officials in IRS' district offices expressed the following concerns:

--For many transactions, Social Security numbers or other taxpayer identification numbers are missing. For one IRS district, this item was missing for more than 75 percent of the 318 transactions reviewed.

--In several instances incorrect Social Security numbers were supplied. This could be attributable either to errors in entering the data into the computer, or to individuals with reportable transactions supplying false data.

--In abbreviating data elements to aid in entering them into the computer, ME had been used to designate both Maine and Mexico in addresses, resulting in information on transactions for individuals residing in Mexico being sent to investigators in Maine. Similarly, the abbreviation CA had been used to designate both California and Canada, and information on Canadians with reported transactions was sent to investigators in California.

--Inconsistency in completing the forms and/or entering the data into the computer caused some individuals with more than one reported transaction to be listed different ways. An example of this would be for an individual to be listed as John Doe for one transaction, and Doe John for another. This becomes even more complicated when middle initials are used and when foreigners' names are listed.

Treasury officials have also recognized the problem of incomplete CTRs and cited it as one of the reasons for the Reports Analysis Branch's inability to use the data base to detect financial institutions with little or no CTR reporting. According to those officials, many CTRs lack an identification number for the filing institution and therefore the name of the institution may be listed on the form and entered into the computer in a variety of ways. A program has been recently instituted at IRS and Treasury to obtain better data on CTRs. (See p. 39.)

Customs' internal auditors performed a series of audits on CMIR filings at different locations in the early 1970s. Reports of those audits mention problems with the completeness, legibility, and timeliness of the CMIRs and contain recommendations for improvements. However, there has been no followup work in this area by Customs' internal auditors since January 1976.

During our review we saw evidence that some CMIRs continue to be incomplete or illegible. The Chief of Customs' Reports Analysis Branch expressed the belief that the problem with CMIRs is not very serious. Although no exact figures are available, he estimated that fewer than one in every thousand CMIRs received is so incomplete or illegible that it cannot be entered into the data base. However, IRS officials contend that one of the reasons CMIRs have not been more useful to IRS is because they often lack sufficient identifying information, such as Social Security numbers.

OTHER FACTORS HAVE AFFECTED IMPLEMENTATION OF REPORTING REQUIREMENTS

Other factors have also affected the implementation of the act's reporting requirements. Treasury has had to depend on the commitment and initiative of other Federal agencies to enforce and monitor compliance. Yet, these agencies have different philosophies concerning the proper extent and scope of compliance monitoring and enforcement.

Use of the data generally depends on the practices of various law enforcement agencies. These agencies have not always valued the potential contribution of data generated by the act's reporting requirements, and their investigative activities have not always been oriented toward effective use of the data. Additionally, other external factors, such as lack of cooperation among law enforcement agencies and administrative and legal obstacles, have hindered the effective implementation of the act.

Treasury has limited control over actions of agencies with assigned responsibilities

Treasury must broadly delegate authority to agencies with which its working relationship has not always been harmonious and over which it has limited control. The officials of agencies with assigned responsibilities, who have their own mission objectives and priorities, and Treasury's Assistant Secretary for Enforcement and Operations have not agreed on the priority which should be attached to the reporting program. As a result, progress in addressing administrative problems has been slow. Several recent examples demonstrate the problem.

--Despite Treasury prodding, officials of the bank regulatory agencies deliberated about 18 months before adopting a revised compliance examination approach.

--Despite the long-recognized need for IRS to pursue a CTR data file perfection program, IRS did not initiate such an effort until December 1980.

--Despite a longstanding need for adequate staffing at the Reports Analysis Branch, corrective action to fill vacancies has only recently been authorized by senior Customs officials.

The various agencies have clearly been unenthusiastic about enforcing the act's reporting requirements. Often during our review we were confronted with the "chicken or egg" question concerning the act's reporting requirements. Bank regulatory agencies complained of the tedious and thankless regulatory burden imposed upon them and the banks without evidence that law enforcement agencies were successfully using the data. On the other hand, law enforcement investigators attributed their lack of enthusiasm for the data to allegedly inadequate efforts by the regulatory agencies to monitor reporting compliance.

Law enforcement agencies have not emphasized use of the reports; competing priorities limit needed coordination

Even if the administrative deficiencies hampering the act are resolved, factors external to the act may still impede its use in the fight against organized and white collar crime. The Bank Secrecy Act reports are only one of several tools available to law enforcement agencies. To date these agencies generally have not emphasized financial-oriented conspiracy investigations using the reports. Also, other than in IRS and Customs, investigators lack the expertise to carry out such investigations. Further, the complex nature of this type of investigation requires close coordination among the agencies, which generally has been difficult to achieve.

Emphasis has been given only recently to financial conspiracy cases

Tracing the movement of illicit money derived from criminal activities improves the chances of getting to a criminal organizations' leaders and their illicit proceeds. However, financially oriented conspiracy investigations are time-consuming and complex, and, other than IRS and Customs, most Federal law enforcement agencies have been slow to emphasize this type of investigation.

For example, a recent GAO review of DEA 1/ found that the agency seldom pursued financial conspiracy cases to obtain asset forfeitures. In the 10 years that the Racketeer Influenced and Corrupt Organization and the Continuing Criminal Enterprise statutes have existed, only 98 drug cases have been developed pursuant to these statutes. Of the 31 cases we reviewed for that

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1/"Asset Forfeiture--A Seldom Used Tool In Combatting Drug Trafficking" (GGD-81-51, Apr. 10, 1981).

report, in only 4 did investigators use Bank Secrecy Act data. We reported that forfeiture goals had not been established, for the most part, because (1) investigators were not trained for financial investigations, particularly those involving derivative proceeds, (2) investigators were rewarded on the basis of arrests of major violators rather than based on forfeiture of violators' assets, and (3) prosecutors have not been given the challenge or the guidance to pursue forfeiture cases.

At Customs and IRS, where financial investigations are emphasized, we found in previous reviews that the two agencies' investigative efforts were hampered by the lack of a clearly defined national strategy. At Customs, for example, in a 1979 report, 1/ we found that a high percentage of cases had been closed with no violations or deficiencies detected. In a 1979 report 2/ on IRS investigations, we found that cases selected for detailed investigations required substantial resource commitments, but that many of the cases selected did not lead to recommendations for prosecution.

The FBI has only recently emphasized financially oriented conspiracy investigations. To date, the FBI has made little use of Bank Secrecy Act reports in this type of investigation.

The lack of emphasis on the financial aspects of criminal operations extends to Federal prosecutors. In our recent review of Federal efforts to combat drug trafficking, we found that Federal prosecutors lack experience in using the forfeiture statutes and consider their use time-consuming.

Customs' Office of Investigations feels that it must sell U.S. Attorneys the idea of using the Bank Secrecy Act's penalties for failure to report in compliance with the act. DEA officials in Dallas and Miami, and Customs agents in Miami spoke of either past or current difficulties in interesting Federal prosecutors in financially oriented conspiracy cases. Attorneys in the Justice Department's Organized Crime and Racketeering Section, who were unenthusiastic about the usefulness of Bank Secrecy Act data, said the situation today is not appreciably different from August 1977, when the chief of the section characterized cash flow and economic impact as one of law enforcement's weakest areas of intelligence.

1/"Customs' Office Of Investigations Needs To Concentrate Its Resources On Quality Cases" (GGD-79-33, Apr. 20, 1979).

2/"Improved Planning For Developing And Selecting IRS Criminal Tax Cases Can Strengthen Enforcement Of Federal Tax Laws" (GGD-80-9, Nov. 6, 1979).

Law enforcement efforts could be better coordinated

A paper presented at the 11th Major Drug Traffickers Prosecutors Conference in December 1979 noted that investigations of high-level drug trafficking organizations commonly involve the need to analyze and understand complex financial transactions in order to immobilize the organization through the seizure of the ill-gotten gains. The contributing attorney noted that the Government's chances for immobilizing trafficker organizations can be maximized by coordinating the investigative efforts of various Federal law enforcement agencies with different enforcement responsibilities and sources of information. Three recently formed task forces which are using Bank Secrecy Act data to investigate criminal activity provide some indication that Federal investigative efforts can be coordinated under a U.S. Attorney's Office. Currently, IRS agents are participating, along with Customs and DEA agents, in these special task forces which are attempting to use Bank Secrecy Act data as a basis for criminal investigation. In some regions IRS agents are assigned as liaisons to DEA offices to provide financial investigative expertise.

Despite these instances, coordinated efforts among Federal law enforcement agencies have been difficult to achieve. Barriers to coordination arise from conflicting agency missions, differing management policies, and constraining legal and policy issues.

The most notable area of agency conflict is a lack of cooperation between DEA and Customs' Office of Investigations. The conflict appears to date back before 1972 when Customs had substantial investigative responsibility for drug law enforcement. It manifests itself in DEA agents' suspicions that Customs' Office of Investigations is attempting to use the currency laws as a means of encroaching on DEA's drug enforcement responsibilities. In particular, some DEA agents in the Miami area felt Customs was not sharing CMIR data related to DEA investigations but was instead initiating its own separate investigations. On the other hand, Customs agents, who recognize the importance of a cooperative relationship with DEA if Customs is to meet its objective of proving felony violations of the Bank Secrecy Act, criticize DEA for failing to cooperate, for failing to share information, and for placing too much emphasis on investigating drug activity and too little emphasis on tracing the illicit gains.

While it is impossible for us to fully explore these allegations of a lack of cooperation between DEA and Customs agents, it obviously does exist. To the extent that it does exist, it

can impair the contribution of the Bank Secrecy Act data to Federal efforts against drug traffickers, one of the most promising and logical areas for using the data.

Legal and administrative obstacles

During our review, agency officials frequently cited legal and administrative obstacles to effective coordination. The most prominently cited legal obstacle was the Tax Reform Act of 1976.

The intent of the Tax Reform Act, in amending section 6103 of the Internal Revenue Code, was to afford taxpayers increased privacy over information they provide IRS. It placed substantial restrictions on other Federal agencies' access to tax information. While the act has afforded taxpayers increased privacy, it has also adversely affected coordination between IRS and other law enforcement and regulatory agencies, including Federal prosecutors, DEA, and bank regulators. In commenting on legislation introduced in the 96th Congress, we recommended more clearly defining tax information categories and providing a court order mechanism through which IRS may unilaterally disclose information concerning nontax crimes. In its comments on this report, Treasury strongly opposed any changes in the tax information categories.

The Chief of the Controlled Substances Unit of the U.S. Attorney's Office, Central District of California, has testified that IRS' administrative process for approving recommendations for prosecution was too slow to permit one major drug trafficker to be prosecuted on criminal tax charges as well as for drug violations. He also said there were many cases in his office in which IRS delays caused attorneys to drop efforts to include IRS in prosecutions. As discussed in our April 1981 report, 1/ this problem is caused largely by the Government's existing time-consuming and duplicative legal review process for criminal tax cases. As we recommended in that report, streamlining the existing process would reduce delays.

Law enforcement investigators cited other administrative roadblocks to the pursuit of financial investigations. For example, the former DEA supervisor for Operation Banco cited substantial turnover of DEA agents and regular 90-day rotation of FBI agents as detrimental to the pursuit of the long, complicated conspiracy investigations of BANCO suspects.

1/"Streamlining Legal Review Of Criminal Tax Cases Would Strengthen Enforcement Of Federal Tax Laws" (GGD-81-25, Apr. 29, 1981).

CONCLUSIONS

After 10 years, the Bank Secrecy Act reports are not being used as the Congress envisioned when the act was passed. Furthermore, no one knows how well financial institutions and individuals are complying with the reporting requirements.

Treasury's failure to enact effective regulations, to ensure effective monitoring and enforcement of compliance, and to ensure the effective compilation and distribution of reported information resulted in significant impediments to full implementation of the act. Even today, with renewed emphasis and interest in making the act work, Treasury cannot effectively manage all of its responsibilities because of insufficient staff.

A lack of commitment from other agencies with assigned responsibilities under the regulations has also detracted from the usefulness of the act's reports. This may, however, have resulted from Treasury's own lack of aggressiveness in administering the act.

Also, while use of the data depends upon practices and policies of Federal law enforcement agencies, Treasury's failure to quickly and effectively implement the act discouraged these agencies from obtaining and incorporating the data into their investigations.

As discussed in the next chapter, Treasury's belated efforts to improve the implementation of the act's reporting requirements offer some hope. However, the inattentive management that prevailed for so many years should never have occurred.

AGENCY COMMENTS AND OUR EVALUATION

The Treasury Department and the regulatory agencies varied in their opinions of our assessment of the Bank Secrecy Act's implementation as presented in this chapter. Justice Department comments were received too late to evaluate and are not included here. However, they are included in their entirety as appendix XI.

In a letter dated June 29, 1981, the Treasury Department disagreed with our conclusion that the reports' usefulness has not been demonstrated. It cites well-known cases and some of the results of the recent Greenback Project as evidence the reports have demonstrated their usefulness. We agree that there are selected cases involving large amounts of money that show the usefulness of the reports. To the extent that these help demonstrate the ways in which the reports have been useful, they are included in this report. We also recognize the recent cases emanating from Project Greenback. But we do not believe

that these examples sufficiently demonstrate the overall usefulness of the act's reporting requirements.

Further, the act's reports were envisioned to be a useful investigative tool. However, to our knowledge, many of the arrests stemming from Project Greenback are based on suspects' attempts to circumvent the reporting requirement. Perhaps this represents the greatest potential for the act. But it does not demonstrate the reports' usefulness as envisioned in the enacting legislation.

In a letter dated June 29, 1981, OCC disagreed with our assessment that it has not been responsive to Treasury's requests and that it has not demonstrated a commitment to enforcing the act's reporting requirements. While the record shows that OCC, as well as the other regulatory agencies, has responded to Treasury and has committed resources to carrying out its regulatory responsibilities for the act, these actions have not always been as quick or as comprehensive as Treasury requested or that effective implementation of the act might have warranted. The process leading to the development of the new examination procedures (described on p. 41) demonstrates the point. While OCC, FDIC, and FRS responded to Treasury's request, their responses were made after 18 months of deliberation and fell far short of what Treasury requested.

Obviously, other priorities, resource limitations, and various time constraints affect the regulatory agencies' responses and commitments. Also, Treasury's commitment to the act has not offered much incentive to other agencies to commit extensive resources. Nevertheless, we believe the act's implementation has been impeded by this lack of responsiveness and commitment.

Finally, both Treasury and OCC refer to the legal challenge of the act's implementing regulations that restrained the enforcement of CTR reporting from July 1972 until April 1974. While this fact needs to be recognized when considering the progress of the act, it does not significantly alter the fact that implementation of the act lagged. The legal challenge and other important events relating to the progress of the act's requirements are shown in appendix I.

CHAPTER 3

RECENT INITIATIVES SHOULD IMPROVE IMPLEMENTATION OF BANK SECRECY ACT REPORTING REQUIREMENTS, BUT FURTHER ACTIONS ARE NEEDED

Prompted by congressional concern, Treasury and the other responsible agencies have initiated several actions in the last 2 years that should correct many of the problems related to implementation of the Bank Secrecy Act reporting requirements. These changes should provide more complete and timely report data which should enhance the usefulness of the reports to law enforcement investigators. Concurrently, Treasury, IRS, and two U.S. Attorney's Offices are conducting major investigations that should more extensively test the usefulness of reports. If successful, these investigations could encourage greater use of the data by other offices, as well as provide a better basis for assessing the act's usefulness.

While these actions are a major step toward effectively implementing the Bank Secrecy Act reporting requirements, they will not correct all the problems discussed in the previous chapter. Further action is needed to (1) implement an effective data dissemination system, (2) assure an effective compliance monitoring system, and (3) implement a workable compliance enforcement policy. Also, investigators must use the report data if the usefulness of the reporting requirements is ever to be demonstrated as envisioned by the Congress. This will require renewed efforts to educate and convince investigators of the reports' potential.

Although Treasury alone cannot successfully implement the reporting requirements, it can set the tone and provide the framework for correcting the problems. Only after displaying its own commitment to the program, including allocating resources necessary to carry out daily implementation, can Treasury expect other responsible agencies to make a commitment to the program. Further, only if Treasury effectively carries out its responsibilities can it isolate and address problems which other agencies must correct.

RECENT ACTIONS SHOULD ENHANCE COMPLIANCE WITH AND USEFULNESS OF THE ACT'S REPORTING REQUIREMENTS

Several recent actions should help correct some of the problems associated with the implementation of the Bank Secrecy Act reporting requirements. These include:

--Treasury's revisions to the regulations to eliminate problems with the filing, exemption, and retention of CTRs.

--Customs' Reports Analysis Branch computer program improvements and planned staff additions to correct problems with compiling and distributing current, meaningful report information.

--IRS' program to perfect report data in order to resolve some of the problems detracting from the quality of CTR data.

--Changes in the financial institution regulatory agencies' examination procedures to strengthen report compliance monitoring.

--The conducting of major law enforcement investigative projects aimed at testing the value of Bank Secrecy Act reports more comprehensively.

Revisions to Bank Secrecy Act regulations

In July 1980, Treasury implemented several important revisions to the regulations governing the filing and retention of records for CTRs under the Bank Secrecy Act. These revisions should improve the implementation of the act.

--Reducing, from 45 days to 15 days, the amount of time allowed for financial institutions to report transactions on CTRs should improve the timeliness of the data base and enhance the usefulness of the CTRs.

--Requiring financial institutions to retain copies of CTRs for 5 years and to record and retain exemption authorizations should enhance the institutions' accountability. Previously, examiners had no basis for comparing transactions and institutions' filing and exemption practices.

--Restricting eligibility for the exemption of large currency transactions to domestic government entities, certain financial institutions, and retail businesses should eliminate some of the vagueness that has fostered inconsistent filing practices by financial institutions. While this change will not prevent the exemption of businesses which are used as fronts for criminal activities, it does restrict the latitude in the granting of exemptions and precludes the exemption of the transactions of individuals. Overall, this should assure more consistent reporting of CTRs and provide reports on individuals previously exempted from such reporting.

--Requiring the review and recording of more specific information verifying a customer's identity. This should

increase the value of reporting by providing more complete, accurate data.

Customs' Reports Analysis Branch improvements

Recent or planned improvements in Customs' Reports Analysis Branch offer the potential for the compilation and distribution of higher quality data.

Beginning in 1979, the Customs unit established standardized computer files for the CTR and FBAR to complement the already standardized computer file for CMIRs. As of January 1981, the files contained current CMIR data, 3-month-old CTR data, and 1-year-old FBAR data--the most current computerized data file in the history of the program. The unit plans to have all three files completely current before the end of 1981, thus increasing the amount of data readily available to investigators.

New computer programming changes provide the ability to simultaneously query the CTR, CMIR, and FBAR files, thus increasing the unit's ability to quickly obtain complete reporting data. Previously, when a request for data was received, the unit had to query each data file separately and obtain three separate computer printouts. The new process is quicker and more efficient.

Finally, the Reports Analysis Branch has obtained commitments to receive five additional staff members. This should increase the amount of analytical work which can be performed by the unit. Treasury and Reports Analysis Branch officials hope that increased analysis seeking links between individuals conducting large currency transactions will enhance the reports' usefulness to law enforcement investigators.

IRS actions to perfect CTR files

In 1980, the IRS initiated two separate actions to improve the quality of the CTR data file. First, it centralized the transcription of data from CTRs to computer tape in Ogden, Utah. Thus all CTRs are now being transcribed in a singular format, eliminating variations arising from processing at 10 different service centers.

Second, IRS is for the first time returning incomplete or illegible CTRs to the originating financial institution for corrections. Submitted forms were often of little value in the past because there was no emphasis on complete, legible reporting.

According to Treasury, IRS has returned a significant number of CTRs to financial institutions since December 1980 so that incomplete or illegible data can be corrected. This action

should not only improve the quality of the CTR data file, but should also increase financial institutions' awareness of the need to effectively comply with the regulations.

After only 2 months, however, this process was in jeopardy because of Treasury's limited staff. As of February, 1981, IRS had forwarded as many as 1,000 incomplete or illegible forms to Treasury because the negligent banks had not responded to IRS' data perfection requests. As planned, Treasury was to follow up on these nonresponsive institutions. However, Treasury's program administrator believed he could do little, if any, of the follow-up required to make the process successful. Subsequently, he delegated this responsibility to the financial institution regulatory agencies which are now making the needed followups.

New bank regulatory compliance examination procedures

In January 1981, following a year of study and testing, the three bank regulatory agencies--FDIC, FRS, and OCC--implemented more extensive Bank Secrecy Act reporting compliance examination procedures. The new procedures should improve compliance monitoring, although they do not incorporate all of the changes we believe are necessary. (See p. 46.)

The process leading to the revised procedures started in July 1979, when the Treasury Department asked the three bank regulatory agencies to modify their Bank Secrecy Act examinations along the lines of the comprehensive procedures developed by FRS' New York district. Those procedures require examiners to independently test, at each bank, transactions which occurred during a 2-week period to verify CTR reporting and adherence to established exemption policies.

In February 1980, the agencies agreed to test the procedures to determine their viability. The tests, which were run from May through August 1980, detected about 10 times as many violations as the procedures normally followed. Banks that had been determined in previous examinations to be in compliance with the act were cited for from 1 to 31 violations of the reporting requirements. However, because these procedures required as much as an eight-fold increase in examination time, the regulatory agencies did not think the increased effectiveness justified the additional resources.

Alternatively, the bank regulatory agencies proposed a three-phased, modular examination approach. The first phase was primarily cursory, addressing the stated procedures of the bank. The second phase focused on the bank's internal audit program, and the third phase required detailed transaction testing. We objected to that approach because (1) the first phase was much like the cursory, old checklist approach; and (2) no additional examination would be done if the financial institution passed the

first phase. After our October 1, 1980, testimony, we met with the Bank Secrecy Act Subcommittee of the Federal Financial Institution Examination Council's Task Force on Supervision to discuss our reservations concerning its proposed approach.

As a result of those discussions, the bank regulatory agencies made several modifications to their proposed procedures. These included:

--Interviewing tellers at the branches of financial institutions which conduct relatively large volumes of cash business to ascertain whether personnel are sufficiently knowledgeable of compliance-related regulations and operating procedures.

--Reviewing the financial institution's list of exempt customers to determine adherence to its established policies and conformity to Treasury regulations.

--Reviewing the institution's file of Bank Secrecy Act reports submitted to ascertain that they are properly completed and filed as required.

--Reviewing, as part of the first examination phase, the adequacy of internal audit reports.

--Requiring examiners to follow up on any deficiencies cited in prior examination reports.

--Requiring examiners to summarize their findings in order to justify stopping short of reviewing transactions.

The banking agencies tested this revised approach in four regions in December 1980 and January 1981. Although the procedures did not surface as many violations as the earlier tested procedures, they generally surfaced more weaknesses than existing procedures. The agencies were satisfied that this approach provided a reasonable balance between effective and efficient examination. The new procedures also allow regional or district administrators to extensively examine institutions within their region if it is determined that a major compliance problem may exist in their area. While we believe these changes represent a positive improvement, we believe further improvements can be made to make compliance examination more effective. (See p. 46.)

Other regulatory agencies' compliance examination initiatives

During our review, three other financial institution regulatory agencies with delegated compliance responsibilities made examination changes or began studying possible changes.

In July 1980 NCUA expanded its examination checkist to include a question on the filing of CTRs by credit unions. Additionally, NCUA worked with the Federal Financial Institution Examination Council's Task Force on Supervision to develop procedures for examining credit unions, consistent with the revised procedures tested by the banking agencies in December 1980. However, some modifications in procedures are necessary for credit unions, according to NCUA officials, because credit unions differ from banks in organization and operation. For example, most credit unions lack an internal audit group, and few credit unions have transactions involving large amounts of cash. NCUA tested its revised procedures in January 1981 and implemented them about the same time that the three banking agencies implemented new procedures. Simultaneously, NCUA improved its information processing system to allow it to better distinguish in reports the types of Bank Secrecy Act violations its examiners have detected.

FHLBB has also tested new examination procedures similar to those adopted by the three banking agencies. In his formal comments on our draft report, the chairman of FHLBB stated that implementation of such procedures at FHLBB is imminent.

SEC is currently considering alternative ways to assure that all broker-dealers are periodically checked for compliance with the Bank Secrecy Act. SEC conducts such a check in its routine examinations, and in many of its special examinations of broker-dealers which come under the purview of the self-regulatory organizations for routine examinations. The examination procedures used by the self-regulatory organizations, however, do not contain such procedures. SEC officials are optimistic about solving this problem in the near future.

Special investigative projects to test usefulness of report data

In addition to a number of program implementation changes, Treasury, IRS, and two U.S. Attorney's Offices have initiated investigative projects that will more comprehensively test the usefulness of Bank Secrecy Act reports.

Project Greenback, initiated by Treasury in cooperation with the Department of Justice, is an attempt to use Bank Secrecy Act data as a basis for identifying individuals and organizations involved in the unusually large cash flow in Florida. The project is directed at detecting felony or felony conspiracy violations of the act. Major emphasis is being given to identifying those felony violations directly related to large-scale drug trafficking. In this regard, bank examiners, in coordination with IRS and Customs, are conducting extensive compliance examinations of 25 banks in Florida. Thus far, the project has resulted in the arrest of the alleged leader of a major drug ring,

raids on two banks, and the arrest of several former bank officers accused of helping launder drug money without filing CTRs.

The U.S. Attorney's Offices in Los Angeles and San Francisco are also using Bank Secrecy Act data to identify individuals and organizations involved in unusually large cash flows. The U.S. Attorney's task force in Los Angeles draws upon Customs, DEA, and IRS investigative resources to pursue leads provided by Bank Secrecy Act data and subpoened bank records. Treasury, in commenting on our report, stated that a total of 10 such projects are now ongoing.

The Treasury Department has begun an inquiry into the increased volume of $100 bills being circulated in New York. About $4 billion in $100 bills flowed from the New York Federal Reserve in 1980.

IRS, in response to congressional concern, recently initiated efforts which should provide a better evaluation of the usefulness of Bank Secrecy Act data. IRS doubled its resource commitment against drug dealers from $10 million to $20 million. In March 1980, IRS' Criminal Investigation Division distributed 1978 Bank Secrecy Act data to all IRS regional offices for use in detecting potential targets for investigation. Enthusiasm for the data varied. However, according to preliminary regional evaluations, data use could increase if it were more complete and better formatted.

In commenting on a draft of this report, the Treasury Department stated that as of June 1981, the IRS district office in Florida had about 63 criminal cases, in various stages of development, dealing with compliance with the Bank Secrecy Act. Most of these, according to Treasury officials, are related to Project Greenback.

While we have not tried to minimize the importance of Project Greenback, as Treasury suggests in its comments, the recency of the project prevents us from making a valid appraisal of its value. We would agree that, on the surface, the project seems to provide a valuable test of the act's reporting requirements.

Other recent IRS initiatives

Since the completion of our review, Treasury has reported that IRS has developed two additional initiatives to enhance the implementation and usefulness of the Bank Secrecy Act reports.

1. Recently, all 1979 CTR reports were entered into IRS' Information Return Selection System file. This file will be compared with all 1979 individual tax returns selected for tax examination, thus providing the IRS

another source of information for detecting tax filing discrepancies.

2. IRS plans, in the near future, to send all federally insured banks and savings and loan associations a Bank Secrecy Act compliance information package. As planned, the package will include small stickers that tellers can place on their windows to remind them of the act's filing requirements.

FURTHER ACTIONS ARE NEEDED TO FULLY IMPLEMENT THE ACT'S REPORTING REQUIREMENTS

Although the Treasury Department and agencies with assigned responsibilities are undertaking actions which should improve compliance with and usefulness of the Bank Secrecy Act's reporting requirements, further actions are needed. As the lead agency, Treasury must provide the impetus for actions needed to improve management of the Bank Secrecy Act reporting requirements.

Treasury needs to commit adequate attention and resources to the program

The Treasury Department must commit more attention and the necessary resources to (1) provide timely policy direction, (2) adequately monitor the diverse efforts of the various agencies with delegated responsibilities, and (3) effectively educate law enforcement agencies on the potential use of the Bank Secrecy Act data. After years of delay, actions are underway which provide the best opportunity so far to demonstrate the usefulness of the data as a criminal investigative tool, as well as to better assure compliance with the act's reporting requirements. Unless Treasury provides strong leadership, current interest in the Bank Secrecy Act reporting requirements may fade.

The Deputy Assistant Secretary of the Treasury for Enforcement and Treasury's Bank Secrecy Act program administrator consider additional staffing important. However, they stated that, because of limited resources and other priority matters, Treasury's Assistant Secretary for Enforcement and Operations has been unwilling to commit more resources to the act's implementation. In October, the Assistant Secretary restated this belief, stating that other agencies such as Customs needed more resources but that Treasury's staffing was adequate.

There also seems to be some misunderstanding between Treasury and the other agencies with delegated responsibilities regarding who is responsible for initiating actions to resolve problems related to the Bank Secrecy Act. Treasury's program manager believes the supporting agencies should develop proposals for Treasury's approval; the agencies, on the other hand, are looking to Treasury for leadership and direction. We believe the Congress

intended for Treasury to take the lead in administering the act. Unless Treasury officials specifically advise other agencies to the contrary, they should assert their leadership role.

Staff commitments to Customs' Reports Analysis Branch needed

A longstanding shortage of intelligence analysts and support personnel has prevented extensive analysis by the Reports Analysis Branch. However, this has been partially alleviated through a decision by the Deputy Commissioner of Customs to staff five vacant positions. This should help, but whether this staffing level is adequate remains to be seen. Treasury and Customs should closely monitor the branch's progress to assure that staffing is adequate.

Easier access to report data is needed

Currently, most agents query CTR and CMIR data files by written request to Customs' Reports Analysis Branch through their headquarters. This can be time-consuming, taking from 2 to 4 weeks for a reply. It can also breed dissatisfaction since in 65 percent of the special requests made during fiscal years 1979 and 1980, no positive information was obtained.

During our review, Treasury Department and Reports Analysis Branch officials recognized that user satisfaction could be increased and Reports Analysis Branch workload decreased by permitting investigators to make some type of direct query of the Bank Secrecy Act report data files. For example, investigators could be permitted to query a data index to determine whether the files contain information on investigative subjects. Only positive responses would need to be followed by formal requests for report data. Treasury's Deputy Assistant Secretary for Enforcement and the Bank Secrecy Act program manager informed us that they are considering permitting Federal investigators to access the CMIR data file and an index of the CTR data file at U.S. Customs' district offices.

The importance of ready access to the data is demonstrated, in part, by the greater number of report data queries by IRS and Customs agents in comparison to other Federal law enforcement agents. In 1980 according to Treasury, IRS and Customs field units made 268,851 direct inquiries of the CMIR data base; 76,047 queries of the CTR data base; and 15,645 queries of FBAR data. By comparison, as shown in appendix II, other Federal agencies made fewer than 100 requests, averaging about 10 names per request, for Bank Secrecy Act report data.

Since experience to date shows that IRS and Customs have the greatest access to the data and have used it the most, we believe eased access, whether at the Customs district office level

or through streamlined request procedures to the Reports Analysis Branch, should be a priority effort.

The usefulness of exemption reporting should be tested

Information on the reporting exemptions granted by financial institutions can be useful for law enforcement and compliance monitoring purposes. Numerous Federal investigators expressed the belief that financial information regarding race tracks, vending machine companies, restaurants and bars, all of which can be exempted under the revised regulations, could be useful in organized crime investigations. The Treasury Department has requested exemption lists from about 1,000 banks to support investigative efforts in Florida, Los Angeles, and elsewhere. However, such information has not generally been available to investigators.

Treasury has also made limited use of bank exemption lists in monitoring the exemption practices of financial institutions. According to Treasury's Bank Secrecy Act program administrator, when a financial institution does not grant reporting exemptions in compliance with regulations, it is likely the institution is not complying with other aspects of the regulations.

Treasury's Deputy Assistant Secretary for Enforcement and the Bank Secrecy Act program manager agree that the best course of action would be to have the exemption lists routinely reported and computerized. At the same time, Treasury's program administrator feels that the Bank Secrecy Act regulations, revised in July 1980, clearly direct that exemptions should be limited to retail businesses, thus resolving many of the past problems with bank exemption lists.

However, the nature of some of the businesses which still can be exempted under the new regulations makes them targets for organized crime activities. Improved compliance monitoring may cause criminals to make greater efforts to camouflage their financial activities through these types of business exemptions. Accordingly, requiring financial institutions to routinely report their exempted customers to Treasury might be appropriate. Treasury could use such information as part of its reporting compliance efforts. It would also be accessible for legitimate inquiries by Federal investigators. Because the benefits to be derived from such a reporting requirement are tentative, we believe it would be advisable to test such an approach prior to initiating wholesale application. Florida and California might be appropriate test locations because of investigative projects going on there.

Compliance monitoring of financial institutions needs further improvement

In revising their examination procedures, the bank regulatory agencies (FDIC, FRS, OCC) incorporated several of our suggested improvements. (See p. 42.) However, we suggested two key procedures that the agencies chose not to implement, even on a test basis; two key operational changes which we believe would further enhance monitoring of compliance with Bank Secrecy reporting requirements. These involve (1) comprehensively examining, on a random basis, as many as 10 percent of the institutions scheduled for examination each year and (2) designating one supervisory examiner in each region or district to review the results of Bank Secrecy Act examinations.

Extensive examination of randomly selected financial institutions

Monitoring and enforcing compliance with the reporting requirements could be enhanced by comprehensively examining, on a sample basis, some portion, perhaps as much as 10 percent, of the financial institutions reviewed each year. It would allow the regulatory agencies to develop a credible compliance monitoring strategy while minimizing the resource burden.

The modified routine examination procedures presently being implemented by the agencies are an improvement over the previous checklist procedures. However, they still are not a substitute for periodic transaction testing. This belief is exemplified by an examiner's comment in his report of examination of a bank with about $100 million in assets. He said that the bank's failure to file CTRs for transactions of three customers who were not on the banks exemption list would not have been detected if the examination had been confined to an interview of the bank's management. A further indication of the importance of transaction testing is that, when the bank regulatory agencies tried reviewing transactions on a test basis, they found more reporting violations than when they tested the current examination procedures.

The compliance examination approach being used by the Federal Reserve System's New York district, and which Treasury's Bank Secrecy Act program administrator believed should be applied nationwide, involves auditing 2 weeks of transactions. Broad application of these procedures, however, would require application of considerable additional resources by the bank regulatory agencies. Recognizing this concern, we believe comprehensive examination of a randomly selected sample of as many as 10 percent, depending on resource availability, of all institutions examined each year would minimize resource expenditures while meeting the objectives of (1) collecting credible information on the general level of compliance, and (2) identifying negligence or deliberate

noncompliance by supplementing the less stringent routine examination procedures. This sample would be in addition to institutions subjected to comprehensive examination as a result of problems detected in routine compliance examinations. However, Treasury and law enforcement requests for comprehensive examination of specific institutions could be substituted for randomly selected institutions.

Testing transactions in a sample of the financial institutions examined annually would serve to confirm the results of the routine compliance examinations. It would test the adequacy of institutions' auditing attention to Bank Secrecy Act compliance as well as examiner impressions from reviewing bank procedures and interviewing bank officials and employees. Just as the possibility of an IRS audit deters taxpayers from underreporting income, extensive Bank Secrecy Act examinations may deter bank officials from failing to file CTRs.

The Deputy Assistant Secretary of the Treasury for Enforcement and the Federal Reserve Board's Director of Banking Supervision and Regulation, recently said that extensive examinations, when employed, should be concentrated in high-crime areas. The Director thought extensive examinations might be useful in areas having a high incidence of drug trafficking.

Concentrating efforts in high-crime areas or Federal Reserve districts with unusual cash flow situations might be the most productive examination strategy. However, we do not believe that some areas of the country should be exempt from transaction auditing primarily because the CTR filing requirement was also aimed at crimes other than drug trafficking, such as tax evasion. Criminal tax investigations, of course, are not limited to large metropolitan areas. For example, IRS' Criminal Investigation Division officials in Knoxville, Tennesee; Oklahoma City, Oklahoma; and Denver, Colorado, recently stated that CTR information was highly useful in planning tax fraud investigations.

Furthermore, noncompliance with the regulations is not limited to financial institutions in metropolitan areas. The bank regulatory agencies' test of the comprehensive procedures, devised by the Federal Reserve System's New York district, indicated that reporting violations exist at small financial institutions in rural areas, as well as at large institutions in urban areas. FRS, OCC, and FDIC extensively tested procedures at 84 banks and found that 16 were in violation of the CTR reporting requirement. Of the 16 banks in violation, 9 are located in cities or towns with a population of less than 100,000 people. Also, 11 of the 16 banks have total assets of less than $250 million each, including 5 which have less than $50 million each in total assets.

We believe the regulatory agencies could concentrate their compliance examination efforts in high-crime areas or areas with unusual cash flow situations, while at the same time maintaining balanced coverage. This could be accomplished using a stratified sample which principally includes banks in geographic areas with indications of criminal activity but which also includes banks that are randomly selected in each of the agency's regions. This approach would devote the bulk of examiner resources to locations, such as south Florida, while still providing information on the overall level of compliance.

If valid indicators of noncompliance with the Bank Secrecy Act reporting requirements existed, extensive examination efforts could be focused on institutions whose compliance is questionable. However, such indicators do not exist and some bank regulatory officials question whether usable indicators can be developed. Certainly, Customs' Reports Analysis Branch is not presently in a position to accurately identify suspicious institutions because it does not have fully computerized files, records of bank exemptions, cash flows to the Federal Reserve, and CTR files permitting the matching of financial institution identification numbers. Until this capability exists, we believe the only feasible approach is to randomly select financial institutions for extensive examination.

Single supervisory examiner in each region to review results of Bank Secrecy Act related examinations

Financial institution regulatory agencies should designate one review examiner in each region to review the results of Bank Secrecy Act examinations. This is necessary to assure that (1) examinations are carried out consistently, (2) judgments on further work are made consistently, and (3) compliance problems are surfaced consistently. A single review examiner in each region for Bank Secrecy Act matters would also facilitate the coordination of problems and new initiatives, as well as provide a focal point for monitoring and tracking results for evaluation purposes. Currently, only the FDIC has a special review examiner in each region to review Bank Secrecy Act examinations. This is done in conjunction with review of the agency's overall consumer compliance examination. The Federal Reserve System's New York district also has a specialized Bank Secrecy Act review examiner.

Treasury's initial regulations, as well as a lack of familiarity with the reporting requirements at some financial institutions, have produced wide variations in practices for reporting and exempting currency transactions. To remedy this situation, Treasury has amended the pertinent regulations and the bank regulatory agencies have improved their compliance examinations. As a followup measure, a review examiner should be designated in each region or district to review the results of Bank Secrecy

Act examinations and ensure that the regulations are consistently and correctly interpreted by banks and examiners. This is particularly important because the current examination procedures rely greatly on examiner judgment. Centralizing review responsibility for various examiners' narrative summaries offers greater potential for consistent and critical review which otherwise might not be obtained.

While examiners and review examiners are well-trained and experienced in financial safety and soundness matters, they are not as well-trained regarding the Bank Secrecy Act. One well-trained review examiner in each region to review the Bank Secrecy Act examinations would preclude extensive training of all review examiners to supervise compliance with the act. It would streamline the review process for Bank Secrecy Act matters and provide for one individual in each region to observe and evaluate the extent of compliance, problems with assessing compliance, and additional measures which might need to be taken. While this could be spread among several review examiners, the agencies could experience a loss of consistent expertise. The sense of importance is not as great if the examination of Bank Secrecy Act matters is part of all review examiners' work as opposed to being a key part of one individual's job.

The Bank Secrecy Act review examiner for the New York Federal Reserve Bank told us that having one designated review examiner has the following advantages over splitting the responsibility among review personnel:

--It is easier to thoroughly familiarize a few supervisory examiners with the Bank Secrecy Act requirements than it is to educate all the review examiners in each region or district.

--Designating one review examiner will ensure that examinations are conducted in a uniform manner and that violations of equal magnitude are treated similarly with respect to whether a civil or criminal penalty should be pursued.

--Banks would know which supervisory review examiner to contact if they have a question concerning Bank Secrecy Act matters.

FDIC officials responsible for the overall management of the act similarly supported the importance of a single review examiner in each region.

Treasury must develop a coordinated compliance enforcement policy

The Department of the Treasury has not yet developed a coordinated policy for imposing penalties for noncompliance with CTR reporting requirements. From the beginning, the vague implementing regulations inhibited the use of civil penalties for noncompliance. Additionally, guidance dating back to October 1972 stressed that agencies should use discretion in recommending civil penalties and that each agency should attempt to obtain voluntary compliance with Treasury regulations. It was not until October 1980 that Treasury's Assistant Secretary for Enforcement and Operations sent a memorandum to the bank regulatory agencies articulating a tougher policy. In that memorandum, he stated his determination to scrutinize every violation and to impose civil penalties even against financial institutions which undertake corrective action.

Officials of agencies with delegated compliance monitoring responsibilities believe Treasury's guidance for imposing penalties on banks which fail to comply with the reporting requirements has been vague. Treasury's Bank Secrecy Act program administrator agreed that these agencies should be provided more extensive guidelines, including examples of situations that should be referred to Treasury for civil penalties or criminal investigation. Recently, Treasury officials expressed disapproval because some bank examiners included in their examination reports opinions which suggested a lack of criminality or willfulness by some banks at which violations were detected. The examiners' opinions were contradictory to Treasury's assessment of the situation, but because they were documented by the examiner, Treasury was precluded from taking further action. Bank regulatory and Treasury officials subsequently met in an effort to develop better guidance on imposing civil penalties.

Treasury needs to conduct a comprehensive evaluation of Bank Secrecy Act reporting requirements

The Congress granted the Secretary of the Treasury great discretionary authority under the Bank Secrecy Act. It envisioned that the data required to be kept and reported under the act would be very useful to law enforcement agencies in investigating the financial resources connected with illegal activities. At the same time, however, the Congress made it clear that (1) the reporting and recordkeeping requirements imposed by Treasury should not unduly burden legitimate commercial transactions, and (2) the cost of implementing and administering the requirements should not outweigh benefits to law enforcement.

After 10 years, the questions of whether the Bank Secrecy Act has achieved its expectations and whether its associated costs are justified are still unanswered. Treasury has not evaluated the Bank Secrecy Act reporting requirements--or the record-keeping requirements for that matter--to determine their overall usefulness and whether the benefits outweigh the associated costs of preparing and processing the reports, disseminating the data, and monitoring and enforcing compliance. Recent actions to improve use of the reports and compliance with the requirements should, after all these years, increase reporting activity and provide a better basis for evaluating the cost and benefits. However, Treasury needs to gather and develop adequate information to manage and assess its progress in implementing the act's requirements. Such information would also allow Treasury to give the Congress a badly needed evaluation of the Bank Secrecy Act reports' use and usefulness and the costs of the reporting burden.

Treasury lacks adequate management information

The Bank Secrecy Act authorizes Treasury to prescribe the dollar amounts and nature of transactions to be reported, the method of reporting, and the limits on who may be exempted from such reporting. In addition, Treasury must provide guidance on a day-to-day basis both to Federal agencies with assigned responsibilities for implementing Bank Secrecy Act reporting requirements, as well as to individuals and financial institutions seeking to comply with the requirements. Some typical questions which require Treasury guidance are:

--What types of businesses, in addition to the obvious ones, constitute financial institutions and, therefore, are subject to the CTR filing requirements?

--How thorough should examination procedures for compliance be, and how often should institutions be examined?

--Which data elements from submitted reports should become part of the automated data base, and how much analysis of this data is justified without knowledge of criminal implications?

--Should special exemptions from the reporting requirements be granted under specified circumstances?

To provide guidance on questions like these and to revise the implementing regulations and assess compliance with and usefulness of the reports, Treasury must have sound management information on which to base its decisions. Such information should include the costs to be incurred or avoided by choosing one alternative course over another, as well as the benefits to be gained or foregone as a result of those respective decisions.

Evaluation of reports' usefulness needed

Beyond a few publicized cases, the usefulness of Bank Secrecy Act reports as an investigative tool is yet to be demonstrated or assessed. In our April 1979 report on currency and foreign account reports, we recognized the need for evaluation of the Bank Secrecy Act reports' usefulness. We recommended that Treasury conduct such an evaluation and requested that the Congress reconsider the need for reporting requirements if they are found not to be useful.

Despite our earlier recommendation, no meaningful assessment of the reports' usefulness has been performed. It was not until February 1980 that the Customs Service, IRS, and Treasury signed a memorandum of understanding providing for a study of the usefulness of CTRs. Customs assumed responsibility for monitoring usefulness of the forms to agencies other than IRS. IRS agreed to monitor the usefulness of the forms to its enforcement efforts.

Customs' experience in assessing usefulness thus far has been inconclusive. Because of limited experience with the reports and the lack of an appropriate measurement system, the agencies using the reports were unable to respond in a meaningful way to Customs' queries concerning the reports' usefulness. As of January 1981 IRS had not implemented procedures to monitor the usefulness of the act in its operations. Treasury's comments on our draft report suggest that IRS has now developed a plan to test usefulness. However, no date is given on when this evaluation will begin.

An IRS report, "Tax Havens and Their Use By United States Taxpayers--An Overview," issued in January 1981, provides a limited analysis of the usefulness of reports required by the Bank Secrecy Act. The IRS report states:

> "Form 4789 [CTR] probably has the greatest potential, because it is prepared and filed by an impartial third party (the financial institution). Just how useful this form can become may depend upon Treasury's success in securing better quality reporting from financial institutions. The information received is still of poor quality, and in many cases the CTRs are incomplete. It has, however, already proved useful."
>
> * * * * *
>
> "Skepticism exists as to whether Form 4790 [CMIR] can be useful. The information secured is of poor quality * * * the limited authority of Customs to enforce the reporting requirement further inhibits the production of quality information * * * although it is illegal to export or import currency without filing the required

form, an argument can be made that it is not illegal to attempt to do so."

* * * * *

"The usefulness of the foreign bank account question has yet to be established."

Until a meaningful evaluation of the act's usefulness is performed, however, the extent to which implementation problems have detracted from the reports' usefulness and the extent to which the act is useful cannot be determined.

Assessment of respondent and administration costs needed

To date, Treasury has no reliable cost estimates of the Bank Secrecy Act reporting requirements or of the reporting burden. All decisions on the applicability of the reporting requirements and methods of administering and enforcing those requirements have been made without benefit of adequate information concerning cost and burden.

While reliable cost estimates are not available, the minimal compliance monitoring efforts thus far indicate that such costs are relatively small. With the amended regulations and greater compliance monitoring efforts, the costs of implementing the program are sure to increase.

In our visits to 22 financial institutions, we were generally told that the costs of complying with the Bank Secrecy Act reporting requirements were minimal. Only one institution--which had in the past been the object of one of the few enforcement actions by Treasury--could identify the specific effort given to the Bank Secrecy Act. This relatively large bank spent 10 staff years and $1.5 million on implementing the reporting requirements during 1979.

However, our interviews were conducted before (1) the banks had experience with the amended Treasury regulations which reduce the latitude bankers have in exempting customers' transactions, (2) IRS and Treasury began their effort to insure that CTRs were filed completely and legibly, and (3) bank regulatory agencies adopted more extensive examination procedures. Therefore, we are unable to provide an estimate of the burden which financial institutions are likely to bear in the future.

With the passage of the Paperwork Reduction Act of 1980, which requires more stringent justification of Federal reporting requirements, the evaluation of the costs and benefits of Bank Secrecy Act data will assume greater significance. The Paperwork Reduction Act requires that the Office of Management and Budget

approve each reporting requirement that agencies levy on the public. It will judge the agency application not only on the basis of need, but also by an evaluation of whether the agency has the resources to use the data it is requesting. Since the Office of Management and Budget will impose a limit on the amount of reporting burden each agency can impose on the public, agencies will have to rank their information needs. Each reporting requirement will be reevaluated after 3 years.

CONCLUSIONS

Continuing congressional oversight since 1977 has prompted Treasury and the other responsible agencies to initiate several changes to improve the implementation of the Bank Secrecy Act reporting requirements. In the last 2 years, Treasury and the other responsible regulatory agencies have taken important steps which should go a long way toward improving use of and compliance with the act's requirements. However, these agencies need to take further action.

Treasury, as the agency primarily responsible for implementing the act, must take the initiative to correct unresolved problems and assure that the act's requirements are effectively carried out. To do this, Treasury first has to commit adequate resources to monitor problems and facilitate corrective actions. There is no question that even under the best of circumstances, the implementation of the Bank Secrecy Act is difficult to manage because of the large number of agencies assigned responsibility and the difficulties in enforcing compliance with the various reports. However, without a commitment of resources by Treasury to effectively manage the program, it is unlikely that the act's potential will ever be tested.

We recognize that there are limitations to Treasury's authority to require financial institution regulatory agencies to carry out compliance monitoring activities. We also recognize that there are limitations in requiring law enforcement agencies to use the report data. These are matters that will have to be worked out in a cooperative manner that is beneficial to all. In our opinion, the regulatory agencies have not gone as far as they should in monitoring compliance. Also, Treasury must start anew to convince the law enforcement agencies of the usefulness of the report data. While most of the law enforcement agencies are placing greater emphasis on financially oriented conspiracy investigations, many investigators are not convinced that the data from the Bank Secrecy Act reports is useful to them. Experience shows, though, that investigators using the data, as in the case of Customs and IRS, generally find it useful and support the act. But, the investigators need quality data that is readily available.

While it might be argued that, on the basis of performance to date, the act's reporting requirements should be repealed, we

believe there are still too many unknowns and too much potential for usefulness to make such a decision at this time. Recent improvements in the implementation of the act, coupled with recent greater emphasis on financially oriented investigations by law enforcement agencies, suggests that after 10 years the reports are beginning to receive the attention the Congress intended when it enacted the law. Because of these seemingly favorable conditions, we believe it is worthwhile to continue the reporting requirements to see if the act's report data, on a broad basis, can be the useful tool envisioned. But, at the same time, we believe it is critical that the costs and benefits of the act's reporting requirements be closely monitored so that at some point in the future we are not confronted with the same uncertainties that exist today.

The next 2 to 3 years will be crucial to demonstrating the contribution of the Bank Secrecy Act reporting requirements. As law enforcement agencies focus more on detecting the financial resources of organized criminals, and as greater attention is focused upon the effects of Federal regulatory activities on the national economy, Treasury will have to better demonstrate that the usefulness of the Bank Secrecy Act reports justifies the costs. If this cannot be demonstrated, then the act's reporting requirements, in part or in total, should be repealed.

RECOMMENDATION TO THE CONGRESS

Accordingly, we recommend that the Congress amend the Bank Secrecy Act to require a reauthorization of the act's reporting requirements in 1984. On the basis of current progress, we believe that Treasury should be able to provide sufficient data before then, for the Congress to make a decision on the act's continuation, modification, or elimination.

RECOMMENDATIONS TO THE SECRETARY OF THE TREASURY

We recommend that the Secretary of the Treasury initiate, and submit to the Congress within 2 years, a comprehensive assessment of the act's reporting requirements. Such an assessment should include

- --the administrative and respondent costs of the reporting requirements;
- --the reports' value to criminal, tax, and regulatory investigations; and
- --recommendations for legislative or program changes.

Such an assessment should demonstrate whether the act is cost-beneficial and should highlight changes needed to make the act's requirements more effective.

In the interim, Treasury should act to more aggressively and effectively implement the reporting requirements of the Bank Secrecy Act. Specifically, the Secretary, through the Assistant Secretary for Enforcement and Operations, should:

--Allocate, within Treasury, the staff necessary to effectively implement, monitor, and evaluate the act's reporting requirements; and assure that Customs' commitments to increase staff in its Reports Analysis Branch are fulfilled.

--Revise the Department's Bank Secrecy Act data dissemination guidelines to provide (1) law enforcement investigators easier access to Bank Secrecy Act report data and (2) regulatory examiners data to verify financial institutions' report filings.

--Work with the financial institution regulatory agencies in (1) developing a workable compliance enforcement policy specifying penalties to be applied for non-compliance; (2) establishing effective compliance monitoring procedures that provide for each regulatory agency to extensively test some portion, perhaps as much as 10 percent, depending on resource availability, of the institutions examined year; and (3) designating a single supervisory examiner in each district or region to review Bank Secrecy Act examinations.

--Develop, in cooperation with Customs' Reports Analysis Branch and the financial institution regulatory agencies, the capability to identify financial institutions which may not be complying, so that the regulatory agencies can most effectively focus their limited examination resources.

--On a test basis, obtain and distribute the names of retail businesses exempted from filing currency transaction reports to determine if such data is useful to law enforcement agencies.

--Establish a system to obtain the data necessary to make a comprehensive assessment of the costs and benefits of the act's reporting requirements.

AGENCY COMMENTS AND OUR EVALUATION

In a letter dated July 6, 1981, the Treasury Department agreed with most of our recommendations and stated it has initiated or plans to consider actions responsive to these recommendations. However, it disagreed with our recommendation to the Congress requiring reauthorization of the act. Treasury also disagreed with our recommendation that exemption lists should be provided to law enforcement agencies on a test basis.

We believe Treasury's concerns relative to reauthorization are unwarranted. Treasury refers specifically to a possible "deadening psychological effect" and the possibility that "legislative priorities might not permit timely action" on the act's reauthorization. However, if the Treasury provides the Congress with data supporting the usefulness of the Bank Secrecy Act's reporting requirements, we do not believe that reauthorization would be difficult. Importantly, reauthorization would serve to focus attention on the act's implementation and encourage the enactment of needed changes. In our view, the Bank Secrecy Act's reporting requirements need this consideration greatly because so much uncertainty still exists about them even after 10 years. If reauthorization had been included in the enacting legislation, the act's implementation may have progressed differently from the way it has.

We believe Treasury's view regarding dissemination of exemption list data is somewhat parochial and contradictory. While disagreeing with our recommendation, Treasury points out recent actions to distribute such data to Treasury agencies stating "this information may be significant in initiating additional criminal cases." We believe the information could be equally valuable to investigators in agencies of the Justice Department.

FDIC, FRS, FHLBB, and OCC disagree with our recommendation that the financial institution regulatory agencies should extensively and annually examine, a random sample, perhaps as many as 10 percent, of institutions examined each year. FRS, FHLBB, and OCC also objected to our recommendation that specialized review examiners be designated in each regional office to review the results of Bank Secrecy Act examinations. The principal concern these agencies raised was how to use the presently limited examiner resources in the most effective and efficient manner. Because of this concern, we recommended extensive examination of a rather small sample of institutions as opposed to broad scale implementation of the extensive examination procedures.

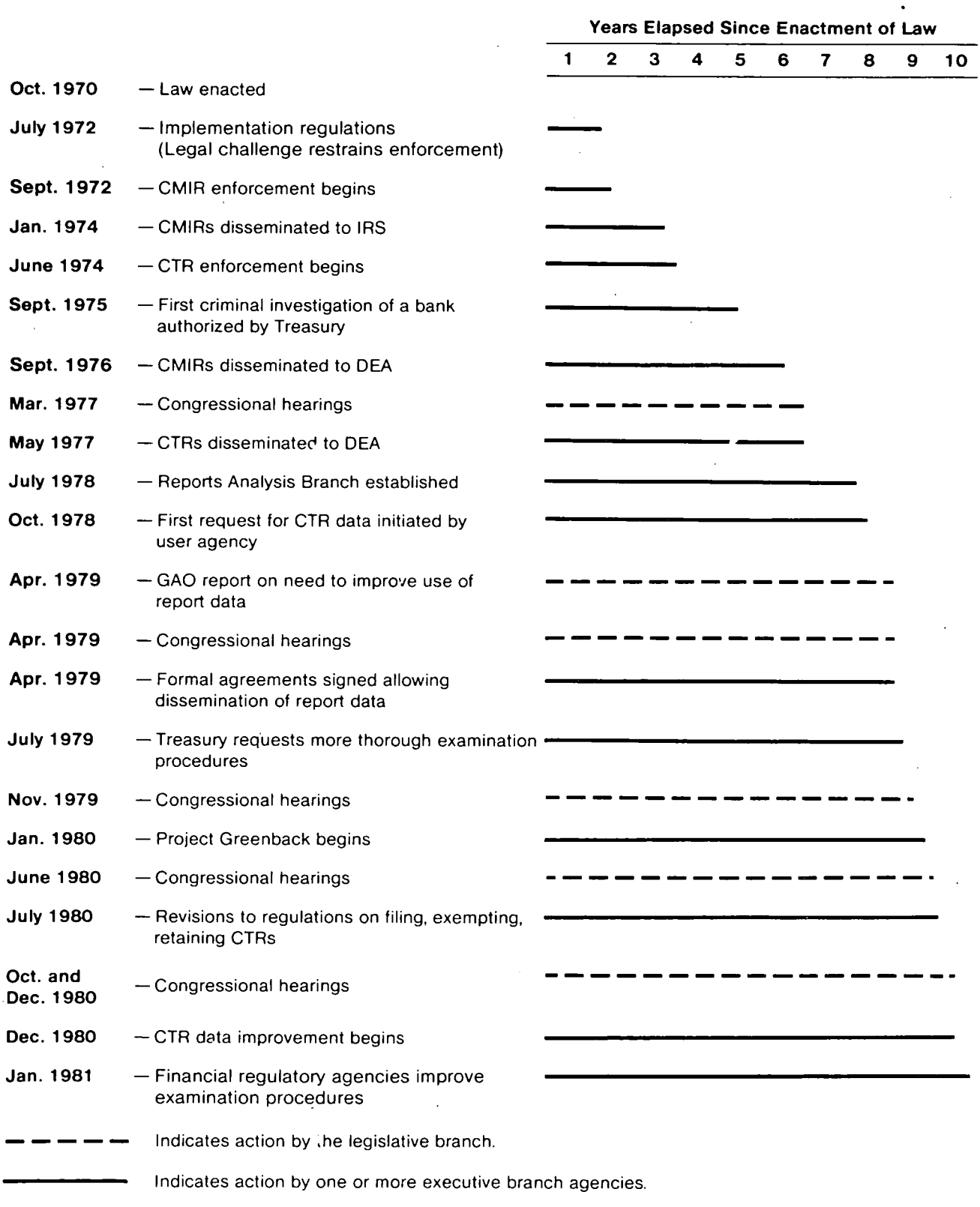
While we cannot argue that the approach proposed by the banking agencies--to geographically target potential noncompliance situations as a supplement to their regular examination practices--is unreasonable, we do not believe this provides the most balanced approach to assessing the Nation's financial institutions' compliance with the act. Most of the arguments supporting our position are discussed in detail on pages 48 to 50. In summary, however, our rationale is that (1) although new examination procedures will better test compliance, extensive examinations surfaces more problems; (2) criminal activity is a national problem; and (3) experience shows that noncompliance is a problem in many smaller cities as well as in a few highly publicized geographical areas.

Regarding our recommendation for the designation of a single review examiner in each of the agency's regional offices to review results of Bank Secrecy Act examinations, we believe this is

the most effective and efficient use of the agencies' resources. A single review examiner in each region should be the most effective approach because it would develop expertise that could be applied consistently to all examination results. It should be most efficient because only one review examiner would have to be trained and kept abreast of changes relative to the act and could handle such matters more quickly. We do not envision that one review examiner in each region would have to be devoted full time to Bank Secrecy Act examinations.

Finally, OCC questioned the consistency of our recommendations, which on the one hand call for greater emphasis on compliance examination while at the same time calling for a complete assessment of the act's reporting requirements to determine their value. In our view, these proposals do not conflict and could only be viewed as conflicting if one presupposes the act is not cost-beneficial. Assuring compliance with the act is critical to its effective implementation. An assessment is needed to determine if the costs to effectively implement are acceptable when compared to the benefits derived from the reports by law enforcement agencies.

Implementation of the Bank Secrecy Act Reporting Requirements



Annual Requests and Responses for Bank Secrecy Act Reports, by Agency, for the period July 1978 through December 1980

	1978			1979			1980		
	Requests to RAB	Positive responses (note a)	Negative responses	Requests to RAB	Positive responses (note a)	Negative responses	Requests to RAB	Positive responses (note a)	Negative responses
DEA	5	4	1	37	17	20	33	16	17
IRS	1	1	-	1	1	-	15	12	3
Justice	10	6	4	28	12	16	1	1	-
Treasury	2	2	-	6	3	3	10	9	1
Customs				b/142	35	107	c/288	96	192
FBI				20	4	16	16	10	6
SEC				5	3	2	1	1	-
Immigration and Naturalization				1	-	1			
Secret Service				1	-	1			
Congress				1	-	1			
GSA							2	1	1
ICC							1	-	1
Social Security							1	-	1
Agriculture							1	1	-
SBA							1	-	1
State Government							1	1	-
Total	18	13	5	242	75	167	371	148	223

a/An average request includes about 10 specific names; a positive response could be based on only 1 of these names.

b/Represents about 60 percent of all requests for 1979.

c/Represents about 75 percent of all requests for 1980.

APPENDIX II

Reports Disseminated by RAB To Federal and State Agencies From July 1978 through December 1980 (note a)

	Disseminations pursuant to a specific request (see app. II)			Routine disseminations based on established criteria			Special RAB analytical studies disseminated
	4789	4790	90-22.1	4789	4790	90-22.1	
DEA	179	588	-	2,159	84	-	6
IRS	54,327	b/343,483	-	56,325	28,152	-	3
Justice	901	2,980	2	1,077	26,791	-	-
Treasury	3,556	1,265	-	31	-	-	6
Customs	6,126	44,838	58	8,111	3,419	26,770	24
FBI	60	14	1	-	-	-	2
SEC	16	287	-	-	-	-	-
ATF	-	-	-	9	69	-	1
GSA	3	-	-	-	-	-	-
Agriculture	2	-	-	-	-	-	-
State Government	-	210	-	-	-	-	-
Immigration and Naturalization	-	-	-	-	-	-	1

a/Disseminations identified are not mutually exclusive.

b/Largely as a result of a special IRS project.

APPENDIX III

APPENDIX IV

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

JUN 29 1981

Dear Mr. Anderson:

Thank you for the opportunity to review and comment on GAO's draft report entitled "Further Actions Needed to Effectively Implement and Test the Usefulness of the 1970 Bank Secrecy Act Reporting Requirements."

Although we are in general agreement with certain of the principal recommendations concerning the need for the Treasury Department to take action to improve the implementation and utilization of the Bank Secrecy Act reporting requirements, we do not concur in GAO's findings concerning the demonstrated usefulness of the reporting requirements. In our opinion, the reports have made an extremely important contribution to Federal law enforcement efforts and the growth of that contribution is continuing to accelerate. For example, the reporting requirements are cornerstones in our current investigation of the financial aspects of drug trafficking in Florida, which involves billions of dollars and promises to be one of the largest financial investigations ever undertaken.

The report indicates that after ten years, it is uncertain how well financial institutions and individuals are complying with the Act's reporting requirements. Following the passage of the Act we were enjoined from enforcing its provisions by the U.S. District Court, Northern District of California in the companion cases Stark v. Connally and California Bankers Association v. Connally. It was not until April 1, 1974, when the Supreme Court upheld the Title I, Financial Recordkeeping requirements and Title II, Reports of Currency and Financial Transactions of the Act that we were able to enforce currency transactions reporting requirements in the Act. Since that time, the number of Currency Transaction Reports (Forms 4789) filed with the IRS has increased substantially from approximately 3,400 in 1975 to over 220,000 in 1980.

We recognize the difficulty that the GAO has had in evaluating the usefulness of the reports. In many instances, the agencies that have received report information are not in a position to trace its dissemination or to determine its usefulness to them. In other instances, the cases developed from the reports are still active and, consequently, information concerning them cannot be released. Due to the pervasive nature of the reporting requirements, it seems likely that any assessment of them, however diligent, will be understated.

Nevertheless, we believe that the record should show that as of June, 1981, the IRS district office in Florida has approximately 63 criminal cases in inventory, in review, or awaiting trial with the Bank Secrecy Act as the primary statute being considered for prosecution. These cases generally involve money laundering specialists who are skilled in disguising illegally generated funds. The Bank Secrecy Act is providing an effective means to prosecute these individuals who are to a large extent insulated from prosecution under tax and other criminal statutes.

Most of the IRS cases are related to Operation Greenback, the major Federal investigation in Florida previously referred to. Although the planning for the project began in 1979, the grand jury investigations did not begin until the first part of 1980 and the Bank Secrecy Act cases have not gone to trial. Therefore, information about them is not in the public record.

Since the project is the most significant single law enforcement effort that has developed from the Bank Secrecy Act reporting requirements to date, we believe that a brief description of it should be included for the record. During 1978, 1979, and 1980, the banks in Florida deposited a net of more than $14 billion in currency in the Federal Reserve Banks in Jacksonville and Miami. That $14 billion has been the focus of the project. Forms 4789 filed by banks in Florida were used to select specific individuals and banks for investigation. More than 25 banks have been identified as handling large amounts of questionable funds. A number of the investigations involve tens of millions of dollars. At least one is believed to involve hundreds of millions of dollars. The project is continuing to identify new subjects; and, in our opinion, we have seen only the tip of the iceberg.

Approximately 30 IRS special agents, 10 Customs special agents, and 6 Federal attorneys currently are assigned to the grand jury investigations related to the project. FBI, DEA, and BATF agents are also involved. The charges being investigated include possible income tax evasion, Bank Secrecy Act violations, and drug charges.

We believe that the importance of the Greenback project has been minimized in the GAO draft report. The results from this one project alone would appear to justify the currency reporting requirements. In addition, however, its success has stimulated U.S. attorneys in various parts of the nation to establish similar projects. Ten have been established to date.

Although Operation Greenback is the centerpiece of our efforts to utilize the reporting provisions and the Bank Secrecy Act, there have been other major accomplishments that have not been fully covered in the GAO draft report:

-- Customs initiated an investigation that developed into a major drug/Bank Secrecy Act/tax case in California that resulted in convictions in 1979. The case was started from information in Forms 4789. The drug organization was responsible for the distribution of about 300

pounds of heroin per month. Sixteen persons were convicted; the leader was sentenced to 35 years' imprisonment on Bank Secrecy Act and tax charges and was fined $1.2 million. The tax case involved deficiencies of about $19 million and Bank Secrecy Act penalties could amount to $13 million.

-- The celebrated Black Tuna case, which was prosecuted in 1980, was initiated in part as a result of Forms 4789 provided to DEA beginning in 1977. One of the principals was sentenced to 54 years in prison. His organization was a major importer of marijuana in Florida and was alleged to have handled transactions amounting to hundreds of millions of dollars.

-- On June 23, 1981, 17 people were indicted as members of an international heroin manufacturing and trafficking ring which linked Long Island with the Island of Sicily. The indictment includes counts both under Title 21 and under Title 31, United States Code. The Bank Secrecy Act violations occurred in connection with large shipments of currency to Italy, via Greece, in payment for heroin. The indictments were a result of a joint effort between Customs and DEA.

-- In addition to our use of currency transaction reports for criminal purposes, all Forms 4789 for the tax year 1979 were trancribed and entered into the Information Return Selection System (IRSS) file by the IRS. IRSS transcripts of 1979 data will be associated with all tax returns selected from Discriminant Function (DIF) inventory regardless of source code; all returns selected from Self-Employment Tax (SET) and DIF Correspondence Inventories; as well as all returns from the Taxpayer Compliance Measurement Program (TCMP). Basically, this means that all 1979 Forms 4789 data contained on IRSS will be associated with 1979 individual returns that are selected for examination.

-- As the GAO draft report indicates, in 1980, the currency reporting provisions were amended, Form 4789 was revised, and a report perfection procedure developed and implemented by IRS at their Ogden Service Center. These were major steps forward in the refining of the information being entered into the Bank Secrecy Act data base. As we make the financial community more fully aware of the changes, the data will become even more valuable to the IRS, Customs, and other law enforcement agencies.

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-- In 1981, the three Federal agencies that supervise the commercial banks instituted new, improved, and much more extensive examination procedures for use in checking compliance with the Bank Secrecy Act. We believe that the new procedures will improve both the level and quality of compliance with the Act.

-- IRS is planning to mail, in the near future, a Bank Secrecy Act "Compliance Package" to all federally insured banks and savings and loan associations. This mailing will furnish financial institutions with material that can be used to alert their employees to the filing requirements.

-- From 1974 through 1980, IRS initiated 400 criminal investigations based on currency transaction report information. An additional twenty criminal cases were initiated, based on currency transaction report data, during 1981, up to April 27, 1981. Since 1977, nine additional criminal cases have been initiated as a result of data from the Forms 4790 (Report of International Transportation of Currency or Monetary Instruments).

-- The IRS Collection Division plans to test the usefulness of the Currency Transaction Report (Form 4789), Report of International Transportation of Currency or Monetary Instruments (Form 4790) and Report of Foreign Bank and Financial Accounts (Form 90-22.1) in four large districts with significant Customs activity over a six-month period. The IRS Examination Division is developing a plan to canvass all regions and extract report data on cases under examination. The canvass will include between 3,000 and 4,000 open Special Enforcement Program (SEP) cases (i.e., narcotics traffickers, labor racketeers, organized crime subjects, etc.). It is anticipated that the Collection Division test and the canvass will establish a basis for evaluating the usefulness of currency transaction report information in these areas.

We would also like to point out that the GAO draft appears to overlook the Customs Service's enforcement of the requirement to report the international transportation of currency. Cumulative statistics through the Second Quarter FY 1981 are as follows:

Seizures related to other criminal activity	684
Arrests	726
Convictions	344
Value of Mitigated Seizures	$7.4 million
Fines	$6.1 million
Civil Penalties	$2.2 million

APPENDIX IV

Customs activity in this area is continuing to increase. Currently about 30% of its investigative resources is devoted to the Bank Secrecy Act.

The appendices of the draft report which show disseminations of report data do not appear to be complete. Both IRS and Customs field units have the ability to make direct inquiries of the data base. In 1980, they made 268,851 queries of Form 4790 (Report of the International Transportation of Currency and Monetary Instruments); 76,047 queries of Form 4789 (Currency Transaction Report) data base; and 15,645 queries of Form 90-22.1 (Report of Foreign Bank and Financial Accounts). These more than 360,000 queries are not reflected in the appendices and do not appear to have been considered in the study.

We agree that it would be desirable for more Federal law enforcement agencies, especially those outside Treasury, to make greater use of the Bank Secrecy Act report data. Customs has made efforts to make other agencies aware of the data's availability through articles in law enforcement journals, speeches at meetings and conventions, and field contact. For example, in 1980, the Office of Investigations in Los Angeles made 23 presentations on the financial information network and its uses. In addition, Customs has used its participation in 14 Federal strike forces to alert other agencies.

The IRS strongly opposes the suggestion on page 35 of the report to modify the current definitions of tax information in IRC 6103 which distinguish between returns, return information and taxpayer return information.* Much thought went into these definitions and the entire framework of disclosure, of which disclosure to law enforcement agencies is only one part, is dependent on them. Modification of these definitions could seriously impair the entire disclosure framework. Changing, adding or deleting definitions could also unintentionally, but adversely, affect disclosure litigations.

The GAO report indicates that the level of compliance with the requirement to report currency transactions is unknown. While the precise level cannot be determined, the system for checking compliance provides more complete coverage than those used for enforcing many other laws. The Federal bank supervisory agencies provide 100% coverage of commercial banks every one to two years. There is little reason to believe that the majority of banks have not been technically in compliance with the regulations in effect prior to July, 1980. Under those regulations, banks had great latitude in deciding whether a report had to be filed and were not specifically required to maintain lists of depositors they had exempted. While some banks have not been observing the intent of the law, they may well have been complying

with the implementing regulations. We believe that the amended regulations and the new examination procedures will result in a noticeable improvement in the effectiveness of the reporting requirement.

A number of the findings contained in the draft report pertained to the Office of the Assistant Secretary (Enforcement and Operations) which has overall responsibility for the administration of the Bank Secrecy Act. In general, we agree with many of the observations and have initiated corrective action in the following areas:

-- Efforts are being made to secure additional staff to coordinate, monitor, and assist in the implementation of the Act.

-- A decision has been made to review and make appropriate revisions in the procedures for disseminating Bank Secrecy Act report information.

-- Treasury agencies have been requested to review their instructions to field units to make certain agents are aware of the availability of Bank Secrecy Act report information.

The recommendation to distribute exempt lists to law enforcement agencies to determine if such information is useful appears to overlook the fact that Treasury has already distributed hundreds of such lists to Customs and IRS for use in Operation Greenback and task forces in various parts of the country. This is a continuing practice. In FY 1981 to date, the IRS Criminal Investigation Division has provided currency transaction exempt lists received from financial institutions to field units for both criminal and civil tax purposes on fifty banks in the Western Region, on all banks in Florida, and on selected banks in Minnesota and New Jersey. This information may be significant in initiating additional criminal cases. We would prefer to evaluate the use of the lists where there is already an investigative interest rather than to randomly disburse financial information to law enforcement agencies and hope that in some way it will be used.

The other findings and recommendations not specifically referred to in this response will be considered and acted upon to the extent that such action is feasible.

It is our understanding from recent discussions with GAO staff members that GAO is considering a change in the recommendation to the Congress that appears in the draft report. The revision would call for an immediate amendment to the Bank Secrecy Act that would terminate the reporting requirements in 1984. This recommendation would be coupled with another stating that the requirements should be reenacted if the Secretary of the Treasury submits a comprehensive assessment that demonstrates the value of the reports. We believe that such a procedure is unwarranted and would be hazardous.

As we have indicated previously in the response, we believe that the benefits that we have obtained from the reporting requirements clearly demonstrate their value, especially in the Federal Government's efforts to fight narcotics trafficking. An amendment that would terminate them would have a deadening psychological effect on further plans to make greater utilization of the reports. In effect, a premature judgement will have been made that the reports have little or no value. This will be difficult, if not impossible, to combat. In addition, at some time in the future when Congress would be asked to reconsider reinstating the Act, the legislative priorities might not permit timely action. The entire enforcement system related to the requirement would be forced to cease operations at a substantial loss to the public.

There is no question but that one of the keys to successful drug enforcement is the ability to follow the cash flow of major drug traffickers. The reporting requirements of the Bank Secrecy Act provide a unique way to do this. In addition, these reporting requirements have provided a method of identifying suspected major drug traffickers. As an added bonus, the Bank Secrecy Act imposes criminal sanctions on those who fail to comply with its requirements. The major narcotics suspect, who carefully insulates himself from actually handling the drugs, and thus against whom a Title 21 case cannot be made, can still be brought before the bar of Justice for failure to comply with the reporting requirements of the Act. The major trafficker also faces the possibility of forfeiture of large amounts of currency and assessment of penalties in certain situations under the Act. Enforcement officials have found, perhaps somewhat belatedly, that the way to convict major drug conspirators involves a combination of enforcement efforts employing Title 21 and Title 26 offenses in conjunction with transgressions of the Bank Secrecy Act. This is not idle theory and supposition.

A termination of the reporting requirements of the Bank Secrecy Act in a few years would be a major blow to effective drug enforcement. The most immediate beneficiaries would be major drug traffickers responsible for financial transactions of hundreds of millions of dollars per year. This recommendation comes at a time when the drug problem is assuming monumental proportions in the nation. It also comes at a time when enforcement officials have come to realize fully the benefit of the Bank Secrecy Act in combatting drug trafficking. Contrary to the findings in the GAO report, the reports filed under the Bank Secrecy Act are highly useful. The Treasury Department opposes the termination of the reporting requirements of the Act in 1984.

Sincerely,

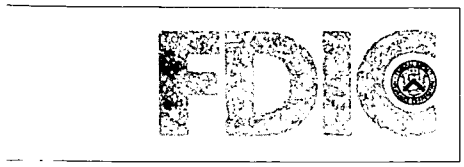
Joseph T. Davis
Acting Commissioner of
Internal Revenue

John M. Walker, Jr.
Assistant Secretary-Designate
(Enforcement & Operations)

Mr. William J. Anderson, Director
General Government Division
United States General Accounting Office
Washington, D.C. 20548

* GAO Note: Page references refer to the draft report and do not necessarily correspond to the final report.

APPENDIX V



FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, D.C. 20429

OFFICE OF DIRECTOR • DIVISION OF BANK SUPERVISION

June 25, 1981

The Honorable William J. Anderson
Director
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

Your May 29 letter to Chairman Sprague has been referred to my office. We appreciate the opportunity to comment on your draft report entitled, "Further Actions Needed to Effectively Implement and Test the Usefulness of the 1970 Bank Secrecy Act Reporting Requirements", prepared for the Subcommittee on General Oversight and Renegotiation, House Committee on Banking, Finance and Urban Affairs. As you indicated in your May 29 letter, most of the factual content of the report was presented in testimony before the Subcommittee in October 1980. Therefore, with one exception our comments are directed to the conclusions and recommendations contained in the report.

On page five your report states "Our review was hampered by financial institution regulatory agencies' refusal to allow us to conduct independent examinations of financial institutions". An understanding regarding GAO's review of Bank Secrecy Act examinations was reached prior to embarking on the review, and a memorandum outlining such understanding was signed by all concerned parties in April 1980. We were not aware that your staff felt hampered by this arrangement until reading your draft. From the outset, it was our intent to cooperate to the fullest extent under governing statutes and the terms of our agreement. Our examiners and staff were so instructed, and since no questions or difficulties were referred to the FDIC officials designated in the agreement, we are dismayed to see such comment at this late date.

With regard to your conclusion that the examination procedures and techniques employed in the past by bank regulatory agencies were insufficiently comprehensive to ensure substantial compliance by the banking industry, we would stress and reinforce your own conclusions that until June of 1980, the regulations were sufficiently nebulous to allow financial institutions to legally evade the spirit of the Bank Secrecy Act if they chose to do so, thus making adequate enforcement extremely difficult.

We agree that recent initiatives by the Treasury (i.e. the 1980 amendments to 31 C.F.R. Part 103, increased emphasis on reports analysis, and others) in conjunction with the implementation of new, comprehensive examination procedures will improve future compliance. A framework has now been established for accurately assessing industry compliance with the reporting

APPENDIX V

Honorable William J. Anderson

requirements and which will ultimately provide the basis for a rational appraisal of the usefulness of the reports themselves.

With respect to your specific recommendations for operational changes to compliance monitoring of financial institutions, we offer the following comments:

Your report recommends that the agencies comprehensively examine, on a random basis, ten percent of the institutions scheduled for examination each year. The ten percent selection would be in addition to those institutions comprehensively examined as a result of following our two-stage examination procedures. You further state that institutions selected externally by Treasury or other law enforcement agencies could be substituted for randomly selected institutions.

During the interagency deliberations on this subject, the FDIC took the position that while the ten percent figure represented a reasonable target for the first examination cycle, without benefit of experience, application across-the-board could lead to an inefficient allocation of examination resources. We chose instead to concentrate our examination efforts, at least until experience proves otherwise, in geographical areas where problems are known to us; e.g., South Florida, the border areas of Texas, etc. Moreover, our new examination procedures require examiners to collect and analyze data on currency flows into and out of each banking office. After sufficient data have been gathered and analyzed, those banks which deal in large volumes of currency should be identifiable during the first stage of each examination.

We believe that selecting banks for comprehensive review from criteria derived from actual experience, vis-a-vis random selection, will provide for more effective regulation in the long run. Of equal importance, the agencies will retain the flexibility to efficiently allocate examination resources.

In your report, you also recommend that the agencies designate one supervisory examiner in each region to review the results of Bank Secrecy Act Examinations. Your report correctly points out that the FDIC currently has a special review examiner in each region to review Bank Secrecy Act Examinations. This system has been effective in connection with other federal regulations and should prove equally successful in monitoring compliance with the currency reporting regulations.

We would also like to point out that while many of the issues in the report were accurately presented at the time they were addressed, circumstances have changed significantly in the past several months. Many of the deficiencies cited in your report have since been corrected, and many of your staff's recommendations have already been implemented. Your report makes mention of these developments; however, the organization of the draft is such that only upon the most thorough study would a reader be aware that such was the case. We are convinced that these recent initiatives will go far in improving compliance with the currency reporting requirements. The most important

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question still remaining is whether the usefulness of the reports to law enforcement authorities can yield a social benefit that is matched by the overall cost to comply with the regulations. In this regard, we support your recommendation that a comprehensive evaluation of the Bank Secrecy Act reporting requirements be conducted at some time in the not so distant future and we stand ready to again cooperate fully in such an endeavor.

Sincerely,

Quinton Thompson
Director

* GAO Note: Page references refer to the draft report and no not necessarily correspond to the final report.

APPENDIX VI

Federal Home Loan Bank Board

RICHARD T. PRATT
CHAIRMAN

1700 G Street, N.W.
Washington, D.C. 20552
Federal Home Loan Bank System
Federal Home Loan Mortgage Corporation
Federal Savings and Loan Insurance Corporation

JUN 25 1981

Mr. William J. Anderson, Director
General Government Division
U.S. General Accounting Office
Washington, DC 20548

Dear Mr. Anderson:

This responds to your May 29, 1981 letter submitting for comment a draft of the G.A.O. report entitled "Further Actions Needed To Effectively Implement and Test the Usefulness of the 1970 Bank Secrecy Act Reporting Requirements." Although the major findings, conclusions and recommendations in the draft report do not directly involve the Federal Home Loan Bank Board, we do wish to provide additional thoughts and comments on a few points.

At page 42, the report states that the Board is "... testing the new examination procedures recently implemented by the three Bank regulatory agencies." * Effective this month we are adopting new procedures which essentially are the same as those used by the banking agencies. We have provided to representatives of your staff a copy of the procedural instructions to our examining staff.

At the request of the Treasury Department, we recently commenced a program by which we are provided with copies of incomplete or incorrect IRS Form 4789's (the currency transaction reports used to monitor large cash transactions) which have been returned to Federally insured savings and loan associations. Our examiners will review the deficiencies with those preparing the reports in an effort to upgrade the quality of reporting. In addition, when the volume of rejected reports indicates that a special problem exists, we will have an examiner make a special visit to the institution to secure correction.

While the draft report, at page 27, correctly states that the Board has not recommended civil penalties to the Treasury Department, we have in process such a recommendation which the Board will consider within the next 30 days. *

APPENDIX VI

At page 48 of the draft, GAO recommends:*

(1) comprehensively examining (for compliance with the Act) on a random basis, 10 percent of the institutions scheduled for examination each year; and

(2) designating one supervisory examiner in each region or district to review the results of the Bank Secrecy Act examinations.

In our view, the newly adopted procedures and the special follow-up described above should satisfactorily improve the effectiveness of the Bank Secrecy Act. Since, as stated in the draft report, most savings and loan institutions do not have large cash transactions, the GAO recommendations seem overburdensome. If we had unlimited resources (which we do not) and if the thrift industry was not facing severe economic and financial problems (which it is), these recommendations would be more palatable. However, given the severe strains now being imposed on our limited examiner resources, which will continue for some time, I cannot agree with the recommendations in this regard. If GAO believes that this special initiative would have a value exceeding the costs for the financial regulators, we would be willing to reconsider our position in light of a cost-benefit analysis.

We appreciate the opportunity to comment on the draft of your report. If you have any questions or need additional information, please feel free to contact me.

Sincerely,

Richard T. Pratt

Richard T. Pratt
Chairman

* GAO Note: Page references refer to the draft report and do not necessarily correspond to the final report.

APPENDIX VII

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

June 29, 1981

Mr. William J. Anderson
Director
General Government Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

The Board appreciates the opportunity to comment on the GAO draft report on the Currency and Foreign Transactions Reporting Act, commonly known as the Bank Secrecy Act. The report discusses issues relating to financial institutions' compliance with the reporting requirements of the Bank Secrecy Act and the use made of the information by Federal enforcement agencies.

With respect to compliance, the GAO describes the steps taken by the Federal banking agencies in cooperation with the Department of the Treasury to improve the quality and timeliness of the Bank Secrecy reports and to strengthen their usefulness to law enforcement investigators. Most important among these steps has been the implementation of examination procedures designed to evaluate a bank's internal procedures and audit systems as well as to conduct targeted transaction testing where appropriate to ensure that banks are in compliance with the recordkeeping and reporting requirements. The Board is pleased to note that the GAO believes the new examination procedures will improve the banking agencies' ability to monitor compliance with the Act. The Federal Reserve is committed to ensuring compliance with and enforcement of the Bank Secrecy Act and, in addition to strengthening its examination procedures, has taken a number of other steps to contribute to these objectives. Specifically, the Federal Reserve has increased the number of examiner person days devoted to examining for compliance, enhanced training activities in this area and assisted the IRS and Justice Department upon request in conducting investigations of possible violations. The Federal Reserve has also taken steps to improve the accuracy, timeliness and completeness of the information it provides to the Treasury Department on the circumstances surrounding possible violations of the reporting requirements. In addition, the Federal Reserve is exploring the feasibility of identifying those member banks with unusually large or otherwise abnormal shipments of currency to or from the District Reserve Banks. This initiative may assist Reserve Banks in targeting examination resources on those institutions whose characteristics suggest the possibility of noncompliance with the statute or the need for more intense supervisory review.

While the Federal Reserve remains committed to expanding and strengthening these efforts where necessary, the Board believes such steps must be carried out in the most cost-effective and efficient manner as possible in light of limitations to examination resources. The GAO report includes two suggestions

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Mr. William J. Anderson

whose resource implications and, therefore, implementation require careful consideration. One recommendation calls for conducting extensive transaction testing of a sample of banks, which the GAO suggests might be a flat 10 percent of banks examined each year. Another recommendation would require each agency to designate a regional or district supervisory examiner to review the results of Bank Secrecy examinations. Concerning the first suggestion, the Board believes that reliance on the judgment and experience of Reserve Bank supervisory officials to determine what particular financial institutions or geographic areas warrant utilization of the more comprehensive transaction testing procedures is a more effective use of scarce examiner resources than the across the board 10 percent random sample figure suggested by the GAO. Moreover, those institutions whose internal procedures and practices do not appear to ensure adequate compliance will be subject to the more comprehensive transaction testing procedures. Combined with some of the efforts already described, the Board believes that this more directed approach will result in improved monitoring and better detection of those institutions whose circumstances or characteristics suggest a higher possibility of noncompliance. With respect to the second recommendation, the Federal Reserve Banks have long had senior review examiners responsible for reviewing examination reports for violations of law, including any comments relative to compliance with the Bank Secrecy Act. The Board believes that these procedures and practices comply with the spirit and intent of the GAO suggestions while ensuring the most economic and cost-effective use of the System's limited supervisory resources.

Sincerely yours,

William W. Wiles
Secretary of the Board

NATIONAL CREDIT UNION ADMINISTRATION
WASHINGTON, D.C. 20456

EI/RG:gcb
SSIC 3220
June 29, 1981

Mr. William J. Anderson
Director, General Government Division
United States General Accounting Office
Washington, D. C. 20548

Dear Mr. Anderson:

I have received your letter of May 29, 1981, with the enclosed copies of your draft report entitled "Further Actions Needed to Effectively Implement and Test the Usefulness of the 1970 Bank Secrecy Act Reporting Requirements." I appreciate the opportunity to comment on the draft report.

Page 3 of the report indicates that the National Credit Union Administration (NCUA) is responsible for monitoring compliance for all federally insured credit unions. NCUA's understanding of the Currency and Foreign Transactions Reporting Act (Act) (Public Law 91-508), and of the Treasury Department's Regulations Issued to Implement Titles I and II of Public Law 91-508, is that NCUA is responsible for monitoring compliance in federally chartered credit unions. Part 103.11 of the Treasury Department's regulations defines a bank, in part, as "A credit union organized under the laws of any State or of the United States", and Part 103.46 delegates enforcement responsibility, in part, "to . . . the National Credit Union Administration, with respect to Federal credit unions."

That understanding is confirmed on page 19 of the draft report which states that NCUA supervises about 13,000 credit unions. There are about 13,000 Federal credit unions, and about 17,000 federally insured credit unions. NCUA does not generally examine state chartered, federally insured credit unions.

Page 5 of the report indicates that the General Accounting Office (GAO) was hampered by financial institutions regulatory agencies' refusal to allow independent examinations by GAO staff. NCUA was fully prepared to cooperate with GAO, as has been the case with past GAO audits, but GAO did not request to make any audits of credit unions. I believe that GAO's statement should be clarified to indicate the specific agencies that hampered GAO's efforts, and that examinations were not requested for credit unions.

The table on page 17 of the draft report indicates that in 1977, 1978 and 1979, respectively, 47, 14 and 26 credit unions did not file Reports of International Transportation of Currency or Monetary Instruments (CMIR). As was discussed with your auditors, NCUA's data collection during those periods did not provide an accurate identification of specific violations. In conjunction with your auditors, NCUA staff has developed specific identification codes for reporting violations that are now in use.

NATIONAL CREDIT UNION ADMINISTRATION
WASHINGTON, D.C. 20456

Page 17 of the report also states "NCUA has not reported the results of its 1980 examinations to Treasury."* While this statement is factual, it fails to point out that Treasury has not requested any such data from NCUA.

Page 42 indicates that NCUA is testing the examination procedures used by the banking regulatory agencies.* It further states "Adoption of these procedures by the two agencies (NCUA and FHLBB) would be a significant improvement over their current cursory procedures." Actually, NCUA began working with the banking regulatory agencies, in August of 1980, to develop better examination procedures to monitor compliance with the Act. The banking regulatory agencies began their testing in late 1980. It took NCUA a few days longer to begin a field test because the examination procedures applicable for banks are not applicable for credit unions. An example of this is that exemption lists, one of the more severely criticized areas in your draft report, are not used in credit unions. NCUA implemented the new examination procedures about the same time that the banking agencies did, in February 1981. NCUA's procedures are in keeping with the spirit and concept of banking agencies, but are necessarily different. I believe the draft report should be revised in this area to show clearly that NCUA has adopted the new procedures, and to delete the comment that NCUA is reluctant "to spend much time examining for compliance with the law."

Page 46 indicates that your office has made two suggestions for examination procedures that the regulatory agencies chose not to adopt.* The report does not indicate clearly whether NCUA is included in the two key suggestions. The report should state specifically that the two key suggestions were not discussed with NCUA, and that, therefore, NCUA is not included among the agencies which chose not to adopt GAO's suggestions. If NCUA is not included, the report should be made clear.

I would like to add that NCUA has recently (May 1981) implemented procedures whereby local Internal Revenue Service (IRS) offices can communicate directly with NCUA's regional offices to obtain assistance in their efforts to get complete Currency Transaction Reports from reporting credit unions. This direct communication link will enhance IRS' use of the reports.

I appreciate the opportunity to comment on the report. If you have any questions, please contact me.

Sincerely,

LAWRENCE CONNELL
Chairman

* GAO Note: Page references refer to the draft report and do not necessarily correspond to the final report.

Comptroller of the Currency
Administrator of National Banks

Washington, D. C. 20219

June 29, 1981

Mr. William J. Anderson
Director
General Government Division
U. S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

We appreciate the opportunity to respond to GAO's draft report entitled "Further Action Needed to Effectively Implement and Test the Usefulness of the 1970 Bank Secrecy Act Reporting Requirements".

Although the report was compiled over a 15 month period from February, 1980 to May, 1981, GAO seems to have omitted or minimized much of the progress made over the past 18 months. The timing of the preparation of the report was unfortunate since this was the same period in which the Office of the Comptroller of the Currency (OCC), the other federal banking agencies, and the Department of Treasury made major efforts to assure compliance and enforce the provisions of the Bank Secrecy Act. Unavoidably, GAO's draft report does not emphasize the significance of these accomplishments.

Compliance Monitoring Practices

In the draft report, GAO states that the bank regulatory compliance monitoring has been cursory. It is easy to take this GAO criticism out of context, in that the uninformed reader may not understand the scope and totality of the OCC's supervision and examination processes. It should be noted that substantial legal impediments existed, questioning before the courts the applicability of the regulation promulgated pursuant to the Act. Notwithstanding the delay created in the courts, this Office, as early as April 15, 1972, gave specific guidance to the national banking industry and to our examination personnel through the issuance of various Banking

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Circulars. Continually thereafter, up through the present, this Office has both officially and unofficially kept the national banking industry and our examiners informed as to their responsibilities and the various changes to the Regulation. As well as official communications, such information is brought to the attention of banks at boards of directors' meetings and through letters and examinations. The OCC has expended significant amounts of time in alerting banks and our personnel to the need for compliance with the Act. Since 1972, the OCC has had compliance examination procedures for the Bank Secrecy Act and its Regulation and, as Treasury's interest in the compliance and enforcement of the law increased, our procedures have been changed or revised to accommodate Treasury's emphasis.

Revised Compliance Examination Procedures

GAO suggests that the regulatory agencies have been reluctant to improve ineffective compliance examination procedures. This is not correct. In fact, the OCC has worked with Treasury (and more recently with GAO) to improve examination procedures. Over the past 15 months, the OCC, in conjunction with Treasury, GAO, and the other financial institution regulatory agencies, has developed and tested revised compliance examination procedures which have been implemented. These procedures were tested for their effectiveness to assure compliance with 31 CFR 103 and to ascertain the costs/benefits both to the banking agencies and to the banks. We constantly attempt to be sensitive to the benefits to be derived compared to the additional regulatory burden and the increased resource allocation that go with more comprehensive examination procedures.

The revised procedures contain a two-module examination approach which requires all financial institutions to be subjected to a more thorough compliance check than was previously utilized. However, it reserves the most extensive, time-consuming procedures for institutions which warrant further examination based on the results of the first module. This is consistent with all our new examination procedures which rely less on a "hands on" examination than on one which checks to see that the banks have adequate controls and procedures in place. The objective is to make the banks as "self-supervising" as possible. This is essential, as our personnel only perform an on-site examination approximately once every 18 months for most banks and do not as a matter of course review daily transactions. In addition, we only visit an institution's branches on an "as needed" basis.

Elsewhere in the draft, GAO indicates that compliance examination procedures are applied unevenly. Since 1976, the OCC has

implemented uniform examination procedures. Also, GAO states that examination procedures did not provide for checking the accuracy and completeness of Forms 4789. We remind the GAO that these forms were not submitted to the bank regulatory agencies, and until the July 5, 1980 amendments to 31 CFR 103, banks were not required to maintain copies of filed Forms 4789. Also, prior to these amendments, banks could exempt virtually all deposit customers from the filing requirements without even maintaining an exempt list at the bank.

Other remarks in the draft report refer to the need for the regulatory agencies to be more responsive to Treasury's requests regarding 31 CFR 103. We think that broad generalizations such as this are inaccurate, unfair, and unjustified. Our resource commitment cannot be viewed in a vacuum without acknowledging our other supervisory responsibilities. To the extent that we may not have appeared to be responsive to Treasury, only resource limitations and time constraints have impeded or delayed our total commitment to Treasury's suggestions regarding compliance procedures. In addition, we recognize that Treasury has provided limited resources to Bank Secrecy Act matters.

The OCC, therefore, does not believe that the actions taken by this Office can be characterized fairly by GAO as "cursory" or "non-existent". Furthermore, in the draft report, it appears that GAO underemphasized the fact that Treasury and OCC developed special investigatory procedures which were used in numerous targeted institutions as part of "Operation Greenback", Treasury's Florida cash flow project. We estimate that within the last year, our Atlanta region alone has expended over 600 workdays in cooperation with Operation Greenback-related matters only.

Referrals of Potential Violations

Prior to 1977, the OCC referred 31 CFR 103 cases directly to the Department of Justice's U.S. Attorneys for their consideration of criminal prosecution. At the request of Treasury in 1977, the OCC began referring 31 CFR 103 cases for enforcement actions directly to Treasury. The enforcement action to be taken included both criminal and civil actions and were left to the discretion of the Treasury Department. To date, approximately 25 referrals have been forwarded by the OCC to Treasury based on facts developed through the examination process or through input from the banks or Treasury. Likewise, it should be noted that it has been the OCC's practice to report to Treasury quarterly all possible 31 CFR 103 violations.

As well as referring all possible violations of the Bank Secrecy Act to Treasury, the OCC has taken steps to require banks to comply with the law and to establish procedures to avoid violations. When violations are detected, we, among other actions, direct banks to

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correct the violations and establish procedures to ensure that they do not continue in the future. In the 94 formal administrative actions taken in 1979, the OCC has required banks on at least 51 occasions to correct violations of the Bank Secrecy Act regulation and to establish procedures to prevent them from recurring. These actions primarily dealt with the record keeping provision of the Act. Nevertheless, in three recent actions the sole issue and action dealt with the reporting requirements of the Act and procedures to prevent violation.

GAO's Recommendations

Included in GAO's recommendations to the Secretary of the Treasury are two matters which concern the OCC. First, GAO recommends civil penalties for noncompliance. We concur with the recommendation and would again urge that Treasury develop a civil penalty policy and procedure for financial institution and regulatory agency guidance. We believe that if civil penalties were levied in justifiably serious circumstances, this would retard 31 CFR 103 noncompliance.

Second, GAO recommends a random sample of banks, e.g. 10 percent, where the extensive compliance examination procedures would be performed. We do not believe that this is the optimal way to deploy our limited resources. The OCC is willing to intensify examination procedures in certain "targeted banks in specific cities". We have suggested to the Federal Reserve that targeting of specific financial institutions for extensive examination procedures could be based on amounts of cash shipments from the individual bank to the local Federal Reserve branch. This process could be automated and result in an early warning system which would allow us more effectively to target institutions for more intensive examination. We believe that receipt of information from the law enforcement community may help us to target institutions in which we should concentrate our resources.

Additionally, GAO recommends the designation of one supervisory examiner in each region to review 31 CFR 103 compliance examinations only. We believe that our present review procedures for examination reports are adequate and feel that this would be an inefficient use of our limited resources. It should be noted, however, that "regional" 31 CFR 103 specialists have evolved as needed, although they continue to have other responsibilities.

Level of Compliance

GAO states that opinions vary on the level of compliance with Bank Secrecy Act reporting requirements and that no precise measurement exists. The conclusion that "compliance monitoring by bank

regulatory agencies generally has been cursory" does not follow from the material in the draft report. GAO reports that this conclusion is not shared by officials at Treasury, the bank regulatory agencies, and the SEC as they all believe compliance is good, although "acknowledging that some financial institutions may not be fully complying".

We agree that in certain cases, there have been violations which may not have been detected by bank examiners during the course of an examination. Reasons for the failure to detect violations include, among other things, the following:

- The violation may have occurred between examinations.
- Examiners do not, as a matter of course, review every cash transaction that occurred in a bank from the prior examination.
- Regulations did not require banks to retain records or the Currency Transaction Report filings.
- Regulations, as they existed, allowed the banks wide flexibility as to who could be considered on the exempt list.
- Verification problems have been created by our inability to get information on what forms were filed.
- An unscrupulous bank employee can escape detection even from daily audits.

GAO acknowledged some of these problems when it stated, "...the regulation's failure to require record retention greatly impaired any serious attempt to verify compliance."

GAO makes a statement in the draft report as to the assumed substantial non-filing of Forms 4789. This is not necessarily a valid assumption since the size of the bank, the volume and size of daily cash transactions, and the number of exempt customers all impact the volume and number of Form 4789 filings. GAO cites a study performed by Customs' Reports Analysis Branch which indicated that "significant nonreporting has probably gone undetected". A conclusion of the Chief of the computer unit conducting the study was that "as many as 50 percent of the banks were not filing reports and that the proportion of the required forms not being filed, although unknown, could be anywhere from 10 to 90 percent". This large estimated range raises questions for us as to the validity of the study. According to the draft report, other Treasury officials also expressed their doubts about the study's validity.

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GAO Auditing Techniques

It is unfortunate that GAO contends in the draft report that the review, "was hampered by financial institution regulatory agencies' refusal to allow [GAO] to conduct independent examinations of financial institutions." The OCC, as well as FDIC and the Federal Reserve, entered into an agreement with GAO in the very early stages of this review whereby GAO auditors were allowed to accompany bank examiners to observe Bank Secrecy Act examinations for the purpose of evaluating the agencies' examining procedures and examiners' techniques. The agreement contained very few restrictions on GAO auditors--and those few were incorporated by the agencies only to maintain the effectiveness of the examination process.

The OCC, therefore, finds GAO's statement in the draft report disappointing and misleading. We believe that our office has cooperated in every respect with GAO to enable their auditors to accompany OCC examiners to those national banks scheduled to be examined during the review period. Neither during GAO's testimony on the Bank Secrecy Act in the Fall of 1980 before the Subcommittee on General Oversight and Renegotiation of the House Committee on Banking, Finance and Urban Affairs, nor at any other time, was there any mention that GAO's review was being hampered by our office in any manner. To see this statement appear in the text of the draft report thus is surprising and disturbing to us. We strongly disagree with the statement and submit, to the contrary, that the OCC's cooperation on all GAO reviews has been consistently high.

Impediments to Agencies' Effectiveness

We agree with GAO that the major impediments to the effective use of information developed pursuant to the Bank Secrecy Act are the numerous barriers that have been established to limit cooperation among the agencies.

The draft report indicates that "coordinated efforts among Federal law enforcement agencies have been difficult to achieve. Barriers to coordination arise from conflicts in agency missions, differing management policies, and legal and policy constraints." We agree with this conclusion and believe that the major impediments are the legal barriers. These are limitations, actual or perceived, that arise from, among others: the Tax Reform Act of 1976, the Right to Financial Privacy Act of 1978, the Privacy Act of 1974, the Freedom of Information Act, state privacy acts, grand jury secrecy rules, as well as the procedures of various agencies. These barriers have been documented before various committees of Congress, including the Senate Permanent Subcommittee on Investigations where witnesses testified about many of the problems faced by the law enforcement

community. The limitations, both actual and perceived, should be focused on, so that the law enforcement mechanism can operate without unnecessary burdens.

OCC Commitment

Under "Conclusions" in the draft report, there is a comment as to the lack of commitment by the agencies having responsibility under the Regulation. Since inception of the Regulation, the OCC has been committed to its compliance responsibilities subject only to the bounds of its personnel resources, time constraints, and its other bank supervisory responsibilities. We have:

- reported violations (quarterly);
- emphasized the need for the industry to develop compliance audit programs;
- made specific referrals to Treasury and Justice;
- taken administrative actions against banks for 31 CFR 103 violations;
- improved our examination procedures and training;
- met with accounting firms to emphasize the need for external audit coverage in the 31 CFR 103 area;
- assigned examiners on numerous occasions to assist the Department of Justice, Treasury, and IRS in 31 CFR 103 investigations;
- coordinated casework with various state and federal government entities within the restrictive legal barriers previously discussed;
- denied, upheld, or conditionally approved corporate applications based on a bank's compliance with the 31 CFR 103; and,
- spent thousands of work days on special investigations, compliance examinations, field tests, administrative and policy issues, etc. regarding our responsibilities with the Bank Secrecy Act.

Finally, the OCC has a difficult time reconciling GAO's criticism that the OCC has not gone as far as it should in monitoring 31 CFR 103 compliance, while, at the same time, recommending to Congress

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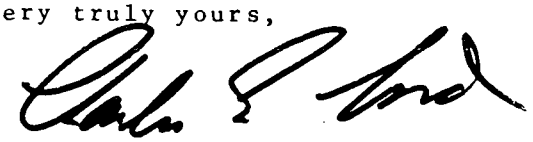
that a two year study be undertaken to determine the effectiveness and need for the Law. As we have testified before, we agree with GAO's comment that it is time for an overall assessment of the cost and benefits of the Act.

Very truly yours,



Charles E. Lord
Acting Comptroller of the Currency

Attachments

DIVISION OF
ENFORCEMENT

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

July 8, 1981

D. L. Scantlebury, Chief Accountant
General Accounting Office
Washington, D.C. 20548

Dear Mr. Scantlebury:

Your letter of June 3, 1981, to Chairman Shad enclosing copies of a draft report concerning the Bank Secrecy Act reporting requirements and requesting our comments was referred to this Division for reply.

After reviewing the draft, members of the staff were concerned with the accuracy of statements made in two places. One was the last paragraph beginning on page 19 of the original draft and the other was the fourth paragraph on page 42. Thereafter, members of the staff of this Division and the Division of Market Regulation met with a member of the GAO staff and provided him with comments on these two areas of the report. As a result, revisions have been made in these two areas, which now appear as the second and third full paragraphs on page 19 and the second paragraph on page 43. The latest revision was received on July 6, 1981, and was then further modified in subsequent telephone conversations.

As we understand it, the second and third full paragraphs on page 19 will read along the following lines:

> Also, broker-dealer firms' compliance with the act's requirements has not been adequately tested. The Bank Secrecy Act regulations assign compliance responsibility for broker-dealers to the SEC. Although the SEC routinely examines a portion of broker-dealers, self-regulatory organizations such as the New York Stock Exchange and the National Association of Securities Dealers are responsible for the routine examination of a majority of broker-dealers for compliance with the Federal securities laws. This is required by specific provisions in the securities laws, however, the Bank Secrecy Act's regulations place no comparable obligation on the self-regulatory organizations.

D. L. Scantlebury
Page two

> SEC examinations include procedures for checking Bank Secrecy Act compliance, but the self-regulatory organizations examinations do not. During our review, SEC officials contacted the self-regulatory organizations concerning the absence of such procedures from their examintions. Officials of the self-regulatory organizations expressed uncertainty, however, as to whether there was a legal basis for them to check compliance with Bank Secrecy Act reporting requirements. SEC officials have discussed this problem with Treasury, but thus far have received no guidance on the possible resolution of it.

Also, we understand that the third paragraph on page 43 will read as follows:

> SEC is currently considering alternative ways to assure that all broker-dealers are periodically checked for compliance with the Bank Secrecy Act. SEC conducts such a check in its routine examinations, and in many of its special examinations of broker/dealers which come under the purview of the self-regulatory organizations for routine examinations. The examination procedures used by the self-regulatory organizations, however, do not contain such procedures. SEC officials are optimistic about solving this problem in the near future.

As a result of these revisions which we understand that GAO has agreed to make in the report, the staff now has no comments on this report. We appreciate very much having had the opportunity to comment upon this draft report and believe that the final report will more accurately reflect the actual facts as a result of such consultation.

Very truly yours,

Ira H. Pearce

Ira H. Pearce
Special Counsel

U.S. Department of Justice

Washington, D.C. 20530

JUL 6 1981

Mr. William J. Anderson
Director
General Government Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

This letter is in response to your request to the Attorney General for the comments of the Department of Justice (Department) on your draft report entitled "Further Action Needed to Effectively Implement and Test the Usefulness of the 1970 Bank Secrecy Act's Reporting Requirements."

The draft report is essentially a critique of the manner in which the Treasury Department has implemented the reporting requirements of the 1970 Bank Secrecy Act (Act), and of the ways in which law enforcement agencies have utilized the data made available through those reports. The Department's general reaction to the draft report is one of agreement with the essence of its conclusions and recommendations to the Secretary of the Treasury and the Congress.

Although a decade has elapsed since the passage of the Act, there is no doubt that full advantage has yet to be taken of the reports which the Act intended to make available to federal law enforcement agencies. Particularly in the last two years, the Department has begun to train its personnel to make better use of the Racketeer Influenced and Corrupt Organizations (RICO) and Continuing Criminal Enterprise (CCE) statutes, in order to effect the forfeiture of the profits of criminal enterprises. The use of complex cash-flow analyses in such investigations is critical, and they are heavily dependent on the kind of data which the Act should be making accessible. Despite these redoubled efforts, it is clear that the forfeitures achieved to date represent but a small percentage of the potential in this area. Now that the federal investigative and prosecutive agencies have begun to turn the corner toward successful pursuit of national criminal enterprises, it is crucial that we ensure that the tools available under the Act can be utilized as fully as possible.

The primary focus of these efforts should be the use that can be made of the data by the investigative agencies as a means toward the goal of crippling ongoing criminal enterprises. The data can frequently be extremely useful in providing and confirming investigative leads. For example, Operation Greenback, a joint Treasury-Justice project in Florida, has used the Act in the investigation and prosecution of the financial aspects of narcotics trafficking. Special Agents of the Internal Revenue Service (IRS) and U.S. Customs have made great use of both Currency

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Transaction Reports (CTRs) and Reports of International Transportation of Currency or Monetary Instruments (CMIRs), and have developed a general technique in Greenback that involves these reports and tax returns as well. The reports have also been used with regard to subpoenas, search warrants, indictments, and trials. The CTRs and CMIRs have also served as the bases for IRS investigations with respect to failures to file and false filings. Felony violations have, in addition, been prosecuted in Greenback by charging conspiracy and fraud violations in connection with prosecutions under the Act.

Nevertheless, as the draft report notes, there have been questions and concerns regarding the quality and timeliness of the reports, the extent of compliance, and the access to the reports enjoyed by federal law enforcement agencies. Loopholes exist in the Treasury regulations implementing the Act, and the belief that compliance is poor has perhaps discouraged law enforcement agencies from more active efforts to obtain the available data. The CTRs were not computerized until 1979, with the result that access is still not as easy and as routine as it ideally should be. Although criteria established jointly by the Drug Enforcement Administration (DEA) and Treasury provide for an automatic transmittal of select Forms 4789 and 4790 on a regular basis from IRS and Customs, relatively few forms are received by DEA by routine dissemination. Specific requests have been more productive, but timeliness for investigative purposes is still a problem, as is the fact that Forms 4789 and 4790 do not provide certain important data regarding transaction descriptions and monetary instrument information.

We do, however, agree with the draft report's observation that improvements have been made more recently. Specifically, modification of the implementing regulations by Treasury, and their computerization of the CTRs have been positive steps. We continue to value the potential of the Act and we are optimistic about future cooperation among federal agencies.

In this connection, we would like to enter one disagreement with the draft report's conclusion that there is a lack of cooperation between DEA and the Office of Investigation of the U.S. Customs Service. This conclusion appears to be based on little more than insinuation. For example, the draft report cites "a well publicized case involving a seizure of $3.2 million in cash" in which a Customs official reported "a lack of investigative support from DEA attaches in Latin American cities due to conflicting investigative priorities" (page 34). * In fact, the delays in that case were attributable to the bank secrecy laws of the Republic of Panama, and not to lack of support from DEA. Moreover, DEA and Customs have operated since 1975 under a formal Memorandum of Understanding providing for the sharing of information and cooperative enforcement efforts. To the extent that there are difficulties surrounding such cooperation, they are problems which the two agencies share, and not which they create for each other.

Because of our belief in the importance of the Act, we generally concur in the draft report's recommendation that access to report data should be made easier and that ensuring greater compliance should be a priority matter. With respect to access, the preferable approach would be to

permit access through the Customs Service's district offices. Finally, we agree that a two-year comprehensive assessment of the Act's reporting requirements with a view toward recommending legislative or program changes is highly advisable.

The Department appreciates the opportunity to comment on the draft report. Should you desire any additional information, please feel free to get in touch with me.

Sincerely,

for R. Allen Hansen, Acting

Kevin D. Rooney
Assistant Attorney General
for Administration

*U.S. GOVERNMENT PRINTING OFFICE : 1981 0-341-843/728

* GAO Note: Page references refer to the draft report and do not necessarily correspond to the final report.

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