The SAR Activity Review

Trends Tips & Issues

Issue 16

Published under the auspices of the BSA Advisory Group.
October 2009

Financial Crimes Enforcement Network

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The SAR Activity Review **Index** is available on the FinCEN website at:
http://www.fincen.gov/news_room/rp/files/reg_sar_index.html
For your convenience, topics are indexed alphabetically by subject matter.

The **Archive of Law Enforcement Cases** published in *The SAR Activity Review* can be accessed through the following link:
http://www.fincen.gov/news_room/rp/sar_case_example.html

You can subscribe to **FinCEN Updates** under "What's New" on the FinCEN website, www.fincen.gov, to receive notification of when *The SAR Activity Review* is published.

Introduction

The SAR Activity Review – Trends, Tips & Issues is a product of continuing dialogue and close collaboration among the nation's financial institutions, law enforcement officials and regulatory agencies[1] to provide meaningful information about the preparation, use and value of Suspicious Activity Reports (SARs) and other Bank Secrecy Act reports filed by financial institutions.

In the Trends and Analysis section of this issue, FinCEN's Office of Regulatory Analysis provides new information on mortgage loan fraud SARs filings for the first six months of 2009. In this section we also profile FinCEN's E-Filing system, looking at the trends and benefits of the system. An analysis of calls received on FinCEN's Regulatory Helpline shows trends during the period of July 1, 2008 to June 30, 2009 – a transitional period of time for the U.S. economy.

Structuring is the focus of many of the law enforcement cases in this issue, and the Issues and Guidance section offers articles on preparing and filing SARs and avoiding common SAR errors. Finally, the Industry Forum explores how the auditing of AML programs has evolved since the topic was first addressed in Issue 6 of *The SAR Activity Review*.

As always, your comments and feedback are important to us. We have included a feedback form in Section 6; please take a moment to let us know if the topics chosen for this issue are helpful and what type of articles you would like to see in future editions.

1. Participants include, among others, the American Bankers Association; Independent Community Bankers of America; American Institute of Certified Public Accountants; Securities Industry and Financial Markets Association; Board of Governors of the Federal Reserve System; Office of the Comptroller of the Currency; Federal Deposit Insurance Corporation; Office of Thrift Supervision; National Credit Union Administration; U.S. Securities and Exchange Commission; U.S. Department of Justice's Criminal Division and Asset Forfeiture & Money Laundering Section and the Federal Bureau of Investigation; Drug Enforcement Administration; U.S. Department of Homeland Security's Bureau of Immigration and Customs Enforcement and U.S. Secret Service; U.S. Department of the Treasury's Office of Terrorism and Financial Intelligence, Internal Revenue Service, and the Financial Crimes Enforcement Network.

Your comments may also be addressed to either or both of *The SAR Activity Review* project co-chairs:

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Please do not submit questions regarding suspicious activity reports to The SAR Activity Review mailbox.

Section 1 — Director's Forum

Welcome to the sixteenth edition of *The SAR Activity Review - Trends, Tips & Issues*. This semi-annual publication is devoted to fostering the dialogue between the thousands of financial professionals who craft and submit the information contained in Suspicious Activity Reports (SARs) and the thousands of Federal, State, and local law enforcement and regulatory professionals who expertly utilize this unique and valuable data. Every day, investigators, analysts, and regulators rely upon SAR data to combat money laundering, fraud, and other criminal threats to our financial system.

As this edition goes to print, investigations and indictments supported by SAR data are making news and the value of SARs is again being recognized by the highest levels of the U.S. government. For the past four years, FinCEN analysts have focused on mortgage fraud to help financial institutions and regulators address the vulnerabilities and to help law enforcement hold the criminals accountable. Most recently, FinCEN was credited for assisting the FBI and the Fairfax County (VA) Police Department in a mortgage fraud investigation involving up to 200 properties worth over $100 million. Seventeen teams of over 100 detectives and agents arrested 20 suspects.

On September 17, 2009, as a follow up to a joint initiative to combat foreclosure rescue scams announced earlier in the year, Treasury Secretary Timothy F. Geithner hosted Attorney General Eric Holder, Housing and Urban Development (HUD) Secretary Shaun Donovan, Federal Trade Commission (FTC) Chairman Jon Leibowitz, myself, and attorneys general from 12 States to discuss emerging trends and proactive strategies to combat fraud against consumers in the housing markets as well as best practices to bolster coordination across State and Federal agencies. FinCEN, and the data that our financial institution partners provide, plays a key and leading role in this effort. As a network that reaches across Federal, State, and international boundaries, FinCEN is in the unique position to follow the money trail wherever it may lead. In turn, by sharing information, our law enforcement partners can leverage FinCEN's capabilities to enhance their own investigatory efforts.

These are but two strong examples of the power and utility of the information provided by SARs in the mortgage market. The unique resource of SAR data is being increasingly utilized in combating problems of consumer loan fraud, identity theft, credit card fraud, and many other areas of crime. In difficult economic times, we can expect anti-fraud and consumer protection efforts to remain a national priority, and FinCEN's analytical and networking efforts will have ever increasing value.

Many more law enforcement case examples, citing the use of SAR data, are included within this *Review*. In an effort to continue to provide timely information on mortgage loan fraud, an update is included. Other articles discuss the most efficient way to file SARs, CTRs, and other BSA data through e-filing and offer suggestions from investigators on what they find most useful in a SAR narrative.

Another article discusses the types and volume of inquiries received by FinCEN's Regulatory Helpline. In the past year, the helpline received 1,634 inquiries from financial institutions located across the country. As a service to financial institutions, FinCEN will begin to post the most frequent topics and inquiries to its web site, www.fincen.gov so that other institutions and compliance professionals may be better informed of the latest developments.

We again welcome another interesting article in the "Industry Forum." This issue presents an informative perspective from Alan Able, CPA, who also serves as a representative for a member of the Bank Secrecy Advisory Group (BSAAG). Alan discusses the challenges and changes involved in auditing an institution's anti-money laundering programs.

As always, by providing a feedback form, we welcome your comments and encourage readers to submit their ideas for future articles. As in everything we do, sharing information makes every member of this partnership stronger.

James H. Freis, Jr.
Director
Financial Crimes Enforcement Network

Section 2 - Trends & Analysis

This section of The SAR Activity Review focuses on patterns of BSA reporting, specifically as it relates to mortgage loan fraud, as well as trends in how financial institutions file their BSA reports. Finally, this section also contains an analysis of calls received on FinCEN's Regulatory Helpline.

Contributors writers and editors: Jeanne-Marie Avila, Barbara Bishop, Ken Janoski, Erik Kiefel, Tom Keller, Jason Morgan, Clare Murphy, Chris Penaherrera, Joe Stachyra and Nona Tiedge

Mortgage Loan Fraud Update

By FinCEN's Office of Regulatory Analysis

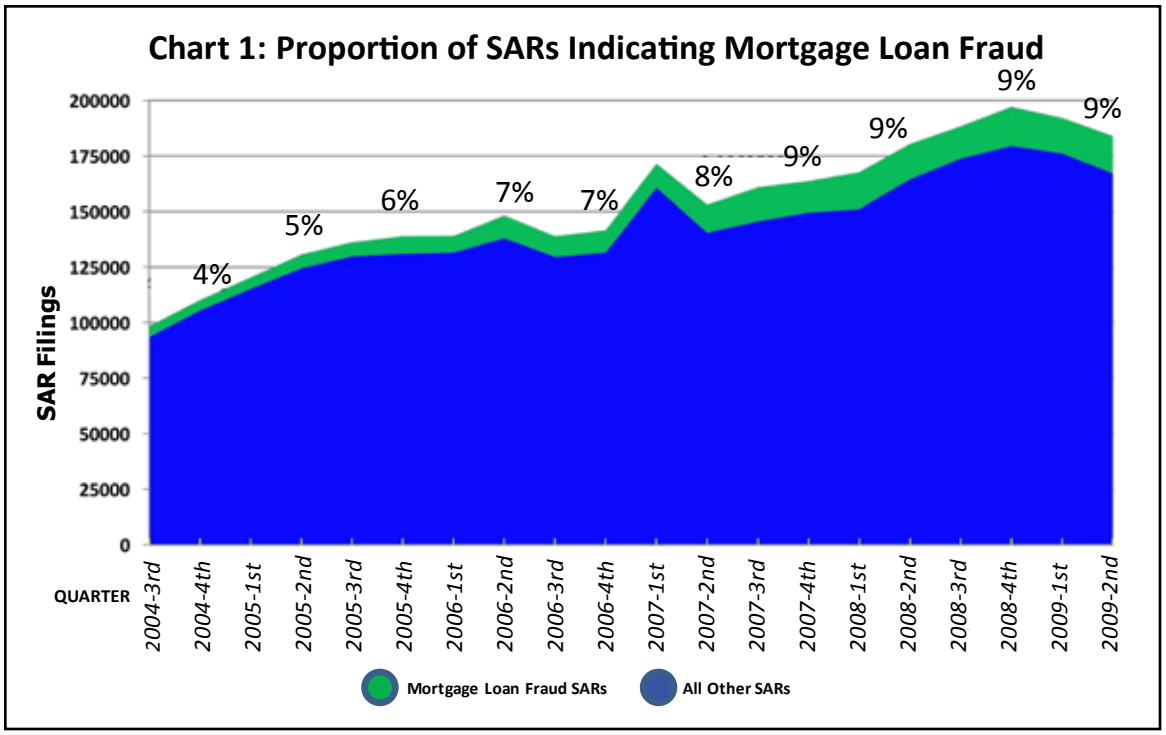
This update to FinCEN's prior Mortgage Loan Fraud (MLF) studies looks at filings during the first six months of 2009 and provides new information on subject roles and geographic locations. Two illustrations provide rankings by State and metropolitan areas for subject locations reported during this period. In addition, we provide information on the secondary activities reported along with mortgage loan fraud in the SAR filings.

Overall Filings

From January 1 to June 30, 2009, filers submitted 32,926 MLF SARs, less than a one percent increase over the 32,660 MLF SARs filed in the same period in 2008.[2] The top 10 depository institution filers submitted 72 percent of the MLF SARs, up from

2. The volume of SAR filings for the given period does not directly correlate to the number or timing of suspected fraudulent incidents, as explained in FinCEN's March 2009 report, "Mortgage Loan Fraud Connections with Other Financial Crime: An Evaluation of Suspicious Activity Reports Filed by Money Services Businesses, Securities, and Futures Firms, Insurance Companies and Casinos," http://www.fincen.gov/news_room/rp/files/mortgage_fraud.pdf.

64 percent. Continuing a trend begun in Mid-2007 (Chart 1), the MLF SARs filed from January 1 to June 30, 2009, represent nearly 9 percent of all SARs filed during this period.[3]



Subjects of MLF SARs

Filers most frequently indicated the subjects of MLF SARs as "borrower" or "broker" relationships to the reporting institution, respectively accounting for 43 and 13 percent of subjects. Table 1 displays a list of reported relationships.[4]

3. For more on information on 2007-2008 MLF SARs, see the February 2009 FinCEN report "Filing Trends in Mortgage Loan Fraud," at http://www.fincen.gov/news_room/nr/pdf/20090225a.pdf.

4. SAR Part II, 30a-l. Subject totals in this report represent *total name variations* without consideration for alternate spellings, aliases, identically named subjects, or those with multiple listed addresses. Subjects reported without listed addresses are not counted in geographically delineated totals.

Table 1: Mortgage Loan Fraud SAR Subjects - Relation to Reporting Institution *January – June 2009*	
Description	***Subjects***
Borrower	25,960
Broker	7,601
Customer	4,812
Appraiser	3,426
Employee	467
Agent	213
Attorney	152
Director	96
Officer	82
Accountant	29
Other	13,162

In addition to these reported relationships, filers described numerous "other" subject relationships to the filing institution. Table 2 provides general descriptions of the most common "other" characterizations.[5]

5. SAR Part II, 30l.

Table 2: Mortgage Loan Fraud SAR Subjects – "Other" Relations to Reporting Institution *January – June 2009*	
Filer description	***Subjects***
Real estate professional (Loan officer, mortgage broker, realtor, or employee of any)	5,944
Borrower or family member, or business owned by either	1,763
Seller	1,440
Closing agent (Title agent, escrow company, attorney, etc.)	735
Verifier of loan documentation (Notary, employer, tax preparer, landlord, etc.)	640
Developer, construction company, property management company, or real estate investor	476
Appraiser or employee	227
Loan modification scammers[6]	77

Subject Locations

Ranked by total reported subjects, the top 10 States included: 1) California, 2) Florida, 3) New York, 4) Illinois, 5) Georgia, 6) Texas, 7) Arizona, 8) Michigan, 9) Virginia, and 10) New Jersey. The following graph, *Mortgage Loan Fraud SAR Subjects*, ranks each State or territory by totals of reported subjects. Table 3 provides a list of the top 50 metropolitan locations for MLF SARs, ranked by subject totals. Single subjects named in multiple SAR entries are counted for each mention. On average, less than eight percent of subject totals contained duplicates arising from the same name appearing multiple times. At the metropolitan level, the greater Los Angeles and Miami areas ranked first and second in terms of total MLF SAR subjects, with approximately 6,300 subjects each. Following these, the urban areas of New York City (4,500), Chicago (3,200), and the District of Columbia (2,200) had the largest number of MLF SAR subjects.

6. More information about FinCEN's efforts as part of the Federal-State partnership to combat loan modification fraud schemes can be found on the FinCEN website at http://www.fincen.gov/foreclosurerescue.html.

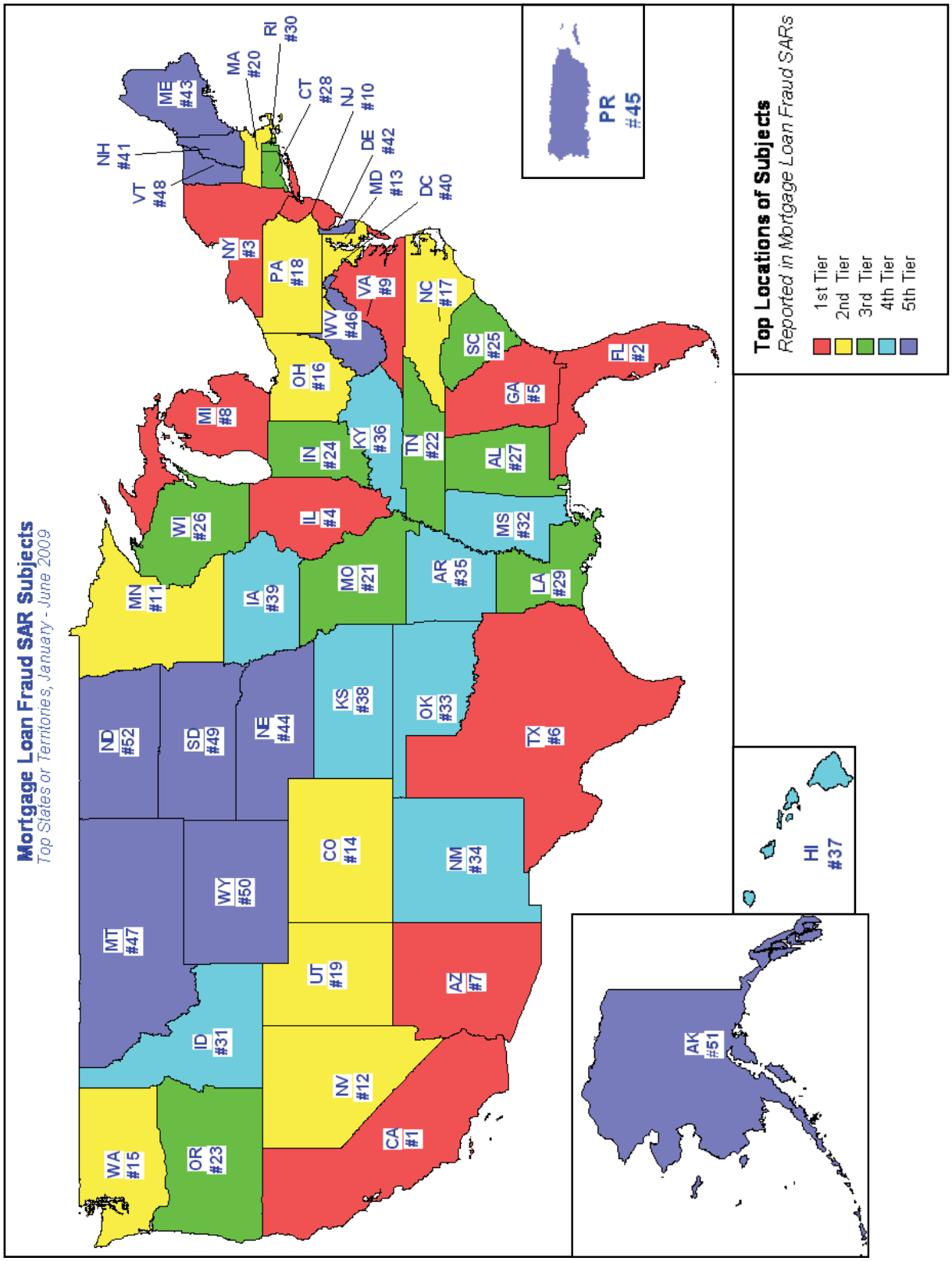

Mortgage Loan Fraud SAR Subjects
Top States or Territories, January - June 2009
Top Locations of Subjects
Reported in Mortgage Loan Fraud SARs
1st Tier
2nd Tier
3rd Tier
4th Tier
5th Tier
WA #15
OR #23
CA #1
NV #12
ID #31
MT #47
WY #50
UT #19
AZ #7
CO #14
NM #34
ND #52
SD #49
NE #44
KS #38
OK #33
TX #6
MN #11
IA #39
MO #21
AR #35
LA #29
WI #26
IL #4
MS #32
MI #8
IN #24
KY #36
TN #22
AL #27
OH #16
WV #46
VA #9
NC #17
SC #25
GA #5
FL #2
PA #18
NY #3
VT #48
NH #41
ME #43
MA #20
RI #30
CT #28
NJ #10
DE #42
MD #13
DC #40
PR #45
AK #51
HI #37

Table 3: Top Metropolitan Locations of Subjects in Mortgage Loan Fraud SARs
January – June 2009

Rank	Metropolitan Area	Subject	Rank	Metropolitan Area	Subject
1	Los Angeles-Long Beach-Santa Ana, CA	6,347	26	Baltimore-Towson, MD	419
2	Miami-Fort Lauderdale-Pompano Beach, FL	6,296	27	Salt Lake City, UT	380
3	New York-Northern New Jersey-Long Island, NY-NJ-PA	4,549	28	St. Louis, MO-IL	370
4	Chicago-Naperville-Joliet, IL-IN-WI	3,200	29	Providence-New Bedford-Fall River, RI-MA	326
5	Washington-Arlington-Alexandria, DC-VA-MD-WV	2,241	30	Sarasota-Bradenton-Venice, FL	324
6	Riverside-San Bernardino-Ontario, CA	2,198	31	Stockton, CA	309
7	Atlanta-Sandy Springs-Marietta, GA	2,081	32	Cleveland-Elyria-Mentor, OH	307
8	Phoenix-Mesa-Scottsdale, AZ	1,978	33	Charlotte-Gastonia-Concord, NC-SC	304
9	San Francisco-Oakland-Fremont, CA	1,841	34	Indianapolis-Carmel, IN	300
10	Detroit-Warren-Livonia, MI	1,676	35	Bakersfield, CA	280
11	Orlando-Kissimmee, FL	1,652	36	Oxnard-Thousand Oaks-Ventura, CA	273
12	Minneapolis-St. Paul-Bloomington, MN-WI	1,397	37	Modesto, CA	270
13	San Diego-Carlsbad-San Marcos, CA	1,336	38	Memphis, TN-AR-MS	260
14	Las Vegas-Paradise, NV	1,252	39	Jacksonville, FL	250
15	Tampa-St. Petersburg-Clearwater, FL	1,189	40	Columbus, OH	232
16	Dallas-Fort Worth-Arlington, TX	1,019	41	Naples-Marco Island, FL	221
17	Sacramento-Arden-Arcade-Roseville, CA	1,002	42	Port St. Lucie, FL	207

18	San Jose-Sunnyvale-Santa Clara, CA	913
19	Houston-Sugar Land-Baytown, TX	777
20	Denver-Aurora, CO	711
21	Seattle-Tacoma-Bellevue, WA	672
22	Philadelphia-Camden-Wilmington, PA-NJ-DE-MD	562
23	Cape Coral-Fort Myers, FL	499
24	Boston-Cambridge-Quincy, MA-NH	497
25	Portland-Vancouver-Beaverton, OR-WA	481

43	Kansas City, MO-KS	202
44	Virginia Beach-Norfolk-Newport News, VA-NC	183
45	Vallejo-Fairfield, CA	183
46	Milwaukee-Waukesha-West Allis, WI	162
47	Fresno, CA	161
48	Palm Bay-Melbourne-Titusville, FL	160
49	Provo-Orem, UT	156
50	Nashville-Davidson-Murfreesboro-Franklin, TN MSA	152

Secondary Activity Descriptions

Filers most frequently indicated false statements (28 percent) as a secondary activity to mortgage loan fraud, followed by identity theft (3 percent). Table 4 displays the number of reports indicating each secondary activity category.

Table 4: Secondary Activities in Mortgage Loan Fraud SARs: *January - June 2009*

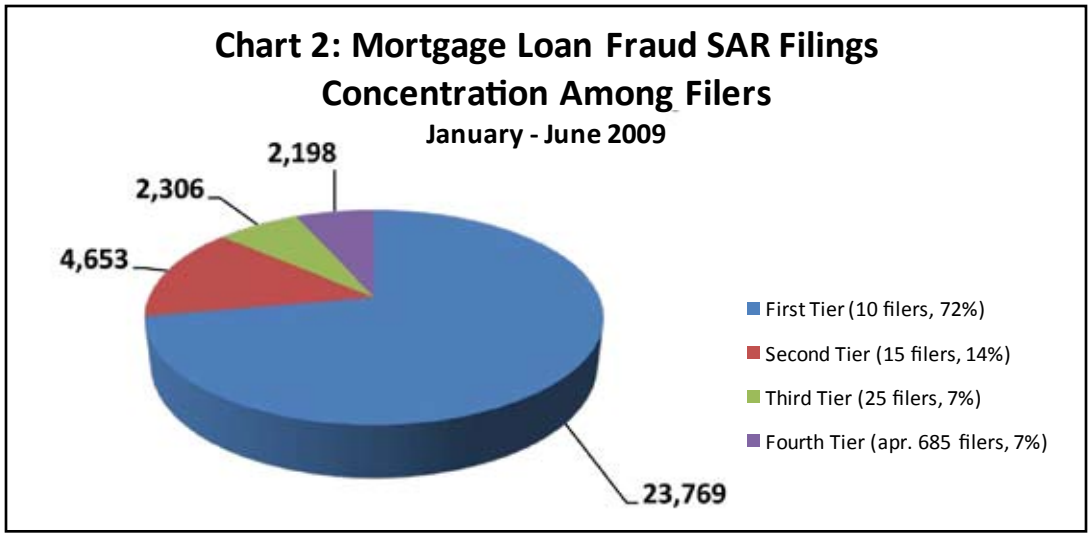
Secondary Activity Indicated	*SARs*	*Percentage of Mortgage Loan Fraud SARs (rounded)*
False statement	9,017	28%
Identity theft	980	3%
Consumer loan fraud	296	1%
Misuse of position or self-dealing	186	1%
BSA/Structuring/Money Laundering	168	1%
Commercial loan fraud	93	<1%
Wire transfer fraud	84	<1%
Check fraud	69	<1%
Defalcation/embezzlement	41	<1%
Counterfeit instrument (other)	28	<1%
Counterfeit check	22	<1%
Credit card fraud	17	<1%
Bribery/gratuity	13	<1%
Mysterious disappearance	10	<1%
Check Kiting	10	<1%
Computer intrusion	7	<1%
Counterfeit credit/debit card	3	<1%
Debit card fraud	1	<1%
Terrorist Financing	0	0

In some MLF SARs, filers provided additional information about activities by using the "Other" suspicious activity field. Table 5 provides a list of the most frequent types of "Other" activities filers described in this field.

Table 5: Mortgage Loan Fraud SARs Additional Filer Activity Clarifications *January - June 2009*	
Reported activity	***Mortgage Loan Fraud SARs***
Forged documents (specified)	254
Debt elimination or foreclosure rescue schemes	203
SSN or ITIN theft or fraud	178
Misrepresented assets, undisclosed liabilities, or occupancy fraud (specified)	118
Title or insurance fraud	32
Appraisal fraud (specified)	29
Exploitation of vulnerable adult	19
Tax or bankruptcy fraud	16

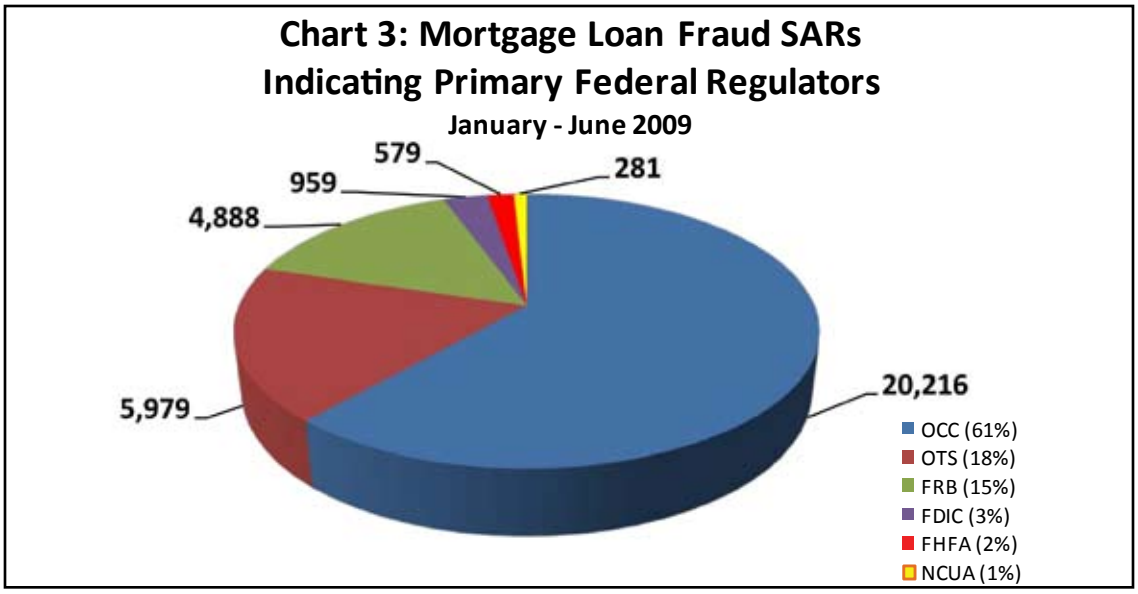
Filers

In the first half of 2009, approximately 735 financial institutions submitted MLF SARs, or about 50 more filers compared to the same period in 2008. The top 50 filers submitted 93 percent of all MLF SARs, consistent with the same 2008 filing period. However, MLF SARs submitted by the top 10 filers increased from 64 percent to 72 percent. Factors affecting this growth included institutional mergers and third party reviews by secondary market participants, credits enhancers and mortgage servicers. Chart 2 breaks down filing volumes by groups of top filers.



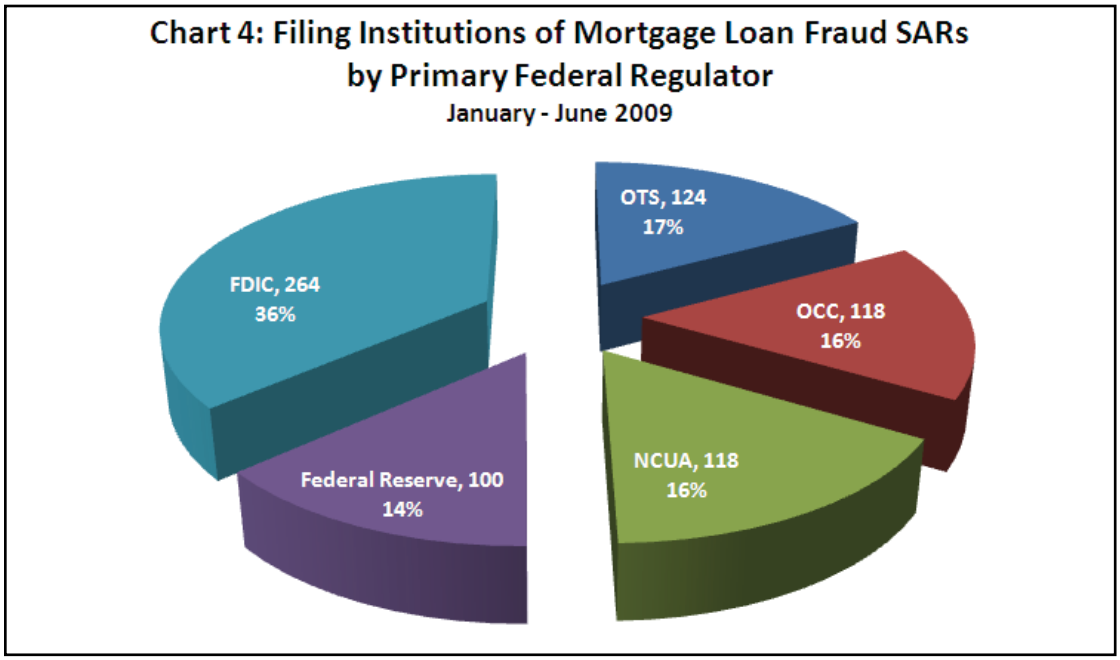
Federal Regulators

With respect to the volume of filings, institutions under the Federal supervision of the Office of the Comptroller of the Currency (OCC) filed the largest number of MLF SARs, submitting a combined 20,216 SARs (61 percent). Institutions supervised by the Office of Thrift Supervision (OTS) and the Board of Governors of the Federal Reserve System (FRB) together accounted for 33 percent of the reports; the remaining 6 percent came from institutions supervised by the Federal Deposit Insurance Corporation (FDIC), the Federal Housing Finance Authority (FHFA), and the National Credit Union Administration (NCUA). Chart 3 provides a breakdown of MLF SAR volumes by the indicated regulator.



With respect to filers, those indicating the FDIC as their primary Federal regulator comprised 36 percent of all MLF SAR filers from January to June 2009, an increase from 31 percent over the same period in 2008. Filers indicating the NCUA as their primary regulator increased from 14 to 16 percent, while those indicating the OCC were static at 16 percent. The proportion of filers supervised in 2009 by the OTS and the FRB (respectively, 17 and 14 percent) declined from the earlier period (respectively, 20 and 16 percent). Filers indicating the FHFA as their primary regulator accounted for less than 1 percent. Chart 4 provides a breakdown of filers according to primary Federal regulator.[7]

7. Chart 4 does not include the 1 percent of filers that were either under FHFA supervision or that did not indicate a primary federal regulator.



Conclusion

FinCEN will continue to monitor MLF SARs and report trends publicly in addition to the ongoing work in support of law enforcement investigations and prosecutions. In addition, we will be taking a more in-depth look at some of the activity trends reported in this article, such as secondary activities reported in addition to mortgage loan fraud.

Trends in and Benefits of FinCEN's BSA E-Filing System

By FinCEN's Technology Solutions and Services Division and Office of Outreach Resources

The BSA E-Filing system (E-Filing) is a secure web-based electronic filing system that allows financial institutions to submit Bank Secrecy Act (BSA) forms to FinCEN. The USA PATRIOT Act authorized FinCEN to develop E-Filing to increase the efficiency of the BSA filing process. Since E-Filing's October 2002 implementation, institutions have benefitted greatly from an ability to use a secure Internet connection to submit BSA forms.

As of December 2008, 77% of all BSA forms were submitted electronically. As of July 2009, financial institutions have e-filed over 48 million forms since the program's inception; and the number of registered users has grown to more than 21,000, representing approximately 6,500 institutions. In Fiscal Year 2009, more than 1 million BSA forms were submitted each month by financial institutions.

Why Do Institutions Continue to File Using Paper?

Although an increasing number of financial institutions have recognized the benefits of E-Filing, nearly one in four BSA filings continues to be completed using a paper form. To better understand why certain institutions file paper BSA forms, FinCEN spoke with form filers and various Federal regulators.

Financial institutions cited a number of reasons for choosing paper forms. The consistent themes were cost, and organizational processes and culture. Many felt the low volume of their BSA reporting did not warrant conversion to E-Filing (the majority of high volume filers are using E-Filing); others did not have Internet access or had only a slow dial-up connection. Some just felt more comfortable using paper forms. Others stated either that their internal programs and procedures were built to support paper form filing and audit trails, or that moving to E-Filing would require a significant technology investment.

FinCEN is committed to working with all financial institutions that file paper BSA forms to understand the value that E-Filing may provide them. In many cases, these concerns are being addressed through new E-Filing capabilities, such as the use of

Adobe Forms for single or small numbers of filings (discrete filings) or to provide paper copies for internal review and approval purposes. Other paper filers may be unaware of the benefits to E-Filing for improving internal BSA filing processes, including for recordkeeping and internal audit purposes, as well as the security and privacy advantages of E-Filing compared with paper forms and traditional mail delivery. For a very small number of financial institutions, the E-Filing system as currently implemented may simply not be financially or operationally a viable filing means at this time.

Paper Filing Statistics

FinCEN also compared the rates at which financial institutions submitted BSA filings, both electronically and using paper forms, for the 2008 calendar year. The results affirmed that, where E-Filing was available for a specific type of BSA filing, institutions largely submitted those filings electronically.[8] (See Exhibit 1).

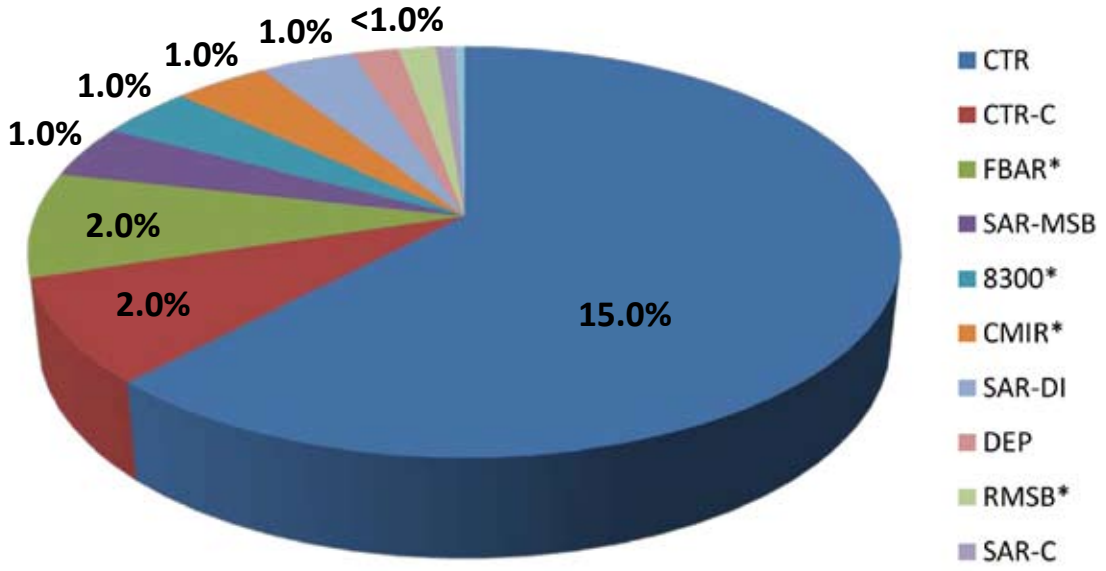
Exhibit 1. Comparison of Electronic and Paper Bank Secrecy Act (BSA) Filings (2008)

Type of BSA Filing	Percentage Submitted	
	E-Filing	Paper Form
CTR	82	18
CTR-C	61	39
SAR-MSB	63	37
SAR-DI	76	24
DEP	31	69
SAR-C	12	88
SAR-SF	40	60
TOTAL	**77%**	**23%**

8. Financial institutions can submit seven (7) of the eleven (11) BSA filings electronically. Those seven are: CTR (Currency Transaction Report); CTR-C (Currency Transaction Report by Casinos); DEP (Designation of Exempt Person); SAR-DI (Suspicious Activity Report by Depository Institutions); SAR-C (Suspicious Activity Report by Casinos and Card Clubs); SAR-MSB (Suspicious Activity Report by Money Services Businesses); SAR-SF (Suspicious Activity Report by the Securities and Futures Industries) Financial institutions and persons subject to filing obligations can submit the following BSA filings only using paper forms: FBAR (Report of Foreign Bank or Financial Accounts); 8300 (Report of Cash Payments Over $10,000 Received in a Trade or Business); CMIR (Report of International Transportation of Currency or Monetary Instruments); and RMSB (Registration of Money Services Businesses.

When including those filings that could be completed only using paper forms, the use of specific types of BSA paper forms as a percentage of all BSA filings submitted to FinCEN was relatively small; the exception was CTRs (see Exhibit 2).

Exhibit 2. Bank Secrecy Act (BSA) Reports Filed Using Paper Forms (2008)
Percentage of All BSA Submissions (E-Filing and Paper)



* Indicates forms that can only be submitted by paper

FinCEN also reviewed which type of paper form accounted for the largest share of all paper BSA submissions. CTRs were dominant, largely because of the wide variety in size, type, and technological capabilities of the submitting institutions (see Exhibit 3).

Exhibit 3. Bank Secrecy Act (BSA) Reports Filed Using Paper Forms (2008)

Type of BSA Filing	*Number of Paper Form Submissions*	*Percentage of the Total Paper Form Submissions*
CTR	2,745,472	64
CTR-C	397,571	9
FBAR*	344,967	8
SAR-MSB	193,330	5
8300*	184,305	4
CMIR*	175,324	4
SAR-DI	166,354	4
DEP	37,297	1
RMSB*	21,102	< 1
SAR-C	9,600	< 1
SAR-SF	8,597	< 1
Total	**4,283,919**	**100%**

* Indicates forms that can only be submitted by paper

Generally, financial institutions from five key States (Texas, New York, California, Florida, and Illinois) accounted for the largest share of paper BSA filings among forms that could be filed electronically (see Exhibit 4).

Exhibit 4. Paper Filings by Form Type and Top 10 State Filing Locations (July 2009)

Type of BSA Filing				
CTR	*SAR-DI*	*SAR-MSB*	*SAR-SF*	*DEP*
TX	NY	MN	NY	CA
CA	CA	CA	CA	TX
NY	TX	WA	NE	IL
FL	IL	FL	MA	GA
GA	AL	TX	MI	WI
IL	FL	MA	MO	AL
LA	DE	NY	IL	NY
PA	TN	MD	NJ	OH
NJ	MI	CO	TX	PA
MA	PA	NV	VA	MO

As might be expected for the CTR-C and SAR-C (casinos), the majority of the paper filings were submitted from the States of New Jersey and Nevada. For other forms, such as the industry-specific SAR forms, the lead filing States appear to reflect centralized filing locations of national or regional companies.

Benefits of Using the BSA E-Filing System

As more than three out of four BSA filings are electronically submitted, it is clear that financial institutions of all sizes, types, and locations have discovered the benefits of using E-Filing. For many institutions, FinCEN, and the government agencies and law enforcement officials accessing the filings, the value proposition results from improved processing efficiencies, cost savings, increased security and higher quality data submissions:

Streamlined BSA Form Submission Process. Financial institutions that use E-Filing are able to submit their filings immediately to FinCEN. E-Filing also provides those institutions with the ability to maintain an ongoing record of their filing submissions for informational or audit purposes. Further, financial institutions can track the status of their filing submissions within the system. These capabilities make E-Filing a better alternative to the more labor-intensive paper form filing and records keeping process.

Faster Routing of Information. CTR and CTR-C form acknowledgements, which serve as a receipt of BSA data submission, are routed back to the filing organization within 48 hours. BSA E-Filing also offers the ability to send Secure Messages and Alerts, allowing critical processing information to be disseminated rapidly to filing organizations. BSA reports submitted through E-Filing are processed and loaded more quickly, resulting in a faster turnaround time for law enforcement and regulators to access and review the data.

Greater data security and privacy. E-Filing provides greater data security and privacy than the use of paper BSA forms. FinCEN's secure electronic delivery system[9] eliminates the potential for delayed, misrouted, or lost deliveries of paper forms that may occur with traditional physical delivery. E-Filing also provides tangible demonstration of FinCEN's ongoing commitment to protecting financial institutions' sensitive data.

9. All communication between users and the BSA E-filing system is strongly encrypted using Secure Sockets Layer (SSL). Data is transferred from BSA E-filing to the FinCEN system via a direct secure File Transfer Protocol (FTP) connection initiated by FinCEN.

Long Term Cost Savings to Financial Organizations and Government. Long-term cost savings accrue to both filing institutions and the government through elimination of paper review and postal costs. In addition, internal costs savings can be achieved by a reduction in filing errors and data entry time. FinCEN benefits from E-Filing, when compared with paper filing processing, through lower per-item costs, reduced data keying errors,[10] and verification and validation of the submitted data.

BSA E-Filing System Features. E-Filing provides features that are not available to paper filers. For example, various submission methods are available for different size financial institutions: a) single-entry (discrete) Adobe forms which perform data validation upon submission; b) batch file submission that contains multiple form documents that can be uploaded using the E-Filing application; or c) a System-to-System bulk file upload for financial institutions (Connect:Direct). Continually updated training, documentation, and user manuals also are available to assist new filers.

BSA E-Filing System Enhancements Recently Completed and Planned for Future Release

Over the past year, FinCEN has added various valuable features within E-Filing for filing institutions. Future features will enhance E-Filing's value further.

Improved Data Quality Checks. In December of 2008, FinCEN updated E-Filing to provide additional validation checks on CTR and CTR-C batch file submissions. These validations provide additional technical feedback and warnings to filers when submitted files contain significant formatting errors.

Increased Usability through the Adoption of Adobe-based Forms. In June 2009, FinCEN transitioned E-Filing to the use of Adobe based forms. The implementation of Adobe forms capabilities provided additional error checking and validation for institutions filing discrete forms and aligned E-Filing with current industry standards for form processing.

10. The information from paper filings must be manually inputted into the electronic database, whereas e-filed data can be uploaded without manual intervention.

Introduction of SAR Filing Acknowledgements. In September 2009, FinCEN completed the first phase of the SAR Acknowledgments and Validations Project. Phase I involved enhancing the system to provide BSA E-Filers with the following features:

- *SAR Acknowledgement files*. Acknowledgement files containing a Document Control Number (DCN) are returned to the financial institution for each submitted document. This record can be used as a receipt of a BSA report submission to FinCEN.
- *Self-enrollment function*. This new capability enables batch filers to register their organization to receive acknowledgements by form type when they are ready to receive and process the acknowledgement files. Discrete filers do not need to register; they automatically receive acknowledgements.
- *Updated electronic filing requirements*. These updates to filing requirements and specifications, including SAR Acknowledgement Record Layouts and new error codes, make E-Filing more flexible for filers.

Phase II of the project, which FinCEN has scheduled for release in December 2009, will implement additional validation checks on SAR-DI, SAR-C, SAR-SF, and SAR-MSB submissions. Any information formatted in error will be returned to the filer in an acknowledgement file. Financial institutions can use these quality checks to prevent errors in future BSA data submissions.

Consider Electronic Filing

The many benefits and enhanced features of FinCEN's E-Filing system, which is provided free to filing institutions, provide compelling reasons for institutions to adopt electronic BSA filing. If your institution still submits BSA filings using paper forms, now may be the right time to adopt E-Filing.

To make that assessment, your institution should determine whether existing IT systems and Internet connections can support E-Filing. Your institution also should consider how using FinCEN's free E-Filing system may permit greater streamlining of your current BSA report submission processes and enhanced audit and recordkeeping capabilities.

How Do I Enroll?

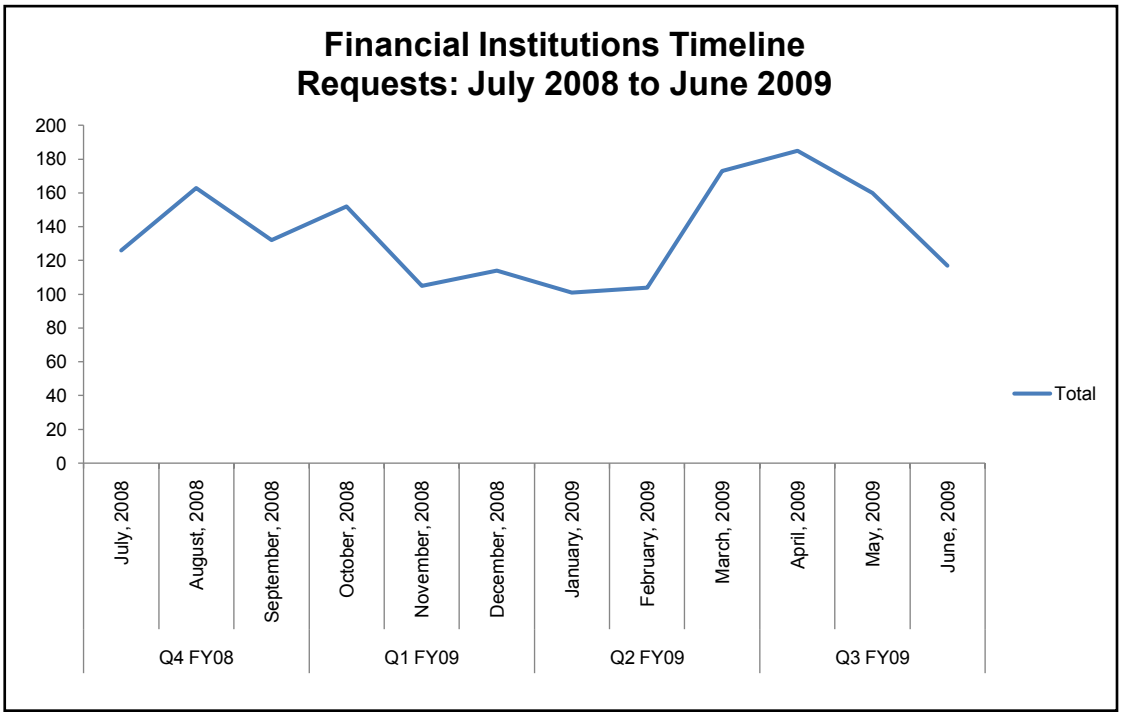
Once a financial institution has determined that E-Filing is the right choice, enrollment is simple and free. Institutions need only apply for a system account by going to the BSA E-Filing home page located at http://bsaefiling.fincen.treas.gov/, calling the BSA E-Filing Help Desk at 888-827-2778 (option 6), or submitting an enrollment request via email at BSAEFilingHelp@notes.tcs.treas.gov.

For more information about E-Filing and what its adoption can enable your institution to do, visit FinCEN's "Take a Tour" feature on the BSA E-Filing home page. If you have further questions about the system, please call or e-mail the BSA E-Filing System Help Desk. The Help Desk is available Monday through Friday 8 a.m. - 6 p.m. ET.

Analysis of Suspicious Activity Report (SAR) Inquiries Received by FinCEN's Regulatory Helpline

By FinCEN's Office of Outreach Resources

FinCEN operates a Regulatory Helpline that provides assistance for institutions seeking clarification of their BSA requirements and obligations. The following information highlights the types of questions institutions raised with the Regulatory Helpline about suspicious activity reporting during a changing period of U.S. financial and economic activity. During the period of July 1, 2008 through June 20, 2009, the Regulatory Helpline received 1,634 inquiries from a variety of institutions located across the country.[11]



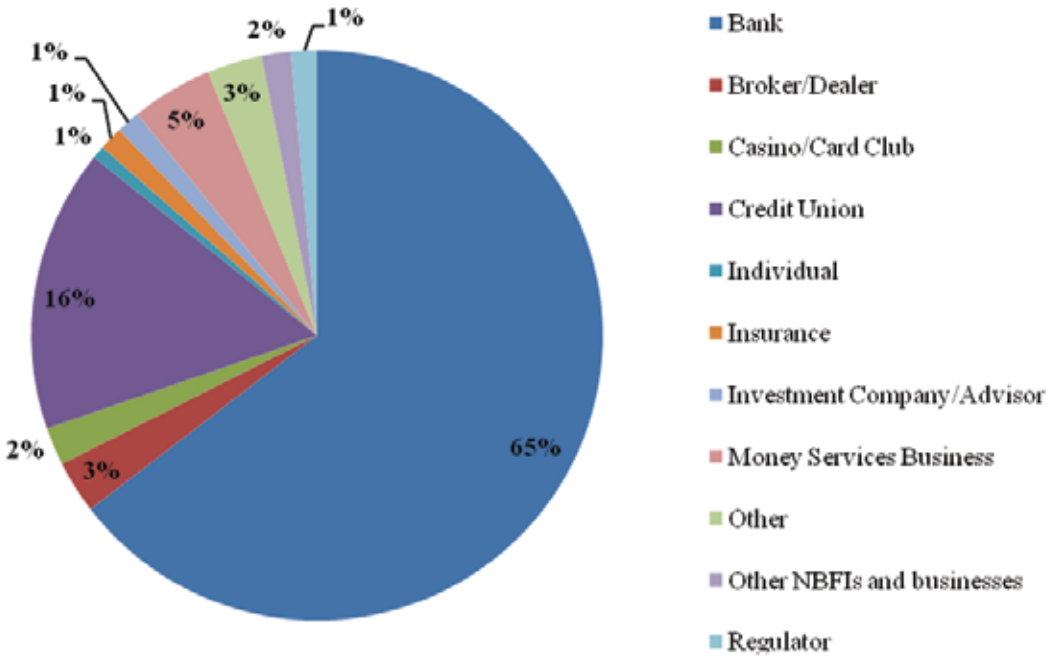
11. All information provided in this publication has been aggregated to ensure each individual requestor's confidentiality.

Identification of Key Issues and Themes
July 1, 2008 - June 30, 2009

Number of inquiries	
Assistance with SAR form	**623**
SAR item instructions	495
Form corrections	59
Aggregation	31
Filing Deadline	25
Deletion or rescission of a filed SAR	13
Guidance on whether to file a SAR	**336**
Whether to file a SAR	261
Monetary thresholds	48
Guidance on attempted activity	27
SAR sharing and disclosure	**215**
Sharing SARs with law enforcement	118
Corporate and other sharing and disclosure questions	49
Sharing SARs with regulators	23
Attempt to obtain SARs in a civil case	16
Other subpoena and disclosure questions	9
Definitions and other guidance	**113**
Regulation	36
General guidance	27
Definitions	24
FinCEN guidance	12
Proposed rulemaking	8
Safe harbor	6
Verification of SAR filing	**76**
Verification of filing	49
Obtaining copies of a SAR	27

Guidance on ongoing activity	**73**
Guidance on whether to file	35
Filing frequency	29
Ongoing activity	9
Additional steps a financial institution should take	**53**
Notification of authority (i.e. FinCEN, FBI)	44
Guidance on whether to close an account	9
E-filing questions	**20**
Other	**125**
Total Inquiries	**1634**

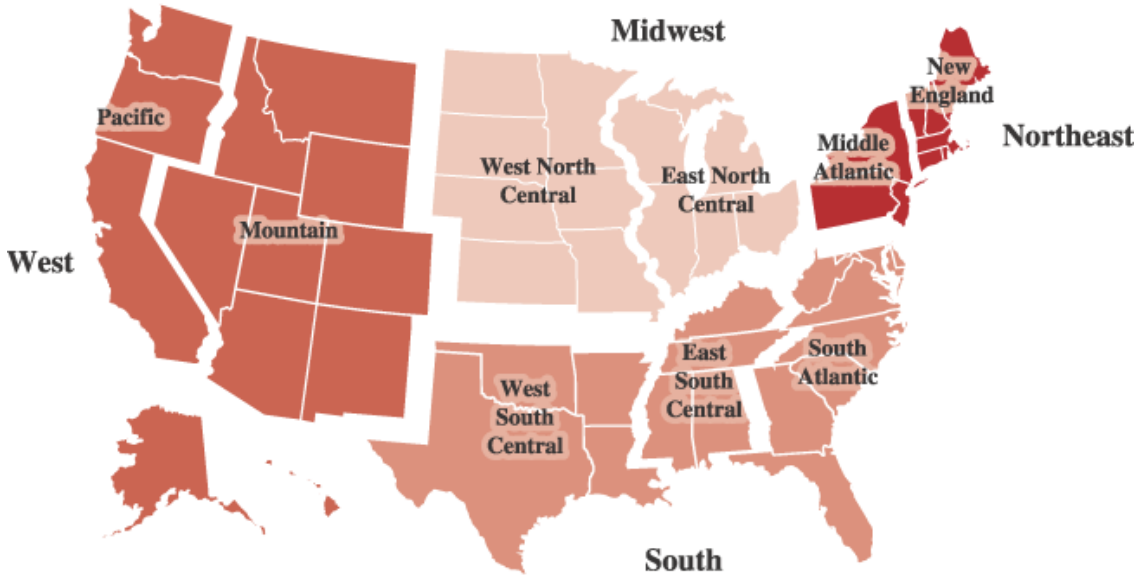
Requests by Institution Type
July 1, 2008 -June 30, 2009



Bank	1055	Investment company/advisor	22
Broker/dealer	49	Money services businesses[12]	75
Casino/card club	35	Other[13]	51
Credit union	262	Other NBFIs and businesses[14]	27
Individual	12	Regulator	24
Insurance	22		
Total Requests		**1634**	

12. This category includes money transmitters; currency dealers and exchangers; check cashers; issuers, sellers, and redeemers of traveler's checks, money orders, and stored value; and, (for certain activities) the United States Postal Service
13. This category includes inquiries from undetermined institution types and requests from law enforcement regarding general SAR requirements.
14. This category includes all other non-bank financial institutions and businesses, such as mutual funds, commodity trading advisors, pawn shops, jewelers, real estate companies, vehicle sellers, and other businesses.

Requests by Region of Caller
July 1, 2008 - June 30, 2009



WEST = 339	***NORTHEAST = 345***
Pacific =247	New England = 111
Mountain = 92	Middle Atlantic = 234
SOUTH = 552	***MIDWEST = 341***
West South Central = 188	West North Central = 155
East South Central = 75	East North Central = 186
South Atlantic = 289	
	N/A, Unknown = 57

Suspicious Activity Report (SAR): Sharing and Disclosure

Institutions frequently seek the guidance of FinCEN's Regulatory Helpline when law enforcement and regulatory authorities request SAR information and supporting documentation. To aid institutions in responding to such requests, FinCEN issued guidance in June 2007 entitled, Suspicious Activity Report Supporting Documentation (FIN-2007-G003). The guidance explains:

1. When and how to disclose SAR information to appropriate law enforcement and supervisory agencies;
2. What constitutes supporting documentation; and,
3. Whether a legal process is required for the disclosure of supporting documentation to appropriate requesters.

One common industry question relates to the proper disclosure of SAR information. It may involve instances when SAR information is requested to support a civil case or when someone other than an appropriate law enforcement or supervisory authority makes the request. Guidance on this subject is available in a previous SAR Activity Review (see The SAR Activity Review Issue 7 (August 2004), Section 4).

SAR Filing Requirements

Financial institutions frequently seek clarification regarding when an institution has an obligation to file a SAR. Because filing a SAR is an inherently risk-based decision based upon specific facts and circumstances, institutions should have policies, procedures and processes for referring unusual activity from all business lines to the personnel or department responsible for evaluating such activity. Within those procedures, institutions should establish a clear and defined escalation process from the point of initial detection to disposition of the investigation. To assist in this internal effort, institutions may refer to resources such as the FFIEC BSA/AML Examination Manual, Suspicious Activity Reporting Overview, SAR Decision-Making Process. Some of the common questions regarding SAR filing requirements include:

Q: Explain the definitions and characterizations of suspicious activity in the SAR form.

> Institutions can find helpful explanations for the various characterizations of suspicious activity that appear in Item 35 of the depository institution Suspicious Activity Report form in The SAR Activity Review Issue 12 (October 2007), Section 4.

Q: Clarify the application of the SAR thresholds and whether to file on attempted transactions.

Institutions are required to file on transactions conducted or attempted by, at, or through the institution (or an affiliate) **and** aggregating above a certain threshold (based on the specific industry),[15] if the institution knows, suspects, or has reason to suspect that the transaction:

- May involve potential money laundering or other illegal activity (e.g., terrorism financing),
- Is designed to evade the Bank Secrecy Act (BSA) or its implementing regulations,
- Has no apparent business or lawful purpose or is not the type of transaction in which the particular customer would normally be expected to engage; and the bank knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

Assistance with the SAR Form

Institutions routinely pose questions regarding the appropriate way to complete certain fields on the SAR forms. The following guidance pieces provide helpful answers for form assistance:

- SAR Narrative Guidance Package
- Guidance - Suggestions for Addressing Common Errors Noted in Suspicious Activity Reporting
- Line Item Instructions for the Depository Institutions SAR
- Date to Use When Correcting Previously Filed SARs
- Insignificant SAR Filing Errors

FinCEN's Regulatory Helpline provides helpful assistance for institutions seeking clarification of their Bank Secrecy Act requirements. Institutions can reach the Regulatory Helpline at 800-949-2732.

15. Further clarification of industry-specific requirements can be found under 31 C.F.R. Part 103 and on the industry-specific SAR forms.

Section 3 - Law Enforcement Cases

This section of *The SAR Activity Review* affords law enforcement agencies the opportunity to summarize investigations where Suspicious Activity Reports (SARs), Currency Transaction Reports (CTRs) and other BSA information played an important role in the successful investigation and prosecution of criminal activity. This issue contains new case examples from Federal, State and local law enforcement agencies. Additional law enforcement cases can be found on the FinCEN website under the link to Investigations Assisted by BSA Data. This site is updated periodically with new cases of interest, which are listed by the type of form used in the investigation, type of financial institution involved and type of violation committed.

Contributing editors: Shawn Braszo, John Summers, Jennifer White, James Emery and Jack Cunniff.

FinCEN appreciates the help of the many agencies that contributed to the cases in this issue. In many cases, SAR confidentiality requirements preclude FinCEN from associating the name of all law enforcement agencies and entities that utilized SAR information for specific cases highlighted in *The SAR Activity Review*.

In this edition of *The SAR Activity Review*, we take a special look at structuring cases. The first five examples are cases that started with proactive reviews from SAR review teams. The filing institutions noted the subjects conducted activity that indicated attempts to evade currency reporting requirements. When law enforcement began investigating the subjects of the SARs, they found underlying crimes that included mortgage fraud, tax evasion, and possible medical fraud.

Our sixth case reminds us of the role that BSA data can play in narcotics investigations. Congress passed the Bank Secrecy Act (BSA) in 1970, in part, as a response to drug traffickers using the financial system to launder their ill-gotten gains. Prior to the BSA, drug traffickers could walk into a bank, casino, or financial institution with bags of cash and conduct transactions, including converting the currency to a single check or transmitting the funds around the globe, with anonymity. As this case example illustrates, drug traffickers still try to get around the reporting requirements and launder illicit currency through casinos, car dealerships, and financial institutions.

Finally, we also include excerpts from two press releases that illustrate the importance of anti-money laundering statutes in combating sophisticated crime. While not every criminal case involves the use of BSA data, the lack of BSA filings is often telling in itself. In both instances reported here, purportedly legitimate businessmen facilitated money laundering by willfully disregarding BSA statutes.

SARs Lead to Serial Mortgage Fraud Offender

A SAR filed by a bank on a subject for orchestrating a series of structured transactions revealed that those transactions occurred while the subject was on probation for an earlier criminal offence. During proactive reviews of SARs, an analyst recognized the defendant's name and forwarded the SARs to the agent who investigated the defendant for the original mortgage fraud. Investigators discovered that the subject, originally charged with mortgage fraud, was again disguising transactions to facilitate yet another mortgage fraud. Moreover, investigators found that he structured transactions on the very day he was sentenced for the previous offense.

According to court documents, the defendant, doing business under several names, recruited "investors" to buy and sell real estate using inflated property appraisals and false promises. False and fraudulent financial information was submitted to lenders in order to obtain mortgages at the inflated property values.

One count of the indictment alleges that the defendant laundered the proceeds from the unlawful criminal activity by purchasing items for his own personal use. Additional counts allege that the defendant structured more than $200,000 in separate deposits into his bank accounts by breaking large deposits into smaller ones in an effort to evade Federal cash transaction reporting requirements. In the indictment, prosecutors allege the defendant structured proceeds from fraudulent mortgage loans at several different depository institutions over a period of approximately 30 months. These institutions filed SARs on the defendant's structuring activities. In addition to filing SARs on the transactions, the reporting institutions also closed his accounts.

Customarily, the defendant would cash a large check, withdraw an amount in currency, and purchase a cashier's check for the remainder. He would repeat the process daily, until he converted all the funds from the original check into currency without generating a CTR. All told, investigators believe that defendant structured transactions totaling nearly a million dollars.

Several years prior to this indictment, the U.S. attorney charged the defendant with making false statements to the IRS. He subsequently pled guilty and was

sentenced to 2 years of probation. As part of his sentence, he agreed not to engage in any criminal acts during that period. The plea to the tax charge resulted from an investigation into mortgage fraud.

From the day of his sentencing, however, the defendant continued structuring funds into bank accounts to facilitate the ongoing mortgage fraud. The defendant went to extraordinary lengths to keep accounts with a negative balance. He told bank employees that he did this so no one could seize his money.

SAR Leads to Guilty Plea in Case against Doctor

A Federal judge sentenced a chiropractor to 8 months' imprisonment and fined the defendant $30,000 for structuring a series of transactions. In addition, during the course of the investigation, evidence surfaced that the defendant may have committed medical fraud and may have obtained a medical license under false pretenses.

The defendant frequently converted a portion of income into cash, and it was transactions involving cash that raised suspicions with the defendant's bank. Specifically, the reporting bank noticed two cash deposits of approximately $9,000 made on successive days. The bank reviewed the defendant's transactions over a two-month period and identified multiple deposits of cash ranging from $8,300 to $9,500 that totaled over $100,000.

Other transactions that occurred during the review period included the deposit of checks from several insurance companies and payments to credit card companies, utilities, and a department store. The defendant also purchased two checks payable to an individual for $50,000 each. The notation on the checks indicated that they were part of a divorce settlement.

The local SAR review team identified the SAR during its monthly meeting as one for follow up action. A few months later, investigators from the SAR review team interviewed the defendant, who volunteered that the structured payments were part of a divorce settlement. The defendant claimed that an ex-spouse, who had previously worked in the financial industry, told the defendant to make deposits under $10,000 to avoid scrutiny. The defendant reported that the cash came from patient payments hidden in a safe.

While reviewing records pertaining to the defendant, investigators began to suspect that medical fraud might be involved. When the SAR team brought the potential fraud to the other law enforcement agencies, they learned that a central reporting authority received inquiries from several insurance companies concerning suspicious claims filed on patients of the defendant.

As the investigation progressed, more details about the defendant emerged. Through BSA record searches, investigators learned that the defendant was the subject of a CTR filed almost ten years earlier, confirming knowledge of the reporting requirement. Moreover, the defendant did not file Federal tax returns for several years, until shortly after being interviewed by investigators. Finally, the defendant failed to inform authorities of a previous felony, a disqualifying condition, when applying for a State medical license. The medical license was subsequently suspended.

SARs Lead to Discovery of $1.8 Million Hidden in House

In a case started from SARs, investigators executing a search warrant found $1.8 million of unreported income stashed in a closet. Although the defendants legally earned the funds, they established a system to convert business revenues to cash with the explicit purpose of evading taxes. SARs indicated that one of the defendants repeatedly cashed checks, always under $10,000, which it was believed were intended to avoid reporting requirements.

The case started after law enforcement agents gathered evidence to support a search warrant for the defendants' residence and business. The majority of the proceeds of the tax evasion scheme, nearly $2 million in cash, were seized from the residence and business during the search.

A majority of the gross income for the defendants' business came from a client business. One of the defendants cashed the majority of the checks from the client business, as well as other checks they received, in increments under $10,000. The cashed business checks were never documented on any bank statements for the business. One of the defendants went to the bank several times a week to cash checks that were written to the defendant personally, rather than in the name of the business. In one three-month period, the defendant cashed almost $500,000 in checks, structuring multiple checks in each day. A review of check cashing transactions revealed that the defendant cashed checks totaling more than $3 million during a 3-year period.

The defendants concealed their actual income by only providing a handwritten summary of their business activity and oral statements to their tax preparer for the completion of their tax returns, neither of which revealed the actual income for their business. The summary only listed the bank deposits as the gross receipts for the business, excluding all the checks cashed by the defendant from the client business.

The defendants pleaded guilty to tax offenses, admitting that they evaded the majority of their income tax liability for several years by understating the gross income during each respective year for their business, resulting in more than $500,000 in lost revenue for the government.

Mortgage Broker Pleads Guilty to Structuring Charges

An investigation by Federal law enforcement agencies led to the conviction of a mortgage broker who pleaded guilty to structuring more than $600,000 into multiple accounts at various financial institutions. The defendant admitted to officials that he did so to avoid CTR filing requirements.

In one month alone, the defendant made nearly 30 deposits at multiple branches of multiple banks aggregating to over $260,000. Fourteen months later, he made nearly 20 deposits into multiple branches of a bank totaling $185,000. A SAR filed by a depository institution soon after the first instance of structuring was pivotal in helping investigators determine that the defendant was structuring multiple cash deposits and withdrawals to and from several accounts to stay under the CTR reporting limit.

The SAR caught the attention of a Federal agent attending a monthly SAR review team meeting. An in-depth search for relevant BSA documents located additional SARs filed by depository institutions and money services businesses indicating both cash structuring and the apparent structured purchase of money orders by or for the defendant.

One SAR narrative revealed that during a two-week period, the defendant was structuring his money through personal and business accounts at the bank. Each of his cash deposits was split amongst his bank accounts in amounts ranging between $9,000 and $9,800. He also deposited numerous money orders that appeared to be purchased by several different individuals, though handwriting similarities noted in the signatures on the money orders suggested they were signed by the same individual. The depository institution also reportedly suspected the defendant of check kiting as evidenced by the number of personal checks from the individual that were drawn on other financial institutions and returned unpaid to the institution as the bank of first deposit.

Another SAR filed by the same institution a year later revealed the defendant's continued pattern of structuring cash deposits. The SAR also revealed the defendant's purchase of large cashier's checks, some of which were payable to individuals with no known business affiliation to the defendant.

During the investigation, agents were unable to determine the source of much of the cash that the defendant deposited. However, agents suspected that the money came from drug trafficking, currency smuggling, and/or questionable real estate dealings. Two additional SARs report the defendant's possible involvement in mortgage loan fraud. The defendant's attorney maintained that the bulk of the cash was from money that the defendant kept at home for a "rainy day".

State Jury Convicts Defendant of Structuring to Avoid BSA Reporting Requirements

In an innovative use of money laundering statutes, a State successfully prosecuted a defendant for violations of the Federal Bank Secrecy Act. The State's money laundering statute includes criminal penalties for anyone attempting to avoid BSA reporting requirements and prosecutors were able to prove that the defendant engaged in an organized and calculated effort to avoid CTR requirements.

The case started when the attorney general's office was notified of suspect transactions on the part of the defendant and filed a SAR. In initiating the case, investigators found that other banks had filed SARs during the same time-period. The defendant has a prior conviction for retail theft and a long history of fraud. Investigators believed that the funds used in the structured deposits were derived from fraudulent activity, mostly credit card "bust-out" schemes.

The defendant first came to the attention of banks in 2001 with a series of transactions that resulted in SARs. When confronted by bank employees, he attempted to justify the transactions as fear for the economy or mistrust of the government. Earlier, he expressed concern about Y2K computer problems.

The activity that initiated the investigation occurred when the defendant opened accounts at several banks, all in the same county, in the span of 2 ½ weeks. SARs filed by the banks noted that the defendant made deposits using $100 bills ranging between $9,000 and $9,900 and the bank felt that the defendant was trying to avoid the CTR filing requirements. The cash deposits totaled more than $540,000.

In court, the defendant claimed that he had no knowledge of BSA reporting requirements. However, while a bank was preparing a CTR, the defendant made a comment to a teller that he "thought that you only did that on amounts over $10,000." The teller responded that they complete a form on anything $10,000 and above. After that, he began making deposits below $10,000. A local jury convicted the defendant of nearly 60 felony charges of trying to circumvent the bank reporting requirements in order to avoid the attention of State and Federal investigators.

BSA Information Helps Jury Convict Cocaine Trafficker

Prosecutors used information directly derived from BSA records to help convict a repeat drug trafficker in Federal court. The wealth accumulated by the defendant through illicit drug sales became evident by the filing of numerous CTRs by casinos, a Form 8300 filed in conjunction with the purchase of a luxury automobile, and SARs filed by casinos highlighting an attempt to buy another luxury item through structured transactions.

In 2008, a Federal jury returned a verdict of guilty against the defendant on conspiracy to possess with the intent to distribute five kilograms or more of a mixture or substance containing a detectable amount of cocaine as well as other trafficking offenses. The evidence presented at trial established a conspiracy to buy and sell kilogram quantities of cocaine. Specific evidence included court-authorized intercepted telephone conversations discussing the delivery of multi-kilogram quantities of cocaine, as well as evidence of unexplained wealth inconsistent with the defendant's source of income and admissions to purchasing cocaine.

Both the United States attorney and officials from the State involved in the case noted that this prosecution stemmed from an ongoing Federal, State and local law enforcement effort to quell violence fueled by the drug trade in that State. To date, 27 individuals have been charged with Federal crimes as a result of this joint investigative effort. Several additional individuals have been prosecuted and the effort has removed more than two dozen illegal firearms from the streets.

During searches conducted at the time of the arrests, including searches of rented units at several self-storage locations, law enforcement seized approximately five kilograms of cocaine, more than 30 pounds of marijuana, seven firearms, approximately $60,000 in United States currency, 10 vehicles, and large-scale drug packaging materials from several locations.

An analyst working the case reported that casino CTRs and SARs played a significant part in the case, especially in supporting a guilty verdict at trial. The casino records indicated that the defendant gambled over $1.8 million in a 7-year period and one SAR filing described his attempt to purchase other luxury items valued at over $45,000 by violating structuring laws. At the trial in Federal court, the prosecution team successfully used this financial information from the casinos to confront him about his wealth and gambling activities when he testified that he was not a drug dealer.

Prosecutors were able to use information from 16 casino CTRs to show that the defendant spent tens of thousands of dollars for "buying-in" at various casinos. Two SARs were also filed documenting repeated attempts to buy luxury items. In addition, an automobile dealer filed a Form 8300 regarding the purchase of a luxury vehicle, and a local bank filed two SARs referencing apparent structuring of cash withdrawals.

Money Laundering Cases in the News

The following press releases highlight cases where legitimate businessmen used their enterprises to launder money for criminals. These cases, where defendants knowingly violated provisions of the Bank Secrecy Act, are intended to promote broader awareness of money laundering activity.[16]

16. The inclusion of these cases in *The SAR Activity Review* neither confirms nor denies whether SARs were filed in the specific cases.

US Attorney's Office News

FORMER DEALERSHIP OWNER SENTENCED ON MONEY LAUNDERING CHARGES

Shirland Fitzgerald Will Spend 140 Months In Prison

ROANOKE, VIRGINIA -- For years, Shirland Fitzgerald, owner of Fitzgerald Auto Sales in Danville, Va., associated with known drug dealers. He sold them cars, he allowed them to use the backroom of his business for high stakes gambling and he laundered their drug money. It was a combination of all of these things that will keep Fitzgerald in prison for the foreseeable future.

Following a two-week trial in May, Fitzgerald, age 62, was convicted of six counts of conspiracy to launder money. Yesterday, he was sentenced in U.S. District Court in Roanoke, to 140 months of incarceration and three years of supervised release thereafter. He was also ordered to forfeit $1 million, representing the approximate value of the funds he laundered for three large scale trafficking organization over a six-year period.

"In order to produce higher profits for his business, Mr. Fitzgerald associated with individuals he knew sold drugs," United States Attorney Julia C. Dudley said today. "He laundered money, he lied to the Internal Revenue Service and he got caught. Today, justice was served and he was punished for his actions."

According to evidence presented at trial by Assistant United States Attorney Anthony Giorno and United States Department of Justice Trial Attorney for the Tax Division Mitch Bober, between 1998 and 2004, Fitzgerald used his car dealership on Riverside Drive in Danville to foster relationships with known drug dealers who trafficked in the Danville area.

Fitzgerald, in order to increase sales and profits at his car dealership, engaged in a scheme in which the drug dealers could purchase cars from the defendant using money obtained through the sale of illegal drugs. To further the scheme, Fitzgerald would disguise the identity of the true purchasers, create false paperwork and allow the drug dealers to make incremental payments of less than $10,000, avoiding the need to file a Federal 8300 form.

The defendant also structured his personal and business finances in such a way that all deposits totaled less than $10,000. He devised a false receipt system

that showed no payments were ever made over $10,000 and created a false and fictitious interest free "financing system" that allowed the drug dealers to pay for vehicles over time.

In addition, Fitzgerald assisted his drug dealer associates in the sale of assets for the purpose of avoiding seizure and forfeiture of those assets by law enforcement.

Fred Rodgers pled guilty to two counts of conspiring to launder money and was sentenced to 235 months in prison. The remaining defendants all pled guilty to one count of conspiring to launder money. They were sentenced as follows: Khaleel Rodgers, 40 months, to run consecutive to a current seven-year State sentence for drug trafficking; Lenora Rodgers, 37 months; Teresa Swan Hunt Tyler, 24 months; Sherika Swann, 21 months; Dionne Lakesha Hunt, three years probation; Juanita Rodgers, 24 months; Rontae Perkins, 77 months.

The investigation of the case was conducted by the Internal Revenue Service and the Drug Enforcement Administration. Assistant United States Attorney Anthony Giorno and United States Department of Justice Trial Attorney for the Tax Division Mitch Bober prosecuted the case for the United States.

DISTRICT ATTORNEY - NEW YORK COUNTY

NEWS RELEASE Contact: Alicia Maxey Greene
July 28, 2009 212-335-9400

Manhattan District Attorney Robert M. Morgenthau announced today a 186-count indictment of a check bundler and the owner of check cashing companies for repeatedly falsifying business records to avoid New York State banking and anti-money laundering reporting requirements. The District Attorney also announced the guilty pleas of the owner's business partner as well as those of four check cashing companies.

The defendants RIAD (a/k/a Steve) KHALIL, 46, the check bundler, and NEIL GOLDSTEIN, 53, an owner of two of the check cashing companies, were indicted for falsifying the business records of VEIL CHECK CASHING CORP. to aid and conceal their structuring of transactions and for failing to file currency transaction reports on those structured transactions. The crimes charged in the indictment occurred between October 27, 2006 and July 11, 2008. The defendant, CHARLES GOLDBERG, 46, who is GOLDSTEIN's business partner, and corporate defendants, VALE CHECKING OF NEW YORK, Inc. (VALE), VEIL CHECK CASHING CORP. (VEIL), GEM CHECK CASHING, CORP. (GEM) and TOMPKINS EXPRESS CHECK CASHING, CORP. (TOMPKINS) (collectively, the Check Cashing Companies), each pleaded guilty on July 9, 2009, to a Superior Court Information charging them with falsifying business records.

The investigation leading to the indictment and guilty pleas arose from the District Attorney's investigation into the financial affairs of The John Galt Corporation and related companies, Regional Scaffolding & Hoisting, Windham Enterprises Inc., Windham Construction Corporation, Eastern States Construction and Elm Suspension Systems, Inc.

The John Galt Corporation was the subcontractor hired by Bovis Lend Lease to abate and deconstruct the Deutsche Bank building in March 2006. Regional Scaffolding & Hoisting, in a joint venture with Safeway Environmental, contracted with the owner of the Deutsche Bank building – the Lower Manhattan Development Corporation – to erect the scaffolding that surrounds the building and to abate its exterior vestibules. Following the completion of that portion of the project, Regional remained connected to the site to maintain and deconstruct the scaffolding as the building was abated and deconstructed.

The investigation revealed that GOLDBERG owns all four corporate defendants and that GOLDSTEIN had an ownership interest in Vale and Veil. In the late summer of 2006 GOLDBERG, GOLDSTEIN and the Check Cashing Companies formed a business relationship with KHALIL. KHALIL, though unlicensed to do so, received checks made out to or by various companies and individuals, including The John Galt Corporation and Regional Scaffolding & Hoisting, which he then cashed at VALE in downtown Brooklyn. Soon after forming their business relationship, GOLDBERG, GOLDSTEIN and KHALIL reached an agreement pursuant to which GOLDBERG and GOLDSTEIN structured KHALIL's check cashing transactions to avoid filing Currency Transaction Reports (CTRs). The New York State Banking Law, New York State Banking Department regulations, and related Federal Bank Secrecy Act and anti-money laundering laws require licensed check cashers, such as the Check Cashing Companies, to file CTRs with the government with respect to transactions that result in one person or company conducting a cash transaction in an amount over $10,000 within a single business day.

During the entire two-year period of KHALIL's relationship with GOLDBERG, KHALIL bundled and cashed checks for dozens of construction related corporations and conducted hundreds of transactions with the Check Cashing Companies.

When KHALIL brought in multiple checks issued to the same payee that totaled more than $10,000 to the Brooklyn VALE location, GOLDBERG or GOLDSTEIN processed the checks either through their different check cashing companies, including those located in New York County, or on different days. In exchange for these services, KHALIL continued to use the Check Cashing Companies as his primary check cashers and to pay them a commission on each transaction. At the height of their relationship, KHALIL processed up to $800,000 per week in both structured and non-structured transactions through the Check Cashing Companies. The District Attorney's Office estimates that during the two-year period of their scheme KHALIL cashed in excess of $40 million in checks through GOLDBERG's companies.

In structuring the transactions at the urging of KHALIL, GOLDBERG and GOLDSTEIN falsified the Check Cashing Companies' check registers, which the Check Cashing Companies were required to maintain pursuant to New York State Banking Law and related regulations. The check registers were false in

several ways. First, the check registers indicated that the presenter of the check was the payee of the check when in fact the presenter was KHALIL. Second, because all of the checks that KHALIL brought to GOLDSTEIN and GOLDBERG were cashed at VALE in Brooklyn, all of the entries in the logs of the Manhattan stores relating to those checks were false. Lastly, GOLDBERG and GOLDSTEIN frequently falsified the dates of the transactions on these reports.

From May to August 2007, the Check Cashing Companies cashed checks issued by Regional Scaffolding & Hoisting to various vendors and checks written to The John Galt Corporation. The 18 checks issued by Regional totaled $145,000 and the 43 checks written to The John Galt Corporation totaled $227,637. KHALIL brought these checks to GOLDBERG and GOLDSTEIN, and the records of the Check Cashing Companies reflect that more than half of these checks were structured illegally through the various check cashing stores.

The New York State Banking Department joined in the investigation. Superintendent Richard H. Neiman has pledged to continue to work with the District Attorney's Office to take every step necessary to ferret out those who attempt to avoid their reporting obligations under the law. As this case demonstrates, these joint efforts will ensure that the financial services industry will not be used for personal financial gain and will be operated in a fair and honest manner to promote the public interest.

Section 4 - Issues & Guidance

This section of *The SAR Activity Review* discusses current issues raised with regard to the preparation and filing of SARs. This section is intended to identify suspicious activity reporting-related issues and provide meaningful guidance to filers. In addition, it reflects the collective positions of the government agencies that require organizations to file SARs.

FinCEN is introducing another means for financial institutions to quickly find guidance on their BSA/AML questions on the FinCEN Web site: the "Regulatory Helpline Hot Topics". FinCEN's "Regulatory Helpline Hot Topics" will provide direct links to useful and accessible information for addressing the most common and important questions that are asked of FinCEN's Regulatory Helpline. The "Hot Topics" will be revised regularly to reflect the changing nature of the questions regarding BSA/AML obligations. For more information about the Regulatory Helpline or to seek assistance with your BSA/AML questions, please call 1-800-949-2732.

Contributing writers and editors: Barbara Bishop, Dan Haley, and Agents of the Federal Bureau of Investigation and Immigration and Customs Enforcement

Law Enforcement Suggestions When Preparing Suspicious Activity Reports

By Agents of the Federal Bureau of Investigation and Immigration and Customs Enforcement

Financial institutions have done an outstanding job partnering with law enforcement through robust Suspicious Activity Reporting. Without question, SAR reporting along with Currency Transaction Reports and other Bank Secrecy Act filings are extremely useful and heavily relied on for predicating and supporting criminal investigations as well as supporting intelligence gathering and analysis on criminal and counterterrorism matters. Agents and analysts spend many hours reviewing these intelligence-rich reports and are often asked by financial institutions how their reports can be improved to assist law enforcement's efforts.

Although many of these reports are reviewed individually by agents and analysts, new technology has vastly improved law enforcement's efforts to develop electronic tools to more fully exploit the intelligence in SARs. Use of these tools not only identifies potential cases but also allows law enforcement to identify emerging crime problems and new methods being used by criminals.

The below observations are those items that agents and analysts have noted that would assist them when accessing and reviewing SARs. These observations are provided for consideration by the financial institutions during the SAR preparation process:

1. Begin the narrative with a summary sentence to give the reader a snapshot of what the details will discuss. This is particularly important on lengthy narratives, so the reader has a framework for what the narrative is describing;

2. Note what supporting documentation exists so we know what evidence is readily available and what we should request when following up with the financial institution;

3. Indicate whether there are employees of the financial institution that have personal knowledge, such as conversations with the suspect or whether any site visits or inspections were conducted. If the filer does not want to name the employee(s), simply indicate that those conversations/visits occurred and maintain details with the supporting documentation;

4. For SARs related to suspicious correspondent account activity, include the details of all the accounts involved, including the correspondent account numbers and names, sub-correspondent account numbers, names, and addresses and actual account numbers and names affected;

5. If other parties are identified only in the narrative, provide any known identifiers for them as well. These include date of birth, social security number, driver's license number, passport number, address and/or other known addresses;

6. For SARs related to computer intrusion, include technical details such as any IP addresses and email addresses;

7. For Mortgage Fraud SARs, identify all professionals in the narrative so links in SARs filed by different financial institutions can be easily identified to focus on organized schemes to defraud. These professionals include:

   a. Real Estate agent
   b. Loan company
   c. Loan officer
   d. Appraiser
   e. Title company
   f. Closing agent/attorney

8. Select multiple violation types when appropriate to facilitate analysis of the data to assess crime problems;
9. The "OTHER" box for violation type should only be selected when none of the other boxes apply. When it is used, please include a description of that "other" activity;
10. Keep in mind that the narrative section contains no formatting, so formatted data (such as tables) entered by the filer are lost in the version seen by law enforcement;
11. Identify any law enforcement agency that has been notified of the suspicious activity, HOWEVER
    a. Do not include details that the law enforcement officer may have shared during discussions with the bank, and
    b. Do not disclose that grand jury subpoenas or National Security Letters were served.

Suspicious Activity Reporting continues to play a critical role in assisting law enforcement in both criminal and terrorist activity. SARs and the continuing communication between law enforcement and financial institutions greatly enhance our efforts to evaluate, identify and pursue those that seek to victimize individuals and organizations, weaken the U.S. financial system, and threaten our nation's security.

In addition to the information provided by representatives from the FBI and ICE on suggestions when preparing SARs, filers may find previously published tips and guidance from *The SAR Activity Review* on FinCEN's website at: Index to Topics for The SAR Activity Review.

Avoiding Common Errors in Suspicious Activity Reports

By FinCEN's Office of Compliance and Office of Outreach Resources

In 2007, FinCEN published suggestions for addressing common errors in SARs.[17] In this update, we include new information on identifying suspicious activity, including the category and character of the activity, and provide new information on errors in fields of critical value. Updating this information on common errors will help financial institutions improve the quality of the information in their SARs.

Accurate and complete SARs are critical to the utility of BSA data in combating financial crimes, terrorist financing and other illicit activity. The value of any SAR filing is impaired when it is not accurate and complete. SAR information is a valuable tool for FinCEN, law enforcement, regulatory authorities, and intelligence agencies (collectively "users"), allowing identification of larger patterns of suspicious activity which might not otherwise be detected. When combined with other sources, the information generated by SAR filings plays an important role in identifying illegal activities. However, lack of accurate and complete information limits the value of BSA data for users.

Identifying Suspicious Activity

Some filers develop strategies for identifying suspicious activity, such as asking customers to explain the purpose of an unusual transaction. This allows the filer to evaluate whether a transaction may be suspicious. Other strategies merely generate a high volume of SARs without identifying suspicious activities. Two such strategies are filing SARs based on the dollar amount of the transaction and filing SARs because the transaction was "unusual" without explaining why.

Dollar Amount. Some financial institutions have policies requiring a SAR filing for transactions where the dollar amount meets or exceeds a certain dollar level. For such SARs, the narrative may state only that the dollar amount was suspicious,

17. See Suggestions for Addressing Common Errors Noted in Suspicious Activity Report at http://www.fincen.gov/statutes_regs/guidance/pdf/SAR_Common_Errors_Web_Posting.pdf, (October 10, 2007)

or exceeded an amount set by company policy. However, no dollar amount is suspicious in and of itself – only the total circumstances of the transaction can be suspicious. As such, the SAR narrative should explain in detail why a particular transaction is suspicious, not merely that the dollar amount involved meets or exceeds a certain dollar level.

Unusual Transactions. Financial institutions frequently file SARs in which the narrative may state that the transaction is unusual or is a type not normally conducted by the customer – even though there may be a reasonable explanation for the transaction. For example, a filer submits a SAR because a customer deposited cash from the sale of a boat or car.

SAR instructions state that financial institutions should file a SAR when a transaction exceeds or aggregates above a defined threshold[18] and there is no reasonable explanation for the transaction. Again, the SAR narrative should explain the circumstances surrounding the transaction that lead the filer to believe that it was suspicious. Using the example above, the reporting financial institution should explain in the narrative *why* a cash deposit involving a sale of a boat or car was suspicious.

Responses in Fields of Critical Value

The quality of information provided in fields marked by an asterisk (*) on FinCEN forms 101, 102 and 109 – fields designated as being of critical value to users of BSA data – is of the utmost importance. Some common errors, such as incorrect use of special responses in these fields, are described below.

Unauthorized Special Responses. Unauthorized special responses (such as "N/A," "UNK," or "Same as above") in critical fields may appear as real data in the BSA database, distorting the data.[19] For example, entering "N/A" for "Not Applicable" in some last name fields creates a SAR where the last name of the subject is "N" and the first name is "A" because the database reads the slash bar as a name separator. Entering "NA" for "Not Applicable" in a State field creates false data because "NA" is a foreign address designation. Filers should follow form instructions and FinCEN guidance and input the proper responses for unavailable information.

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18. Further clarification of industry-specific requirements can be found under 31 C.F.R. Part 103 and on the industry-specific SAR forms.

19. FinCEN guidance prohibits abbreviation of special responses. See "General Tips for Using These Types of Responses In SARs," The SAR Activity Review – Trends, Tips & Issues, Issue 6, p. 52 (November 2003).

Failure to use Special Responses. Special responses, such as "XX" in certain critical fields, should be entered on the SAR form when the required data is unknown.[20] SARs filed using special responses informs users of the data that the required data was unknown. Filers should follow form instructions and, in particular, FinCEN guidance[21] in using special responses in critical fields to denote that required data is unknown.

Invalid Subject Social Security Number (SSN) or EIN. Entries using repeated numbers such as "000000000" are unauthorized special responses that filers also incorrectly use to show that a required number is not known. The SAR instructions for FinCEN forms 101, 102 and 109 instruct filers to enter "XX" in the first two spaces of this field if the data is unknown. Filers should not enter hyphens, slashes, alpha characters, or invalid entries such as repeated numbers in these fields.

Identifying the Category, Character and Subjects of Suspicious Activity

The following are examples of common errors received in the SAR fields identifying the type and the subject of suspicious activity being reported. Proper completion of these fields is important to more efficient analysis of BSA data. Information on possible characterizations of suspicious activity and their descriptions can be found in *SAR Activity Review Issue 12*.[22]

Subject/Suspect Information Unavailable. Filers should only check the box "Subject/ Subject information unavailable" when there is no subject data that can be entered in the subject fields of the SAR.[23] All subject fields should be left blank when this box is checked. When filers have partial subject data this data should be entered in the appropriate fields and the box left unchecked. SAR filers should then follow form instructions and FinCEN guidance when completing the remaining fields that have

20. Some critical fields require a special response in certain circumstances and should be left blank in other circumstances. For example, in the SAR-MSB a special response is only required when a currency exchange was recorded and some of the required data was unknown. If no currency exchange is recorded, then the required currency exchange fields are left blank. Filers should review both form instructions and applicable FinCEN guidance before using critical fields in SARs.
21. See "Preparation Guidelines for Use of Special Response 'XX' in FinCEN Form 109, Suspicious Activity Report by Money Services Business, Fin-2008-G006" (May 2, 2008)."
22. Issue 12 of The SAR Activity Review – Trends, Tips and Issues is available at http://www.fincen.gov/news_room/rp/files/sar_tti_12.pdf#page=39.
23. The SAR-MSB form does not include this option.

no data. For instance, instructions/guidance may require entry of an appropriate special response in some fields, while in others the requirement would be to leave the fields blank.

Using the Correct Form

Filing on expired or incorrect forms. Some filers continue to file SARs using expired versions of the correct form for their industry or on forms designated for other industries. Revised forms may contain changes designed to make the form more useful for users of the data, such as data fields that are not found on the expired version of the form. Likewise, forms designated for a specific industry make those forms more useful for users of the data by facilitating quicker identification and analysis of SARs. Filers should review the forms they are using to insure they are the correct and current version of the form for their specific industry.

Conclusion

Accurate and complete SARs provide users with important information that can be used to analyze broad sets of data and to apprehend suspected criminals and terrorists. Further, accurate and complete SARs documenting suspicious activity flowing through a financial institution allows that institution to identify potential risks, which may be of use in their AML program for risk mitigation purposes.

Section 5 - Industry Forum

In each issue of *The SAR Activity Review*, representatives from the financial services industry offer insights into some aspect of compliance management or fraud prevention that present their view of how they implement the BSA within their institutions. The *Industry Forum* section provides an opportunity for the industry to share its views. The information provided may not represent the official position of the U.S. Government.

Update: Auditing the AML Program – What's New?

By Alan S. Abel, CPA, representing the American Institute of Certified Public Accountants to the Bank Secrecy Act Advisory Group

Counter to the conventional wisdom and surprising to many today, the core legal and regulatory requirements that serve as the foundation or the "Four Pillars" of a Bank Secrecy Act (BSA) /Anti-Money Laundering (AML) program for financial institutions were established by law and implementing regulations for a number of key covered sectors *well before* the enactment of the USA PATRIOT Act of 2001 (PATRIOT Act). With regard to the "Fourth Pillar," that a covered financial institution shall have "an independent audit function to test programs,"[24] the only language change the PATRIOT Act brought forth was to substitute the word "testing" for "audit". Without speculating on Congressional intent eight years

24. USC Title 31, Section 5318(h)(1)(D) as amended by the USA PATRIOT Act of 2001, SEC. 352. ANTI-MONEY LAUNDERING PROGRAMS: "...(1) IN GENERAL.—In order to guard against money laundering through financial institutions, each financial institution shall establish anti-money laundering programs, including, at a minimum—
''(A) the development of internal policies, procedures, and controls;
''(B) the designation of a compliance officer;
''(C) an ongoing employee training program; and
''(D) an independent audit function to test programs.

in the past, that one change, however terse, established a strong foundation for significant implementing rules, regulatory guidance and expectations, and the evolution of leading AML compliance program auditing practices going forward. Also, from the time that this article's antecedent was published in the sixth issue of The SAR Activity Review in November, 2003, we have seen a number of important changes stemming from the experiences and "lessons learned" by covered financial institutions' management and boards, and their internal and external auditors, and in examination feedback from their regulators.

The Audit Objectives – Pretty Much the Same

In issue six, I talked about the primary objectives of an auditor's independent review of a suspicious activity reporting program and important criteria and elements that a leading practices audit program should consider.[25]

They were then, and still are:

- Determine whether the overall AML/BSA compliance program and its suspicious activity reporting component is suitably designed and operating effectively.
- Identify any material program weaknesses, control deficiencies and corresponding opportunities for program, process, and control enhancements, and report them to senior management and the board (usually the audit committee).
- Assist management with identifying money laundering, terrorism financing and other financial crime vulnerabilities, and not lose sight of the context of risk focused supervision and the four major qualitative risk factors universally recognized by regulators – compliance, reputational, strategic, and operational.
- Perform and document procedures and results that may be useful to regulators in conducting their supervisory examinations.

To these I would add:

- Assess and identify possible gaps and opportunities for management to continually improve its suspicious activity detection, investigation, analysis, escalation, documentation and reporting processes and controls, including due diligence feedback, and the enterprise-wide AML risk assessment process.

25. See The SAR Activity Review - Trends, Tips and Issues (Issue 6), page 71 (November, 2003).

- Assess management's AML strategic planning process.
- Identify opportunities and methods to help management make program enhancements continuous and sustainable.
- Assess and identify opportunities to enhance management's self-monitoring and self-testing compliance review program. A robust, centralized, compliance monitoring program has increasingly become a regulatory expectation, particularly for larger enterprises (this doesn't really apply to smaller entities).
- Assess how well AML compliance is integrated into the business.

Changes of Consequence

In the six years since I last addressed this topic, there are some big-ticket changes, many of which stem from natural program maturation:

1. **The enhancement of the audit function itself in response to direct supervisory criticism**. In recent years, there have been numerous supervisory examination reports and enforcement actions citing financial institutions for having insufficient AML/BSA audit functions, particularly in auditing suspicious activity reporting processes, or more importantly, in not properly identifying and highlighting their lack thereof. Generally these criticisms have been about:

    - Deploying insufficient levels of audit resources dedicated to auditing AML programs, their process, and controls.
    - Using internal staff or consultants who lack the requisite credentials, experience, and subject matter training and expertise.
    - Failing to employ well-considered risk-based approaches in auditing, resulting in insufficient attention to higher-risk areas and processes, and with questionable frequency.
    - Lack of proper audit effort and skills for validating transaction monitoring systems.
    - Failure to sufficiently escalate significant and meaningful findings to management and audit committees.
    - Lack of follow-up with management on urgent findings, and not sufficiently holding management's "feet to the fire" for remediation of reported deficiencies.

Is there good news to share? Yes, there is. By and large, financial institutions have made much progress in employing or engaging more experienced audit professionals, greater level of effort, stronger and better documented risk-based approaches, and more thorough auditing and testing of processes, systems, and controls. Is there yet room to improve? Sure.

2. **Examiner reliance**. Stemming from #1, examiners say they increasingly rely on the reports, workpapers and competence of AML auditors.

   Over the past few years, regulators have repeatedly emphasized the importance of the "Fourth Pillar", testing, and the BSA/AML auditor. They have stated repeatedly that when examiners get to a reasonable comfort level where they feel that they can rely on the professional competence and experience of the internal and external auditor, the quality of the audit, as evidenced by meaningful, well-written reports and well-documented workpapers, the effectiveness of auditors, as evidenced by their empowerment by senior management (and especially the Board Audit Committee) as demonstrated by their ability to get management's urgent and effective response and remediation, they do.

3. **Enterprise-wide risk assessment and "risk response"**. Also responding to regulatory criticism, we have seen considerable advancement in enterprise-wide risk assessment, both broad-brush and for AML. Auditors have gotten much better at carefully considering management's AML risk assessment in designing, scheduling, and staffing their own risk based audit procedures. Management's risk assessment ought to be a very important tool for auditors to consider in performing, in turn, their own audit risk assessment. Similarly, broader promulgation and acceptance of the revised ERM COSO model[26] as a foundation methodology for audit professionals has resulted in auditors' greater focus, not just on risk assessment, but on risk response. Competent and proactive management may now produce a rich, comprehensive, detailed, enterprise-wide risk assessment, but if the strategic and tactical responses are lackluster and lack teeth, then the question becomes, "So what?"

26. ***Enterprise Risk Management – Integrated Framework, Executive Summary***, September 2004, The Committee of Sponsoring Organizations of the Treadway Commission (COSO).

More recently, auditors, and audit methodology and procedures, have gotten better in ferreting out and testing the effectiveness of management's response to their own assessed risk and the mitigating or compensating controls. Are we really focusing on and monitoring where we believe we have higher risk? Do we have adequate processes and controls in place for identifying and reporting unusual and suspicious activity? Are these processes and controls working appropriately as intended? Do we have any significant gaps? Can we brandish reports for adequately monitoring every red flag we wave and identify an individual who does that in every case? How responsive are we, and is it in a sustainable way?

4. **Fraud and other reportable conditions**. Most of the BSA SAR reportable conditions across the sectors are in fact fraud and not money laundering – i.e. they are about BSA and not AML. But they are, nevertheless, required BSA-reportable conditions. Better risk assessment processes are leading, responsively, to better detection and reporting of both AML and non-AML activity. However, this necessarily increases the auditor's scope and responsibility. In auditing SAR processes, auditors must consider the nature of the business, the entity itself, the ERM, and the AML enterprise-wide risk assessments. The radar screen must be all-encompassing.

5. **IT Auditing**. Audit departments have learned, and have come to appreciate, the need for greater attention to validating new or modified transaction monitoring systems as well as data quality, especially customer data quality. All too often IT auditors have learned that what comes out may not exactly tie to what goes in, or maybe it never came in quite right in the first place.

6. **Customer Identification Program (CIP)**. The sixth anniversary of CIP for banks, broker dealers, and mutual funds is well upon us. Once considered a major implementation challenge with a high occurrence of backlogs and gaps, CIP processes and strong controls have become fairly routine to account opening processes for the covered sectors. Also, after six years of process maturity, it has become more difficult for management to live with and explain a lack of CIP in pre-existing accounts. "How," asks the auditor and the examiner, "can you tell me that you know your customer if you haven't looked at their file in more than six years?" The answer: not easily.

CIP maturity also ties closely to IT auditing because of the importance of customer data quality to CIP effectiveness. Six years ago it was not uncommon to perform audit procedures for testing customer data quality and to surface missing or erroneous data entered without proper data validation controls. As auditors we still come across and hopefully escalate deficiencies in data quality, but today we do find the more egregious situations to be fewer and farther between.

7. **Training**. Also responding to regulatory criticism, financial institutions have generally improved the quality of their BSA/AML training content and delivery, and that includes their internal auditors. External consulting professionals are ostensibly core competent as auditors and with the AML subject matter. Whether internal or external, audit professionals in the U.S. are subject to considerable and growing "Continuing Professional Education" (CPE) requirements to maintain their certifications. Not surprisingly, as AML programs, and their component suspicious activity reporting, have matured in the business-as-usual environment, so too have the quality of subject matter experts, (SMEs), i.e. smart, seasoned compliance and audit professionals.

8. **Trees, forests, efficiency and effectiveness**. These days, the internal audit function is by no means immune from contemporary pressures to do more with less. As a result, audit programs and effort, regardless of over-arching control objective – financial reporting, operational, or compliance are just as vulnerable to cost-cutting as are the business units and other support areas (see item #1 above). Today, the pressure is on to do less, not more. For BSA, this slippery slope can lead to obsessive focus on "trees" (testing CIP, CTRs, SARs) and may get away from the proverbial forest, and from really helping management in a more operational way – to identify opportunities to become more efficient and effective. Properly considering the forest requires a well-considered COSO-based audit approach that asks, fundamentally, is the whole of the program truly greater than the sum of its parts? The seasoned audit professional and SME really needs to be asking the right questions. And through independent assessment, one can assist management and the board in their efforts to get to and sustain effective risk assessment and risk management, operational efficiency, well-being and protection of the business entity, its people, its reputation, and its assets.

Here are some of the right questions to be asking:

- Are we doing the right things, and are we doing them well? How do we compare to others?
- Are we sufficient, competent, and effective?
- Are we well-integrated?
- Are our program components properly positioned?
- Are we outsourcing and insourcing the right processes in line with our competencies and economies? Are we properly managed and accountable in all cases?
- Top-down and bottom-up – is our program working as intended?

The Hubble Advantage

It would seem, at first glance, nonsensical to have a discussion about who has the greater performance advantage (or conversely, the performance handicap) – the examiner or the auditor. But in closing, it's worth highlighting two points of great consequence for each party, and also for management, the board, and law enforcement.

The seasoned, professional AML/BSA compliance auditor (and an important part of the message here – an AML/BSA *operational* auditor), internal or external, has one important performance advantage over the examiner, and with very good reason. With full-time job experience comes valuable inside knowledge of the institution, the business units and business processes, management and staff. There comes a point where these professionals will hopefully come to know the business entity inside and out.

The examiner, on the other hand, has a tool that auditors can only dream about (and management too) – namely, the entire universe of reported SAR activity from 1996 (and some even before that). Six years ago, the BSA database harbored roughly 1.5 million SARs, and most of them were filed by conventional deposit-taking and lending institutions. Today the SAR universe is well past 7 million reports and increasingly reflects MSBs and other covered sectors. When it comes to competency gathering, assessing due diligence and monitoring the event horizon, e.g. media searches connected with continuing business relationships, or potential new ones, financial institutions have generally made considerable strides, and the state of the art has become far more sophisticated.

However, at the end of the day, regulators and law enforcement have the power of that vast and rapidly growing SAR universe, and that's a formidable power indeed. Here they will always have the better cards, and for good reason. Management, with auditors' help, will keep improving their ability to detect and report the suspicious activity that they can see in their own microcosm. But examiners and law enforcement have their ever-expanding Hubble telescope to see all those shooting stars.

Section 6 - Feedback Form

Financial Crimes Enforcement Network
U.S. Department of the Treasury

Your feedback is important and will assist us in planning future issues of ***The SAR Activity Review****. Please take the time to complete this form. The form can be faxed to FinCEN at (202) 354-6411 or accessed and completed online at http://www.fincen.gov/feedback/fb.sar.artti.php. Questions regarding* ***The SAR Activity Review*** *can be submitted to sar.review@fincen.gov. For all other questions, please contact our Regulatory Helpline at 1-800-949-2732.* ***Please do not submit questions regarding suspicious activity reports to the SAR Activity Review mailbox****.*

A. Please identify your type of financial institution.

Depository Institution:
__ Bank or Bank Holding Company
__ Savings Association
__ Credit Union
__ Foreign Bank with U.S. Branches or Agencies

Money Services Business:
__ Money Transmitter
__ Money Order Company or Agent
__ Traveler's Check Company or Agent
__ Currency Dealer or Exchanger
__ U.S. Postal Service
__ Stored Value

Securities and Futures Industry:
__ Securities Broker/Dealer
__Futures Commission Merchant
__Introducing Broker in Commodities
__Mutual Fund

Casino or Card Club:
__ Casino located in Nevada
__ Casino located outside of Nevada
__ Card Club

__ **Insurance Company**
__ **Dealers in Precious Metals, Precious Stones, or Jewels**
__ **Other** (please identify): _____

B. Please indicate your level of satisfaction with each section of this issue of *The SAR Activity Review- Trends Tips and Issues* (circle your response).

	1=Not Useful, 5=Very Useful				
Section 1 - Director's Forum	1	2	3	4	5
Section 2 - Trends and Analysis	1	2	3	4	5
Section 3 - Law Enforcement Cases	1	2	3	4	5
Section 4 - Issues & Guidance	1	2	3	4	5
Section 5 - Industry Forum	1	2	3	4	5
Section 6 - Feedback Form	1	2	3	4	5

C. What information or article in this edition did you find the most helpful or interesting? Please explain why (please indicate by topic title and page number):

_____
_____
_____
_____

D. What information did you find least helpful or interesting? Please explain why (again, please indicate by topic title and page number):

_____
_____
_____
_____

E. What new TOPICS, TRENDS, or PATTERNS in suspicious activity would you like to see addressed in the next edition of *The SAR Activity Review – Trends, Tips & Issues*? Please be specific - Examples might include: in a particular geographic area; concerning a certain type of transaction or instrument; other hot topics, etc.

_____
_____
_____
_____

F. What questions does your financial institution have about *The SAR Activity Review* that need to be answered?

_____
_____
_____
_____

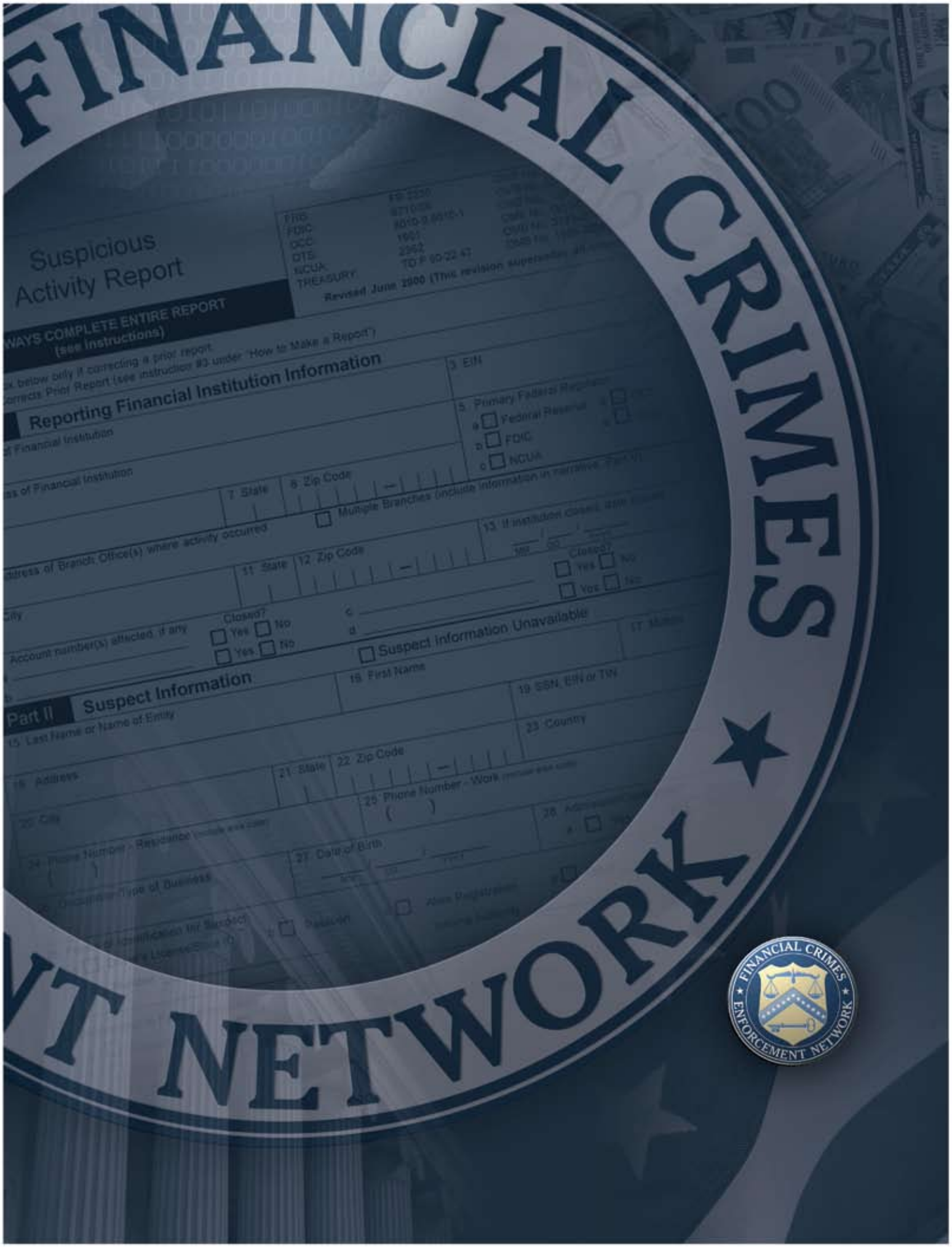
G. Which of the previous issues have you read? (Check all that apply)

[ ] All Issues

[ ] Issue 1 - October 2000
[ ] Issue 2 - June 2001
[ ] Issue 3 - October 2001
[ ] Issue 4 - August 2002
[ ] Issue 5 - February 2003
[ ] Issue 6 - November 2003
[ ] Issue 7 - August 2004
[ ] Issue 8 - April 2005
[ ] Issue 9 - October 2005
[ ] Issue 10 - May 2006
[ ] Issue 11 - May 2007
[ ] Issue 11 - October 2007
[ ] Issue 13 - May 2008
[ ] Issue 14 - October 2008
[ ] Issue 15 - May 2009

The *SAR Activity Review* **Index** is available on the FinCEN website at:
http://www.fincen.gov/news_room/rp/files/reg_sar_index.html.
For your convenience, topics are indexed alphabetically by subject matter.

The **Archive of Law Enforcement Cases** published in *The SAR Activity Review* can be accessed through the following link:
http://www.fincen.gov/news_room/rp/sar_case_example.html.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NETWORK
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Activity Report
Reporting Financial Institution Information
Suspect Information
Suspect Information Unavailable
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