

1. Please explain why FinCEN began tracking mortgage fraud separately from other crimes. –

In an effort to share information with the public, FinCEN began reporting Bank Secrecy Act (BSA) statistics in a biannual publication, *The SAR Activity Review – By the Numbers (BTN)*, beginning in October 2003. BTN covers a wide variety of topics and activities based on BSA filings, including SARs indicating mortgage loan fraud (MLF SARs). By 2004, it was clear that MLF SARs were among the most frequently reported SAR activities and that annual filing volumes of MLF SARs were rapidly trending upward.

To determine the causes behind these increases, FinCEN analysts began to separately review MLF SARs in 2004, which ultimately led to a public report on mortgage fraud typologies in 2006. Subsequent to publication, FinCEN received numerous requests from law enforcement and the banking industry to speak on the report's findings. FinCEN also received numerous requests from law enforcement and regulators for training, case support, and threat analyses. Recognizing a wide need for continuing information on mortgage fraud, FinCEN continues to provide updates on MLF SARs.

Interrogatory 4. Please explain the reason(s) why mortgage fraud SARs understate the level of mortgage fraud.

Viewed in isolation, the mere filing of a SAR on mortgage loan fraud (MLF SAR) does not prove that mortgage fraud, or any other crime, has occurred. Financial institutions submit SARs when they detect either known *or suspected* criminal violations. SARs are best used as a significant indicator in conjunction with other sources, as they do not directly correlate with crime levels.

By themselves SARs provide several measures of possible or actual incidents of mortgage fraud detected by particular filers. These measures all have limitations. A list of the most commonly used measures are provided below, followed by a discussion of their limitations.

Measures

- 1) Volume of reports. More particularly, how many relevant reports were filed in a particular period.
- 2) Transaction amounts of reported suspicious activities. This amount most frequently reflects a loan amount.
- 3) Loss amounts reported in connection to the suspicious activity. This amount usually reflects realized loss and is seldom reported in MLF SARs.

Limitations

Each of these measures faces limitations. The following list is not exhaustive, but covers the most significant factors.

- 1) There is no correlation between the number or dollar value of suspicious loans and the number or dollar values reported on MLF SARs. Many MLF SARs include information on multiple loans. In some cases, MLF SARs describe dozens or even hundreds of suspicious loans. Hence suspicious loan volume can not be determined based solely on the number of MLF SAR filings.
- 2) MLF SARs are lagging indicators of suspicious activities that frequently occurred years before the filer submitted a SAR. Based on discussions with industry, FinCEN anticipates it will continue to receive numerous reports of MLF SARs that describe suspicious loans originated during the mid-2000s. Consequently, a fuller picture of suspected mortgage fraud for reporting institutions is unlikely to emerge in the near future.
- 3) Amended or updated SARs report the same activity multiple times. In quantifying suspicious transaction amounts or losses, amended/updated SARs will often lead to double counting. The results from double counting can be significant – from 1999 to 2009, filers submitted 13, 208 amended/updated SARs totaling \$1.7 billion in reported losses and \$12.5 billion in reported suspicious transaction amounts. These totals represent an upper limit of activities that have been double counted, although the actual figure of such entries is most likely lower.

- 4) Limited number of filers. Depository institutions file the vast majority of MLF SARs. Additional reports are received from other institutions including voluntary filers and regulatory agencies, but these submit a relatively small minority of reports. Consequently possible fraudulent activities detected by other institutions such as originators from non-depository institutions are unlikely to be reported in a MLF SAR. Also, when a lending institution fails, reports of fraud drop dramatically either permanently or for a lengthy transitional period. Consequently, suspicious loans in the last year or so of the failed institution's life are less likely to be reported or will at least take much longer to be reported.
- 5) MLF SARs typically do not include a loss amount. In most cases, this is likely because the filer is unable to project losses until recovery efforts have ended. In some cases, this is because the filer does not anticipate a loss and intends to push losses back to the originator. In other cases, the filer did not have a direct financial connection to the loan. For instance, some depository institutions have reported customers for asset rental activities using the filing institution as a verifier of account. Other loans may have been denied prior to funding and resulted in no loss. FinCEN determined that filers detected suspected fraud prior to closing a loan in 34 percent of reports filed from July 2007 to June 2008. It is unlikely that this preapproval detection rate of possible fraud – as reported in MLF SARs – has been sustained, since only 12 percent of MLF SARs received in 2009 described activities less than 90 days old.
- 6) Reported loss amounts reflect only the filer's loss. Losses to secondary parties from a particular loan are generally not included in loss amounts. These totals are also inadequate for quantifying losses incurred by homeowners and neighbors as a result of fraudulently inflated or deflated home prices.
- 7) Data quality issues affecting suspicious transaction amounts. While only 2.4 percent of MLF SARs do not include this information, an unknown number of these reports involve loans with total values in the tens of millions. While suspicious transaction amount generally represents the amount of relevant loans, a sizeable number of reports may use a different amount. For instance, a filer may report \$125,000 as the suspicious activity amount if the borrower fraudulently reported this amount as income. The actual loan received by inflated incomes is typically much higher and at higher risk of early default. A related challenge is weeding out misleadingly high outliers in the tens or hundreds of millions of dollars. For example, some SARs report denied attempts to obtain a multimillion dollar loan through Nigerian scams. Other misleading outliers include reports by financial institutions that include their entire portfolio with a convicted mortgage broker before determining what portion of the loans involved possible fraud.

Interrogatory 5. Please identify the law enforcement agencies that FinCEN works most closely with concerning mortgage fraud.

Federal Trade Commission (FTC)

Inspector General for Housing and Urban Development (HUD OIG)

Special Inspector General for the Troubled Asset Relief Program (SIGTARP)

United States Attorney's Offices (USAO)

FBI

Florida Attorney General

Illinois Attorney General

California Attorney General

DOJ

Executive Office for United States Attorneys (EOUSA)

Criminal Investigation Bureau at the New York State Banking Department (NYSB)

8. Please identify the agency or agencies that are responsible for enforcing non-compliance with the Bank Secrecy Act.

The Financial Crimes Enforcement Network, U.S. Department of the Treasury, is responsible for civil enforcement of the Bank Secrecy Act. In 1994, the Secretary of the Treasury delegated to the Director of FinCEN overall authority for civil enforcement of, and compliance with, the Bank Secrecy Act.

The Federal banking agencies including the Office of the Comptroller of the Currency, Federal Reserve, Federal Deposit Insurance Corporation, Office of Thrift Supervision and National Credit Union Association also enforce civil rules parallel to the Bank Secrecy Act under Title 12 of the United States Code.

The U.S. Department of Justice is responsible for enforcement of the criminal provisions of the Bank Secrecy Act. Criminal investigations of the Bank Secrecy Act are conducted by a number of agencies including, but not limited to, the Internal Revenue Service, Immigration and Customs Enforcement and the Federal Bureau of Investigation.

9. Please list enforcement actions taken against institutions for non-compliance with the Bank Secrecy Act from CY 1999 – CY 2009, broken down by year.

Appearing below is a list of Bank Secrecy Act enforcement actions by FinCEN. Further details on each case are available at http://www.fincen.gov/news_room/ea/.

Financial Crimes Enforcement Network (“FinCEN”) Enforcement Actions from CY 1999 – CY 2009	Date	Civil Money Penalty Assessed by FinCEN
In the Matter of Doha Bank, New York Branch	04-20-09	\$5,000,000
In the Matter of NY Branch United Bank for Africa	04-28-08	\$15,000,000
In the Matter of El Noa Noa Corporation	04-14-08	\$12,000
In the Matter of Sigue Corporation and Sigue, LLC	01-28-08	\$12,000,000
In the Matter of Union Bank of California, N.A.	09-17-07	\$10,000,000
In the Matter of American Express Bank International and American Express Travel Related Services Company, Inc	08-06-07	\$25,000,000
In the Matter of Beach Bank	12-27-06	\$800,000
In the Matter of The Foster Bank	12-14-06	\$2,000,000

In the Matter of Israel Discount Bank of New York	10-31-06	\$12,000,000
In the Matter of Deprez's Quality Jewelry and Loans, Inc.	07-20-06	\$25,000
In the Matter of Liberty Bank of New York	05-19-06	\$600,000
In the Matter of Frosty Food Mart	05-09-06	\$10,000
In the Matter of BankAtlantic	04-26-06	\$10,000,000
In the Matter of the New York Branch of Metropolitan Bank & Trust Company	04-19-06	\$150,000
In the Matter of the Tonkawa Tribe of Oklahoma and Edward E. Street	03-24-06	\$1,000,000 plus \$1,500,000
In the Matter of Oppenheimer & Company, Inc.	12-29-05	\$1,400,000
In the Matter of The New York Branch of ABN AMRO Bank N.V	12-19-05	\$30,000,000
In the Matter of Banco de Chile-New York and Banco de Chile-Miami	10-12-05	\$3,000,000
In the Matter of The New York Branch of Arab Bank	08-17-05	\$24,000,000
In the Matter of Gulf Corporation	07-05-05	\$700,000
In the Matter of AmSouth Bank	10-12-04	\$10,000,000
In the Matter of Riggs Bank, NA	05-13-04	\$25,000,000
In the Matter of Hartsfield Capital Securities, Inc.	11-24-03	\$10,000
In the Matter of Korea Exchange Bank, New York, New York	06-24-03	\$1,100,000
In the Matter of Greenville Riverboat, LLC d/b/a Lighthouse Point Casino	05-23-03	\$350,000
In the Matter of Western Union Financial Services, Inc.	03-06-03	\$3,000,000
In the Matter of Banco Popular de Puerto Rico	01-16-03	\$20,000,000
In the Matter of Great Eastern Bank of Florida	09-04-02	\$100,000
In the Matter of Sovereign Bank	04-08-02	\$700,000
In the Matter of Joseph A. Sivigliano	09-04-01	\$100,000

In the Matter of Angelina Plett	09-04-01	\$100,000
In the Matter of Rainbow Casino Vicksburg	12-20-00	\$75,000
In the Matter of Casa De Cambio Rega	10-23-00	\$2,500
In the Matter of D & S Check Cashing, Inc. and Michael Rose	06-29-00	\$75,000
In the Matter of Mex Pesos Currency Exchange	04-19-00	\$50,000
In the Matter of Ameristar Casino Vicksburg, Inc.	03-06-00	\$160,000
In the Matter of Polish & Slavic Federal Credit Union	01-18-00	\$185,000
In the Matter of Sunflower Bank, N.A.	01-06-00	\$100,000
In the Matter of Grand Casinos of Mississippi, Inc. Biloxi	09-30-99	\$160,500
In the Matter of Riverboat Corporation of Mississippi-Vicksburg, d/b/a Isle of Capri-Vicksburg	09-30-99	\$150,000
In the Matter of Riverboat Corporation of Mississippi, d/b/a Isle of Capri Casino-Biloxi	09-30-99	\$227,500
In the Matter of Lady Luck Mississippi, Inc., d/b/a Lady Luck Natchez	08-09-99	\$115,000
In the Matter of Biloxi Casino Corp., d/b/a/ Casino Magic-Biloxi	08-03-99	\$145,000
In the Matter of Gulfside Casino Partnership, d/b/a Copa Casino	04-23-99	\$101,000

Losses reported due to mortgage fraud

Summary

Depository institutions cited \$12.4 billion in possible mortgage fraud losses from 1999 through 2009. Fewer than 16 percent of MLF SARs included a loss amount.

Annual loss totals are expected to greatly increase as new MLF SARs are filed. The following table provides an overview of losses reported as of early October 2010.

Mortgage Loan Fraud Losses Reported in Suspicious Activity Reports	
CY	Losses
1999	\$714,636,887
2000	286,457,784
2001	544,841,085
2002	404,854,416
2003	439,285,717
2004	829,695,959
2005	1,546,995,517
2006	2,483,742,403
2007	3,232,710,341
2008	1,359,963,603
2009	560,918,399
Total	\$12,404,102,111
<i>Totals are from MLF SARs submitted prior to October 7, 2010. Estimates are based on activity dates rather than reporting dates and consequently will increase as FinCEN receives new reports.</i>	

Methodology

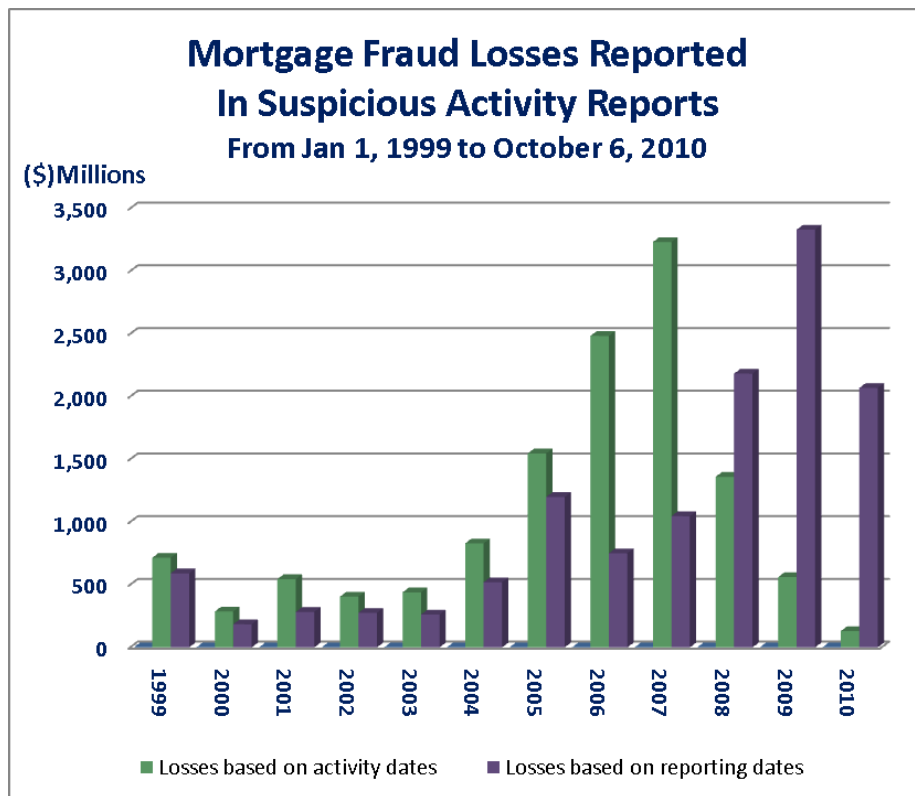
Annual reported losses may be calculated using either:

- 1) The date of the activity (“activity date”); or
- 2) The date that an institution reported the activity (“reporting date”)

Using either method, reported losses totaled roughly \$12.5 billion. Totals in the Summary section are based on activity dates – rather than reporting dates – as activity dates generally better reflect when losses actually occurred. There is typically a significant lag between the discovery of potential mortgage fraud and the reporting thereof, and the reporting date is often years after the actual activity and losses.

The differences between the two totals is most pronounced for recent activities. For instance, a majority of MLF SARs submitted in 2010 involved activities over two years old; consequently the reporting date total for the year dwarfs the activity date total.

The following graph illustrates the difference when calculating loss amounts based on reporting dates versus activity dates.



Filers may indicate both the date an activity starts and the date it ends. As many MLF SARs relate multiyear activities, losses are averaged out for each relevant year. For example, if a filer submitted a SAR indicating \$999 in losses for an activity taking place from 2006 through 2008, each year (2006, 2007, and 2008) is assigned a value of \$333.