



*The Internal Revenue Service's Bank
Secrecy Act Program Has Minimal Impact on
Compliance*

September 24, 2018

Reference Number: 2018-30-071

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HIGHLIGHTS

THE INTERNAL REVENUE SERVICE'S BANK SECRECY ACT PROGRAM HAS MINIMAL IMPACT ON COMPLIANCE

Highlights

Final Report issued on
September 24, 2018

Highlights of Reference Number: 2018-30-071
to the Commissioner of Internal Revenue.

IMPACT ON TAXPAYERS

The Currency and Foreign Transactions Reporting Act of 1970 requires U.S. financial institutions to assist U.S. Government agencies in detecting and preventing money laundering and to assist U.S. persons in reporting foreign bank and financial accounts. The law has been amended several times and is now known as the Bank Secrecy Act (BSA). The IRS received delegated authority to enforce the BSA's criminal provisions and examine certain nonbank financial institutions. The IRS also has authority to examine trades and businesses for compliance with Form 8300, *Report of Cash Payments Over \$10,000 Received in a Trade or Business*, under Internal Revenue Code Title 26 and 31 and authority to assess penalties under Title 26. However, the Financial Crimes Enforcement Network (FinCEN) retains the final authority to impose Internal Revenue Code Title 31 civil penalties.

WHY TIGTA DID THE AUDIT

This audit was initiated to evaluate the impact of the IRS's compliance efforts related to its delegated authority under the BSA.

WHAT TIGTA FOUND

The IRS Small Business/Self-Employed Division conducts BSA compliance activities through its Specialty Examination function, which has a dedicated BSA Program. TIGTA reviewed a statistically valid random sample of 140 compliance cases from a population of 24,212 closed cases worked by the BSA Program for Fiscal Years 2014 through 2016 and found that 105 (75 percent) were closed

with 383 Title 31 violations in which the respective business only received a letter citing the violations found. For the same fiscal year period, TIGTA found that 1) referrals to the FinCEN of Title 31 penalty cases go through lengthy delays and have little impact on BSA compliance; 2) the BSA Program spent about \$97 million to assess approximately \$39 million in penalties; and 3) while referrals were made to IRS Criminal Investigation, most of the investigations were declined and less than half of the cases were accepted.

Additionally, a September 2016 TIGTA report addressed the need for the IRS to incorporate BSA Program personnel in developing its virtual currency strategy; however, the IRS has still not effectively used the BSA Program in this area. TIGTA also found that until June 2017, the BSA Program did not require Publication 1, *Your Rights as a Taxpayer*, as a required enclosure to notify taxpayers of their rights when initiating a Form 8300, Title 26 examination, and some examiners still are unaware of the change that requires taxpayers to be notified of their rights.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the IRS: 1) coordinate with the FinCEN on the authority to assert Title 31 penalties or reprioritize resources to more productive work; 2) leverage the BSA Program's Title 31 authority and annual examination planning in the development of the IRS's virtual currency strategy; 3) notify examiners of new appointment letter enclosures that includes Publication 1; 4) evaluate the effectiveness of the newly implemented review procedures for FinCEN referrals; and 5) improve the process for referrals to IRS Criminal Investigation. The IRS agreed with four of the five recommendations. The IRS will incorporate its virtual currency strategy into its Title 31 compliance efforts; provide BSA examiners guidance on appointment letter enclosures; review and improve the FinCEN referral process; and review the BSA criminal referral criteria to maximize efficiency and enhance BSA referrals to Criminal Investigation. However, the IRS disagreed with pursuing Title 31 penalty authority stating it was outside its purview and that the FinCEN intends to retain this authority.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

September 24, 2018

MEMORANDUM FOR COMMISSIONER OF INTERNAL REVENUE

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – The Internal Revenue Service’s Bank Secrecy Act Program Has Minimal Impact on Compliance (Audit # 201630034)

This report presents the results of our review to evaluate the Internal Revenue Service’s compliance efforts related to its delegated authority under the Bank Secrecy Act.¹ This audit is included in our Fiscal Year 2018 Annual Audit Plan and addresses the major management challenge of Improving Tax Compliance.

Management’s complete response to the draft report is included as Appendix X.

Copies of this report are also being sent to the Internal Revenue Service managers affected by the report recommendations. If you have any questions, please contact me or Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations).

¹ Currency and Foreign Transactions Reporting Act, Pub. L. No. 91-508, Title II, 84 Stat. 1118 (1970) (codified as amended at 31 §§ 321, 5311–5314, and 5316–5322). Part II of the BSA is cited as the Currency and Foreign Transactions Reporting Act. It is codified now at 31 U.S.C., Money and Finance, Chapter 53, Monetary Transactions, Part II, *Records and Reports on Monetary Instruments Transactions*. The parts of the BSA for which Internal Revenue Service has responsibilities are 31 U.S.C. §§ 5311 through 5332, except § 5315. The Secretary of the Treasury has delegated the authority to administer Title II of the BSA to the Director of the Financial Crimes Enforcement Network.



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Abbreviations

BSA	Bank Secrecy Act
CI	Criminal Investigation
C.F.R.	Code of Federal Regulations
FinCEN	Financial Crimes Enforcement Network
FTE	Full-Time Equivalent
FY	Fiscal Year
I.R.C.	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
SB/SE	Small Business/Self-Employed
TIGTA	Treasury Inspector General for Tax Administration
U.S.C.	United States Code



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Background

In October 1970, Congress passed the Currency and Foreign Transactions Reporting Act of 1970, which requires U.S. financial institutions to assist U.S. Government agencies in detecting and preventing money laundering¹ and to assist U.S. persons in reporting foreign bank and financial accounts.² The law has been amended several times and is now known as the Bank Secrecy Act (BSA). The provisions, as amended, were codified in Title 31 of United States

The BSA is designed to help prevent money laundering, tax evasion, terrorist financing, and other unlawful activities by creating a paper trail from financial institutions to help identify these criminal actions.

Code (U.S.C.) sections (§§) 5311 through 5332, excluding § 5315, and state “it is the purpose of this subchapter to require certain reports or records where they have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.” The BSA also authorizes the Secretary of the Treasury to require financial institutions and, in some cases, other businesses and private citizens, to file reports on a wide variety of financial transactions that establish and preserve a financial trail for investigators to follow as they track criminal activities and assets. Specifically, the BSA requires:

- 1) Financial institutions to keep records of cash purchases of negotiable instruments.
- 2) Persons with a trade or business to file reports of cash purchases of these negotiable instruments of more than \$10,000 (daily aggregate amount).
- 3) A U.S. person who has financial interest in, or signature authority over, one or more foreign financial accounts with an aggregate value greater than \$10,000 to file a report.
- 4) Financial institutions to report suspicious activity that might signify money laundering, tax evasion, or other criminal activities.

Detailed regulations to implement the BSA appear in the Code of Federal Regulations (C.F.R.) at Title 31, Money and Finance, Chapter X, Parts 1000 through 1999, *Financial Recordkeeping and*

¹ See Appendix IX for glossary of terms.

² Currency and Foreign Transactions Reporting Act, Pub. L. No. 91-508, Title II, 84 Stat. 1118 (1970) (codified as amended at 31 §§ 321, 5311–5314, and 5316–5322). Part II of the BSA is cited as the Currency and Foreign Transactions Reporting Act. It is codified now at 31 U.S.C., Money and Finance, Chapter 53, Monetary Transactions, Part II, *Records and Reports on Monetary Instruments Transactions*. The parts of the BSA for which Internal Revenue Service has responsibilities are 31 U.S.C. §§ 5311 through 5332, except § 5315. The Secretary of the Treasury has delegated the authority to administer Title II of the BSA to the Director of the Financial Crimes Enforcement Network.



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Reporting of Currency and Foreign Transactions. The two components of the Department of the Treasury with significant responsibilities for the administration of the BSA are the Financial Crimes Enforcement Network (FinCEN) and the Internal Revenue Service (IRS). The Department of the Treasury relies on the expertise and resources of each bureau to perform the many functions necessary to carry out the purposes of the BSA. Under the BSA sections of Title 31, the IRS received delegated authority to:

- 1) Enforce the criminal provisions of the BSA as provided in 31 C.F.R. § 1010.810(c)(2).
- 2) Examine certain nonbank financial institutions to determine compliance as set forth under Title 31 BSA requirements in December 1992; however, the FinCEN retains the final authority to impose civil penalties.³
- 3) Examine and impose civil penalties for the Report of Foreign Bank and Financial Accounts in April 2003.⁴ (TIGTA's review does not include a review of the Report of Foreign Bank and Financial Accounts program).

The IRS also has authority to examine trades and businesses for compliance with the requirements as set forth under Form 8300, *Report of Cash Payments Over \$10,000 Received in a Trade or Business*, under Titles 26 and 31 and authority to assess penalties under Title 26; however, the FinCEN retains penalty authority under Title 31. The Small Business/Self-Employed (SB/SE) Division has the responsibility to pursue BSA civil compliance, and it established a BSA compliance group under its Specialty Examination function. The Specialty Examination function BSA Program is made up of three units: BSA Policy, BSA Examination Case Selection, and BSA Examination. The BSA Policy unit provides policy and guidance to IRS operating divisions on BSA civil enforcement matters. The BSA Examination Case Selection unit is responsible for identifying, selecting, classifying, and delivering inventory under IRS jurisdiction subject to the BSA under Title 31 and Form 8300. The BSA Examination unit performs Title 31 compliance inquiries and Form 8300 examinations and is the subject of this review.

BSA Title 31 compliance reviews

The majority of BSA examinations consist of Title 31 compliance reviews, which make up 87 percent of planned workload closures for Fiscal Years (FY) 2014 through 2016.⁵ The IRS

³ Originally delegated under Department of the Treasury Directive 15-41, December 1, 1992, and as authorized under 31 C.F.R. § 1010.810(b)(8). This regulation authorizes the IRS to conduct most of its Title 31 BSA examinations, such as those with respect to nonbank financial institutions. It does not authorize the IRS to investigate Report of Foreign Bank and Financial Accounts violations; that authority is found in 31 C.F.R. § 1010.810(g). Also, final authority to assess civil penalties is delegated to the FinCEN per 31 C.F.R. § 1010.810.

⁴ *Memorandum of Agreement and Delegation of Authority for Enforcement of FBAR Requirements*, April 2, 2003; and as authorized under 31 C.F.R. § 1010.810(g).

⁵ SB/SE Division Business Performance Review for FYs 2014 through 2016.



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maintains a database called "Title 31" that houses the population of entities that are subject to BSA requirements, including examination data for those entities selected for Title 31 examinations. These entities are commonly referred to as nonbank financial institutions, which are financial institutions not supervised by Federal bank supervisory agencies or other Federal functional regulatory agencies for compliance with the BSA. Figure 1 provides a summary by primary financial service type of the IRS's planned and actual Title 31 examinations for FYs 2014 through 2016.



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Figure 1: Title 31 Planned and Actual Case Closures for FYs 2014–2016⁶

Primary Financial Service Type	FY 2014		FY 2015		FY 2016		Total	
	Planned	Actual	Planned	Actual	Planned	Actual	Planned	Actual
Casino or Card Club	12	15	7	23	17	18	36	56
Centralized/Headquarter Exam	57	0	39	0	31	0	127	0
Check Casher ⁷	3,934	2,614	4,370	2,735	4,092	2,956	12,396	8,305
Dealer Precious Metals/Stones	6	85	8	29	19	47	33	161
Foreign Exchange Dealer	12	59	36	68	30	66	78	193
Informal Value Transfer	0	0	0	**1**	0	0	0	**1**
Insurance Company	**1**	0	**1**	0	**1**	0	3	0
Issuers of Money Orders	0	13	0	8	0	9	0	30
Money Transmitter Agent	2,820	2,555	2,385	2,924	1,472	2,834	6,677	8,313
Money Transmitter Principle	0	66	0	72	0	66	0	204
Nevada Casinos	41	42	29	29	29	25	99	96
Nonfinancial Trade or Business	0	3	0	0	128	171	128	174
Other or Not Money Service Businesses	0	708	0	805	0	651	0	2,164
Provider Prepaid Access	9	4	6	12	6	8	21	24
Refiner Precious Metals/Precious Stones	0	4	0	**1**	0	**1**	0	6
Sellers of Money Orders, Traveler Checks, Stored Value	1,037	1,743	1,050	1,438	1,312	1,244	3,399	4,425
Tribal Casinos	11	22	14	11	14	18	39	51
Virtual Currency	0	0	0	3	7	5	7	8
Totals	***1***⁸	7,933	***1***	***1***	***1***	***1***	23,043	***1***

Source: IRS Performance Metrics (for “Planned” figures) and the Treasury Inspector General for Tax Administration’s (TIGTA) analysis of Title 31 Database (for “Actual” figures).

The BSA coordinator is responsible for the identification of nonbank financial institutions subject to the registration, reporting, recordkeeping, and compliance program requirements under the BSA. Nonbank financial institutions include money services businesses.

⁶ The IRS provided Performance Metrics for FYs 2014 through 2016. The planned numbers for FY 2014 are the original planned numbers, reduced by post-October 2013 IRS shutdown case closures. The actuals are based on the Title 31 Database provided by the IRS representing closures from FYs 2014 through 2016. However, the total closed Title 31 examinations reported under BSA accomplishments in the SB/SE Division’s Business Performance Review for FYs 2014 through 2016 total 23,043 closures, and the IRS could not comment on the discrepancy of 1,169 closures when comparing closures using its Title 31 Database business versus performance reports for the BSA Program.

⁷ For “Actual” closures, Check Casher includes both “Check Casher” and “Check Casher–Principle” categories as identified in the Title 31 Database for FYs 2014 through 2016.

⁸ The FY 2014 workplan lists 7,941 planned Title 31 case closures; however, TIGTA calculated the total number in the column to be 7,940 closures. Additionally, FY 2014 plan data reflect the reduced post-October 2013 IRS shutdown case closures.



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- Money service businesses are businesses that transmit or convert money, such as check cashing, issuing money orders, foreign currency exchanges, issuing travelers' checks, and money transfers. Each money service business is required by law to have an effective anti-money laundering compliance program.⁹ An effective program is one that is reasonably designed to prevent the money service business from being used to facilitate money laundering and the financing of terrorist activities.
- The BSA examiner is responsible for assisting the BSA coordinator in identifying nonbank financial institutions. These nonbank financial institutions, including the money service businesses that register, are entered into the IRS's Title 31 Database and used as a population of entities that are subject to IRS jurisdiction in relation to the BSA requirements. The Title 31 examination cases are also located on this database. The BSA examiner's responsibilities are to 1) determine if there are weaknesses in the entity's compliance program or any BSA violations and 2) to educate the entity on their reporting, registration, recordkeeping, and compliance program requirements.

BSA Program management believes education is an integral part of each BSA examination. BSA examiners provide education in a variety of ways, such as so-called "knock and talk meetings," Letter 1052, *Notification of Possible IRS Check to Verify Maintenance of Required Records and Filing Reports*, and the BSA examination process. Letter 1052 provides an entity with guidance on BSA's regulations and the entity's requirements under the law.

Form 8300 compliance reviews

BSA examinations include Form 8300 compliance reviews, which make up 13 percent of the planned workload closures for FYs 2014 through 2016.¹⁰ Form 8300 examinations review entities that are required to file Form 8300. A trade or business that receives a cash payment exceeding \$10,000 as a result of a single transaction or two or more related transactions must report the transaction by filing Form 8300. The examinations help enforce compliance by determining if entities are filing the forms when required and ensuring that they are filed correctly and timely. If violations are identified, the entity may be subject to penalties. While much of the BSA Program's work involves Title 31 issues, the requirement to file Form 8300 is set forth in provisions in both Titles 26 and 31.¹¹ Generally, BSA examiners conduct Form 8300 examinations under Title 26; however, for entities required to have an anti-money laundering compliance program under Title 31 (*e.g.*, insurance companies or dealers in precious metals, precious stones, and jewels), examinations are initiated under Title 31 regulations. For violations of the anti-money laundering program that may warrant a potential civil money penalty assessment, cases are referred to the FinCEN for penalty consideration. For violations related to

⁹ 31 C.F.R. 103.125.

¹⁰ SB/SE's Business Performance Review for FYs 2014 through 2016.

¹¹ Internal Revenue Code (I.R.C.) § 6050I and 31 U.S.C. § 5331.



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delinquent Forms 8300, the penalties are assessed by the IRS. Figure 2 provides TIGTA's analysis of the IRS's workplans for Form 8300 examinations for FYs 2014 through 2016.

Figure 2: Form 8300 (Title 26) Planned and Actual Case Closures for FYs 2014–2016¹²

BSA Workstream	FY 2014		FY 2015		FY 2016		Total	
	Planned	Actual	Planned	Actual	Planned	Actual	Planned	Actual
Antique Dealers/Art Dealers	0	**1**	0	0	0	3	0	5
Attorneys	10	22	4	12	4	17	18	51
Auctions	**1**	15	**1**	4	0	5	**1**	24
Auto Retailer	617	896	702	917	563	665	1,882	2,478
Boat Retailer	35	34	13	22	13	19	61	75
Construction	21	**1**	31	0	8	**1**	60	3
Court Clerks	0	**1**	0	0	0	0	0	**1**
Escrow/Title	0	**1**	3	**1**	**1**	**1**	4	5
Importer/Exporter	0	4	0	3	0	**1**	0	9
Large 8300 Exams	**1**	0	0	0	0	**1**	**1**	**1**
Mobile Home/Manufactured Housing	0	4	14	**1**	11	**1**	25	6
Motorcycle Retailer	69	113	130	135	106	69	305	317
Other Retail	27	60	32	26	25	13	84	99
Other Service Business	123	23	55	10	68	19	246	52
Precious Metals	0	3	6	**1**	4	0	10	4
Realtor/Real Estate Broker	0	0	4	0	3	**1**	7	**1**
Retail Jeweler	16	5	17	**1**	17	**1**	50	8
Recreational Vehicle Retailer	18	34	6	24	5	24	29	82
Travel Agencies/Services	0	5	0	7	0	5	0	17
Wholesale Distributors	303	119	166	74	82	75	551	268
Total	**1**13	**1**14	**1**15	**1**	**1**	**1**	**1**	**1**

Source: IRS Performance Metrics (for "Planned" figures) and TIGTA's analysis of closed cases on the Form 8300 Database (for "Actual" figures).

BSA penalties depend on the type of entity, the type of activity involved, and the degree of intent. Apparent violations are found through examination or information from informants. If the violation is willful, the penalty depends on the type of violation. There are different penalties

¹² The IRS provided Performance Metrics by its BSA Workstreams for FYs 2014 through 2016. The workstreams listed in the figure represent the primary type of business. A breakdown of types of entities being examined was not listed in its Performance Metrics.

¹³ The FY 2014 workplan lists 1,240 planned Forms 8300 closures; however, TIGTA rounded to the nearest case and used 1,241 closures. Also, FY 2014 plan data reflect reduced post-October 2013 IRS shutdown case closures.

¹⁴ Actual closures were based on the Form 8300 Database, which for FY 2014 listed 1,343 closures while the BSA performance report listed 1,342 closures.

¹⁵ The FY 2015 workplan lists 1,185 planned Forms 8300 case closures; however, TIGTA calculated the total number in the column to be 1,184 closures.



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for recordkeeping, reporting, and program violations as well as for other types of violations, such as failure to register a money service business.

BSA penalty violations

BSA requirement violations may hold civil or criminal penalties. If the BSA examiner identifies certain violations, such as willfulness, criminal activity, or tax implications, the case may be referred to the FinCEN or IRS Criminal Investigation (CI). Failure to file BSA reports can result in criminal or civil penalties depending on the nature of the violation. The BSA examiners can make civil referrals to the FinCEN regarding willful violations of recordkeeping and reporting regulations and structuring, civil referrals to field examination for tax purposes, and criminal referrals to CI for potential criminal activity identified. CI is responsible for criminal investigations, and the courts impose criminal penalties. Investigation of criminal matters are the responsibility of IRS CI, whereas Title 31 civil penalties are assessed directly by the FinCEN as follows:

- Negligent violation penalties are assessed for any violations of the BSA requirements. The penalty is up to \$500 per violation.¹⁶ The FinCEN may also impose a civil penalty of not more than \$50,000 for a pattern of negligent activity.¹⁷
- Willful violation penalties can result in fines of the greater of \$100,000 or 50 percent of the amount involved in the transaction or account balance at the time of the violation.¹⁸ Indications of willfulness include filing reports on some transactions but not others and multiple transactions conducted within a small period of time to avoid reporting requirements.¹⁹

The IRS's guidance provides the following: "Civil money penalties for negligent violations of the BSA are, in practice, extremely rare."²⁰ After receiving a referral of a Title 31 case for which civil penalties may be assessed, the FinCEN's role includes evaluating the circumstances of the alleged violation and determining whether some type of civil action should be taken against the person or entity. The FinCEN generally closes its civil penalty cases with one of three courses of action: 1) close the case without contacting the subject of the referral, 2) issue a letter of warning or caution to the subject institution or individual, or 3) assess a civil monetary penalty. If apparent BSA violations are found that meet the referral criteria, the apparent violations should be discussed with the manager, who may recommend preparing a Form 5104, *Report of Apparent Violation of Financial Recordkeeping and Reporting Regulations*, (referral to the

¹⁶ 31 U.S.C. § 5321(a)(6)(A).

¹⁷ 31 U.S.C. § 5321(a)(6)(B).

¹⁸ 31 U.S.C. § 5321(a)(5)(C).

¹⁹ Willful violation penalties depend on the type of violations and include specific penalties for recordkeeping, reporting, program violations, and other types of violations, such as failure by a money service business to register. Internal Revenue Manual (IRM) 4.26.7.4.3.2 (June 20, 2012).

²⁰ IRM 4.26.7.3.1 (June 20, 2012). The guidance does not explain *why* penalties for negligence are rare.



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FinCEN) or make a decision to involve the fraud technical advisor. The fraud technical advisor will then recommend whether to prepare Form 2797, *Referral Report of Potential Criminal Fraud Cases* (referral to CI). During Title 31 and Form 8300 examinations, BSA examiners analyze and review data and records to ensure compliance with BSA anti-money laundering statutes and regulations. The BSA examiner should not use a Title 31 examination to inquire about tax returns or other Title 26 return information. Similarly, information obtained during a Form 8300 examination (conducted under Title 26) cannot generally be disclosed for nontax purposes. However, if the BSA examiner identifies information indicating potential tax issues during the course of the examination, he or she should create a referral to the Examination function for a civil examination using the Form 5346, *Examination Information Report*.

The IRS BSA Program can also assert penalties in cases governed by Title 26. Effective for tax returns required to be filed on or after January 1, 2019, as adjusted for inflation, the Title 26 civil penalties assessable by the IRS (including intentional disregard penalties) for failure to file and furnish Form 8300 information returns will be as follows:²¹

- If corrected on or before 30 calendar days after the required filing/furnish date, the penalty is \$50 for each return with respect to which the failure occurs, with an aggregate annual limitation of \$191,000 for businesses with gross receipts not exceeding \$5 million and \$545,500 for those with gross receipts exceeding \$5 million.
- If corrected after 30 calendar days but on or before August 1 of the calendar year in which the required filing occurs, the penalty for each return with respect to which the failure occurs is \$100 per failure, with an aggregate annual limitation of \$545,500 for businesses with gross receipts not exceeding \$5 million and \$1,637,500 for those with gross receipts exceeding \$5 million.
- If not corrected as previously described, the penalty is \$270 for each return with respect to which the failure occurs, with an aggregate annual limitation of \$1,091,500 for businesses with gross receipts not exceeding \$5 million and \$3,275,500 for those with gross receipts exceeding \$5 million.
- The intentional disregard penalty for failure to file provides a penalty of the greater of \$27,290 or the amount of cash received in the transaction (not to exceed \$109,000), with no annual aggregate penalty limitation for businesses regardless of gross receipts.
- The intentional disregard penalty for failure to furnish provides a penalty of \$540 per failure or 10 percent of the agreement amount of the items required to be reported correctly, with no annual aggregate penalty limitation for businesses regardless of gross receipts.

²¹ I.R.C. § 6050I(f)(2) provides that the penalties for Form 8300 violations related to structuring transactions to evade reporting requirements are the same as those for failing to file or filing false or incomplete returns under I.R.C. § 6721; I.R.C. §§ 6721(f)(2) and 6722(f)(2); and Internal Revenue Bulletin No. 2018-10 (Mar. 5, 2018).



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Figure 3 details the civil and criminal penalties assessed by the IRS and the FinCEN during FYs 2014 through 2016.

Figure 3: Types of BSA Penalty Assessments for FYs 2014–2016²²

Type of Penalty Assessments	FY 2014	FY 2015	FY 2016	Total
Title 26 (Form 8300) Failure to File and Failure to Furnish Penalties (IRS Specialty Examination function)	\$6,248,805	\$1,931,272	\$2,161,260	\$10,341,337
Title 31 Negligent Violations Penalties (FinCEN)	\$0	\$0	\$0	\$0
Title 31 Willful Violations Penalties (FinCEN)	\$18,210,000	*****1*****	*****1*****	\$29,010,000
Form 8300, Title 26 and Title 31 Criminal Violations Penalties (IRS CI)	\$0	\$0	\$0	\$0

Sources: TIGTA Data Center Warehouse Examination Return Control System Database, IRS Title 31 Database, and the FinCEN law enforcement website.

If the BSA examiner determines that the violations are technical, minor, infrequent, isolated, or nonsubstantive then the violations do not meet the criteria for referral to the FinCEN. Instead, the BSA examiner can issue Letter 1112, *Notification of Apparent Violation*, to the entity. If action is not taken by the entity, then the BSA Program can make the determination to refer the entity to the FinCEN.

As illustrated in Figure 4, the majority of BSA examiner caseload is primarily from Title 31 examinations.

²² The IRS has authority to assess Form 8300 Title 26 penalties. The IRS does not have authority to assess Title 31 penalties; the FinCEN has final authority to assess Title 31 civil penalties. Although the FinCEN has authority to assess Title 31 civil penalties, TIGTA identified that no referrals were made to the FinCEN regarding negligent violation penalties of the BSA Program.



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Figure 4: BSA Performance Results for FYs 2014–2016

BSA Closures	FY 2014		FY 2015		FY 2016		Total Planned	Total Actual	Percentage of Closures
	Planned ²³	Actual	Planned	Actual	Planned	Actual			
Title 31	7,941	8,165	7,945	7,798	7,158	7,080	23,044	23,043	87%
Form 8300	1,240	1,342	1,185	1,240	910	924	3,335	3,506	13%
Total Closures	9,181	9,507	9,130	9,038	8,068	8,004²⁴	26,379	26,549	100%
Full-Time Equivalents (FTE)	374.30	375.50	330.60	311.33	291.99	288.04	996.89	974.87	
Closures/FTE	25	25	28	29	28	28 ²⁵	26	27	

Source: SB/SE Business Performance Review for 4th quarters of FYs 2014 through 2016.

The SB/SE Business Performance Review provides overall planned and actual metrics for the SB/SE Division, including expenses such as labor, training, and travel. The SB/SE Business Performance Review reports also include results based on the total FTEs associated with each program.

Figure 5 was prepared using the ratio of the overall labor expense category divided by the total FTEs, which was then applied to the BSA Program's planned and actual FTEs for each fiscal year, to provide an estimate of the overall labor associated with the BSA Program. For Title 31 and Form 8300 labor estimates, we used the ratio of closed cases for each fiscal year to allocate the overall BSA FTEs.

²³ The FY 2014 plan data reflect the reduced post-October 2013 IRS shutdown performance results.

²⁴ The FY 2016 SB/SE Business Performance Review lists 7,080 Title 31 closures and 924 Form 8300 closures that TIGTA calculated as 8,004 closures versus 8,005 total closures reported. TIGTA used 8,004 closures in related calculations dependent on FY 2016 actual closures.

²⁵ The FY 2016 SB/SE Business Performance Review lists 27.8 closures per FTE; however, TIGTA rounded to the nearest FTE and used 28 closures per FTE.



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Figure 5: BSA Program Estimated Labor Expense for FYs 2014–2016

	FY 2014 Actual	FY 2015 Actual	FY 2016 Actual	Total Actual
SB/SE Labor Expense	\$2,129,668	\$2,288,651	\$2,238,930	\$6,657,249
SB/SE FTEs	21,681	23,357	21,890	66,928
\$/FTE Conversion Ratio	\$98,227.39	\$97,985.66	\$102,280.95	
BSA FTEs ²⁶	375.50	311.33	288.04	974.87
Title 31	\$31,677,816	\$26,320,515	\$26,059,959	\$84,058,290
Form 8300	\$5,206,568	\$4,185,360	\$3,401,046	\$12,792,974
Total BSA Program	\$36,884,384	\$30,505,875	\$29,461,005	\$96,851,264

Source: TIGTA analysis of SB/SE Business Performance Review for the fourth quarters of FYs 2014 through 2016.

This review was performed with information obtained from the IRS National Headquarters office in Washington, D.C., in the SB/SE Division, the SB/SE Division Specialty Examination function, and CI, during the period of December 2016 through June 2018. On-site reviews were also performed at the IRS SB/SE Division Special Examination function's field offices in Long Beach and Los Angeles, California, and in Austin and Houston, Texas, with information obtained from additional field offices in Santa Ana, California, and San Antonio, Texas. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

²⁶ FTEs for the BSA Program shown in the SB/SE Business Performance Review include managers, BSA examination, and administrative support.



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Results of Review

Title 31 Compliance Reviews Have Minimal Impact on Bank Secrecy Act Compliance Because Negligent Violation Penalties Are Not Assessed

As previously stated, IRS BSA Program management believes education is an integral part of each BSA compliance review. The BSA examiner's responsibilities are to determine if there are weaknesses in the entity's compliance program or any BSA violations and to educate the entity on their reporting, registration, recordkeeping, and compliance program requirements.²⁷ During our case reviews, we identified that BSA examiners ensured that the taxpayer received Letter 1052 during the compliance review in 136 (97 percent) of 140 cases. The BSA Examination Case Selection unit issues the Letter 1052, and the BSA examiner ensures that the taxpayer received the letter. If the taxpayer did not, the BSA examiner will then provide a copy. As previously discussed, the IRS received delegated authority to conduct Title 31 compliance reviews; however, the FinCEN retains the authority to impose civil penalties. Figure 5 shows labor costs incurred by the IRS for conducting Title 31 compliance reviews of \$84.1 million, and Figure 3 shows penalties assessed by the FinCEN of \$29 million for FYs 2014 through 2016.

We conducted a review of Title 31 cases worked by the BSA Program for FYs 2014 through 2016 to evaluate the BSA Program Title 31 compliance efforts. We reviewed a statistically valid random sample of 140 compliance cases from a population of 24,212 closed cases.²⁸

The IRS's inability to enforce Title 31 civil violations hinders compliance

The BSA examiner issues a letter to the noncomplying business in order to close a Title 31 examination. Absent a referral to the FinCEN or CI, if Title 31 potential violation(s) are found, the BSA examiner issues Letter 1112. If Title 31 potential violation(s) are not found, the BSA examiner issues Letter 4029, *Bank Secrecy Act No Change Letter*. In our review of 140 closed Title 31 sample compliance cases, we determined that 105 (75 percent) cases closed with Title 31 BSA violation(s) and 35 (25 percent) cases closed with no Title 31 violation(s) identified. More specifically, the 105 cases closed received a Letter 1112. These cases contained a total of 383 Title 31 BSA violations:

²⁷ IRM 4.26.6.3 (Nov. 14, 2006).

²⁸ The population of unique cases closed during FYs 2014 through 2016 totaled 24,212 cases. Using a 95 percent confidence level, 5 percent error rate, and ± 4 percent precision factor, we computed an overall statistically valid sample size of 140 cases.



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- 68 cases had only Title 31 program violations, totaling 118 violations.
- 32 cases had both Title 31 program and recordkeeping violations, totaling 255 violations.
- 5 cases had only Title 31 recordkeeping violations, totaling 10 violations.

Of the 105 cases closed with a Letter 1112, 43 (41 percent) had prior Title 31 compliance reviews conducted during FYs 2011 through 2016.²⁹ We identified that 41 (95 percent) of those 43 cases had Title 31 violations in both the current and prior compliance review. As mentioned previously, the FinCEN has civil penalty authority for violations of any BSA Program. A negligent violation penalty of not more than \$500 per violation can be imposed if the nonfinancial trade or business violates the recordkeeping or reporting requirements of the BSA, with an additional \$50,000 if there is a pattern of negligent violations of any provision of the BSA.³⁰

IRS Standards for Title 31 referrals to the FinCEN specify that Title 31 violations considered technical, minor, infrequent, isolated, and nonsubstantive should not generally be referred to the FinCEN and require a Letter 1112 be issued.³¹ Final authority to assess civil penalties rests with the Secretary of the Treasury and is delegated to the FinCEN.³² As illustrated previously by Figure 3, between FYs 2014 through 2016, the FinCEN did not assess penalties under Title 31 for recordkeeping or reporting violations that are considered technical, minor, infrequent, isolated, and nonsubstantive (hereafter referred to as minor violations). Based on the Title 31 referral standards, in these instances, generally the IRS may issue only a Letter 1112 citing the violations on these cases. The law does not provide the IRS authority to assess civil penalties at any level for Title 31 violations (with the exception of the Report of Foreign Bank and Financial Accounts penalties). Therefore, these nonwillful violations, not generally referred to the FinCEN, will not be assessed penalties. As such, neither the IRS nor the FinCEN assessed \$191,500 (\$500 per violation) in potential penalties for the 105 sample cases with 383 Title 31 BSA potential program and recordkeeping violations. When we project the potential uncollected civil penalty to the total population size of 24,212 closed cases, we estimate that neither the IRS nor the FinCEN assessed penalties on approximately 18,159 cases with an estimated

²⁹ Our sample population was from FYs 2014 through 2016; however, to determine if the case had a prior compliance review(s), we reviewed the data for FYs 2011 through 2016.

³⁰ IRM 4.26.7.3.1 (June 20, 2012).

³¹ IRM 4.26.8 Exhibit 4.26.8-3, *IRS Standard for Title 31 Referrals to FinCEN* (June 1, 2006).

³² Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 999; Pub. L. 98-473, Title II, § 901(a), Oct. 12, 1984, 98 Stat. 2135; Pub. L. 99-570, Title I, §§ 1356(c)(1), 1357(a)-(f), (h), Oct. 27, 1986, 100 Stat. 3207-24—3207-26; Pub. L. 100-690, Title VI, § 6185(g)(2), Nov. 18, 1988, 102 Stat. 4357; Pub. L. 102-550, Title XV, §§ 1511(b), 1525(b), 1535(a)(2), 1561(a), Oct. 28, 1992, 106 Stat. 4057, 4065, 4066, 4071; Pub. L. 103-322, Title XXXIII, § 330017(a)(1), Sept. 13, 1994, 108 Stat. 2149; Pub. L. 103-325, Title IV §§ 406, 411(b), 413(a)(1), Sept. 23, 1994, 108 Stat. 2247, 2253, 2254; Pub. L. 104-208, Div. A, Title II, § 2223(3), Sept. 30, 1996, 110 Stat. 3009-415; Pub. L. 107-56, Title III, §§ 353(a), 363(a), 365(c)(2)(B)(i), Oct. 26, 2001, 115 Stat. 322, 332, 335; Pub. L. 108-357, Title VIII, § 821(a), Oct. 22, 2004, 118 Stat. 1586. (31 U.S.C. § 5321 – Civil Penalties).



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\$33,118,557 in potential civil penalties over the three-year FYs 2014 through 2016 period.³³ When we discussed Title 31 civil penalty authority with the FinCEN management, they stated that there were no plans to modify the penalty authority for Title 31 violations. The FinCEN management maintains that delegated authority should remain under the control of the FinCEN (including small penalties) so that the application of penalty assessments is consistent across the many regulators that are under the FinCEN.

When we spoke with the BSA examiners, some expressed their frustration that the IRS compliance reviews lack enforcement to ensure that the entity complies with BSA regulations. Two BSA examiners stated that the compliance reviews were a “waste of time” when finding the same violations or minor violations outside of the FinCEN referrals, suggesting that there are no real consequences to deter noncompliance. By not following the program and recordkeeping requirements, the entities are in violation of the law, and some type of enforcement needs to be considered to ensure compliance and deter financial crimes, money laundering schemes, tax evasion, and other illicit activity. Because the IRS does not have delegated penalty authority in Title 31 cases, the BSA Program’s Title 31 compliance reviews appear to be having little impact when nonwillful violations are found and the only consequence is limited to issuance of a Letter 1112. As Figure 5 reflects, BSA Program costs were approximately \$96.9 million for FYs 2014 through 2016, while penalties generated from IRS BSA Program efforts were approximately \$39.4 million over that same period (per Figure 3). If the FinCEN will not take action to assess negligent violation penalties, the IRS should consider working with the FinCEN to either obtain penalty assessment authority or reprioritize BSA Program resources to more productive work.

Referrals were not made to the FinCEN for BSA civil penalties on sampled Title 31 case reviews

If BSA examiners discover potential Title 31 violation(s), they should consider whether a referral should be made to the IRS Examination function, the FinCEN, or IRS CI.³⁴ In our review of 105 cases closed with a Letter 1112, none of the cases were referred to the FinCEN for BSA civil penalties. The general standard for a FinCEN referral is if the case has a “significant” or “willful” BSA violation or deficiency. This standard includes systemic or pervasive BSA compliance program deficiencies, systemic or pervasive recordkeeping violations, or entities failing to respond to regulatory actions concerning BSA compliance violations (even if the deficiencies are dissimilar to previously identified violations in the Letter 1112 or other IRS/FinCEN correspondence).³⁵ The IRS defines willfulness as an intentional violation of a known legal duty. Although there may not be direct evidence of willfulness, the IRS is

³³ See Appendix IV. The point estimate projection is based on a two-sided 95 percent confidence interval. We are 95 percent confident that the point estimate is between 16,224 and 19,831 cases and \$17.9 million and \$48.3 million.

³⁴ Referrals made to IRS CI must have firm indications of willfulness and meet the criminal criteria for submitting a referral.

³⁵ IRM 25.1.12, Exhibit 25.1.12-1 (Dec. 31, 2013).



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instructed to consider circumstantial evidence in determining whether a referral to the FinCEN is warranted, such as:

- Frequency or reoccurrence of violations.
- Continuation of violations after the institution became aware of them and made no efforts to correct the deficiencies that led to the violations.
- History of prior violations or poor compliance.
- Previous written criticism of the institution for similar violations.³⁶

After the first compliance review, the entity should have the knowledge and education to ensure compliance with their BSA requirements. We previously discussed 41 cases in which the violator had multiple Title 31 violations during FYs 2011 through 2016. More specifically, in 26 (63 percent) of the 41 cases, the entity had the same Title 31 violation(s) as the prior compliance review. These cases appear to be of a willful nature due to the reoccurrence of the same violation(s) and the continuation of violations after the entity became aware of them and, therefore, appears to have made no efforts to correct the deficiencies.

Some BSA examiners interviewed stated that they had never referred a case to the FinCEN. The FinCEN did clarify that deficiencies which are minor violations should not be referred to it. However, the FinCEN also stated that it accepts all referrals from the IRS, and the outcome of the case is either a civil penalty, a warning letter, or no action letter. Sometimes the FinCEN may request that the IRS reexamine the entity, which is part of the monitoring process and not a rejection. A deficiency rises to a violation if the entity is willful in the deficiency or if the entity continues making the same mistake, especially continued errors in the anti-money laundering program. Willful violations of the reporting and recordkeeping requirements may cause the imposition of civil penalties (the greater of \$100,000 or 50 percent of the balance in the account at the time of the violation). The Money Laundering Control Act of 1986 has expanded this penalty to allow additional civil money penalties of up to \$50,000 if a financial institution engages in a pattern of negligent activity.³⁷ Even if it is determined that willful violations should not be assessed, consideration should be given on whether to apply a penalty of not more than \$500 per violation for recordkeeping or reporting requirements of the BSA because the entity had the same Title 31 violation(s) as a prior compliance review.

Reoccurrence of the same violations or continued violations after the entity became aware of their requirements indicates that these entities made no effort to correct their deficiency. Due to the entities continued noncompliance, it appears that 26 cases should have been referred to the FinCEN for its determination on a BSA civil penalty. Because these cases were not referred to the FinCEN, BSA civil penalties could not be considered or assessed.

³⁶ IRM 4.26.8, Exhibit 4.26.8-3 (June 1, 2006).

³⁷ Pub. L. 99-570, Title I, Subtitle H, Oct. 27, 1986, 100 Stat. 3207-18.



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Recommendation

Recommendation 1: The Deputy Commissioner for Services and Enforcement should coordinate with the FinCEN on the authority to assess penalties on Title 31 examinations or consider reprioritizing BSA Program resources for more productive work.

Management's Response: The IRS disagreed with this recommendation. In its response, the IRS stated that FinCEN intends to retain authority to impose Title 31 penalties to ensure consistent application across agencies. Further, any change to provide the IRS with Title 31 penalty authority would require a regulatory change, which is outside the purview of the IRS. The IRS allocates its BSA Program resources consistent with its role in Title 31 enforcement, as delegated under 31 C.F.R. 1010.810(b)(8), in collaboration with the Department of the Treasury and the FinCEN.

Office of Audit Comment: TIGTA remains concerned about this issue in light of the fact that 87 percent of the BSA Program's work for FYs 2014 through 2016 was pursuant to Title 31 and that its only internal compliance tool is a warning letter. In our discussions with BSA Program employees, it was clear that many believe that penalty issuance authority would be an important improvement for the program. We plan to discuss our concerns about this with officials in the Department of the Treasury.

Additionally, the IRS did not agree with the outcome measure of \$33.1 million because it assumes all violations the IRS identified warranted a penalty, does not account for the FinCEN policy regarding non-assertion of penalties when minor violations exist, and fails to consider the reasonable cause exception afforded by law. The law provides for a negligent violation penalty of \$500 per violation be imposed if the nonfinancial trade or business violates the recordkeeping or reporting requirements of the BSA. Because the FinCEN retains the authority to assess negligent civil violation penalties and also has a policy regarding non-assertion of penalties when minor violations exists, neither the IRS nor FinCEN assessed these penalties. Our outcome measure reflects the potential unreported revenue we believe the IRS and FinCEN could address by developing a strategy to ensure that these penalties are assessed.

The Internal Revenue Service Is Not Effectively Using the Bank Secrecy Act Program to Assist in the Development of Its Virtual Currency Strategy

In September 2016, TIGTA issued a report addressing the significant strategic tax administration challenges posed by virtual currency.³⁸ The report identified a number of steps the IRS could

³⁸ TIGTA, Ref. No. 2016-30-083, *As the Use of Virtual Currencies in Taxable Transactions Becomes More Common, Additional Actions Are Needed to Ensure Taxpayer Compliance* (Sept. 2016).



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take in furtherance of a virtual currency compliance strategy. With its delegated authority to pursue Title 31 compliance issues, the BSA Program is in a unique position to address compliance issues relating to virtual currency exchanges because those exchanges are deemed money service businesses under the FinCEN guidance.³⁹ Money service businesses have reporting obligations over certain thresholds and must report suspicious activities. The BSA Program can play an important role by examining whether virtual currency exchanges are complying with these obligations.

The BSA Program has not prioritized virtual currency exchanges in its workplan and is not even meeting its planned case closures on virtual currency Title 31 examinations. Starting in FY 2016, the BSA Program incorporated virtual currency as a primary financial services type into its planned closures for Title 31 examinations. A review of the IRS's case closure performance results data for FYs 2014 through 2017 found that the BSA Program did not meet its planned closures in the first two fiscal years that virtual currency closures were included in the workplan (*i.e.*, FYs 2016 and 2017). Figure 6, presents a breakdown of our results by fiscal year.

Figure 6: Title 31, Virtual Currency Closures for FYs 2014–2017

FY	Planned Closures	Actual Closures ⁴⁰
2014	0	0
2015	0	**1**
2016	7	**1**
2017	12	6

Source: BSA Program Workplans and Performance Results Report for FYs 2014 through 2017.

In March 2014, the IRS issued a notice classifying virtual currencies as property and not a currency for tax purposes.⁴¹ For tax purposes, the taxpayers must recognize the gain or loss on the value of their virtual currencies when they exchange it for other property or use it to purchase goods and services. In the September 2016 TIGTA report on virtual currencies, TIGTA found that since the IRS implementation of the March 2014 rule, there has been little evidence of coordination within the IRS to identify and address noncompliance issues for transactions involving digital currencies. In addition, the report stressed the need for the IRS to develop a

³⁹ 31 C.F.R. § 1010.100(ff).

⁴⁰ The BSA Program Workplans and Performance Results Report actual closures for FYs 2015 and 2016 do not reconcile to Title 31 Database figures for FYs 2015 and 2016 as presented in Figure 1. The IRS explained that this is due to updates in the “Primary Financial Service” (*i.e.*, workstream) during the closing process and that currently there is no data field, which captures and retains the original workstream coding within the Title 31 Database. Therefore, the IRS cannot provide reliable closure figures based on the Virtual Currency workstream.

⁴¹ IRS Notice 2014-21.



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comprehensive virtual currency strategy to limit the potential risk that undetected noncompliance of virtual currency taxable transactions will result in an increase to the Tax Gap.

The SB/SE Division BSA Program identifies its virtual currency examination cases from communications with the FinCEN through the BSA Policy unit. As of August 2017, as a part of the workload selection methodology, a total of 115 available cases were identified in the Title 31 Database for which virtual currency was listed as the primary financial services type. ***1***

*****1***** The status of the 115 cases as of August 2017 was as follows:

- 96 cases were available for selection.
- *****1*****
- 6 cases were assigned to a BSA examiner but a review had not been started.
- 10 cases were assigned to a BSA examiner and a review had been started.
- *****1*****

In our September 2016 report, we also recommended that the Large Business and International Division, which is the lead IRS function in the formulation of a virtual currency strategy, incorporate BSA Program personnel into strategic plans and discussions, and the IRS agreed with our recommendation. However, as part of this audit, in August 2017 we met with BSA Program officials and Large Business and International Division officials who confirmed that the recommendation had not yet been implemented. The BSA Program currently does not have any planned initiative in the virtual currency area.

IRS officials have acknowledged that virtual currency poses a threat to tax administration,⁴² and the IRS has begun to take important steps towards assessing the threat but has not yet made use of the BSA Program in this effort.⁴³

⁴² Robert Lee and Matthew Beddingfield, *Virtual Currency: Cryptocurrency Serious Threat to Tax Administration: IRS Official*, BNA Daily Tax Report (Mar. 12, 2018), and Nathan Richman, *IRS Official Says Virtual Currencies Are a Threat Now*, Tax Notes Today (Mar. 12, 2018).

⁴³ In *U.S. v. Coinbase Inc.*, 120 A.F.T.R.2d 2017-6671 (N.D. CA 2017), the IRS prevailed in its efforts to summons information of Coinbase account holders with annual transactions in excess of \$20,000. The IRS demonstrated its legitimate purpose in seeking the information by showing that while Coinbase had 5.9 million customers and 6 billion transactions per year, only approximately 900 taxpayers reported bitcoin transactions on Form 8949, *Sales and Other Dispositions of Capital Assets*.



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Recommendation

Recommendation 2: The Deputy Commissioner for Services and Enforcement should leverage the BSA Program's Title 31 examination authority by incorporating its annual examination planning into the IRS's overall virtual currency strategy.

Management's Response: The IRS agreed with this recommendation. The IRS will incorporate the BSA Program's Title 31 compliance efforts into their other virtual currency strategy compliance efforts.

Bank Secrecy Act Examiners Did Not Notify Taxpayers of Their Rights When Conducting Form 8300 Title 26 Examinations

In addition to being responsible for Title 31 compliance reviews, the SB/SE Division's BSA Program also has jurisdiction over Form 8300 Title 26 compliance reviews.⁴⁴ Figure 5 shows labor costs incurred by the IRS for conducting Form 8300 compliance reviews of approximately \$12.8 million for FYs 2014 through 2016, and Figure 3 shows the civil penalties assessed by the IRS of \$10.3 million for the same period. Under Internal Revenue Code (I.R.C.) § 6050I, any person engaged in a trade or business who receives cash in excess of \$10,000 in one transaction, or two or more related transactions, in the course of their trade or business must file Form 8300 within 15 calendar days of receipt of the reportable cash. A copy of each Form 8300 must be retained for five years by the business. Any business filing a required Form 8300 must also furnish a written statement to each person identified on the Form 8300 by January 31 of the succeeding calendar year.⁴⁵

The IRS has full responsibility for implementing and enforcing the civil and criminal provisions of I.R.C. § 6050I. Form 8300 civil penalties are assessed under I.R.C. §§ 6721 and 6722.⁴⁶ The BSA Program requires that its examiners follow specific guidelines when reviewing taxpayer documents to ensure that taxpayers are complying with BSA policy and procedures. To determine if the taxpayers complied with I.R.C. § 6050I, the examination process includes the following:

⁴⁴ Form 8300 case review results presented herein are limited to Title 26 compliance reviews and do not pertain to Form 8300 Title 31 examinations in which entities are required to have an anti-money laundering program under Title 31.

⁴⁵ IRM 4.26.12.10.1(2) (June 1, 2006).

⁴⁶ IRM 4.26.11.4 (Nov. 24, 2006). The provisions of I.R.C. § 6050I include identifying transactions subject to the reporting requirements, preparing and filing reports, furnishing statements, and asserting civil or criminal penalties. I.R.C. § 6721 applies to a person who fails to file Form 8300 or files a return and fails to include all of the required information or provides incorrect information on the return. I.R.C. § 6722 applies to a person who fails to furnish correct payee statements.



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- **Preplan phase:** research the FinCEN portal to reconcile and verify Form 8300 filing compliance for the period of the examination.
- **Interview phase:** conduct an initial interview with the taxpayer and a tour of the business and provide education about Form 8300 filing and reporting requirements.
- **Inspection of books and records:** review the taxpayer's books and records and conduct testing to ensure that sources of cash received are properly identified.
- **Penalty assertion and closing conference:** assert penalties on I.R.C. § 6050I violations, if any, and hold a closing conference.

We conducted a review of Form 8300 Title 26 cases worked by the BSA program for FYs 2014 through 2016 to evaluate the BSA Program Title 26 compliance efforts. During these fiscal years, the BSA examiners closed 3,507 cases and asserted penalties in 1,733 cases (49 percent) totaling \$10,341,337. We reviewed a statistically valid random sample of 78 Title 26 Form 8300 compliance cases from the population of 3,507 closed cases.⁴⁷ For 39 out of the 78 cases reviewed, BSA examiners collectively identified 262 violations, totaling \$25,600 in associated penalties, as follows:

- 139 violations of I.R.C. § 6721(a), *Failure to Comply with Certain Information Reporting Requirements (Form 8300)*, totaling \$13,340 in penalties.
- 123 violations of I.R.C. § 6722(a), *Failure to Furnish Correct Payee Statements (Form 8300)*, totaling \$12,260 in penalties.

During our case reviews, we identified that the majority of the BSA examiners were providing educational outreach regarding Form 8300 filing and reporting requirements. Specifically, we found that the BSA examiner appropriately documented their educational outreach efforts in 74 (95 percent) of the 78 cases. Additionally, we identified that most of the BSA examiners were assessing the appropriate amount of penalties (when they identified that the taxpayers were noncompliant with Form 8300 filing and reporting requirements) and collecting on those violations.⁴⁸

During the initial interview, the BSA examiner is required to explain the purpose of the audit and the requirements under I.R.C. § 6050I. In every examination, the BSA examiner is instructed to explain that the examination is only for a Form 8300 examination (is not an income tax examination) but that information acquired from their records can be used for any tax matter permitted by the I.R.C. Moreover, the BSA examiner is required to provide educational outreach

⁴⁷ The population of unique cases closed during FYs 2014 through 2016 totaled 3,507 cases. Using a 95 percent confidence level, 10 percent error rate, and ± 7 percent precision factor, we computed an overall statistically valid sample size of 78 cases.

⁴⁸ For 38 of 78 sample cases reviewed, we found that civil penalty assessments did not apply, and *****1*****
*****1*****
*****1*****.



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to the taxpayer that includes the filing requirements, records required to be maintained, civil and criminal penalties, and prohibited structuring transactions.⁴⁹ The BSA examiner is also instructed to provide the taxpayer with a copy of the current Form 8300 and Publication 1544, *Reporting Cash Payments of Over \$10,000 (Received in a Trade or Business)*.

While TIGTA found that the BSA examiners are providing educational compliance outreach and identifying potential recordkeeping or reporting violations, we also identified that most examiners are not advising taxpayers of their rights and are not always identifying or considering referral submissions to further address material Title 26 violations.

BSA examiners did not notify taxpayers of their rights during the Form 8300 Title 26 examination process

For 56 of the 78 sample cases, we found that BSA examiners did not provide the trade or business being examined a Publication 1, *Your Rights as a Taxpayer*. During our case reviews, we found that Letter 2277, *Form 8300 Appointment Letter*, (revised March 2005) did not list Publication 1 as a required enclosure. For the period of our sample case reviews, from FYs 2014 through 2016, Letter 2277 listed the following enclosures:

- Form 4564, *Information Document Request*.
- Form 8300.
- Publication 1544.

Even though the Letter 2277 did not list Publication 1 as an enclosure, the case file activity log or interview with the taxpayer specified that Publication 1 was provided to the taxpayer for 22 cases (28 percent). However, the case file activity log or interview with the taxpayer did not specify if Publication 1 was provided to the taxpayer for the remaining 56 cases.⁵⁰

Prior to January 2016, the BSA Program did not believe that providing Publication 1 to notify taxpayers of their rights applied to its Title 26 Form 8300 cases. However, while this audit was ongoing in 2016, in consultation with the National Taxpayer Advocate, the IRS agreed that Publication 1 should be included in the initial appointment letter for Form 8300 examinations under Title 26; however, the IRS maintains that under solely Title 31 BSA examinations, those individuals or businesses being examined are not “taxpayers” (they are referred to as “customers”) and Publication 1 is not a required enclosure. In June 2017, Letter 2277 was revised, which added Publication 1 and Publication 5264 *Your Exam Rights*, (for the IRS Form 8300 examination process) as required enclosures and removed the Publication 1544

⁴⁹ IRM 4.26.11.3.1, (Nov. 24, 2006).

⁵⁰ For the 56 cases, the BSA examiner did not provide Publication 1 in 34 cases, and the case file documentation did not specify if Publication 1 was provided in the remaining 22 cases. Because the case file documentation did not specify in 22 cases, we attempted to contact the 18 BSA examiners who worked the 22 cases. We conducted interviews with 14 BSA examiners who worked 17 cases and were unable to conduct interviews with four examiners who worked five cases (because they were no longer with the IRS or they were in areas affected by hurricanes).



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enclosure requirement. However, we interviewed 14 BSA examiners in order to determine if they were aware of the revised Letter 2277, which added Publications 1 and 5264. We found that nine of the 14 BSA examiners interviewed were not aware of any policy change in Letter 2277.⁵¹ Publication 1 informs taxpayers that they are entitled to a fair and impartial administrative appeal.⁵² Publication 5264 informs taxpayers that they may provide a written response to the proposed penalties and request a meeting with the examiner's supervisor if they do not agree with the examiner's proposed penalties.⁵³

For the BSA cases prior to June 2017, taxpayers were not required to be notified of their rights, though some BSA examiners appeared to take it upon themselves to provide notification of taxpayer rights. Some taxpayers in our sample were assessed Form 8300 penalties, fully paid these penalties during the appointment with IRS, and then received a closing Letter 4595, *Form 8300 No Intentional Disregard 30 Day Letter*, without ever being told their rights, such as the right to go to the Office of Appeals.⁵⁴

Based on our interviews of BSA examiners, we are concerned that many BSA examiners still have not been made sufficiently aware of the IRS's change in policy that affords taxpayer rights notification to all taxpayers being examined under Title 26. Taxpayers should be advised of all the fundamental rights encompassed in the Taxpayer Bill of Rights, which the IRS formally adopted in June of 2014 and which was codified by Congress in December 2015.⁵⁵ The IRS uses Publication 1 to inform taxpayers of their rights and to explain the audit, collection, appeals, and refund processes. As such, it is imperative that the IRS educate BSA examiners regarding the changes in the law that made notification of taxpayer rights applicable to these cases.

Recommendation

Recommendation 3: The Commissioner, Small Business/Self-Employed Division, should issue formal guidance to BSA examiners requiring inclusion of Publication 1 and Publication 5264 as enclosures with Letter 2277 when initiating an IRS Form 8300 examination.

Management's Response: The IRS agreed with this recommendation. The IRS will draft and issue an Interim Guidance Memorandum to BSA examiners requiring inclusion

⁵¹ Letter 2277 is the initial I.R.C. § 6050I Appointment Letter. In the newly revised letter dated June 2017, the required enclosures are as follows: Form 8300, Form 4564, Publication 1, and Publication 5264.

⁵² See Appendix V.

⁵³ See Appendix VI.

⁵⁴ This letter explains to the taxpayers that if they disagree with the penalty they can take the case to the U.S. Court of Federal Claims or their U.S. District Court. If no action is taken by the due date on the letter, the IRS will assess the penalty and the taxpayer will receive a letter advising them of their appeal rights and related procedures. See Appendix VII for Letter 4595 (Rev. 2-2017) and Appendix VIII for Letter 4595 (Rev. 2-2011).

⁵⁵ I.R.C. § 7803(a)(3). Taxpayer Bill of Rights outlines the 10 fundamental rights taxpayers have when working with the IRS.



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of Letter 2277, Publication 1, and Publication 5264 as enclosures when initiating a Form 8300 examination.

Bank Secrecy Act Program Referrals to the Examination Function Are Resulting in Tax Assessments

We found that the BSA Program made referrals to the SB/SE Division Examination function (hereafter referred to as the Examination function), and the Examination function examined some of the referrals, which resulted in tax assessments. During a Form 8300 or Title 31 BSA examination, if the BSA examiner identifies individuals or businesses conducting questionable transactions in currency or monetary instruments that indicate possible tax violations, a referral to the Examination function may be made. Referrals can be submitted on either the entity under the BSA examination or on the examined entity's customer(s). The BSA Program does not track referrals from the point they are submitted by BSA examiners through the examination cycle by the Examination function, nor does it track which referrals make it into the Examination function's caseload inventory. The BSA examiner starts the referral process by completing Form 5346.⁵⁶ The Form 5346 will then be submitted to the BSA Examination Case Selection unit to research and screen the referral to make sure it is forwarded to the appropriate division.⁵⁷ Referrals are forwarded with Form 3210, *Document Transmittal*, and a spreadsheet is attached that summarizes the referrals that are included. These referrals go to the Brookhaven Campus. The Brookhaven Campus will screen the referrals based on the substantial noncompliance factors criteria, build the case, and put the case on the Audit Information Management System. The referrals will then go to the Planning and Special Programs office for assignment to the field. If the case is not selected to go to the field, the Planning and Special Programs office will close the case off the Audit Information Management System as a survey.⁵⁸

We found that closed Examination function tax examinations from BSA Program referrals are resulting in tax assessments. We analyzed tax examinations closed by the Examination function during FYs 2014 through 2016 originating from referrals through the IRS's BSA Program. The Examination function captures project and tracking code information on the Audit Information Management System that identifies the source of referred returns. Using these codes, as Figure 7 reflects, we confirmed that the Examination function worked and closed 2,992 BSA Program referral tax examinations and made tax assessments in 2,616 (87 percent) of the examinations during this period. While the BSA Program closed 27,719 combined Title 31 and Form 8300 examinations during this period, the 2,992 tax examinations closed by the Examination function originated from the BSA Program referrals.

⁵⁶ IRM 4.26.6.5(3) (Nov. 14, 2016).

⁵⁷ IRM 4.26.3.4(2) and (3) (Sep. 19, 2016).

⁵⁸ IRM 4.1.1.6.11(2) (Oct. 25, 2017).



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Figure 7: Examination Function Closures of BSA Program Referrals⁵⁹

Source of Referral	Closed Examinations			Change (FY 2014 to FY 2016)	Totals
	FY 2014	FY 2015	FY 2016		
Form 8300 ⁶⁰	140	71	64	(54%)	275
Title 31 ⁶¹	698	824	963	38%	2,485
Other BSA Referrals ⁶²	71	92	69	(3%)	232
Totals	909	987	1,096	21%	2,992

Source: TIGTA Data Center Warehouse Audit Information Management System closed cases data for FYs 2014 through 2016.

As noted in Figure 7, the Examination function increased closures of referrals from Title 31 BSA Program referral examinations by 38 percent between FYs 2014 and 2016. However, we identified a reduction exceeding 54 percent for closures on referrals originating from Form 8300 examinations for the same period. We found that the Examination function assessed \$226,439,952 against taxpayers associated with the 2,992 tax return examinations listed in Figure 7. When analyzing the results of these examinations, we found that some taxpayers had multiple assessments on the same tax period; therefore, some assessments may have resulted from an examination unrelated to the original BSA Program referral. Figure 8 summarizes the disposition of these examinations based on the TIGTA Data Center Warehouse Audit Information Management System closed case data files for each respective fiscal year.

⁵⁹ Referrals are by tax return for a specific tax period, and one taxpayer may have multiple referrals based on different tax periods or type of returns.

⁶⁰ Examination project codes 432 and 146 identify referrals from BSA Form 8300 examinations.

⁶¹ Examination project codes 441 and 147 identify referrals from BSA Title 31 examinations.

⁶² Examination tracking code 7759 identifies referrals from BSA examinations and does not distinguish the type of examination (*i.e.*, Form 8300 or Title 31). These BSA Program referrals appeared to have been referred for employment tax examinations.



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Figure 8: Disposition of Examinations on BSA Program Referrals

Disposition	FY 2014		FY 2015		FY 2016		Total	
	Count	Audit Results	Count	Audit Results	Count	Audit Results	Count	Audit Results
Agreed⁶³	397	\$10,924,816	372	\$13,244,002	559	\$23,582,700	1,328	\$47,751,518
No Taxpayer Response⁶⁴	251	\$43,836,041	274	\$29,691,859	322	\$45,348,196	847	\$118,876,096
No Change⁶⁵	126	\$0	144	\$0	106	\$0	376	\$0
Appealed⁶⁶	58	\$15,442,912	68	\$18,522,895	56	\$7,338,369	182	\$41,304,176
Other⁶⁷	77	\$3,860,779	129	\$12,120,900	53	\$2,526,483	259	\$18,508,162
Total	909	\$74,064,548	987	\$73,579,656	1,096	\$78,795,748	2,992	\$226,439,952

Source: TIGTA Data Center Warehouse Audit Information Management System closed cases data for FYs 2014 through 2016.

As Figure 8 illustrates, the majority of the tax returns were closed with assessments totaling \$166,627,614 (approximately 74 percent), which combines the “agreed” assessments and the “no taxpayer response” assessments, in which the taxpayer did not appeal. The remaining examined tax returns were 1) closed as disagreed with an appeal, 2) direct transfers to the Justice Department, or 3) interest or penalty only cases.

Some Examination function tax assessments related to the BSA Program remain unpaid

We also reviewed the current collection status of assessments made by the Examination function from the BSA Program referrals and found that the majority of the tax return examination assessments were still in collection status.⁶⁸ If an examiner does not collect full payment or set up an installment agreement, and the taxpayer does not resolve the account balance by first notice, then the case will enter the collection process. To determine the current collection status

⁶³ The taxpayer agreed with the findings of the examination.

⁶⁴ The taxpayer did not sign an agreement or file a petition, or the examination results letter was returned undeliverable.

⁶⁵ There is no change in the tax liability or the refund amount indicated on the original return.

⁶⁶ The taxpayer appealed the findings to the IRS Office of Appeals or petitioned the tax court.

⁶⁷ Includes cases forwarded to the SB/SE Division Technical Services function for issuance of a statutory notice, direct transfers to the Department of Justice for settlement, interest only or penalty only cases, or barred assessment cases.

⁶⁸ By collection status, TIGTA is referring to unpaid assessed amounts payable to the IRS, which may include balances due 1) in the notice cycle, 2) assigned to the Automated Collection System, 3) assigned to the Field Collection function, 4) waiting to be assigned to the Field Collection function, or 5) in an active installment agreement.



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of the assessments made on these cases, we reviewed the respective Individual or Business Master File tables, from the TIGTA Data Center Warehouse, for the accounts listed in Figure 8, as of December 31, 2017. For the 2,992 accounts with tax return examination assessments of \$226 million from the BSA Program referrals we found that:

- 1,178 (39 percent) of the 2,992 tax return examinations resulted in \$77 million (34 percent) in assessments that were full paid.
- 1,814 (61 percent) had \$149 million (66 percent) in assessments that are not fully paid.

There are multiple factors that may affect the collectability of a taxpayer's assessed balance. As such, it is unknown how much of the \$149 million in unpaid assessments is collectable.

[Internal Revenue Service Reviews of Financial Crimes Enforcement Network Referrals Are Not Timely, Thereby Affecting Compliance Efforts](#)

We found that referrals to the FinCEN were significantly delayed during the IRS policy analyst review process, with minimal referrals resulting in civil penalty assessments. There are six policy analysts who are responsible for reviewing the FinCEN referral package sent from the BSA examiner before forwarding it to the FinCEN for enforcement action. The policy analysts are required to follow guidelines as set in the Internal Revenue Manual (IRM), desk procedures, and other manuals to ensure that the referral package is ready to be sent to the FinCEN. Policy analyst duties include answering questions on the law and reviewing Forms 5104 that come in before forwarding to the FinCEN. The FinCEN referral process starts with the referral submission (via the Form 5104) by a BSA examiner followed by the BSA Program's policy analyst review, from which a decision is made to decline the referral, request more information from the BSA examiner, or accept and forward the referral to the FinCEN for review and enforcement action consideration. For FYs 2014 through 2016, we analyzed the 116 referrals that BSA examiners submitted to policy analysts for consideration and determined that 80 cases were submitted to the FinCEN as of December 31, 2017.⁶⁹ Figure 9 illustrates the status of these referrals as of December 31, 2017.

⁶⁹ TIGTA analyzed unique cases, and any case(s) returned and resubmitted were counted only once.



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Figure 9: Status of IRS FinCEN Referral Submissions for FYs 2014–2016

Status With Policy Analysts	FY 2014	FY 2015	FY 2016	Total	% of Total
Referrals Open ⁷⁰	0	0	**1**	**1**	0.9%
Referrals Declined	**1**	12	6	20	17.2%
Referrals Returned for Rework	3	6	6	15	12.9%
Submitted to the FinCEN	37	16	27	80	69.0%
Totals	**1**	34	**1**	**1**	100.0%

Source: TIGTA analysis of IRS FinCEN referral data for FYs 2014 through 2016.

For 36 (31 percent) of the 116 referrals, the IRS could not provide complete data to determine the number of calendar days required to complete the review process, and *****1*****. It took more than 180 calendar days for the policy analyst to review the case for 61 (76 percent) of the remaining 80 cases. For the 61 cases exceeding 180 calendar days, on average it took 508 calendar days from the date that the BSA examiner sent the referral to the date that the analyst 1) sent the referral package to the FinCEN, 2) sent the case back to the BSA examiner, or 3) declined to send the case to the FinCEN.⁷¹ Figure 10 illustrates the number of calendar days before the 116 cases were finalized by the analyst by one of the three previously mentioned disposal methods.

Figure 10: Number of Calendar Days From Referral Submission to Policy Analyst Review and Disposition, as of December 31, 2017

FY	0–180 Days (0–6 Months)	181–365 Days (6–12 Months)	366–730 Days (1–2 Years)	>731 Days (Over 2 Years)	Unknown ⁷²	Total cases
2014	9	9	9	6	9	42
2015	5	4	9	6	10	34
2016	5	10	8	0	17	40
Total Cases	19	23	26	12	36	116

Source: TIGTA analysis of IRS FinCEN referral data for FYs 2014 through 2016.

As shown in Figure 10, there were significant delays in many cases, some ranging over two fiscal years. In TIGTA’s interview with the BSA examiners, we found that some examiners had concerns with the lengthy processing time of the policy analysts. Specifically, one BSA examiner who has submitted several referrals for the FinCEN expressed concerns that the policy analyst took too long to process the referral, while another BSA examiner, who had similar

⁷⁰ Open as of December 31, 2017.

⁷¹ TIGTA analyzed the current status and number of calendar days as of December 31, 2017.

⁷² Unknown cases include case(s) that are currently being analyzed by policy analysts and cases for which the range of calendar days could not be determined due to the IRS’s lack of recordkeeping with its Title 31 Database.



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concerns, expressed an ongoing frustration with the policy analysts and questioned the value of their review. The same BSA examiner also stated that the IRM does not require a policy analyst to be involved in those reviews and specifically stated that they were aware of ***1*** taking four calendar years (for the policy analyst) to review. We found that the policy analysts were not processing referrals within a reasonable time frame (there were no required time frames during the period of our review), and we found instances of several months or calendar years in elapsed time before action was taken.

Prior to January 2017, there were no set time frames as to when a referral should be processed by the policy analyst. As a result of a Government Accountability Office report on BSA information sharing,⁷³ beginning in Calendar Year 2017, the BSA Program established a new time frame commitment for the policy analyst reviews of the FinCEN referral packages (excluding Headquarter cases, which do not have a time frame).⁷⁴ The newly established time frames for a FinCEN package received from the field are:

- Initial review to be done within 30 business days.
- Completed package review within 90 business days.
- Issue completed product to the FinCEN within 180 business days.

However, Figure 10 shows that 61 (76 percent) of the cases would not meet this new criteria the BSA Program established on the FinCEN referral cases. The lengthy processing times by the policy analysts in making decisions on how to close the case for FinCEN consideration have significant effects on compliance in the BSA Program.

Delays in proposed FinCEN referrals create an inefficient use of BSA resources

Once the FinCEN receives a referral from the BSA Program, FinCEN employees will make an initial case assessment and propose a recommendation. The FinCEN will 1) assess a civil monetary penalty, 2) issue a letter of warning, 3) decline or close the case without contact, or 4) return the case to the BSA Program for additional work.⁷⁵ Figure 11 reflects that the FinCEN has assessed penalties on only six of the 80 cases submitted, and 49 of the 80 cases remain open as of December 31, 2017.⁷⁶ When we interviewed FinCEN management, they stated that the main reason a referral may not be worked is due to the age of the referral. FinCEN management

⁷³ Government Accountability Office, GAO-09-227, *Bank Secrecy Act: Federal Agencies Should Take Action to Further Improve Coordination and Information-Sharing Efforts* (Feb. 2009).

⁷⁴ *****1*****
*****1***** Headquarter cases are centralized Title 31 or Form 8300 examinations of a principal entity that has related entities (branches/agents/franchises) in multi-State locations.

⁷⁵ IRS BSA Continuing Professional Education July 2016 on FinCEN Referrals.

⁷⁶ Of the six cases for which the FinCEN assessed a penalty, *****1*****
*****1*****



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expressed concern that many of the referrals from the IRS are two to four years old. We also found that the FinCEN would sometimes request that BSA examiners reexamine the cases before deciding on issuing a penalty or warning letter. These reexamination cases would remain in open status with the FinCEN.

**Figure 11: Status of BSA Examiner Referrals
for FYs 2014–2016 That Were Sent to the FinCEN**

Status With the FinCEN	Total	Average Calendar Days With Policy Analyst ⁷⁷
Returned to IRS for Reexamination	**1**	Unknown
Declined	**1** ⁷⁸	399
No Action	12	522
Letter of Warning	11	389
Penalty Assessed	6	236
Open (Pending Determination)	49	399
Totals	**1**	399

Source: TIGTA analysis of IRS FinCEN referral data for FYs 2014 through 2016.

We analyzed the amount of time the cases have been with the FinCEN from the date the policy analyst submitted the case to it until December 31, 2017. We found that as of this date:

- 5 cases had been with the FinCEN for 180 calendar days or less (0 to 6 months).⁷⁹
- 7 cases had been with the FinCEN for 181 to 365 calendar days (6 months to one year).
- 16 cases had been with the FinCEN for 366 to 730 calendar days (one to two years).

⁷⁷ This column represents the average number of calendar days the case remained in policy analyst inventory from the date the BSA examiner sent the referral to the date the analyst completed the referral package analysis and notified the group of the disposition to the FinCEN. Additionally, TIGTA excluded cases in the “Average Calendar Days With Policy Analyst” calculation when the IRS could not confirm dates, which affected all categories with the exception of the “Declined” status. The “Declined” status represents the actual calendar days with the policy analyst.

⁷⁸ *****1*****

⁷⁹ The FinCEN requested that the IRS reexamine *****1***** cases, and the age of the case with the FinCEN is as of the most recent resubmission date.



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- 19 cases had been with the FinCEN for more than 731 calendar days (more than two years).⁸⁰
- *****1*****

As the Government Accountability Office points out in its report on BSA information sharing, the FinCEN's long delays in processing referrals and a lack of an agreement on time frames have limited the IRS's BSA compliance activities among nonbank financial institutions. IRS officials mentioned in the report that the FinCEN's response time was too long, and FinCEN officials stated that IRS referrals often require follow-up for additional information or supporting documentation, which affects processing times. As a result of the Government Accountability Office report, the FinCEN and IRS developed a Referral Process Plan in an effort to improve the BSA civil enforcement referral process by ensuring 1) early involvement by the BSA technical advisor/policy analyst, 2) improved referral time frames, and 3) improved communication and feedback.⁸¹ The guidance was initially provided to all BSA examiners in June 2011, and recent training was provided in July 2016 as part of BSA Program training. However, during TIGTA interviews held with policy analysts during April 2017, they stated that errors by BSA examiners on Letter 1112 and Form 5104 are a significant problem. When policy analysts encounter errors, the cases are sent back to the field. Policy analysts will also consult with the FinCEN when they are uncertain of whether to make the referral.

Of the 116 referrals received from BSA examiners, policy analysts submitted 80 referrals to the FinCEN. Of these 80 referrals submitted to the FinCEN, five resulted in \$21,010,000 in assessments.⁸² Even though the five cases resulted in significant penalties, when compared to the original 116 submissions, this represents a minimal rate of approximately 4 percent for which referrals resulted in civil penalty assessments.

Consequently, delays in submitting cases to the FinCEN, may not only require the FinCEN to request more information but also to possibly not consider a case for further civil penalty. This not only affects future compliance from those taxpayers who are required to comply with BSA requirements but also expends the BSA Program's limited resources to prepare referrals for which the FinCEN will not consider penalty assessment.

Recommendation

Recommendation 4: The Commissioner, Small Business/Self-Employed Division, should consider having a review of the FinCEN referral process by process experts inside the IRS, such

⁸⁰ The FinCEN requested that the IRS reexamine four of the 19 cases, and the age of the case with the FinCEN is as of the most recent resubmission date.

⁸¹ GAO, GAO-09-227, *Bank Secrecy Act: Federal Agencies Should Take Action to Further Improve Coordination and Information-Sharing Efforts* (Feb. 2009), and IRS BSA CPE 2016 FinCEN Referrals training course.

⁸² *****1*****



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as the Wage and Investment Division's Lean Six Sigma team, to determine whether process improvements can be achieved and whether the new guidelines for FinCEN referrals are reasonable.

Management's Response: The IRS agreed with this recommendation. The IRS will review the FinCEN referral process. The IRS stated that it has recently completed a Form 5104 Process Improvement Review and will update the IRM to reflect improved procedures.

Most Referrals by the Bank Secrecy Act Program to Criminal Investigation Are Either Not Accepted or Are Discontinued

Overall, we found that less than half of the cases referred to CI were accepted, and most of the accepted referrals never reached the Department of Justice for prosecution because CI ultimately decided to discontinue the investigation before reaching the stage in which a referral to the Department of Justice would be made. As Figure 3 shows, there were no Title 26 (Form 8300) or Title 31 criminal penalty assessments. Between FYs 2014 and 2016, the BSA Program submitted 40 fraud referral packages to CI. As of November 12, 2017, 25 (62.5 percent) of the referral packages had been declined. As of this same date, according to the CI Management Information System database, the status of the investigations for the 15 accepted cases was as follows:

- 7 cases were closed as a discontinued Subject Criminal Investigation.
- 5 cases were ongoing.
- 3 cases were forwarded to the Department of Justice pending prosecution.

If, during the course of an examination, the BSA examiner determines that there are willful BSA Title 31 or Form 8300 violations and the case warrants referral for possible criminal investigation, the examiner follows the procedures to secure the involvement of a fraud technical advisor.⁸³ If firm indications of willful BSA violations exist and criminal criteria are met, the fraud technical advisor will recommend preparation of Form 2797.⁸⁴

At this point in the process, the BSA examiner will suspend all civil examination activity on the case and, with the assistance of the fraud technical advisor, will prepare the referral to CI on Form 2797.⁸⁵ This referral does not mean that a civil penalty cannot still be assessed. During the disposition conference, the possibility of parallel civil and criminal investigations should be discussed. A civil money penalty may be imposed notwithstanding the fact that a criminal

⁸³ IRM 25.1.12.2(1) (Dec. 31, 2013).

⁸⁴ IRM 25.1.12.5(1)(a)(i) (Dec. 31, 2013).

⁸⁵ IRM 4.26.8.7.3(2) and IRM 4.26.8.7.4 (June 1, 2006); IRM 25.1.12.5 (Dec. 31, 2013).



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penalty is imposed with respect to the same violation. This may be desirable to protect the statute of limitations.⁸⁶

Once CI receives the referral, the special agent will initiate a primary investigation. Within 10 workdays of receipt of the referral, CI will hold a conference with the referring BSA examiner and manager, the special agent and manager, and the fraud technical advisor. Within 30 workdays of receipt of the referral (60 workdays for international cases), another meeting will be held to discuss CI's decision to accept or decline the referral. If CI accepts the referral, the primary investigation will be elevated as a Subject Criminal Investigation. CI will then work the case to completion. If the case is eventually prosecuted, the prosecutor has some penalty parameters to work with. For Form 8300 Title 26 examinations, any willful violations of any provisions of I.R.C. § 6050I can result in fines of up to \$25,000 (\$100,000 for corporations) and imprisonment of up to five years. Knowingly filing a false Form 8300 can lead to a fine of up to \$100,000 (\$500,000 for corporations) and imprisonment of up to three years in jail. Willful violations of Form 8300 under Title 31 examinations have fines of up to \$250,000 and imprisonment of up to five years in jail, and these fines can be doubled if they are also convicted of violating other laws.⁸⁷ A willful violation of Title 31 can result in a fine of up to \$250,000 and imprisonment of up to five years. If the violation is in conjunction with violations of another law involving more than \$100,000 in a 12-month period, then a fine of up to \$500,000 and imprisonment of up to 10 years can apply.⁸⁸

If the referral is declined, CI will provide a memorandum to the referring business operating division explaining the reason(s) for the declination.⁸⁹ We reviewed the declination memorandums for the 19 rejected cases and found two common themes for rejection:

- Nine cases were rejected because of the U.S. Attorney's Office priorities as to the types of cases it will pursue because the U.S. Attorney's Office desires cases with jury appeal that will lead to a significant sentence.
- Eight cases were rejected because money laundering was not clearly evident or the business owner could potentially use ignorance of the law as a defense, such as a first examination or an apparent language barrier.

As of February 7, 2018, the three referrals to the Department of Justice remain pending and have not resulted in dismissals or prosecutions. Further, outside of a successful criminal prosecution through the CI referral process, the IRS may impose civil penalties on only Form 8300 violations, as it does not have the delegated authority to assess any civil penalty for Title 31 examination violations. The FinCEN alone has the authority to assess civil penalties resulting

⁸⁶ IRM 4.26.8.7.5(2) (June 1, 2006) and IRM 25.1.12.8(2) (Dec. 31, 2013).

⁸⁷ IRM 4.26.10.10.7; 4.26.10.10.7.1; and 4.26.10.10.7.2 (July 13, 2012).

⁸⁸ 31 U.S.C. § 5322(a) and (b) (Jan. 3, 2012).

⁸⁹ IRM 4.26.8.7.4(6) (June 1, 2006).



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from Title 31 examination violations, while the IRS's enforcement is limited to the issuance of a Letter 1112.

Recommendation

Recommendation 5: The Commissioner, Small Business/Self-Employed Division, should work with CI to review the BSA criminal referral criteria and ensure that written procedures and policies are in place and being followed to maximize efficiency and enhance BSA referrals to CI to prevent unnecessary resources from being expended on referrals that will not be given consideration.

Management's Response: The IRS agreed with this recommendation. The Directors, SB/SE Division, Examination, Specialty Policy, and Business Support (Fraud Policy and Operations Office) and CI will review the BSA criminal referral criteria and ensure that written procedures and policies are in place to maximize efficiency and enhance BSA referrals to CI.



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Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this review was to evaluate the IRS's compliance efforts related to its delegated authority under the BSA. To accomplish this objective, we:

- I. Evaluated the BSA internal controls and guidance and the metrics used by the BSA Program to determine its accomplishments.
 - A. Obtained and reviewed the IRM and management guidance to identify controls and procedures related to the BSA Program.
 - B. Interviewed IRS officials regarding the controls and procedures related to the BSA Program to gain an understanding of the organizational and administrative responsibilities.
 - C. Obtained IRS reports and other documentation describing the metrics that the BSA Program uses to measure success and program results on those metrics from FYs 2014 through 2016.
- II. Evaluated the BSA Program's compliance efforts regarding Form 8300 examinations.
 - A. Interviewed BSA Program management.
 1. Determined how Form 8300 cases are tracked by the BSA Program.
 2. Determined if the BSA Program is considering notification of taxpayers rights during the examination process on Title 26 cases.
 - B. Selected and reviewed a statistical sample of Form 8300 examinations completed in FYs 2014 through 2016 (from the Form 8300 Database).
 1. Selected a statistically valid random sample of 78 Title 26 Form 8300 cases from a population of 3,507 closed cases based on a 95 percent confidence level, a 10 percent anticipated error rate, and a ± 7 percent precision.¹ We worked with a contracted statistician to develop the sampling plan. To arrive at the population, we included a filter rate of 20 percent and over-selected 16 cases due to not having historical data on Title 26 Form 8300 examinations. The filter rate was applied due to cases that potentially may not be adequate for review, such as a

¹ This sampling methodology was used based on advice of TIGTA's contracted statistician. The total population of Title 26 Form 8300 examinations closed during FYs 2011 through 2016 totaled 7,613 cases. For our case review, we reviewed Title 26 Form 8300 examinations closed during FYs 2014 through 2016, which totaled 3,507 cases.



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surveyed case, an error on the database, or a case that could not be found. Therefore, the total requested Title 26 examinations resulted in 94 cases.

2. Determined if the BSA examiner provided education regarding the preparation and reporting requirements of Form 8300 and appropriately documented the educational outreach activity in the case file.
 3. Determined if the taxpayers in the selected sample timely submitted Form 8300.
 4. Determined if the taxpayer that issued the Form 8300 reported the income.
 5. Determined if the BSA examiner considered the taxpayers' rights during the examination process.
 6. Determined what actions BSA examiners took when noncompliant taxpayers were identified during compliance checks.
 7. Determined if the case was closed with a penalty assessed, collected, and/or abated.
 8. Determined if the case was sent to Appeals and whether the penalty was sustained or abated.
 9. Identified if the case was referred or should have been referred by the BSA Program to the FinCEN, CI, and/or Examination function.
- III. Evaluated the BSA Program's compliance efforts regarding Title 31 examinations.
- A. Interviewed BSA management to determine how Title 31 examinations are tracked in the Title 31 Database.
 - B. Selected a statistical sample of Title 31 examinations completed in FYs 2014 through 2016 (from the Title 31 Database).
 1. Selected a statistically valid random sample of 140 Title 31 cases from a population of 24,212 closed unique cases based on a 95 percent confidence level, a 5 percent anticipated error rate, and a ± 4 percent precision.² We worked with a contracted statistician to develop the sampling plan. To arrive at the population, we included a filter rate of 20 percent and over-selected 28 cases, due to not having historical data on Title 31 examinations. The filter rate was applied due to cases that potentially may not be able to be reviewed, such as a case surveyed, an error on the database, or case that could not be found. Therefore, the total requested Title 31 examinations resulted in 168 cases.

² This sampling methodology was used based on advice of TIGTA's contracted statistician. The total population of Title 31 examinations closed during FYs 2011 through 2016 totaled 51,978 unique cases. For our case review, we reviewed Title 31 examinations closed during FYs 2014 through 2016, which totaled 24,212 cases.



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- C. Reviewed each sampled case selected in Step III.B.
 - 1. Determined if the BSA examiner provided education, ensuring the financial institution was informed of the reporting, registration, recordkeeping, and compliance program requirements of the BSA (Letter 1052).
 - 2. Determined if the case had more than one notice or visit and no penalty assessed.
 - 3. Determined if the BSA examiner conducted a review of the nonbank financial bank institution's anti-money laundering program.
 - 4. Determined what actions BSA examiners took when noncompliant taxpayers were identified during compliance checks.
 - 5. Identified if the case was referred or should have been referred by the BSA Program to the FinCEN, CI, and/or Examination function.
- IV. Determined if the IRS was taking appropriate actions on cases that had been referred either to or from the BSA Program.
 - A. Determined how many referrals were made by the BSA Program to the FinCEN, CI, and Examination function for FYs 2012 through 2016 and analyzed for trends.
 - 1. Evaluated whether the IRS or the FinCEN took action on the referred cases from FYs 2014 through 2016 and opened either an examination or investigation.
 - i. Contacted CI to determine the number of referrals received from the BSA Program, how many of those referrals resulted in an investigation, and how many of those investigations resulted in a referral to the Department of Justice.
 - ii. Contacted the Examination function to determine the number of referrals received from the BSA Program, how many referrals resulted in an examination, and determined whether the examination resulted in a tax assessment. We also determined whether the tax assessment resulted in a collection action.
 - iii. Contacted IRS's FinCEN liaison to determine the number of referrals received from the BSA Program and determined if the referrals resulted in 1) closing the case without contacting the subject of the referral, 2) issuing a letter of warning or caution to the subject institution or individual, or 3) assessing a civil monetary penalty.



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Data validation

We were unable to independently validate the accuracy and reliability of the Title 31 Database. However, we successfully validated the data used from the Title 31 Database through specific tests related to the case reviews included in this audit. We found the limited data that we used from the Title 31 Database to be generally accurate and reliable. However, our testing revealed that while the information in the Title 31 Database were generally accurate, our review identified discrepancies and missing data points for which there was no valid entry on the Title 31 Database. This led us to conclude that the Title 31 Database was not entirely accurate and reliable. We were able to independently validate the accuracy and reliability of the Form 8300 Database. We validated the data used from the Form 8300 Database through specific tests related to the case reviews included in this audit and through matching the data against TIGTA's Data Center Warehouse Examination Returns Control System. We found the data that we used from the Form 8300 Database to be generally accurate and reliable.

Internal controls methodology

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our audit objective: BSA Program policies, procedures, and practices. We evaluated these controls by interviewing BSA examiners and management; reviewing BSA policies, procedures, and guidelines; analyzing the Title 31 and Form 8300 Databases; selecting and reviewing available case file information from the BSA cases in our sample; and analyzing the collectability of the civil examination tax assessments, which were referred by the BSA Program.



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Appendix II

Major Contributors to This Report

Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations)
Christina M. Dreyer, Director
Javier Fernandez, Audit Manager
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Jesse Fenton, Auditor



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Appendix III

Report Distribution List

Deputy Commissioner for Services and Enforcement
Commissioner, Small Business/Self-Employed Division
Director, Specialty Exam, Small Business/Self-Employed Division
Chief, Criminal Investigation
Director, Office of Audit Coordination



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Appendix IV

Outcome Measure

This appendix presents detailed information on the measurable impact that our recommended corrective actions will have on tax administration. This benefit will be incorporated into our Semiannual Report to Congress.

Type and Value of Outcome Measure:

- Increased Revenue – Potential; \$33,118,557 in potential civil penalties that were not assessed on approximately 18,159 taxpayer accounts for FYs 2014 through 2016 (see page 11).¹

Methodology Used to Measure the Reported Benefit:

In our review of 140 closed Title 31 sample compliance cases, we determined that 105 (75 percent) cases were closed with Title 31 BSA violation(s) and 35 (25 percent) cases were closed with no Title 31 violation(s). More specifically, the 105 cases closed with violations received a Letter 1112 with a total of 383 Title 31 BSA violations:

- 68 cases had only Title 31 program violations, totaling 118 violations.
- 32 cases had both Title 31 program and recordkeeping violations, totaling 255 violations.
- 5 cases had only Title 31 recordkeeping violations, totaling 10 violations.

Of the 105 cases that closed with a Letter 1112, 43 (41 percent) had a prior Title 31 compliance review conducted during FYs 2011 through 2016.² We identified *****1*****
1 had Title 31 violations in both the current and prior compliance review. As mentioned previously, the FinCEN has overall civil penalty authority for violations of any BSA Program. In addition, the FinCEN provides authority for assessing penalties when regulations for those penalties have not been issued. A negligent violation penalty of not more than \$500 per violation can be imposed if the nonfinancial trade or business violates the recordkeeping or reporting requirements of the BSA, with an additional \$50,000 if there is a pattern of negligent violations of any provision of the BSA.³

IRS standards for Title 31 referrals to the FinCEN specify that Title 31 violations that are considered technical, minor, infrequent, isolated, and nonsubstantive should not generally be

¹ See Appendix IX for a glossary of terms.

² Our sample population was from FYs 2014 through 2016; however, to determine if the case had prior compliance review(s), we reviewed the data for FYs 2011 through 2016.

³ IRM 4.26.7.3.1 (June 20, 2012).



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referred to the FinCEN and instead require a Letter 1112 be issued for these violations.⁴ Final authority to assess civil penalties rests with the Secretary of the Treasury and is delegated to the FinCEN.⁵ The FinCEN does not assess penalties under Title 31 for recordkeeping or reporting violations that are considered technical, minor, infrequent, isolated, and nonsubstantive. The law does not provide the IRS with authority to assess civil penalties at any level for Title 31 violations (with the exception of the Report of Foreign Bank and Financial Accounts penalties). Therefore, these nonwillful violations, not generally referred to the FinCEN, will not be assessed penalties. As such, neither the IRS nor the FinCEN assessed \$191,500 (\$500 per violation) in potential penalties for the 105 sample cases with 383 potential Title 31 BSA program and recordkeeping violations. When we project the potential uncollected civil penalty to the total population size of 24,212 Title 31 examinations, we estimate that neither the IRS nor the FinCEN assessed \$33,118,557 in potential civil penalties on approximately 18,159 cases over the three-year FYs 2014 through 2016 period.⁶

⁴ IRM 4.26.8, Exhibit 4.26.8-3 (June 1, 2006).

⁵ Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 999; Pub. L. 98-473, Title II, § 901(a), Oct. 12, 1984, 98 Stat. 2135; Pub. L. 99-570, Title I, §§ 1356(c)(1), 1357(a)-(f), (h), Oct. 27, 1986, 100 Stat. 3207-24-3207-26; Pub. L. 100-690, Title VI, § 6185(g)(2), Nov. 18, 1988, 102 Stat. 4357; Pub. L. 102-550, Title XV, §§ 1511(b), 1525(b), 1535(a)(2), 1561(a), Oct. 28, 1992, 106 Stat. 4057, 4065, 4066, 4071; Pub. L. 103-322, Title XXXIII, § 330017(a)(1), Sept. 13, 1994, 108 Stat. 2149; Pub. L. 103-325, Title IV, §§ 406, 411(b), 413(a)(1), Sept. 23, 1994, 108 Stat. 2247, 2253, 2254; Pub. L. 104-208, div. A, Title II, § 2223(3), Sept. 30, 1996, 110 Stat. 3009-415; Pub. L. 107-56, Title III, §§ 353(a), 363(a), 365(c)(2)(B)(i), Oct. 26, 2001, 115 Stat. 322, 332, 335; Pub. L. 108-357, Title VIII, § 821(a), Oct. 22, 2004, 118 Stat. 1586. (31 U.S.C. § 5321 – Civil Penalties).


⁶ The point estimate projection is based on a two-sided 95 percent confidence interval. We are 95 percent confident that the point estimate is between 16,224 and 19,831 cases and \$17.9 million and \$48.3 million.



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Appendix V

Publication 1, Your Rights as a Taxpayer



Your Rights as a Taxpayer

Publication 1

This publication explains your rights as a taxpayer and the processes for examination, appeal, collection, and refunds. Also available in Spanish.

The Taxpayer Bill of Rights

- 1. The Right to Be Informed**

Taxpayers have the right to know what they need to do to comply with the tax laws. They are entitled to clear explanations of the laws and IRS procedures in all tax forms, instructions, publications, notices, and correspondence. They have the right to be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.
- 2. The Right to Quality Service**

Taxpayers have the right to receive prompt, courteous, and professional assistance in their dealings with the IRS, to be spoken to in a way they can easily understand, to receive clear and easily understandable communications from the IRS, and to speak to a supervisor about inadequate service.
- 3. The Right to Pay No More than the Correct Amount of Tax**

Taxpayers have the right to pay only the amount of tax legally due, including interest and penalties, and to have the IRS apply all tax payments properly.
- 4. The Right to Challenge the IRS's Position and Be Heard**

Taxpayers have the right to raise objections and provide additional documentation in response to formal IRS actions or proposed actions, to expect that the IRS will consider their timely objections and documentation promptly and fairly, and to receive a response if the IRS does not agree with their position.
- 5. The Right to Appeal an IRS Decision in an Independent Forum**

Taxpayers are entitled to a fair and impartial administrative appeal of most IRS decisions, including many penalties, and have the right to receive a written response regarding the Office of Appeals' decision. Taxpayers generally have the right to take their cases to court.
- 6. The Right to Finality**

Taxpayers have the right to know the maximum amount of time they have to challenge the IRS's position as well as the maximum amount of time the IRS has to audit a particular tax year or collect a tax debt. Taxpayers have the right to know when the IRS has finished an audit.
- 7. The Right to Privacy**

Taxpayers have the right to expect that any IRS inquiry, examination, or enforcement action will comply with the law and be no more intrusive than necessary, and will respect all due process rights, including search and seizure protections, and will provide, where applicable, a collection due process hearing.
- 8. The Right to Confidentiality**

Taxpayers have the right to expect that any information they provide to the IRS will not be disclosed unless authorized by the taxpayer or by law. Taxpayers have the right to expect appropriate action will be taken against employees, return preparers, and others who wrongfully use or disclose taxpayer return information.
- 9. The Right to Retain Representation**

Taxpayers have the right to retain an authorized representative of their choice to represent them in their dealings with the IRS. Taxpayers have the right to seek assistance from a Low Income Taxpayer Clinic if they cannot afford representation.
- 10. The Right to a Fair and Just Tax System**

Taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. Taxpayers have the right to receive assistance from the Taxpayer Advocate Service if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels.

The IRS Mission | Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Publication 1 (Rev. 9-2017) Catalog Number 64731W Department of the Treasury Internal Revenue Service www.irs.gov


Source: IRS.gov.



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Appendix VI

Publication 5264, Your Exam Rights



Your Exam Rights

The BSA Mission To provide business owners top-quality service by helping them understand and comply with IRC Section 6050I and to protect the public interest by applying the law with integrity and fairness to all.

The IRS 8300 Examination Process

- 1. Introduction**

The goal of a Form 8300 examination is to promote voluntary compliance by reviewing the cash transaction of businesses identified as having a potential filing requirement per IRC Section 6050I.
- 2. Exam selection**

A business can be selected several ways for examination. Selection methods include, but are not limited to, an initiative, project or referral, because of a questionable or unusual cash deposits. We use a centralized case selection and review process to enhance consistency of enforcement activities and to focus resources on the areas that have the most positive impact on Form 8300 filing compliance. Our tasks include identifying areas of noncompliance, developing corrective strategies and assisting with those strategies.

Repeat examinations. If we examined your business for Form 8300 compliance in either of the two previous years and proposed no change to the information reported, please contact us as soon as possible so we can see if we should discontinue the examination.
- 3. The examination**

A specially trained examiner will notify you by letter that your business has been selected for examination. It will include a list of items that you or your representative must provide for the examination. We may request that you provide some items before the initial appointment and we may request additional items later.

You can authorize someone to represent you if the person is eligible to practice before the IRS. If you have someone represent you in your absence, you must furnish written authorization. You may use Form 2848, *Power of Attorney and Declaration of Representative*, for this authorization.

- a. Initial interview.** You'll be asked to explain how your business operates and how it receives and records cash. This will help the examiner understand your business and records to allow them to focus the review and complete the examination in a shorter time.
- b. Information review.** The examiner will analyze your information, perform tests and sample data. The examiner may expand the analysis to include additional details and larger samples until it's reasonably certain that the business is in compliance with IRC Section 6050I.
- c. Requests for additional information.** The examiner may require additional information or corrective action prior to concluding the examination. If so, the examiner will explain the reason for the request, describe the information and provide a reasonable response time.
- d. Closing interview.** When the initial field work is concluded, the examiner will explain the findings of the examination and inform you of any proposed penalties.
- e. Closing letter.** The final step in the examination process is a letter explaining the examiner's conclusions. A Form 8300 examination can result in a liability for penalties under IRC Sections 6721 and/or 6722.
- f. Appeal rights.** If you don't agree with the examiner's proposed penalties you may provide a written response to the proposed penalties to the examiner **and request a meeting with the examiner's supervisor.** If your position is not accepted you may file a claim for refund in court after you have paid the penalty amount in full. There is a pre-assessment appeals process for cases involving the Intentional Disregard Penalties described in IRC Sections 6721(e) and 6722(e).



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Appendix VII

Letter 4595, Form 8300 No Intentional Disregard
30 Day Letter (Rev. 2-2017)

Hide Selectable Paragraph Pages

Show Selectable Paragraph Pages

Clear All Fields

Print Form



Department of the Treasury
Internal Revenue Service
[Operating Division / Program Name]

Date:

Taxpayer ID number:

Person to contact:

Employee ID number:

Contact telephone number:

Contact fax number:

Response due date:

Dear:

Why we are sending you this letter

We're proposing to assess the penalties related to Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business, as required by Internal Revenue Code (IRC) Section 6050I. These penalties are for failures to file Form 8300 or failures to furnish a statement to a person providing over \$10,000 in cash.

We're proposing the penalties shown below. Review the proposed assessment and tell us if you agree by following the directions later in this letter.

What to do if you agree

If you agree to the assessment and collection of the proposed penalty or penalties, you must sign, date, and return one copy of the enclosed Form 14141, Agreement to Assessment and Collection of Penalties Under 26 USC 6721 and 6722 for Violations of 26 USC 6050I, in the envelope provided. Make your check or money order payable to the United States Treasury for the amount indicated on the agreement form. If you agree but cannot pay in full, pay what you can within 30 days from the date this letter and we'll send you a bill for the remaining amount with information on your payment options.

What to do if you disagree

The IRS has implemented the Taxpayer Bill of Rights. If you have questions or concerns, see Publication 1, Your Rights as a Taxpayer. You can get this publication from our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676).

You can take your case to the United States Court of Federal Claims or to your United States District Court. These courts are independent judicial bodies and have no connection with the IRS.

Generally, the District Court and the U.S. Court of Federal Claims will hear cases only after you paid the penalty and filed a claim for refund. If we don't act on your claim within six months from the date you filed it, you can then file suit for refund at any time. Once we issue a notice disallowing your claim, you must file suit within two years from the date we disallowed your claim. For information about filing suit in either court, contact the clerk of your District Court, or the Clerk of the United States Court of Federal Claims at:

717 Madison Place, N.W.
Washington, DC 20005
website: www.uscfc.uscourts.gov

Letter 4595 (Rev. 2-2017)
Catalog Number 49868Q



*The Internal Revenue Service's Bank Secrecy Act Program
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Hide Selectable Paragraph Pages

Show Selectable Paragraph Pages

Clear All Fields

Print Form

What will happen if you do nothing

If you take no action by the "Response due date" listed at the top of this letter, the IRS will assess the penalty and you'll receive a letter advising you of your appeal rights and related procedures.

If you have questions, you can contact the person at the top of this letter.

Thank you for your cooperation.

Sincerely,



[Name]

[Title]

Enclosures:

Copy of this letter

Envelope

2 copies of Form 14141

Letter 4595 (Rev. 2-2017)
Catalog Number 49808Q

Source: *IRS.gov*.



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Appendix VIII

*Letter 4595, Form 8300 No Intentional Disregard
30 Day Letter (Rev. 2-2011)*

Internal Revenue Service

Department of the Treasury

Date:

Employer Identification or
Social Security Number:

Person to Contact:

Employee Identification Number:

Contact Telephone Number:

Contact Fax Number:

Last Date to Respond to this Letter:

Dear

Why We Are Sending You This Letter

We are proposing assessment of the penalty(s) related to Form 8300 requirements as required by Internal Revenue Code (IRC) Section 6050I. These penalties deal with failures to file Form 8300 and/or failures to furnish a statement to a person providing over \$10,000 in cash.

We are proposing the assessment of the penalty(s) indicated below. Please review the proposed assessment and let us know whether you agree by following the directions provided later in this letter.

- For Forms 8300 required to be filed before January 1, 2011, IRC Section 6721(a) provides penalty(s) for failure to file or failure to file a complete and correct Form 8300. The penalty is \$50 for each Form 8300 failure to file or failure to file a complete return. The total amount imposed for all IRC 6721(a) penalties during any calendar year cannot exceed \$250,000 or, under Section 6721(d), \$100,000 in the case of persons with gross receipts of not more than \$5,000,000.
- For Forms 8300 required to be filed on or after January 1, 2011, IRC Section 6721(a) provides penalty(s) for failure to file or failure to file a complete and correct Form 8300. The penalty is \$100 for each Form 8300 failure to file or failure to file a complete return. The total amount imposed for all IRC 6721(a) penalties during any calendar year cannot exceed \$1,500,000 or, under Section 6721(d), \$500,000 in the case of persons with gross receipts of not more than \$5,000,000.
- For Forms 8300 required to be filed before January 1, 2011, IRC Section 6721(a) as reduced by Section 6721(b)(1), provides penalty(s) for failure to file or failure to file a complete and correct Form 8300 when the failure is corrected on or before 30 days after the required filing date. The penalty is \$15. The total amount imposed for all IRC 6721(b)(1) penalties during any calendar year cannot exceed \$75,000 or, under Section 6721(d), \$25,000 in the case of persons with gross receipts of not more than \$5,000,000.

Letter 4595 (Rev. 2-2011)
Catalog Number 49808Q



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- For Forms 8300 required to be filed on or after January 1, 2011, IRC Section 6721(a), as reduced by Section 6721(b)(1), provides penalty(s) for failure to file or failure to file a complete and correct Form 8300 when the failure is corrected on or before 30 days after the required filing date. The penalty is \$30. The total amount imposed for all IRC 6721(b)(1) penalties during any calendar year cannot exceed \$250,000 or, under Section 6721(d), \$75,000 in the case of persons with gross receipts of not more than \$5,000,000.
- For statements required by IRC 6050I(e) to be furnished before January 1, 2011, IRC Section 6722(a) provides penalty(s) for any failure to furnish a correct statement on or before the prescribed date to the person to whom such statement is required to be furnished, or any failure to include all of the information required to be shown on a statement or the inclusion of incorrect information on the statement. The penalty is \$50 for each statement where the failure occurs. The total amount imposed on each person for all such failures cannot exceed \$100,000 during any calendar year. There is no reduction of the penalty for correction within 30 days.
- For statements required by IRC 6050I(e) to be furnished on or after January 1, 2011 IRC Section 6722(a) provides penalty(s) for any failure to furnish a correct statement on or before the prescribed date to the person to whom such statement is required to be furnished, or any failure to include all of the information required to be shown on a statement or the inclusion of incorrect information on the statement. The penalty is \$100 for each statement where the failure occurs. The total amount imposed on each person for all such failures cannot exceed \$1,500,000 during any calendar year or \$500,000 for persons with gross receipts of not more than \$5,000,000.
- For statements required by IRC 6050I(e) to be furnished on or after January 1, 2011, Internal Revenue Code Section 6722(a), as reduced by Section 6722(b), provides reduced penalty(s) for any failure to furnish a correct statement on or before the prescribed date to the person to whom such statement is required to be furnished, or any failure to include all of the information required to be shown on a payee statement or the inclusion of incorrect information, when the failure is corrected on or before 30 days after the required filing date. The reduced penalty is \$30. The total amount imposed for all IRC 6722 (b) penalties during any calendar year cannot exceed \$250,000 or \$75,000 for persons with gross receipts of not more than \$5,000,000.



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What to Do If You Agree

If you agree to the assessment and collection of the proposed penalty or penalties, please sign, date, and return one copy of the enclosed Form 14141, *Agreement to Assessment and Collection of Penalties under 26 U.S.C. Section 6721 and/or Section 6722*, in the envelope provided. Make your check or money order payable to the United States Treasury for the amount indicated on the agreement form. If you agree but cannot pay in full, pay what you can within 30 days from receipt of this letter and we will send you a bill for the remaining amount with information on your payment options.

What Will Happen If You Do Nothing

If you take no action by the "Last Date to Respond to this Letter" shown at the beginning of this letter, the IRS will assess the penalty and you will receive a letter advising you of your appeal rights and related procedures.

What to Do If You Disagree

You may take your case to the United States Court of Federal Claims or to your United States District Court. These courts are independent judicial bodies and have no connection with the IRS.

Generally, District Court and the U.S. Court of Federal Claims will hear cases only after you have paid the penalty and have filed a claim for refund. If we have not acted on your claim within six months from the date you filed it, you can then file suit for refund at any time within two years of the disallowance of your claim. For information about filing suit in either court, contact the clerk of your District Court, or Clerk of the United States Court of Federal Claims, 717 Madison Place, N.W., Washington, DC 20005, website <http://www.uscfc.uscourts.gov/>.

If you have questions, please contact the person named in the heading of this letter. Thank you for your cooperation.

Sincerely,

Group Manager

Enclosures:
Copy of this letter
Envelope
2 copies of Form 14141

Letter 4595 (Rev. 2-2011)
Catalog Number 49888Q

Source: *IRS.gov*.



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Appendix IX

Glossary of Terms

Term	Definition
Audit Information Management System	The Audit Information Management System is a computer system used by the SB/SE Division Examination function and others to control returns, input assessments/adjustments to the Master File, and provide management reports.
Bank Secrecy Act	Legislation that requires certain businesses to submit reports of large-dollar transactions for use in criminal, tax, or regulatory investigations or proceedings or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.
BSA Examiner	A Specialty Examination function employee who is responsible for conducting BSA and I.R.C. § 6050I examinations, ensuring appropriate BSA programs are established and implemented, and ensuring the compliance of financial institutions with all applicable BSA anti-money laundering program, recordkeeping, and reporting requirements.
Business Master File	The IRS database that consists of Federal tax-related transactions and accounts for businesses. These include employment taxes, income taxes on businesses, and excise taxes.
Business Performance Review	Quarterly, each IRS business unit reports on its performance measures, business results, employee and customer satisfaction, and other items of importance to the function.
Criminal Investigation	CI investigates potential criminal violations of the I.R.C. and related financial crimes.
Criminal Investigation Management Information System	A database that tracks the status and progress of criminal investigations and the time expended by special agents. It is also used as a management tool that provides the basis for decisions of both local and national scope.
Data Center Warehouse	An online database maintained by TIGTA. The Data Center Warehouse pulls data from IRS system resources, such as IRS Collection and Examination files, for TIGTA access.



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Term	Definition
Department of Justice	With the Attorney General as its head, the Department of Justice's mission includes enforcing the law and defending the interests of the United States, ensuring public safety, and ensuring fair and impartial administration of justice for all Americans.
Discontinued Subject Criminal Investigation	A Subject Criminal Investigation that resulted in a determination that there was no prosecution potential.
Examination Returns Control System	The IRS database used to control and monitor inventories of tax returns being examined (<i>i.e.</i> , requisition tax returns, assign returns to examiners, change codes, and charge time).
Financial Crimes Enforcement Network	A bureau of the U.S. Department of the Treasury. The FinCEN's mission is to safeguard the financial system from illicit use and to combat money laundering and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities.
Fiscal Year	Any yearly accounting period, regardless of its relationship to a calendar year. The Federal Government's fiscal year begins on October 1 and ends on September 30.
Form 8300 Database	Form 8300 (Title 26) cases are maintained on the IRS Examination Returns Control System.
Fraud Technical Advisor	An Examination function employee who assists in the development of indicators of affirmative acts of willfulness or intent to violate BSA Title 31 and Form 8300 to determine if a case should be forwarded to CI.
Full-Time Equivalent	A measure of labor hours in which one full-time equivalent is equal to eight hours multiplied by the number of compensable days in a particular fiscal year. For FYs 2014 and 2015, one full-time equivalent was equal to 2,088 staff hours. For FY 2016, one full-time equivalent was equal to 2,096 staff hours.
Individual Master File	The IRS database that maintains transactions or records of individual tax accounts.
Internal Revenue Code	Federal tax law begins with the Internal Revenue Code, enacted by Congress in Title 26 of the U.S.C.
Internal Revenue Manual	The primary, official source of IRS "instruction to staff" relating to the organization, administration, and operation of the IRS. It details the policies, delegations of authorities, procedures, instructions, and guidelines for daily operations for all divisions and functions of the IRS.



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Term	Definition
Knock and Talk meeting	An educational forum that allows BSA examiners to provide reporting requirements and information to new businesses.
Lean Six Sigma	A methodology that combines Lean, which focuses on eliminating waste and non-value added activities, with Six Sigma, which improves process effectiveness and efficiency by reducing variation and increasing quality.
Metric	A metric is a standard of measurement.
Money Laundering	The process of disguising criminal proceeds; it may include the movement of clean money through the United States with the intent to commit a crime in the future (<i>e.g.</i> , terrorism).
National Taxpayer Advocate	An independent organization within the IRS to help taxpayers resolve problems with the IRS and recommend changes to prevent problems.
Primary Financial Service Type	Primary type of product or financial service offered by a money services business or a financial institution.
Specialty Examination Function	The mission of the Specialty Examination function is to increase compliance with excise tax, employment tax, estate and gift tax, and BSA laws by applying the tax laws with integrity and fairness.
Structuring	A person structures a transaction if that person, acting alone or in conjunction with or on behalf of other persons, conducts or attempts to conduct one or more transactions in currency in any amount, at one or more U.S. financial institutions, on one or more calendar days, in any manner, for the purpose of evading Currency Transaction Reports filing requirements. "In any manner" includes, but is not limited to, breaking down a single currency sum exceeding \$10,000 into smaller amounts that may be conducted as a series of transactions at or less than \$10,000.
Subject Criminal Investigation	An investigation developed when an individual or entity is alleged to be in noncompliance with tax laws and there is prosecution potential. The objective of a Subject Criminal Investigation is to gather evidence to prove or disprove the existence of a violation of the laws enforced by the IRS.
Tax Gap	The estimated difference between the amount of tax that taxpayers should pay and the amount that is paid voluntarily and on time.
Title 26	U.S.C. Title 26 (I.R.C.).



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Term	Definition
Title 31	U.S.C. Title 31 (Money and Finance). Several sections of Title 31 apply to violations that are within the jurisdiction of the function. Examples include § 5322, <i>Criminal Penalties</i> (for willful violations of Title 31 sections), and § 5324, <i>Structuring Transactions to Evade Reporting Requirement Prohibited</i> .
Title 31 Database	The Title 31 Database houses the entire population of Title 31 entities identified as being subject to IRS jurisdiction. The database contains entity information and examination information.
United States Attorney's Office	The U.S. Attorneys serve as the Nation's principal litigators under the direction of the Attorney General. They have three statutory responsibilities: 1) the prosecution of criminal cases brought by the Federal Government; 2) the prosecution and defense of civil cases in which the United States is a party; and 3) the collection of debts owed the Federal Government that are administratively uncollectible.
Virtual Currency	A digital representation of value that functions as a medium of exchange, a unit of account, or a store of value.



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Appendix X

Management's Response to the Draft Report



COMMISSIONER
SMALL BUSINESS/SELF-EMPLOYED DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

August 30, 2018

MEMORANDUM FOR MICHAEL E. MCKENNEY
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Mary Beth Murphy ^{OK} Lisa J. Beard-Hemann
Commissioner, Small Business/Self-Employed Division

SUBJECT: Draft Audit Report – The IRS's Bank Secrecy Act Program Has
Minimal Impact on Compliance (Audit # 201630034)

Thank you for the opportunity to review the above subject draft audit report. Criminals frequently use the financial system to conceal illegal or untaxed proceeds from a variety of activities, including narcotics trafficking, arms trafficking, extortion, and public corruption. Laundering money, evading taxes, and financing a terrorist plot can involve many of the same methods. These activities jeopardize not only the security of our financial system but also our national security. The Bank Secrecy Act (BSA) establishes the framework used to combat these activities and prevent the exploitation of our financial system.

The BSA requires financial institutions to report certain financial transactions made by their customers. Multiple federal and state agencies operate within the BSA framework. The Financial Crimes Enforcement Network (FinCEN) oversees the administration of BSA. The Internal Revenue Service has been delegated authority to examine non-bank financial institutions (NBFI) and enforce the criminal provisions of the BSA. We also have authority to examine compliance with Form 8300, *Report of Cash Payments over \$10,000 Received in a Trade or Business*, and assess penalties for non-compliance with the form where warranted.

We do not agree with your assertion that our BSA program has minimal impact on compliance. Our BSA Program is a crucial and significant component of the United States' and international anti-money laundering strategies. Although we do not have statutory, regulatory, or delegated authority to assert penalties against NBFIs for Title 31 violations, our examiners provide an important BSA enforcement presence, performing NBFI transactional analyses, ensuring NBFIs are registered, and evaluating entities' compliance programs to determine if there are weaknesses or violations. If issues are identified, our examiners educate the entity on the reporting and recordkeeping requirements. Where significant BSA violations are found or past



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recommendations have been ignored, we refer the case to FinCEN, which determines what penalties or other actions should be taken.

Further, we do not agree with your recommendation that we coordinate with FinCEN to obtain authority to assess penalties on Title 31 examinations. As stated in TIGTA's report, "... (TIGTA) discussed Title 31 civil penalty authority with the FinCEN management, they stated that there were no plans to modify the penalty authority for Title 31 violations. The FinCEN management maintains that delegated authority should remain under the control of the FinCEN (including small penalties) so that the application of penalty assessments is consistent across the many regulators that are under the FinCEN." In addition, any such action would require a regulatory change which is outside the purview of the IRS. As described above, IRS plays an important role in Title 31 enforcement, and we will continue to allocate our BSA Program resources consistent with this role in collaboration with Treasury and FinCEN. We do intend, however, to analyze and make changes to improve the efficiency and quality of our referrals to FinCEN and our Criminal Investigation (CI) function.

We do not agree with your outcome measure of \$33.1 million. It assumes all violations that we identified warranted a penalty. It does not account for the FinCEN policy regarding non-assertion of penalties when minor violations exist. It also fails to consider the reasonable cause exception afforded by law.

Attached is a detailed response outlining our corrective actions to address your recommendations. If you have any questions, please contact me or Brenda Dial, Director, Examination Operations.

Attachment



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Attachment

RECOMMENDATION 1:

The Deputy Commissioner for Services and Enforcement should coordinate with the FinCEN on the authority to assess penalties on Title 31 examinations or consider reprioritizing BSA Program resources for more productive work.

CORRECTIVE ACTION:

We do not agree with this recommendation. FinCEN has stated that it intends to retain authority to impose Title 31 penalties to ensure consistent application across agencies. In addition, any change to provide the IRS with Title 31 penalty authority would require a regulatory change, which is outside the purview of the IRS. IRS allocates its BSA Program resources consistent with its role in Title 31 enforcement, as delegated under 31 CFR 1010.810(b)(8), in collaboration with Treasury and FinCEN.

IMPLEMENTATION DATE:

Not Applicable

RESPONSIBLE OFFICIAL:

Not Applicable

CORRECTIVE ACTION MONITORING PLAN:

Not Applicable

RECOMMENDATION 2:

The Deputy Commissioner for Services and Enforcement should leverage the BSA Program's Title 31 examination authority by incorporating its annual examination planning into the IRS's overall virtual currency strategy.

CORRECTIVE ACTION:

We agree with the recommendation. We will incorporate the BSA Program's Title 31 compliance efforts into our other virtual currency strategy compliance efforts.

IMPLEMENTATION DATE:

June 15, 2019

RESPONSIBLE OFFICIAL:

Director, Examination Specialty Policy, Small Business/Self-Employed Division

CORRECTIVE ACTION MONITORING PLAN:

IRS will monitor this corrective action as part of our internal management system of controls.



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RECOMMENDATION 3:

The Commissioner, Small Business/Self-Employed Division, should issue formal guidance to BSA examiners requiring inclusion of Publication 1 and Publication 5264 as enclosures with Letter 2277 when initiating an IRS Form 8300 examination.

CORRECTIVE ACTION:

We agree with the recommendation. We will draft and issue an Interim Guidance Memorandum to BSA examiners requiring inclusion of Letter 2277, *Appointment Letter*, Publication 1, *Your Rights as a Taxpayer*, and Publication 5264, *Your Exam Rights*, as enclosures when initiating a Form 8300 examination.

IMPLEMENTATION DATE:

November 15, 2018

RESPONSIBLE OFFICIAL:

Director, Examination Specialty Policy, Small Business/Self-Employed Division

CORRECTIVE ACTION MONITORING PLAN:

IRS will monitor this corrective action as part of our internal management system of controls.

RECOMMENDATION 4:

The Commissioner, Small Business/Self-Employed Division, should consider having a review of the FinCEN referral process by process experts inside the IRS, such as the Wage and Investment Division's Lean Six Sigma team, to determine whether process improvements can be achieved and whether the new guidelines for FinCEN referrals are reasonable.

CORRECTIVE ACTION:

We agree with the recommendation. We will review the FinCEN referral process. We have recently completed a Form 5104 Process Improvement Review and will update the IRM to reflect improved procedures.

IMPLEMENTATION DATE:

December 15, 2018

RESPONSIBLE OFFICIAL:

Director, Examination Specialty Policy, Small Business/Self-Employed Division

CORRECTIVE ACTION MONITORING PLAN:

IRS will monitor this corrective action as part of our internal management system of controls.



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RECOMMENDATION 5:

The Commissioner, Small Business/Self-Employed Division, should work with CI to review the BSA criminal referral criteria and ensure written procedures and policies are in place and being followed to maximize efficiency and enhance BSA referrals to CI to prevent unnecessary resources from being expended on referrals that will not be given consideration.

CORRECTIVE ACTION:

We agree with the recommendation. The Directors, SB/SE Examination, Specialty Policy and Business Support (Fraud Policy & Operations Office), and CI will review the BSA criminal referral criteria and ensure written procedures and policies are in place to maximize efficiency and enhance BSA referrals to CI.

IMPLEMENTATION DATE:

June 15, 2019

RESPONSIBLE OFFICIALS:

Director, Examination Specialty Policy, Small Business/Self-Employed Division
Director, SB/SE Business Support (Fraud Policy & Operations Office)
Executive Director, Operations Policy and Support, Criminal Investigation

CORRECTIVE ACTION MONITORING PLAN:

IRS will monitor this corrective action as part of our internal management system of controls.