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John W. Thompson
Commissioner

Peter J. Wallison
Commissioner

Thomas Greene
Executive Director

January 27, 2010

Via FedEx
The Honorable Eric Holder
United States Attorney General
Mr. Lanny A. Breuer
Assistant Attorney General, Criminal Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-00001

Re: Financial Crisis Inquiry Commission Hearing on January 14, 2010

Dear Attorney General Holder and Assistant Attorney General Breuer:

On January 20, 2010, Chairman Angelides and Vice Chairman Thomas sent you a letter thanking you for testifying at the January 14, 2010 hearing and informing you that the staff of the FCIC might be contacting you to follow up on certain areas of your testimony and to submit written questions and requests for information related to your testimony. During the hearing, some of the Commissioners asked you to answer certain questions in writing, which are listed below. Please provide your answers and any additional information requested by February 26, 2010.

1. Did the DOJ perform an internal review, audit or investigation regarding any failures by the DOJ in light of the financial crisis? If so, please provide the internal review, audit or investigation.

2. Does the Department of Justice contemplate extending membership in the new federal Financial Fraud Enforcement Task Force to state securities regulators and state attorneys general? Why or why not?

3. What steps were taken by the DOJ in the wake of the September 2004 FBI report warning of an "…epidemic of mortgage fraud coursing across this country…"?

4. In the wake of the September 2004 FBI report warning of an epidemic in mortgage fraud, what additional information was made available by the FBI and/or other sources to the DOJ regarding mortgage fraud? What information was made available to law enforcement personnel across the United States about mortgage fraud?

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5. Did the diversion of 500 FBI white-collar crime investigators to the investigation of terrorist activities after September 11, 2001 inhibit DOJ's ability to investigate and prosecute mortgage fraud? If so, how did the DOJ respond?

6. Did the DOJ issue any warnings regarding the possible impact upon the investigation of mortgage fraud caused by the diversion of 500 FBI white-collar crime investigators to the investigation of terrorist activities?

7. Does the DOJ have nationwide estimates of the amount of mortgages that were tainted by fraud, either by number or dollar amount?

8. Please provide the number of Suspicious Activity Reports ("SAR") that involved mortgage fraud from 2001 to the present, a breakdown by region for the SARs, the number of mortgage loans those SARs included, and how many of the SARs resulted in prosecutions.

The Commissioners and staff of the FCIC sincerely appreciate the DOJ's continued cooperation with this inquiry. If you have any questions or concerns, please do not hesitate to contact Chris Seefer at (202) 292-2799, or cseefer@fcic.gov.

Sincerely,

Thomas Greene
Executive Director

cc: Phil Angelides, Chairman, Financial Crisis Inquiry Commission

Bill Thomas, Vice Chairman, Financial Crisis Inquiry Commission

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 16, 2010

The Honorable Phil Angelides
Chairman
Financial Crisis Inquiry Commission
1717 Pennsylvania Avenue, NW, Suite 800
Washington, D.C. 20006

Dear Mr. Chairman:

Enclosed please find responses to questions for the record stemming from the appearance of Attorney General Eric Holder and Lanny Breuer, Assistant Attorney General for the Criminal Division, before the Commission at a hearing on January 14, 2010. We hope that this information is of assistance to the Commission.

Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that there is no objection to submission of this letter from the perspective of the Administration's program.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosure

Department of Justice Responses to Questions for the Record
Financial Crisis Inquiry Commission Hearing
January 14, 2010

1. Did the DOJ perform an internal review, audit or investigation regarding any failures by the DOJ in light of the financial crisis? If so, please provide the internal review, audit or investigation.

The Department of Justice has not conducted a formal internal review, audit or investigation along the lines you describe; however, we are continually evaluating whether we have the tools, resources, and strategies necessary to be effective in combating financial crimes. The Department provided extensive technical assistance to Members of Congress on the legislation that became the Fraud Enforcement and Recovery Act of 2009 ("FERA"). FERA provided useful tools for criminal and civil enforcement against financial fraud. It also provided much needed resources for investigators, agents, analysts, and prosecutors to address financial crimes. In addition, we continue to develop strategies to address financial crimes related to the current financial crisis and to prevent fraud during the government recovery effort. Specifically, we recommended the creation of the Financial Fraud Enforcement Task Force ("Task Force") to better coordinate our enforcement efforts throughout the executive branch and with state and local law enforcement.

2. Does the Department of Justice contemplate extending membership in the new federal Financial Fraud Enforcement Task Force to state securities regulators and state attorneys general? Why or why not?

The Department of Justice is committed to fostering active participation by state and local law enforcement in the newly formed Task Force. We recognize that the mission of the Task Force requires close coordination with state attorneys general and regulatory authorities and we are taking steps to make sure they are integrated into the work of the Task Force.

Indeed, the National Association of Attorneys General is a participant in the Task Force. State attorneys general serve as co-chairs of the Mortgage Fraud and Recovery Act Fraud Working Groups of the Task Force. In addition, representatives of the National District Attorneys Association have been invited to participate in the Task Force. We look forward to working closely with them. The Task Force also includes a Securities and Commodities Fraud Working Group that is co-chaired by the Department of Justice, the Securities and Exchange Commission, and the Commodities Futures Trading Commission. We recently invited the North American Securities Administrators Association to participate in the Task Force and anticipate that it will be an active member of this working group.

3. What steps were taken by the DOJ in the wake of the September 2004 FBI report warning of an "...epidemic of mortgage fraud coursing across this country?"

At an October 2004 hearing before the House Financial Services Subcommittee on Housing and Community Opportunity, then-FBI Criminal Investigative Division Assistant Director Chris Swecker warned of the potential impact mortgage fraud and other significant financial crimes could have on our nation's economy. Even as Committee Members first heard of the impending crisis, though, the Department of Justice and the Federal Bureau of Investigation were working hard to cultivate partnerships, develop information on fraud schemes, and establish threat-based intelligence-driven task force programs which are ably combating this problem still today.

In June 2004, AD Swecker authorized the consolidation of the mortgage fraud program into the Financial Crimes Section of the FBI's Criminal Investigative Division. At that time, the FBI began working towards an overall strategy to address mortgage fraud on a proactive basis utilizing partnerships with federal agencies, state and local law enforcement, regulatory bodies, and private industry.

In 2004, the FBI also launched its first Financial Institution Fraud national takedown, which was known as Operation Continued Action. During this takedown, over 150 individuals were charged through informations and indictments. The losses suffered in the cases were in excess of $3 billion. Although this takedown included all financial institution fraud cases, numerous mortgage fraud investigations were also included, which at the time did not have a separate investigative classification.

In 2005, the FBI, along with the Housing and Urban Development-Office of Inspector General (HUD-OIG), Internal Revenue Service (IRS), U.S. Postal Inspection Service (USPIS), and DOJ announced the results of an initiative to combat the growing epidemic of mortgage fraud. This operation, commonly referred to as Operation Quick Flip, demonstrated to the public law enforcement's recognition of the mortgage fraud threat and the federal government's effort to combat mortgage fraud. This operation ran from July 5, 2005, through December, 14, 2005, and recorded 156 indictments, 81 arrests, and 89 convictions. The losses resulting from these mortgage fraud cases exceeded $600 million.

In 2007, the FBI created new investigative classifications specifically for mortgage fraud cases in order to track, analyze, and report on mortgage fraud related matters in a more effective and efficient manner. These new mortgage fraud classifications differentiate not only that a case is mortgage fraud related, but also the type of victim (e.g. federally insured institution, government agencies, other entities) and the total estimated dollar losses associated with the investigation. With separate and distinct mortgage fraud classifications, the FBI is able to monitor the resources dedicated to combat mortgage fraud. Since 2007, the FBI has also tripled both the number of Special Agents and analysts dedicated to investigating mortgage fraud.

In addition, the FBI has implemented a number of innovative and proactive methods to detect and combat mortgage and other significant financial frauds. An example of this proactive approach was the development of an analytical computer application to identify property flipping transactions. The original concept, which AD Swecker referenced in his testimony, has since evolved into a national FBI initiative. Through the employment of statistical correlations and other advanced computer technology, this particular tool allows the FBI to search for companies and persons demonstrating patterns of alleged illegal property flipping activity. This database was rolled out to all FBI field offices in January 2008, with live property data. This analytical tool assists field offices with the identification of mortgage fraud criminal enterprises.

In 2008, the FBI established Mortgage Fraud Task Forces and Working Groups to enhance federal, state, and local law enforcement resource capabilities. These efforts acted as a force multiplier; an expertise enhancement; a venue for intelligence and information sharing; and expanded the jurisdictional boundaries for law enforcement. Working together, the law enforcement agencies could share not only intelligence but the ability to prosecute cases across state and federal prosecutive jurisdictions.

From March 1 to June 18, 2008, Operation Malicious Mortgage resulted in 144 mortgage fraud cases in which 406 defendants were charged. Charges in Operation Malicious Mortgage cases were brought in every region of the United States and in more than 50 judicial districts by U.S. Attorneys Offices based upon the law enforcement and investigative efforts of participating law enforcement agencies. The FBI estimates that approximately $1 billion in losses were inflicted by the mortgage fraud schemes employed in these cases.

In 2009, Operation Bad Deeds, a joint federal, state, and local law enforcement operation targeting mortgage fraud crimes, resulted in charges against 41 industry insiders. These bankers, lawyers, brokers and accountants allegedly engaged in various mortgage fraud scams that collectively defrauded lenders out of more than $64 million in home mortgage loans on more than 100 properties across New York State.

In September of 2009, the FBI also initiated the Financial Intelligence Center (FIC). The FIC's mission is to provide tactical intelligence analysis of intelligence collected in data, data sets, and databases, generated from merging technology and data exploitation techniques, to create investigative targeting packages for dissemination to the FBI field offices. One of the best forms of data is the Suspicious Activity Reports obtained from the Financial Crimes Enforcement Network (FinCEN) database. The goal is to create investigative targeting packages of the most egregious criminal enterprises. The FIC is operational but is in its initial stage of development. The FIC has been working to create targeting packages to identify criminal enterprises involved in mortgage fraud.

In November of 2009, as a result of a nine-month operation, the FBI in coordination with the U.S. Attorney's Office in the Middle District of Florida, announced the Mortgage Fraud Surge. The operation, which revealed approximately $400 million in losses, resulted in 100 indictments and informations.

For its part, the FBI continues to participate on both the national Mortgage Fraud Working Group (MFWG) and the national Bank Fraud Working Group (BFWG). The BFWG has been in existence for over 25 years. The MFWG was initiated as a subgroup of BFWG in early 2007. Prior to the creation of the MFWG, a mortgage fraud was a subject addressed in the BFWG meetings. These working groups represent the collaborative effort of multiple agencies and facilitate the information-sharing process across the member agencies, as well as with private organizations. These monthly sessions provide intelligence sharing, best practices and a forum for members to voice concerns and discuss emerging trends in mortgage fraud. The FBI is also a member of the newly formed Financial Fraud Enforcement Task Force.

4. In the wake of the September 2004 FBI report warning of an epidemic in mortgage fraud, what additional information was made available by the FBI and/or other sources to the DOJ regarding mortgage fraud? What information was made available to law enforcement personnel across the United States about mortgage fraud?

Some of the best tools in the FBI's arsenal for combating financial frauds are its long-standing partnerships with federal, state and local law enforcement and regulatory agencies. These partnerships and joint investigations provide an avenue for intelligence sharing, best practices, and de-confliction of overlapping investigations. In many joint investigations, the FBI works with law enforcement officers from other federal, state, and local agencies. In joint cases, information, including evidence, is shared completely between agencies as permitted by law (e.g. grand jury secrecy laws, IRS laws). FBI agents work side-by-side with other agencies and participate jointly in operational events, including interviews, arrests, searches, and evidence analysis.

In addition to joint cases, the field office supervisors have built liaisons with local, state, and federal agencies in their territories. Cases that do not meet U.S. Attorneys' Offices' prosecutive guidelines, do not constitute a federal crime, or require the expertise of another law enforcement agency, are referred to other agencies in order to ensure all mortgage fraud complaints are appropriately addressed.

Since 2004, the Financial Crimes Intelligence Unit has published an annual mortgage fraud report. The report provides, among other things, an overview of the mortgage fraud problem, high mortgage fraud threat areas, and explanations of emerging fraud schemes. This report is available on the FBI's internal intranet website. Additionally, an unclassified version is available for the public on the FBI's external internet website. An FBI representative presents the key components of the mortgage fraud report in the national MFWG meeting each year. Copies of the report are disseminated to all members of the MFWG.

In addition to its partners in law enforcement and regulatory areas, the FBI continues to foster relationships with representatives of the mortgage industry to promote mortgage fraud awareness. The FBI has provided training and participated in various mortgage industry conferences and seminars, including those sponsored by the Mortgage Bankers Association (MBA), the American Bankers Association, and the BITS Financial Services Roundtable.

As a training model, the FBI seeks industry experts to assist in internal training programs. For example, members of the private sector have assisted with training FBI personnel on mortgage industry practices and documentation, as well as with industry views of relevant laws and regulations. The private sector experts also assist in identifying public and private datasets available to enhance existing criminal investigations.

5. Did the diversion of 500 FBI white-collar crime investigators to the investigation of terrorist activities after September 11, 2001 inhibit DOJ's ability to investigate and prosecute mortgage fraud? If so, how did the DOJ respond?

While fewer agents are working White Collar Crime today than in 2001, the combined number of Financial Institution Fraud and Securities/Commodities Fraud personnel has actually increased since 2001, as the FBI continued to investigate financial crimes, including mortgage fraud. As Director Mueller stated before the Senate Judiciary Committee in September 2009, the FBI has undergone a significant evolution in recent years. In order to continue to address the mortgage fraud crime threat, the FBI developed strategies to address these violations with fewer resources and adapted to the country's ever changing needs. To accomplish this mission, the FBI focused its efforts on higher priority financial institution fraud matters including mortgage fraud investigations with losses of over one million dollars. This strategy allowed the FBI to re-direct resources from lower priority matters including fraud against the government with losses less than one million dollars and mass marketing matters to address this emerging threat.

The FBI has also used intelligence collection as a means to better understand the threats of financial frauds. The analysis of this intelligence has lead to the identification of emerging financial trends and threats. This intelligence has afforded the FBI the ability to strategically place resources into the areas identified as having the greatest threat, allowing the resources to focus on neutralizing the threat in those field offices.

In fighting crime, the FBI continues to focus on areas where its involvement will have a substantial and lasting impact and where the FBI has a specific skill or expertise that will contribute to the success of the operation or investigation. Often the FBI brings its expertise to joint investigations with partners in federal, state, and local law enforcement. The FBI stands shoulder-to-shoulder to combat these threats, both operationally and through the sharing of vital intelligence, in a way that was not done in the pre-9/11 world. These intelligence-based, threat-driven joint investigations allow the FBI to leverage all available resources and expertise to meet financial and other crimes head on.

The National Mortgage Fraud Team (NMFT) at FBI Headquarters has assisted with establishing Mortgage Fraud Task Forces and Working Groups across the country since

2008. Appropriations from the Asset Forfeiture Fund are utilized for the creation and enhancement of the Mortgage Fraud Task Forces.

Currently, there are 23 Mortgage Fraud Task Forces nationwide. With representatives of federal, state, and local law enforcement, the task forces are strategically placed in locations identified as high threat areas for mortgage fraud. This multi-agency model serves as a force-multiplier, providing an array of resources to address mortgage fraud schemes.

Additionally, there are 67 Mortgage Fraud Working Groups nationwide. These working groups are designed to more efficiently share and transmit industry data and intelligence information. The working groups provide a venue for participants to learn emerging trends and threats, and they provide successful techniques for combating criminal matters. Regulatory agencies and industry partners from the private sector also participate in these working groups.

As noted above, most recently, the FBI developed the Financial Intelligence Center (FIC) to investigate Mortgage Fraud, Predatory Lending, Market Manipulation, and other financial frauds. The FIC was created using the resources appropriated by Congress, through H.R. 2346, the Supplemental Appropriations Act. Its mission is to provide tactical analysis of intelligence data, data sets, and databases, by using evolving technology and data exploitation techniques, to create targeting packages to identify the most egregious criminal offenders, and to enhance current criminal investigations. In addition, the FIC responds to requests by FBI field offices to complement the field's resources to identify emerging economic threats.

6. Did the DOJ issue any warnings regarding the possible impact upon the investigation of mortgage fraud caused by the diversion of 500 FBI white-collar crime investigators to the investigation of terrorist activities?

In an effort to assist the Commission's inquiry, we have searched communications from the Executive Office of U.S. Attorneys to the 94 U.S. Attorneys' Offices regarding mortgage fraud and financial fraud. Additionally, we are currently considering other searches that may yield responsive documents or information. To the extent that we discover responsive documents or information, we will discuss with Commission staff whether the documents or information may assist the Commission's inquiry.

7. Does the DOJ have nationwide estimates of the amount of mortgages that were tainted by fraud, either by number or dollar amount?

The Department does not have estimates of the amount of mortgages that were tainted by fraud. It does have certain information about the number of reports and complaints of suspected fraud, though it is important to note that (1) a report or complaint does not necessarily mean that there was in fact fraud, and (2) mortgages may be tainted by fraud that never result in a report, complaint, or detection. The FBI compiles data on Mortgage Fraud through Suspicious Activity Reports (SARs) filed by financial institutions through the Financial Crimes Enforcement Network (FinCEN), and through reports generated by the Department of Housing and Urban Development (HUD) Office of Inspector General (OIG). The FBI also receives and shares information pertaining to Mortgage Fraud through its national and regional working groups, as well as complaints from the industry at large.

While a significant portion of the mortgage industry is devoid of any mandatory fraud reporting, and there is presently no central repository to collect all mortgage fraud complaints, SARs from financial institutions have indicated a significant increase in mortgage fraud reporting. For example, during Fiscal Year (FY) 2008, mortgage fraud SARs increased more than 36 percent to 63,173. The total dollar loss attributable to mortgage fraud is unknown. Only 7 percent of SARs in FY 2008 report dollar loss amounts due to the time lag between identifying a suspicious loan and liquidating the property through foreclosure and then calculating the loss amount. Those 7 percent report losses total more than $1.5 billion. In FY 2009, 67,190 mortgage fraud SARs were filed and through January 31, 2010, 24,121 mortgage fraud SARs have been filed.

8. Please provide the number of Suspicious Activity Reports ("SAR") that involved mortgage fraud from 2001 to the present, a breakdown by region for the SARs, the number of mortgage loans those SARs included, and how many of the SARs resulted in prosecutions.

Suspicious Activity Reports ("SARs") are filed with FinCEN, not with the Department. Although FinCEN provides the Department with access to SARs, we do not "receive" those reports or maintain statistics regarding those SARs to which we have been granted access. The Department uses SAR data in various ways to generate investigative leads, identify trends, assess risks, and focus resources. Because the reports themselves are filed with FinCEN, not with the Department, FinCEN systematically tracks and analyzes SAR filings. In an effort to assist the Commission, however, we previously produced several FinCEN reports that analyze SARs, including the nature of the SARs. *See* Bates Nos. FCIC_REQ_A000000057-241.

Filing Trends In
Mortgage Loan Fraud

A Review of Suspicious Activity Reports Filed
July 1, 2007 through June 30, 2008

Filing Trends in Mortgage Loan Fraud

A Review of Suspicious Activity Reports Filed
July 1, 2007 through June 30, 2008

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Introduction

Suspicious Activity Reports (SARs) provide a valuable tool for regulatory agencies and law enforcement seeking to isolate specific instances of potential criminal activity for further investigation and to identify emerging money laundering and terrorism financing trends. These efforts involve government agencies at the Federal, state, and local levels that are authorized by the Financial Crimes Enforcement Network (FinCEN) to access data derived from SARs.[1]

Following a significant increase in SARs on mortgage loan fraud in 2003 and 2004, FinCEN began focusing attention on such activity. The first in a series of reports was issued in November 2006 specifically describing trends and patterns revealed in mortgage loan fraud SARs.[2] Earlier FinCEN reports examined SAR data on a range of factors relevant to mortgage fraud among various business sectors, including: the most frequently reported mortgage fraud methods and schemes; businesses and professions, or "subjects," involved in suspected mortgage fraud; and the key indicators or "red-flags" of mortgage loan fraud of which institutions should be aware in designing and implementing their SAR reporting programs.[3]

This current report updates and complements FinCEN's earlier mortgage fraud reports by describing trends in SAR filings for the period of July 1, 2007 to June 30, 2008, with comparisons to the previous five years. This report is limited in scope to reports of suspected mortgage fraud submitted on Form TD F 90-22.47 (the depository institution SAR) – the form used primarily by banks as defined under FinCEN's regulations.[4]

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1. For FinCEN reports and publications on the uses and value of BSA reports, see the FinCEN website, http://www.fincen.gov/news_room/rp/index.html.
2. *Mortgage Loan Fraud: An Industry Assessment Based Upon Suspicious Activity Report Analysis,* November 2006, http://www.fincen.gov/news_room/rp/reports/pdf/mortgage_fraud112006.pdf.
3. *Ibid.* See also *Mortgage Loan Fraud: an Update of Trends Based upon Analysis of Suspicious Activity Reports*, April 2008; *Suspected Money Laundering in the Residential Real Estate Industry*, April 2008; *Money Laundering in the Commercial Real Estate Industry*; December 2006, at http://www.fincen.gov/news_room/nr/.
4. 31 CFR 103.11(c). The depository institution SAR is filed by all depository institutions operating in the United States, including insured banks, savings associations, savings association service corporations, credit unions, bank holding companies, nonbank subsidiaries of bank holding companies, Edge and Agreement corporations, and U.S. branches and agencies of foreign banks. The Federal Housing Finance Agency (FHFA), which is the Federal regulator for Fannie Mae and Freddie Mac, has established a process for the companies to report possible mortgage fraud to FHFA, which in turn files depository institution SARs with FinCEN.

This report offers an overview of mortgage loan fraud SAR filings to assist regulators and other stakeholders in assessing certain trends on the detection and reporting of mortgage loan fraud. FinCEN will continue discussions with its regulatory and industry partners on how SAR data may enhance analysis of broader mortgage fraud issues. These discussions may provide additional insights into the significance of, for example: changes in the volume of certain types of reports; the types of filers responsible for the greatest number of reports; and the effectiveness of anti-fraud and anti-money laundering (AML) measures.

For depository institutions, this report provides further context in the experiences across the financial industry as a whole. The analysis builds upon FinCEN's earlier mortgage loan fraud reports which detailed vulnerabilities to fraud, examined different types of fraudulent activity, and identified "red flag" indicators of possible fraud. Providing such information can aid financial institutions in making their respective BSA compliance and reporting activities more efficient and effective in catching potential illegal activity before it occurs, as well as providing law enforcement with the information necessary to help support investigation and prosecution of criminals. FinCEN specifically seeks to help financial institutions learn from the experience of others as to ways to seek to protect the institution and its customers from being victimized by fraud. This most recent report aims to provide new insights as to how a variety of businesses besides the lending institution can play a role in the discovery of potential fraud.

Unique among Federal agencies, FinCEN occupies a position at the intersection where the mutual interests of law enforcement, regulators, and the financial industry converge. This special vantage point allows FinCEN to have a line of sight on suspicious financial activities across the nation and to identify trends and patterns that may not be visible to an individual financial institution or industry, nor apparent at the local or even regional level. While the BSA is most often associated with its considerable power to thwart money launderers, FinCEN intends to continually improve its expert analysis of the BSA data to provide early warning to the nation of incipient trends of fraud or other criminal abuse of the financial system. This report provides an example of the type of analyses of BSA information performed by FinCEN in carrying out its regulatory functions as well as in support of regulatory and law enforcement partners on a targeted or strategic basis.

Executive Summary

From July 1, 2007 through June 30, 2008, financial institutions filed 62,084 depository institution SARs reporting mortgage loan fraud. This figure constituted 9 percent of all SAR submissions for the period and a 44 percent increase over the preceding year. Mortgage loan fraud was the third most reported activity during this period.

Nearly 900 filing institutions submitted mortgage loan fraud SARs. Of these, fewer than 200 institutions submitted 98 percent (apr. 60,800) of the total. The top 10 filing institutions submitted 57 percent (apr. 35,400) of these filings, compared to 30 percent for the top 10 filing institutions of all SARs. The top 25 filing institutions of mortgage loan fraud SARs submitted 82 percent (apr. 50,900) of filings. Hence, there is a high concentration of a small number of depository institutions that account for most mortgage loan fraud filings, as compared to SARs generally.

With respect to the *volume of filings*, institutions noting their primary Federal regulators as the Office of Thrift Supervision (OTS) or the Office of the Comptroller of the Currency (OCC) submitted 47 percent and 36 percent, respectively, of all mortgage loan fraud SARs.

In contrast, with respect to *filing institutions*, a third of filing institutions reported the Federal Deposit Insurance Corporation (FDIC) as their primary Federal regulator, more than any other Federal regulator.

Filing institutions reported in 34 percent of reports that detection of possible mortgage loan fraud occurred prior to loan funding. This compares with the 31 percent rate for the 12-month period analyzed in FinCEN's April 2008 report, and the 21 percent rate over the preceding decade, showing that institutions have become increasingly vigilant in trying to protect themselves from and report suspected fraud.[5]

In addition to standard Bank Secrecy Act/Anti Money Laundering (BSA/AML) reviews, several other factors and secondary parties contributed to the detection of suspected fraud. The SARs reveal that a variety of businesses, besides the lending institution, were stakeholders or otherwise involved in the detection of suspected mortgage loan fraud. Filing institutions referenced repurchase demands and insurance, each in 8 percent of filings. Additionally, institutions referenced foreclosures

5. See *Mortgage Loan Fraud: an Update of Trends Based upon Analysis of Suspicious Activity Reports*, April 2008, http://www.fincen.gov/news_room/rp/files/MortgageLoanFraudSARAssessment.pdf.

and early default payments in 13 percent and 2 percent of filings, respectively. In particular, mortgage loan purchasers and providers of mortgage or certificate insurance and similar credit enhancement appeared to have a prominent place in the discovery of possible fraud, which likely contributed to the increase in repurchase demands and denials of certain claims noted in the SARs.

Methodology

The focus of this report is the filing of mortgage loan fraud SARs. Data reflect incidents of suspected mortgage loan fraud activities reported by depository institutions in SARs[6] and derive from SARs wherein mortgage loan fraud is reported as a characterization of the suspicious activity observed. FinCEN continues to conduct additional analyses on related suspicious activities observed in other types of SARs including those filed by financial institutions from other industry sectors, such as money services businesses, securities and futures, and casinos and card clubs.

This report presents data from filings during the period of July 1, 2007 through June 30, 2008 with comparisons to the previous five years. Prior to 2003, filing trends on mortgage loan fraud SARs increased at similar rates to other SAR filings. In calendar year 2003, however, SARs reporting mortgage loan fraud increased 77 percent over the previous year, and continued to climb thereafter at a rate of increase in excess of the overall depository institution SAR filing trend. For this reason, the report does not include data prior to July 1, 2002.[7]

In Part III of the depository institution SAR form, filing institutions may select the characteristic(s) of the suspicious activity observed, which includes "mortgage loan fraud" in field 35(p). Unless noted otherwise in this report, data is derived from SAR forms where mortgage loan fraud is specifically indicated in field 35(p). SAR forms that do not indicate suspected mortgage fraud in field 35(p) were not included in the research or otherwise reflected in the findings in this report. In conducting this research, FinCEN accessed the BSA database to identify SARs for the period covered under this assessment using the filing date found in the Document Control Number (DCN)[8] of those SARs.

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6. The SAR form is available on FinCEN's website at www.fincen.gov/forms.
7. Data on trends regarding SARs from April 1, 1996 through March 31, 2006 is available on the FinCEN website in the 2006 report, *Mortgage Loan Fraud: An Industry Assessment based upon Suspicious Activity Report Analysis*, found at http://www.fincen.gov/news_room/rp/reports/pdf/mortgage_fraud112006.pdf.
8. A DCN is a unique number assigned by the Internal Revenue Service (IRS) to identify BSA documents received at the Enterprise Computing Center in Detroit, Michigan. The DCN numbering convention includes the date the reports are received.

The filing data used in the "Aggregate Trends and Patterns" part of this assessment draws from BSA database fixed field counts. For structured data (data contained in standard formats and fixed fields) such as secondary activities, a simple query may obtain this data. The most useful data for law enforcement purposes, however, often comes from the *unstructured* data in Part V, Suspicious Activity Information Explanation/Description (the "narrative" section), as it allows filing institutions greater flexibility to fully describe the suspected activity as they understand it. The "Trends and Patterns in Activities Leading to Initial Suspicion" part of this assessment is a summary of the conclusions drawn from reading and analyzing the narrative sections of a sample group of 1,050 SARs (1.7% of the total mortgage loan fraud SARs for the reporting period).

Aggregate Trends and Patterns

The following sections describe aggregate trends and patterns observed in mortgage loan fraud SARs. The sections include data on the increase in mortgage loan fraud SARs, SARs prepared by top filers, and statistics on filings based on the institutions' primary Federal regulators.

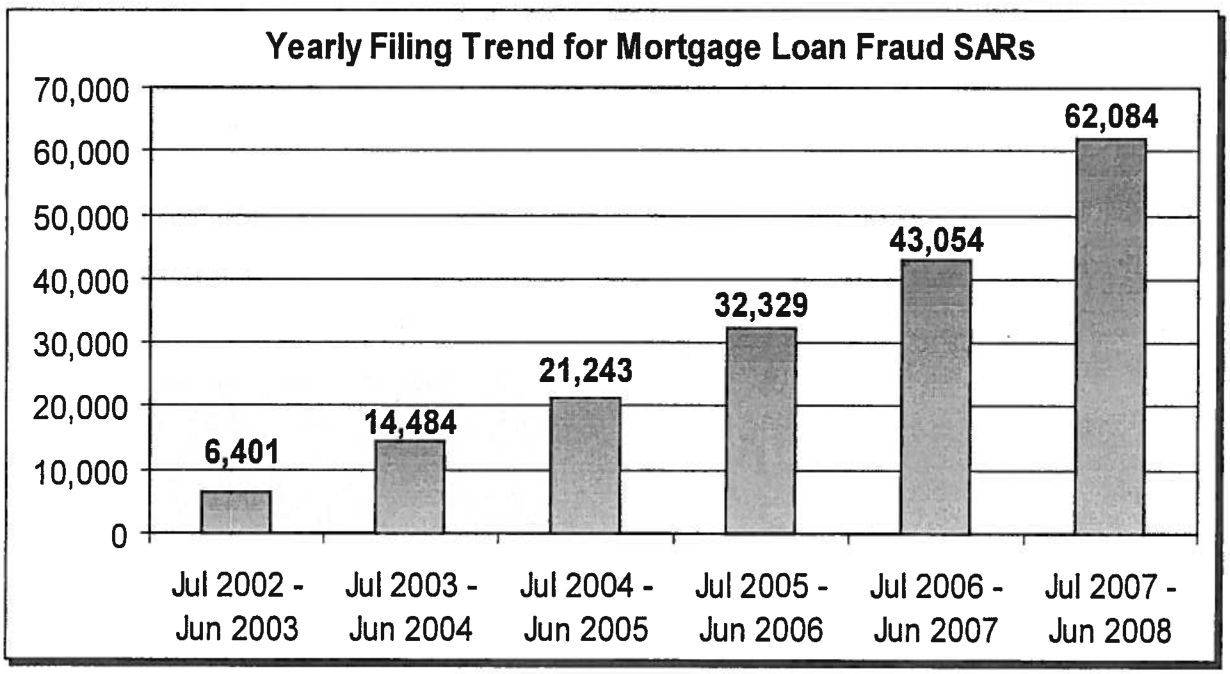
Mortgage Loan Fraud SARs

Section Summary: The volume of SARs reporting suspected mortgage loan fraud increased 44 percent during the 12 months of the period covered under this assessment, with 62,084 SARs filed between July 1, 2007 and June 30, 2008. These reports accounted for 9 percent of all SARs filed during the same period. During this period, mortgage loan fraud was the third most reported activity in SARs.

General Increases

Chart 1 illustrates the filing trend for SARs reporting mortgage loan fraud for the 6 year period July 1, 2002 to June 30, 2008 in 12-month intervals.

Chart 1



As seen in *Table 1*, between July 2002 and June 2008, depository institutions filed nearly 180,000 SARs with mortgage fraud as an activity characterization. Filings for the 12-month period ending June 30, 2008 increased 44 percent over the previous 12-month period. By comparison, all other SARs increased by only 9 percent.[9] While the number of mortgage loan fraud SARs increased significantly, it is important to note that the dates of the SAR filings are not always indicative of the dates of the underlying suspicious activities. Many SARs reflect activity dates that preceded the filing of the SARs by a number of years. Hence, an increase in the filings during this period is not necessarily indicative of an increase in mortgage loan fraud activities during the same period.

In the last 2 years of the review, mortgage loan fraud was the third most reported activity characterization on SARs. The three most reported characterizations, in order, were (1) the general category of BSA / Structuring / Money Laundering, (2) Check Fraud, and (3) Mortgage Loan Fraud.[10] *Table 1* shows the increase in mortgage loan fraud SARs in general and with respect to total SAR filings.[11]

Table 1

Mortgage Loan Fraud SARs - Yearly Increases and Percentages of Total SAR Filings			
Filing Date Range	***Mortgage Loan Fraud SARs***	***Percentage Increase***	***Percent of Total SAR Filings***
Jul 2002 – Jun 2003	6,401	22%	2%
Jul 2003 – Jun 2004	14,484	126%	4%
Jul 2004 – Jun 2005	21,243	47%	5%
Jul 2005 – Jun 2006	32,329	52%	6%
Jul 2006 – Jun 2007	43,054	33%	7%
Jul 2007 - Jun 2008	62,084	44%	9%
Total	**179,595**		**6%**

9. The statistic for "all other SARs" here reflects all SARs that did not include mortgage loan fraud as a suspicious activity characterization. The increase for all other activities should not be confused with the increase for all other reported SARs as many SARs contain multiple reported *activities*. Many of the other *activities* are also in mortgage loan fraud SARs, and, therefore, are not counted in the figure for "all other SARs."

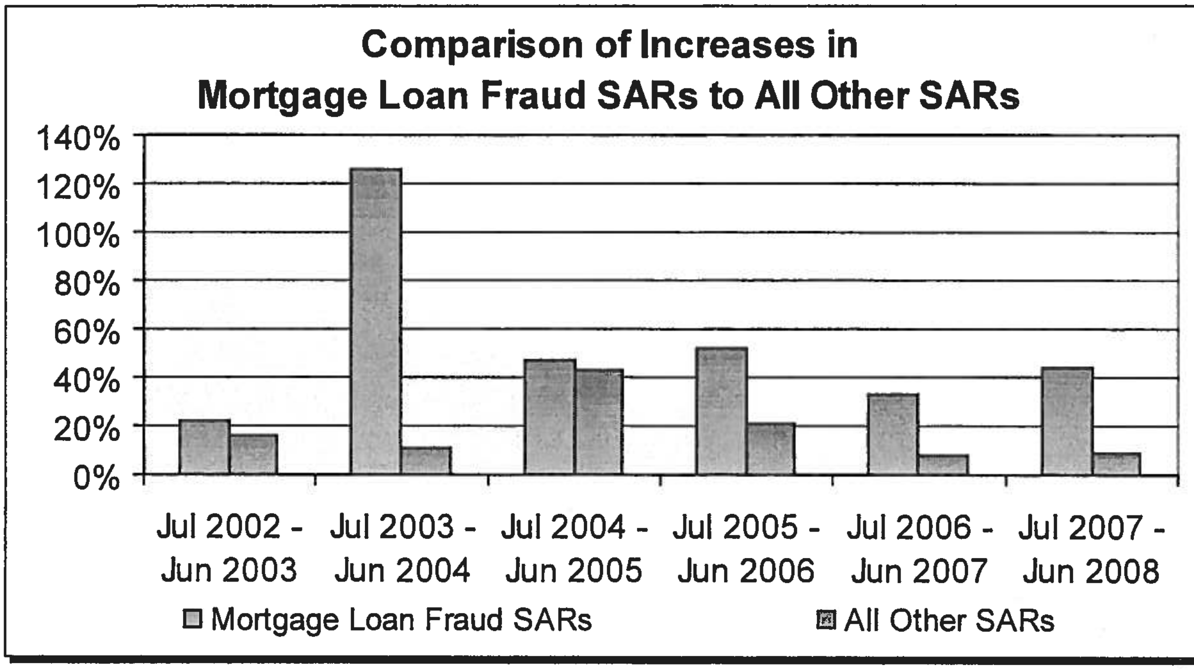
10. The catchall "other" category for reported activity that does not fall into one of the specific categories on the depository institution SAR form was, statistically speaking, the second most indicated on the filings for the reporting period.

11. The filing increase for should not be confused with all other reported *activities*, as many filings contain multiple reported activities.

Comparison to Other SARs

Chart 2 shows the growth rate for mortgage loan fraud SARs compared to SAR filings which do not have this activity characterization.

Chart 2



As seen in *Table 2*, the growth rate of mortgage loan fraud SARs outpaced that of all other SARs over each of the past 6 annual periods, often by a considerable amount.

Table 2

Comparison of Increases in Mortgage Loan Fraud SARs to All Other SARs		
Filing Date Range	***Mortgage Loan Fraud SARs - Filing Increases***	***Non-Mortgage Loan Fraud SARs – Filing Increases***
Jul 2002 - Jun 2003	22%	16%
Jul 2003 - Jun 2004	126%	11%
Jul 2004 - Jun 2005	47%	43%
Jul 2005 - Jun 2006	52%	21%
Jul 2006 - Jun 2007	33%	8%
Jul 2007 - Jun 2008	44%	9%

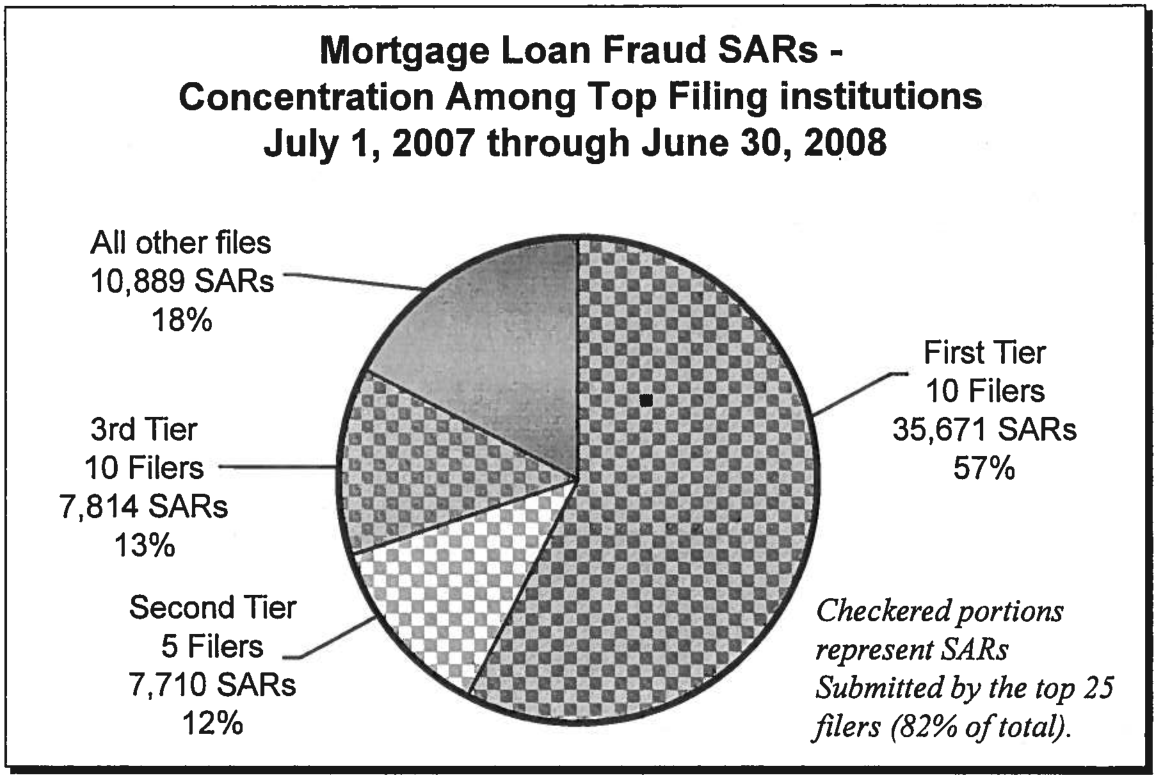
Filing Institutions

Section Summary: The top 10 filing institutions of SARs reporting suspected mortgage loan fraud submitted 57 percent of the total of such reports, whereas the top 10 filing institutions for SARs in general submitted 30 percent of all SARs. The top 25 filing institutions on suspected mortgage loan fraud submitted 82 percent of the total. Six filing institutions accounted for 36 percent of all mortgage loan fraud SARs but only one percent of all other SARs. Hence, mortgage loan fraud filings come predominantly from a more concentrated group of depository institutions than do SARs generally.

In a 12-month period, fewer than 200 depository institutions submitted the bulk of SARs (98 percent) with mortgage fraud as an activity characterization. Although nearly 900 institutions filed SARs reporting suspected mortgage loan fraud between July 1, 2007 and June 30, 2008, more than 700 of these institutions each filed fewer than five SARs with this characterization.[12] As *Chart 3* shows, the 25 top filing institutions of mortgage loan fraud SARs submitted 82 percent of the total 62,084 reports during this period.

12. The filer count is based on unique filer Employer Identification Numbers (EINs) reported in the SAR. As some businesses may use the same EIN for multiple branches or process all SARs at centralized locations for the entire organization, the total does not represent individual filer branch locations, but rather unique filer institutions. Although records reflect 987 EINs and 1,058 filer names, the total appears to be closer to 900 unique filers according to reported EINs, after taking into account typographical errors.

Chart 3



The top 10 filing institutions of mortgage loan fraud SARs submitted 57 percent of these records. This concentration of submissions among the top filing institutions was notable compared to overall SAR filing trends. In contrast, the top 10 filing institutions for *all SARs* submitted 30 percent of the total records. *Charts 4* and *5* illustrate this difference.

Chart 4

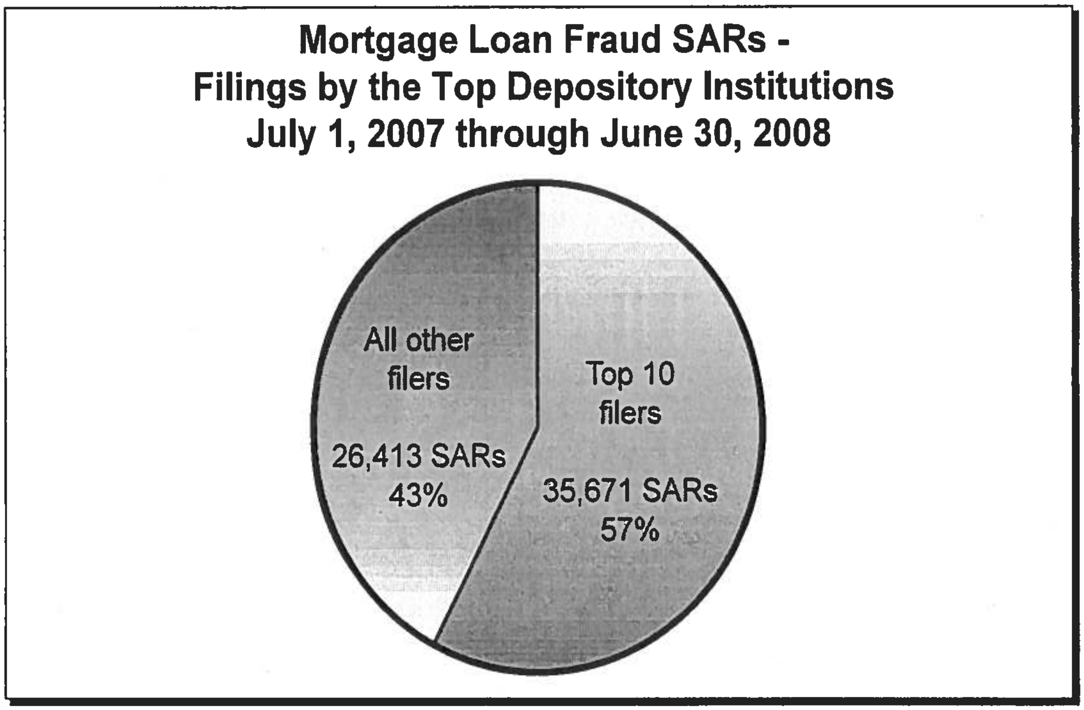
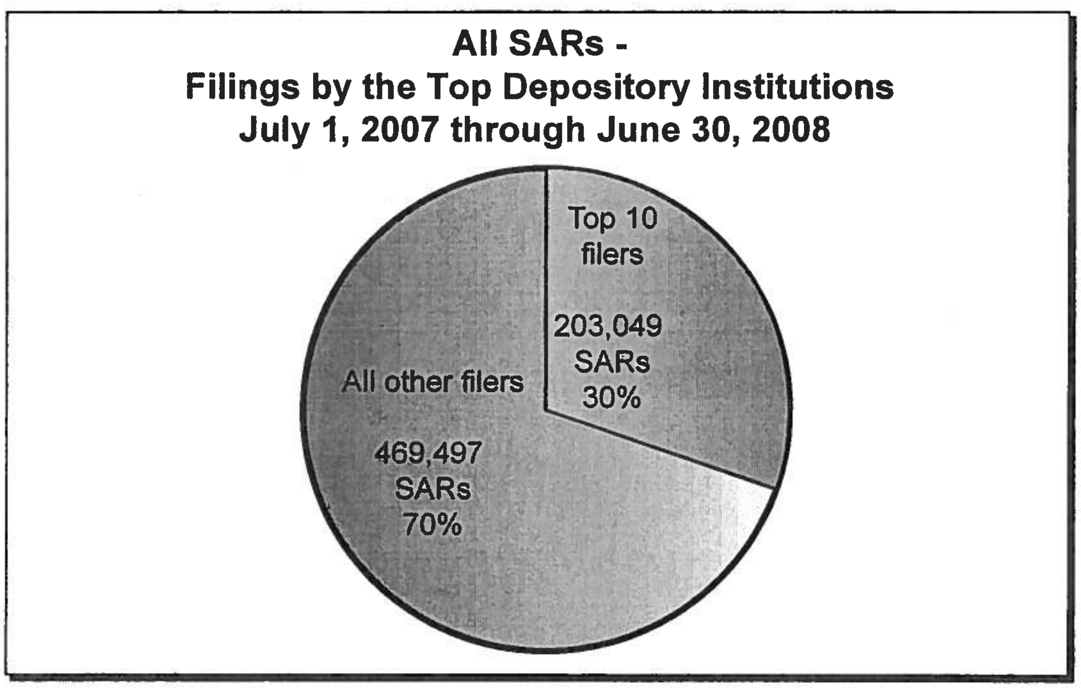


Chart 5



Four of the top ten filing institutions of mortgage loan fraud SARs were also among the top ten filing institutions for all SARs irrespective of activity characterization. The remaining six filing institutions of this group accounted for 36 percent of all mortgage fraud filings but only 1 percent of all other SARs.[13] This would appear to be explained in part by the business model of those latter six filing institutions being relatively more focused on mortgage activity.

Primary Federal Regulators of Filing Institutions

Section Summary: In terms of total SARs, institutions that identified the Office of Thrift Supervision (OTS) and the Office of the Comptroller of the Currency (OCC) as their primary Federal regulators submitted 47 percent and 36 percent, respectively, of all mortgage loan fraud SARs from July 1, 2007 through June 30, 2008. In terms of total depository institutions, a third of filing institutions reported the Federal Deposit Insurance Corporation (FDIC) as their primary Federal regulator; however, the number of mortgage loan fraud SARs prepared by these filers was comparatively low. This shows that although mortgage loan fraud was suspected by depository institutions of all charter types, a subset of larger institutions chartered by the OCC and OTS accounted for the bulk of the SARs filed.

In the last year of the review period, filing institutions under the Federal supervision of OTS filed the most SARs with mortgage loan fraud as an activity characterization, submitting more than 29,000 such reports. Filing institutions under the supervision of OCC submitted the second largest volume, with nearly 22,000 such reports.[14]

13. The total *filings* should not be confused with the filing institutions' proportion of SARs on other *activities*, since SARs frequently indicate multiple activity characterizations.

14. Of the nearly 180,000 mortgage loan fraud SARs submitted between July 1, 2002 and June 30, 2008 which listed a primary Federal regulator, about one percent of all such reports did not provide the primary Federal regulator.

Chart 6 and *Table 3* show yearly comparisons of total SARs with mortgage loan fraud as an activity characterization, grouped by the primary Federal regulator of the reporting institutions.

Chart 6

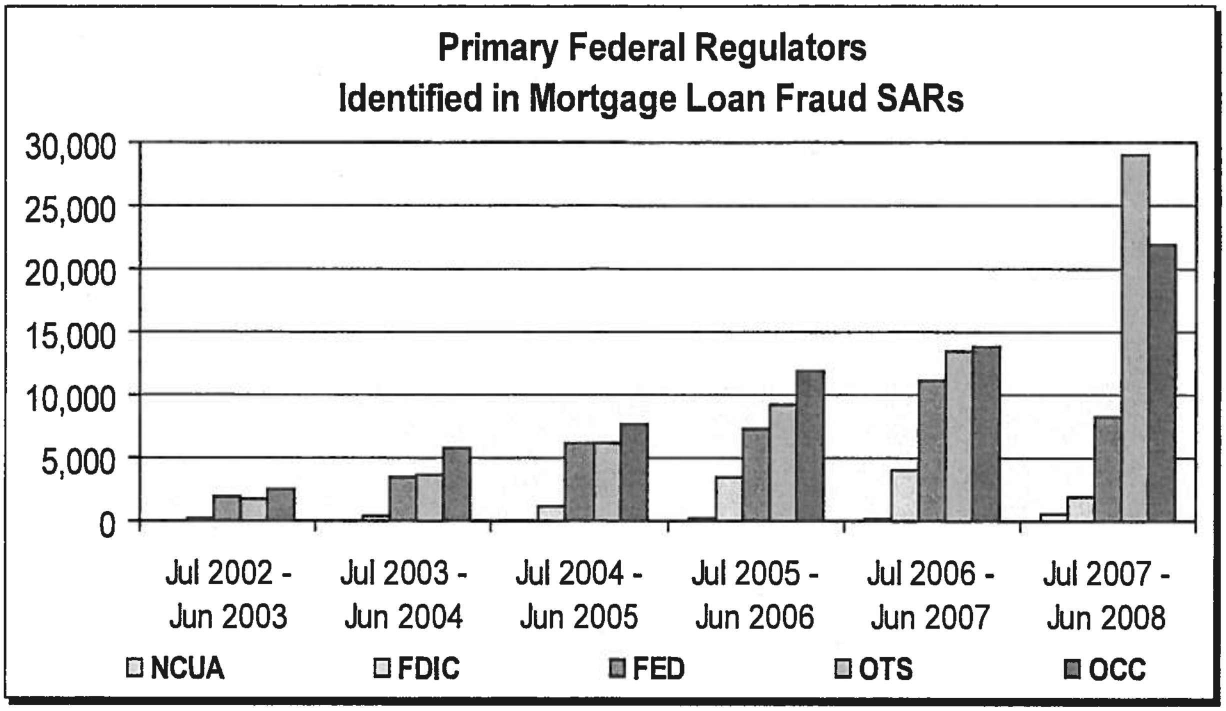


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Table 3

Primary Federal Regulators Identified in Mortgage Loan Fraud SARs - Totals					
Filing Date Range	**NCUA**	**FDIC**	**FED**	**OTS**	**OCC**
Jul 2002 - Jun 2003	20	265	1,827	1,668	2,568
Jul 2003 - Jun 2004	36	391	3,447	3,645	5,786
Jul 2004 - Jun 2005	60	1,169	6,076	6,115	7,638
Jul 2005 - Jun 2006	107	3,506	7,266	9,170	12,007
Jul 2006 - Jun 2007	203	4,097	11,155	13,409	13,937
Jul 2007 - Jun 2008	541	1,928	8,277	29,023	21,974
Total	**967**	**11,356**	**38,048**	**63,030**	**63,910**

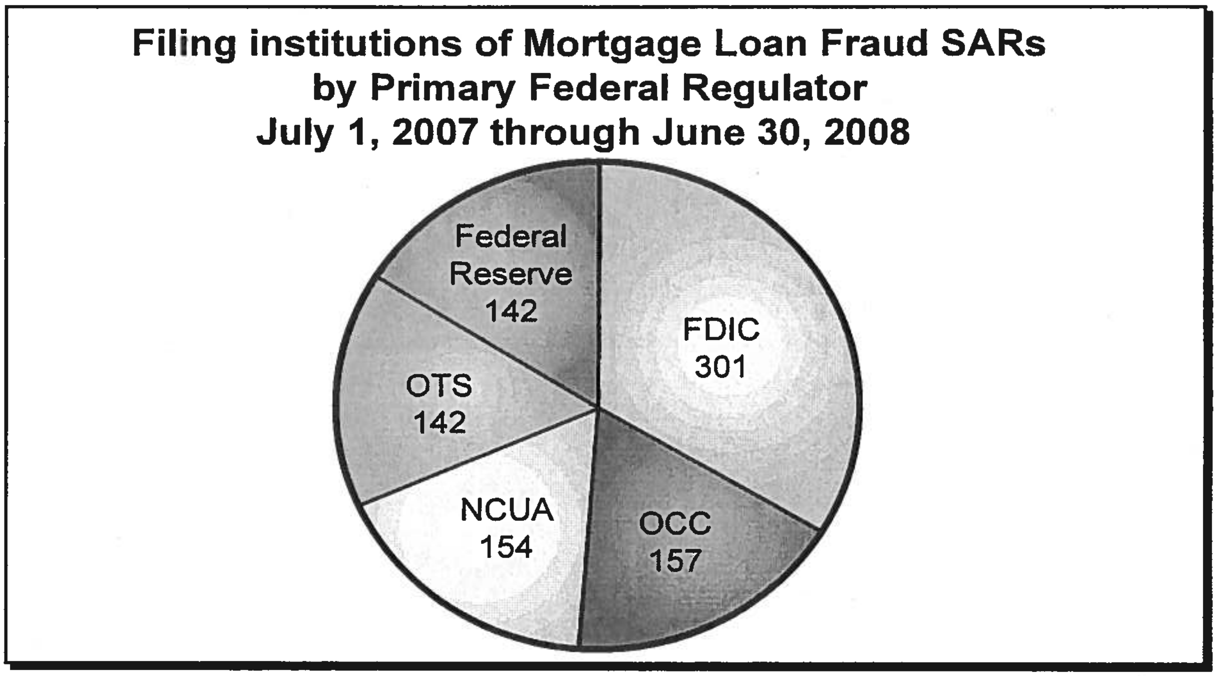
Table 4 shows the percentage (rounded) of these reports relative to the total of mortgage loan fraud SARs.

Table 4

Mortgage Loan Fraud SARs - Percentage Comparison of Reported Primary Federal Regulators					
Filing Date Range	**NCUA**	**FDIC**	**FED**	**OTS**	**OCC**
Jul 2002 - Jun 2003	<1%	4%	29%	26%	40%
Jul 2003 - Jun 2004	<1%	3%	26%	27%	43%
Jul 2004 - Jun 2005	<1%	6%	29%	29%	36%
Jul 2005 - Jun 2006	<1%	11%	23%	29%	37%
Jul 2006 - Jun 2007	<1%	10%	26%	31%	33%
Jul 2007 - Jun 2008	1%	3%	13%	47%	36%

Depository institutions reporting the FDIC as the primary Federal regulator comprised a third of all filing institutions reporting suspected mortgage loan fraud during the period July 1, 2007 to June 30, 2008.[15] These institutions ranked fourth in overall submissions of mortgage loan fraud SARs, submitting an average of six reports per filer. Institutions regulated by the OTS and OCC, on average, filed more than 100 mortgage loan fraud SARs each. Most of the top 25 filing institutions were chartered by either the OCC or OTS. *Chart 7* shows the number of regulated entities that filed mortgage loan fraud SARs by indicated supervisory agency during this period.

Chart 7



15. Filing institutions' self-reported EINs provide the basis for the counts of filing institutions. It is likely that the number of filing institutions is lower than the numbers provided due to data entry errors. Also, while the EIN represents a unique filing institution, it does not reflect the number of institutional affiliates that filed SARs on mortgage loan fraud, as some branches may use the same EIN.

Table 5 shows the average number of submissions for each filing institution based on the reported regulator.

Table 5

Mortgage Loan Fraud SARs: Average Number of Filer Submissions by Primary Federal Regulator July 1, 2007 to June 30, 2008	
Regulator	***Average Number of Filer Submissions***
NCUA	3
FDIC	5
Federal Reserve	56
OCC	136
OTS	182

Trends and Patterns in Activities Leading to Initial Suspicion

This final section describes the role of outside parties such as mortgage loan purchasers and providers of mortgage or certificate insurance and similar credit enhancement in identifying possible mortgage loan fraud.

Section Summary: A review of SAR narratives revealed that institutions detected possible mortgage loan fraud during the pre-funding stage of the loan in 34 percent of the filings. Filing institutions reported that repurchase demands and insurance investigations sometimes provided indications of potential mortgage loan fraud. Eight percent of the mortgage loan fraud SARs referenced repurchase agreements or demands, and another 8 percent referenced insurance; on average, these SARs were filed 7 months longer after the fraudulent activity than were all other mortgage loan fraud SARs. Narrative references in SARs to foreclosures and early defaults increased by 90 percent and 77 percent, respectively.

The sample group for this section included 1,050 SAR narratives describing the underlying activity. Parameters for the sample group included a 95 percent confidence level with a plus or minus three (+/-3) percent confidence interval. This review identified common filer terminology, usages and contexts for particular types of activities. Based on these findings, FinCEN analysts developed term searches to examine the other SAR narratives for similar patterns. In addition, the review helped to determine filing institutions' success rate at detecting fraud before funding loans.

Detection of Suspicious Activity Prior to Funding

FinCEN analysts reviewed the narratives of a representative sample of mortgage loan fraud SARs filed from July 1, 2007 through June 30, 2008 to determine the rate of detection pre- and post-funding. Filing institutions reported detecting possible fraud prior to funding loans in 34 percent of the reviewed SAR narratives.[16] This compares with the 31 percent rate for the 12-month period analyzed in FinCEN's April 2008 report, and the 21 percent rate over the preceding decade, showing that institutions have become increasingly vigilant in trying to protect themselves from and report suspected fraud.[17]

16. This figure excludes reports where analysts could not make a determination due to insufficient data.

17. *Mortgage Loan Fraud, An Update of Trends based Upon an Analysis of Suspicious Activity Reports*, April 2008, http://www.fincen.gov/news_room/rp/files/MortgageLoanFraudSARAssessment.pdf.

Contributing Factors Leading to Detection of Suspicious Activity

Filers often referenced certain types of events and information in depository institution SAR narratives as contributing to the institution's first indication of suspected mortgage loan fraud. Those included:

- Information provided to the filing institution when presented with a repurchase (sometimes referred to in the narrative as a "buy-back") request under the terms of a loan sale agreement;
- Information provided to the filing institution when notified by an insurer of an investigation arising out of a claim on an insurance policy;
- Information learned by the filing institution during the process of loan foreclosure proceedings; and
- Loans that became past-due and/or were in default.

Standard quality control reviews and enhanced fraud detection measures also appeared to be contributing factors in the detection of potential mortgage loan fraud.[18] In addition to lenders' discovery of potential mortgage fraud identified through their own internal processes, some filing institutions reported that these findings began with notifications from other institutions that were not involved in the origination of the loan(s) in question, such as buyers from the secondary market and providers of mortgage or certificate insurance and similar credit enhancement. Subsequent to receiving these notifications, many filing institutions made the decision to submit SARs reporting potential mortgage loan fraud.

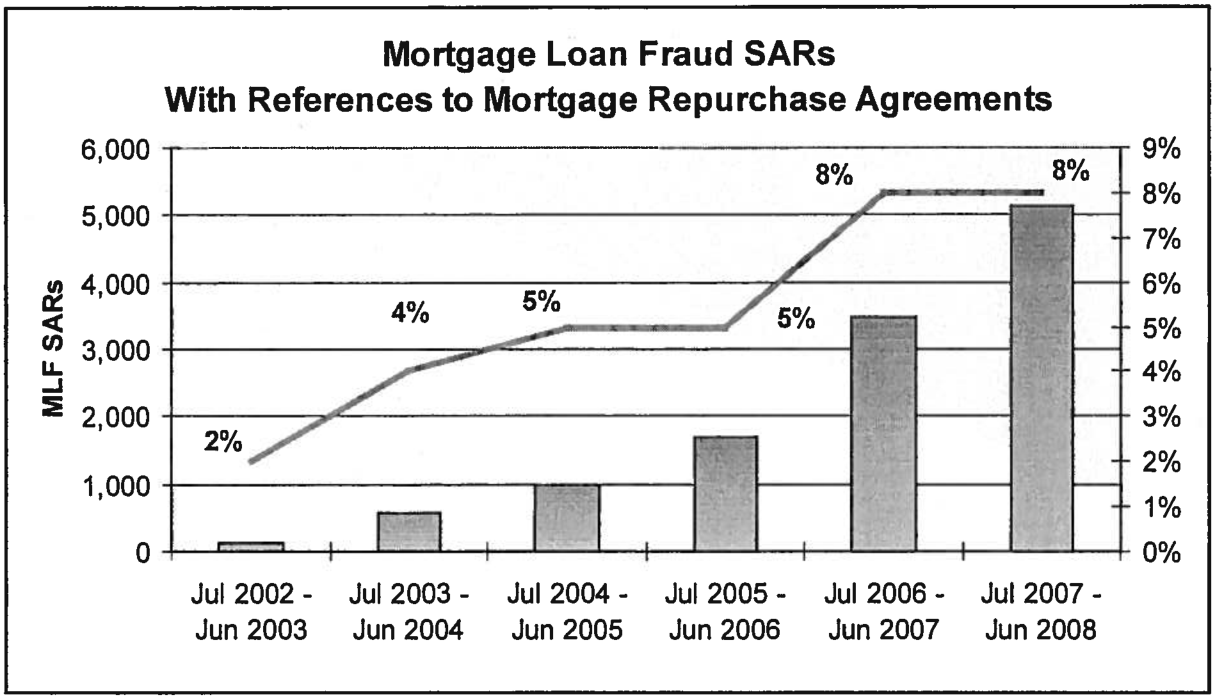
Repurchase and Buy Back Demands

Mortgage loan sale agreements typically contain representations and warranties about the loans being sold, and sellers typically promise to repurchase any loan found to be in breach of these representations and warranties under specified circumstances and terms. One common representation and warranty gives the buyer the right to force the seller to buy back a loan that had fraud or specific misrepresentations involved in its origination. Filing institutions often referenced repurchase requirements and buy back demands in SAR narratives. Some of these narratives stated directly that the filing institution had received a demand from the buyer of a mortgage that the filing institution repurchase the mortgage on grounds of suspected fraud or misrepresentations. In the 12-month period ending June 30, 2008, filing

18. *Ibid.* For a fuller discussion of successful detection measures, see FinCEN's April 2008 report.

institutions mentioned "repurchase" or "buy back" in 8 percent of all mortgage loan fraud SARs. *Chart 8* shows the increase in SARs with narratives referencing repurchase or buy back demands.

Chart 8



Two factors complicate efforts to quantify instances where buyers exercised repurchase demands due to fraud. First, many narratives referencing repurchase or buy back rights were ambiguous as to whether buyers actually exercised these rights. Second, in cases where buyers did clearly exercise these rights, the narrative often did not specify the reason for doing so. In these latter cases, buyers may have exercised their repurchase rights on grounds of fraud, but they may have called for a repurchase for other reasons, such as early defaults apparently unrelated to fraud.

In some mortgage loan fraud SARs referencing "repurchase," the reason for making this reference was clearly that the repurchase demand was the first indicator received by the filing institution that it should suspect possible fraud. Analysts attempted to determine whether repurchase demands were the principal reason for the filing of more than 5,000 mortgage loan fraud SARs, during the period from July 1, 2007 through June 30, 2008, that contained references to repurchase demands. Although these SARs did not provide enough information to determine *directly* if repurchase demands had prompted loan reviews by the loan originators leading to the detection of possible fraud, analysts developed an indirect test of the hypothesis.

Specifically, it could reasonably be expected that if a loan had been securitized and was only now the subject of a repurchase demand identifying possible fraud, which was now resulting in a SAR filing, then the time between the date of the loan and the SAR filing date[19] would be longer than it would be for SARs describing loans that had not undergone this process.[20] The analysis confirmed that this was the case, as mortgage loan fraud SARs with repurchase/buy-back references were filed on average 19 months after from the date the reported activity occurred, compared to an average filing time of 12 months for mortgage loan fraud SARs without such references.[21]

19. The SAR filing date is frequently later than the date the institution submitted the SAR. For this reason, the period between activity and filing dates represents a *maximum* amount of time for the detection of possible fraud.

20. For the sake of simplicity, this test assumed that mortgage loan fraud SARs without references to repurchase demands reflected either nonexistent or unexercised repurchase rights. However, it is more likely that some filers simply did not include this information. Consequently, it is likely that the difference in average filing times is actually greater than calculated.

21. SAR, Part III, Field 33. This hypothesis assumes Field 33 generally reflects the loan application or approval date.

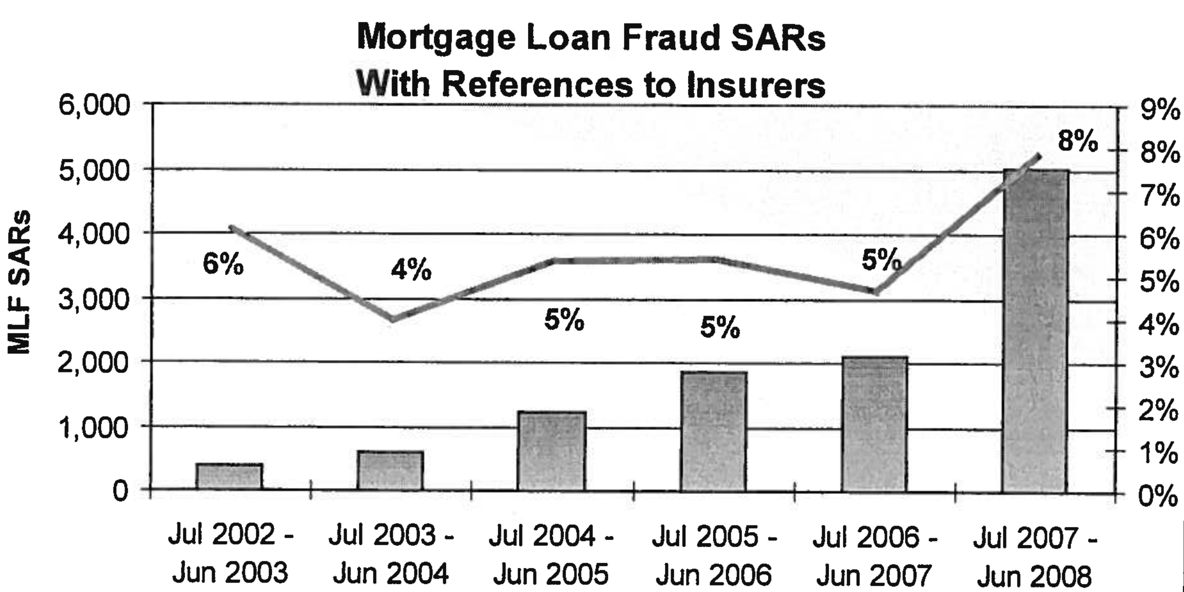
Insurance

In addition to references to loan purchasers, some narratives reported that investigations by insurers provided their first indicators of potential fraud. Of the 1,050 mortgage loan fraud SARs reviewed, only a few clearly stated that the filing institution's first indication of potential fraud arose from insurance investigations. Other mortgage loan fraud SARs referenced insurers but did not elaborate on the role of the insurers in detecting the suspicious activity.

FinCEN analysts reviewed SARs to determine if the references to insurers indicated more than a standard reporting procedure. Fewer than 15 percent of filing institutions with SARs referencing insurers routinely made these references. Within this group of filers, only five submitted more than three mortgage loan fraud SARs. These findings suggest that the references are included for some other reason than standard institutional procedures for preparing mortgage loan fraud SARs. As in the case of mortgage loan fraud SARs referencing repurchases, SARs with references to insurers averaged 19 months between the activity and the SAR filing dates, compared to the average of 12 months between activity date and filing date for mortgage loan fraud SARs without these references.

Chart 9 illustrates the increase in narrative references to insurers.

Chart 9



Numbers in red indicate percentage relative to all Mortgage Loan Fraud SARs for the period.

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Foreclosures and Early Defaults

Factors such as foreclosure data also appeared to facilitate detection of suspected mortgage loan fraud. Since filers were often silent on the loan status, complete data was not available to determine the total number of reported activities that resulted in foreclosures and early defaults. *Table 6* identifies the number of SARs that included references to foreclosures and early defaults.

Table 6

Mortgage Loan Fraud SARs References to Foreclosures and Early Defaults				
	Foreclosures	*Increase*	*Early defaults*	*Increase*
Jul 02 - Jun 03	550		123	
Jul 03 - Jun 04	1,239	125%	150	22%
Jul 04 - Jun 05	2,452	98%	370	147%
Jul 05 - Jun 06	3,441	40%	581	57%
Jul 06 - Jun 07	4,162	21%	834	44%
Jul 07 - Jun 08	7,910	90%	1,478	77%

Next Steps

FinCEN will continue to monitor SARs to identify mortgage loan fraud trends. Forthcoming analyses will present information on reported subjects and activities. These assessments will examine the relationship between mortgage loan fraud and other financial fraud, and describe reported activities, locations, and subjects. In addition to commonly reported activities, these analyses will include greater information on identity theft, international connections, and related activities found in other BSA reports.

Financial Crimes Enforcement Network

U.S. Department of the Treasury

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Regulatory Policy and Programs Division

Mortgage Loan Fraud

An Industry Assessment based upon Suspicious Activity Report Analysis

November 2006

Office of Regulatory Analysis

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Introduction

In recent years federal and state law enforcement and regulatory agencies have devoted considerable effort to the prevention, investigation and prosecution of mortgage loan fraud. The United States has experienced substantial growth in mortgage lending markets and of innovative loan products that have expanded consumer access to home finance. At the same time there has been a significant increase in filings of Suspicious Activity Reports (SARs) pertaining to suspected mortgage loan fraud.[1]

FinCEN's Office of Regulatory Analysis conducted this assessment to identify any trends or patterns that may be ascertained from an analysis of SARs regarding suspected mortgage loan fraud. Analysts searched the Bank Secrecy Act database for SARs[2] from depository institutions filed between April 1, 1996 and March 31, 2006 that contained "Mortgage Loan Fraud" as a characterization of suspicious activity. The search retrieved 82,851 reports, which were examined to discern the trends and patterns revealed in this assessment. A random sample of 1,054 narratives was reviewed for additional analysis. The parameters for the sample size were set to provide a 95 percent confidence level with a plus or minus three (+/-3) confidence interval. The analysis revealed - among other trends addressed in this report - a sharp increase in the number of SARs reporting mortgage loan fraud beginning in 2002. This trend is depicted in Figure 1 below.

Executive Summary

SARs pertaining to mortgage loan fraud increased by 1,411 percent between 1997 and 2005. This report filing trend continues apace in 2006, with 7,093 reports filed on suspected mortgage loan fraud during the first quarter, an increase of 35 percent over the SAR filings in the first quarter of 2005. One explanation for the increase in SARs reporting mortgage loan fraud is increased awareness of the potential for fraud in a dynamic real estate market. Many areas in the United States saw double-digit growth in real estate values during 2003 and 2004. At the same time, mortgage loan interest rates were at a historic low. Although growth in the housing industry appears to be slowing in the first quarter of 2006, opportunities for fraud are still present.

Reports of mortgage loan fraud rose significantly in 2003. The Federal Financial Institutions Examination Council reported an increase in the number of mortgage loans beginning in 2003: "The 2003 data include a total of 42 million reported loans and

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[1] The information contained in this report is the complete mortgage loan fraud study findings as promised in *The SAR Activity Review Trends, Tips & Issues, Highlighted Trend: Mortgage Loan Fraud*, Issue 10, May 2006. See http://www.fincen.gov/sarreviewissue10.pdf, page 13-16.

[2] *See* Form FR 2230 (Board of Governors of the Federal Reserve System); Form 6710/06 (Federal Deposit Insurance Corporation): Form 8010-9,8010-1 (Office of the Comptroller of the Currency); Form 1601 (Office of Thrift Supervision); Form 2362 (National Credit Union Administration; Form TD F 90-22.47 (U.S. Department of the Treasury).

applications, which is an increase of about 33 percent from 2002, primarily due to a significant increase in refinancing activity (approximately 41 percent)."[3] SARs on mortgage loan fraud increased over 92 percent between 2003 and 2004. The increase in filings may be attributed to an increase in overall mortgage lending concurrent with the decline in interest rates in the 2002 – 2005 timeframe and a broader awareness of this fraudulent activity. Figure 1 depicts the filing trend between 1997 and 2005.

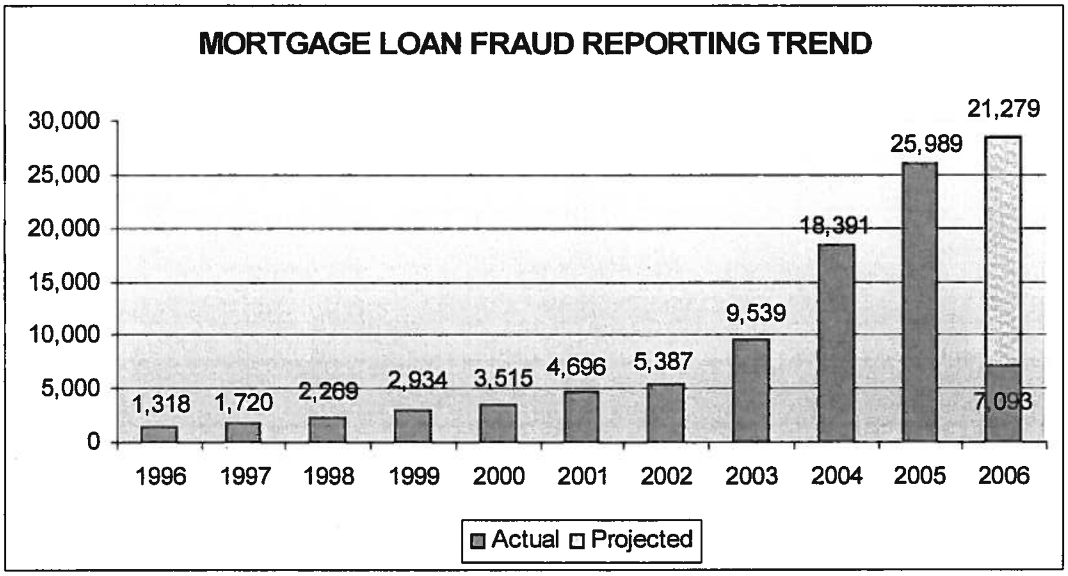

Figure 1

Mortgage loan fraud represents a growing percentage of total depository institution SARs. In 1997, reports of mortgage loan fraud comprised 2.12 percent of total depository institution SAR filings. In 2005, reports of mortgage loan fraud had increased to 4.94 percent of total depository institution filings. Figure 2 provides a comparison of the percentage of change in the number of total depository institution SAR filings to the change in the number of SARs reporting mortgage loan fraud.

[3] Federal Financial Institutions Examination Council, Press Release, July 26, 2004, http://www.ffiec.gov/hmcrpr/hm072604.htm. Accessed October 3, 2005.

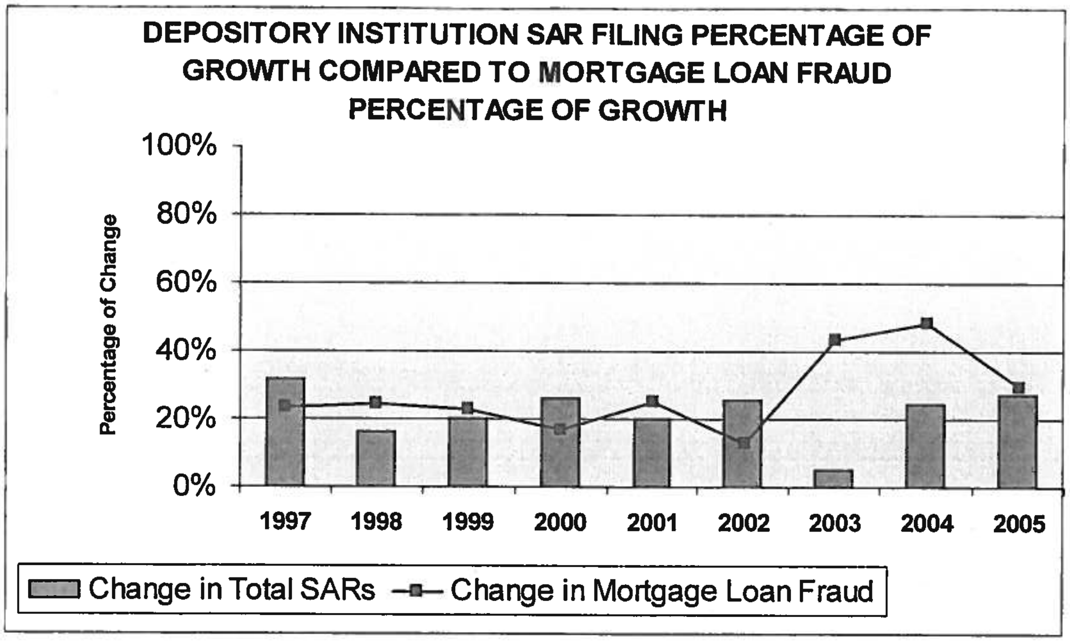

Figure 2

Mortgage loan fraud can be divided into two broad categories: fraud for property and fraud for profit. Fraud for property generally involves material misrepresentation or omission of information with the intent to deceive or mislead a lender into extending credit that would likely not be offered if the true facts were known. The fraudulent activities observed in the SAR narratives describing fraud for property include: asset fraud; occupancy fraud; employment and income fraud; debt elimination fraud; identity theft; and straw buyers.[4] Fraud for property is generally committed by home buyers attempting to purchase homes for their personal use. In contrast, the motivation behind fraud for profit is money. Fraud for profit is often committed with the complicity of industry insiders such as mortgage brokers, real estate agents, property appraisers, and settlement agents (attorneys and title examiners). Typical fraudulent activities associated with this category in the SAR filing sampling are: appraisal fraud; fraudulent flipping;[5] straw buyers; and identity theft.

Identity theft was frequently reported in conjunction with the commission of suspected mortgage loan fraud. Reports of identity theft increased nearly 102 percent between 2004 and 2005. The depository institution SAR form began collecting data on identity theft in July 2003. *The SAR Activity Review – By the Numbers*, Issue 6 (May 2006) reported that identity theft was observed in nearly two percent of the total depository institution SARs. Identity theft was characterized as a suspicious activity on over two percent of the total mortgage loan fraud SAR reports. This is significant given

[4] A straw buyer is someone who purchases property for another person in order to conceal the identity of the true purchaser.
[5] Property flipping generally involves the buying and selling of the same property within a short period of time with the intention of making a quick profit.

the relatively brief amount of time specific data on identity theft has been collected in SARs.

Overview

Real estate mortgage loan fraud poses a growing risk to financial institutions. The Federal Financial Institutions Examination Council reported: "Mortgage loan fraud is growing because it can be very lucrative and relatively easy to perpetrate, particularly in geographic areas experiencing rapid appreciation."[6] Although the true level of mortgage loan fraud is unknown, the growing awareness of mortgage loan fraud is confirmed by the year to year increase in the number of SARs describing this activity. (See Figure 1, Mortgage Loan Reporting Trend.) Depository institutions filed 82,851 SARs describing suspected mortgage loan fraud between April 1, 1996 and March 31, 2006. This represents 3.57 percent of all depository institution SAR filings submitted during that time period.

Over the past 30 years (1975 – 2005), house prices at the national level have grown at about a six percent annual rate.[7] However, in the first quarter of 2005, the national average percentage increase was 12.5 percent. Many U.S. coastal states saw housing prices increase by as much as 20 percent or more during 2004. By contrast, growth rates in many states in the South and Midwest fell below the national average.[8] Interest rates for 30-year mortgages declined throughout the period from 1997 through 2004, with the exception of the first three quarters of 2000.[9] The number of residential loans increased steadily by 153 percent between 1997 and 2003, according to the Federal Financial Institutions Examination Council.[10] "Adjusted 2003 data show that low and moderate-income census tracts taken together experienced the largest increase, 16 percent, in home purchase lending. Such lending for middle and upper-income census tracts increased by 9 percent , respectively, from 2002 to 2003, according to the adjusted 2003 data."[11] The only year experiencing a decrease in the number of home loans was 2000, possibly due to concern over fluctuating interest rates during the first three quarters of 2000. The rapid growth in mortgage lending activity that resulted from the boom in the real estate industry could result in an increased risk in the mortgage loan industry.

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[6] Federal Financial Institutions Examination Council, *The Detection, Investigation, and Deterrence of Mortgage Loan Fraud Involving Third Parties: A White Paper*, Produced by the October 27 – November 7, 2003 FFIEC Fraud Investigations Symposium, Issued February 2005. http://www.ffiec.gov. Accessed August 30, 2005.

[7] Mortgage Bankers Association, *Housing and Mortgage Market: An Analysis*, September 6, 2005. http://www.mortgagebankers.org/files/News/InternalResource/29899_HousingandMortgageMarkets-AnAnalysis.pdf. Accessed October 11, 2005.

[8] Ibid.

[9] Federal Reserve Internet site, http//www/federalreserve.gov/releases/h15/data/wf/cm.txt. Accessed October 3, 2005.

[10] Federal Financial Institutions Examination Council, Press Release July 26, 2004. http://www.ffiec.gov/hmcrpr/hm072604.htm. Accessed October 3, 2005.

[11] Ibid.

Vulnerabilities Identified in SAR Narratives

<u>*Automated loan processing*</u>

The use of the Internet and related technology to receive and process loan applications is increasing. The growing faceless nature of these transactions increases the opportunities for fraud (especially identity fraud) and, coupled with "low-document" or "no-document" loans, creates a condition vulnerable to fraudulent activity.

Using the Internet or telephone to receive and process mortgage loans means that lenders may never meet borrowers, even during the loan closing process. In some cases, lenders forward the loan documents to borrowers by courier service and the documents are returned to lenders in the same manner.

Filers reported use of the telephone or Internet in origination of mortgage loans on 106 reports of mortgage loan fraud (less than one percent). Figure 3 depicts the reports of suspected fraudulent loans originated via telephone or Internet since 1998. (Note that the filings for 2006 occurred during the first three months.)

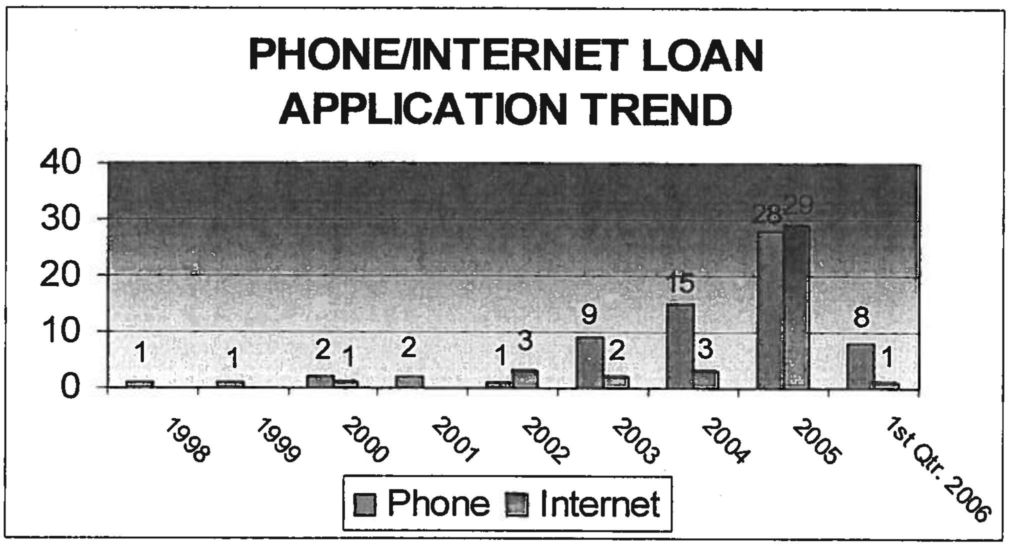

Figure 3

<u>*Sub-prime loans associated with suspected fraud*</u>

Sub-prime lending involves higher-interest loans extended to consumers with impaired or non-existent credit histories stemming from modest incomes or excessive debts. The mortgage industry designed innovative loan packages to allow more low-to-moderate income borrowers to qualify for loans. Filers reported a pattern of the use of exaggerated or fabricated income information associated with sub-prime loans. Such activity may be part of added efforts by some lenders to qualify borrowers in the sub-prime market.

Loans specifically identified as sub-prime appeared in 68 (less than one percent) of the total reports of mortgage loan fraud. Figure 4 depicts the number of report narratives that describe sub-prime loans in SARs reporting suspected mortgage loan fraud.

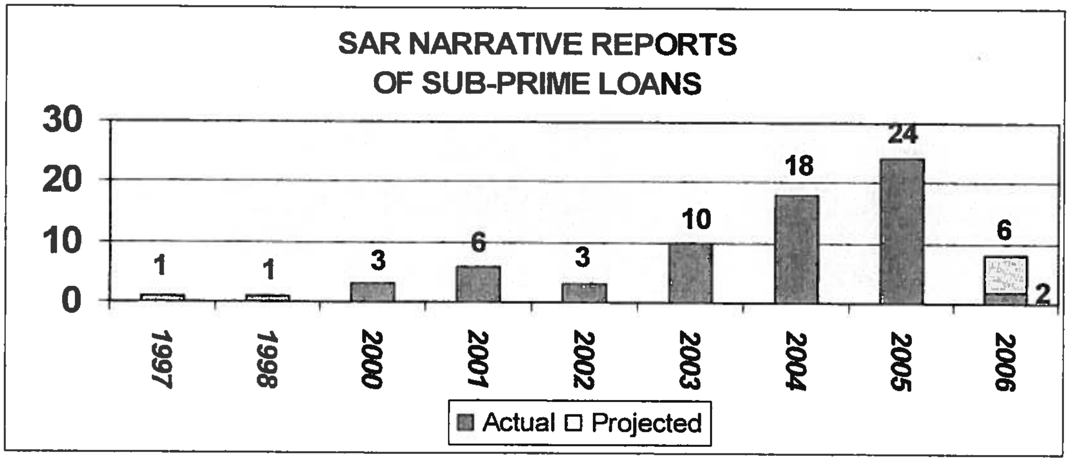

Figure 4

<u>*Mortgage broker originated loans*</u>

The National Association of Mortgage Brokers reports that as many as two-thirds of mortgage loans are now originated by mortgage brokers. Currently there are no national standards for licensing and oversight of mortgage brokers. Some states license mortgage brokerage offices, but not individuals; 24 states have no specific educational or experience requirements for mortgage brokers; and only a few states require criminal background checks on mortgage brokers making it possible for unethical individuals to move from one mortgage brokerage firm to another.

Figure 5 depicts the number of sampled report narratives regarding mortgage broker-originated loans that involved suspected loan fraud. Note that the number of reports filed during the first quarter of 2006 equals the total number of reports filed in all of 2004.

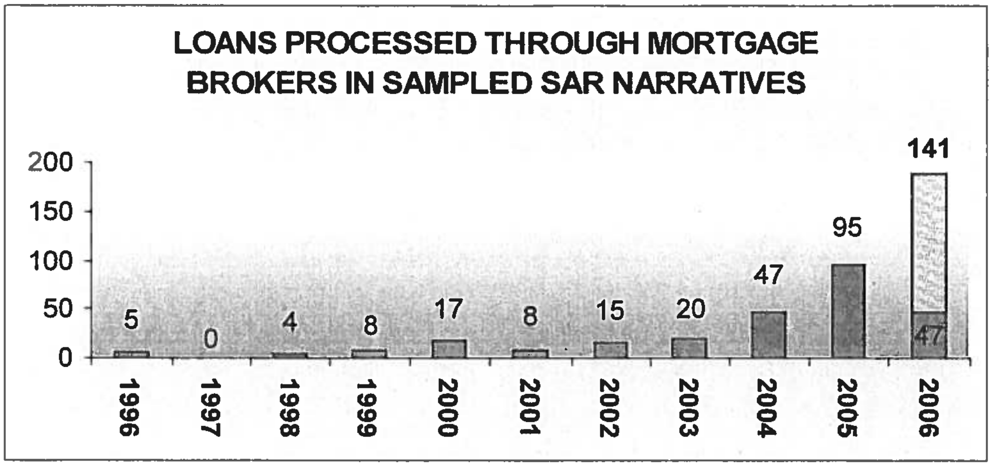

Figure 5

<u>Identity Theft</u>

Identity theft has been associated with both fraud for property and fraud for profit, and is recognized as one of the fastest growing crimes in the United States. Recent news reports of personal information theft from commercial data brokers, corporate databases, and credit report companies demonstrate the potential for large-scale identity theft. Identity theft was characterized as a suspicious activity on 1,761 (2.13%) of the reports of mortgage loan fraud filed from January 1, 2003 to March 31, 2006. Figure 6 shows the increasing incidence of identity theft in conjunction with mortgage loan fraud in the SARs reviewed for this study.

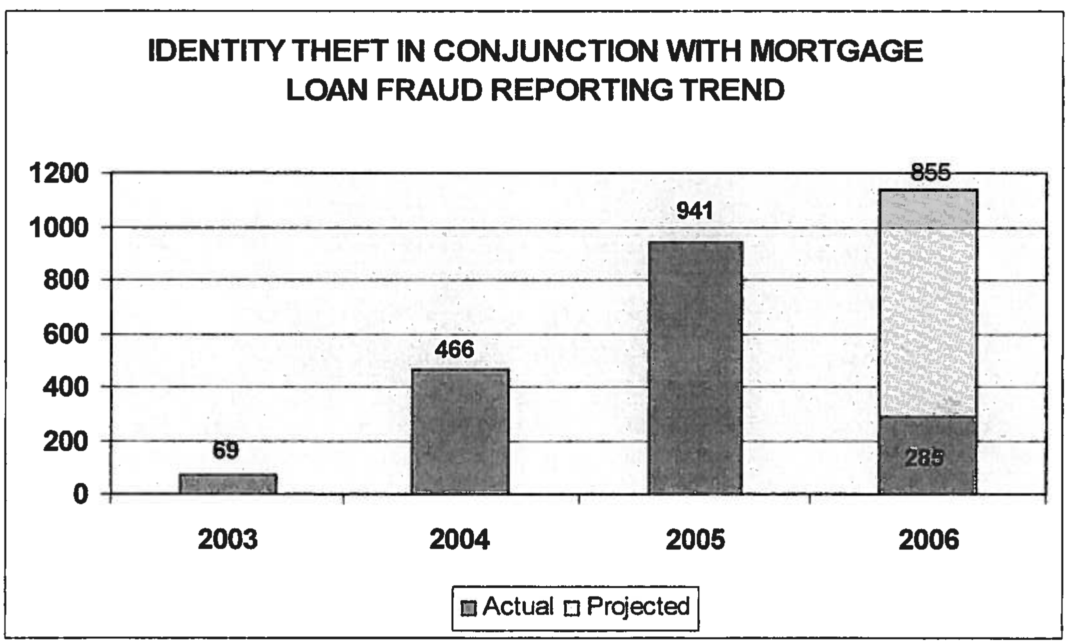

Figure 6

Fixed income and elder exploitation

Retired persons were identified as subjects in 769 (1%) of the SARs reporting mortgage loan fraud filed between April 1, 1996 and March 31, 2006. Additionally, 25 filers suspected exploitation of older subjects in association with mortgage loan fraud. Low- or fixed-income retired persons are often targeted for fraudulent schemes. The growing number of retired and elderly citizens could provide a burgeoning target for mortgage loan fraud. Figure 7 displays the reporting trend for SARs involving this subject group.

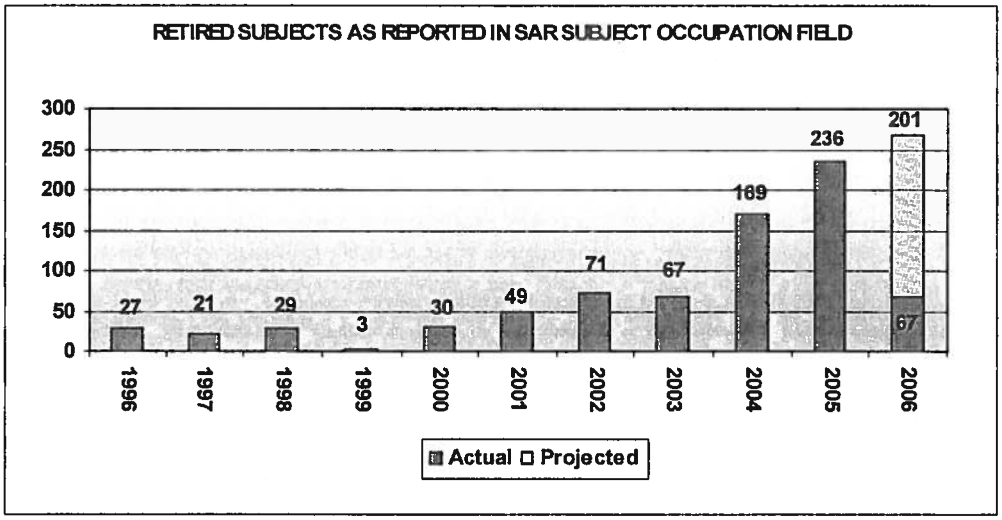

Figure 7

Mortgage Loan Fraud Suspicious Activity Report Findings

Characterizations of Suspicious Activity

Many reports included more than one characterization of suspicious activity in addition to "mortgage fraud." False statement was the most reported suspicious activity in conjunction with mortgage loan fraud. Identity theft represented the fastest growing secondary characterization reported, more than two percent in less than two years. Figure 8 reveals secondary characterizations of suspicious activities reported in conjunction with Mortgage Loan Fraud.

CHARACTERIZATION OF SUSPICIOUS ACTIVITY	NUMBER OF SARs	% OF TOTAL SARs
P - MORTGAGE LOAN FRAUD	82,851	100.00%
N - FALSE STATEMENT	15,390	18.58%
S - OTHER	3,149	3.80%
U - IDENTITY THEFT	1,761	2.13%
O - MISUSE OF POSITION OR SELF DEALING	1,219	1.47%

CHARACTERIZATION OF SUSPICIOUS ACTIVITY	NUMBER OF SARs	% OF TOTAL SARs
G - CONSUMER LOAN FRAUD	699	Less than 1%
E - COMMERCIAL LOAN FRAUD	409	Less than 1%
M - DEFALCATION/EMBEZZLEMENT	373	Less than 1%
C - CHECK FRAUD	290	Less than 1%
A - BSA/STRUCTURING/MONEY LAUNDERING	256	Less than 1%
J - COUNTERFEIT INSTRUMENT (OTHER)	217	Less than 1%
R - WIRE TRANSFER FRAUD	169	Less than 1%
H - COUNTERFEIT CHECK	69	Less than 1%
B - BRIBERY/GRATUITY	68	Less than 1%
D - CHECK KITING	62	Less than 1%
Q - MYSTERIOUS DISAPPEARANCE	60	Less than 1%
K - CREDIT CARD FRAUD	57	Less than 1%
F - COMPUTER INTRUSION	33	Less than 1%
L - DEBIT CARD FRAUD	25	Less than 1%
T - TERRORISM	9	Less than 1%
I - COUNTERFEIT CREDIT/DEBIT CARD	5	Less than 1%

Figure 8

Primary Federal Regulators

Figure 9 displays the primary federal regulators identified in the reports of mortgage loan fraud. National banks with offices located throughout the country made up the largest group of lenders reporting mortgage loan fraud. The Office of the Comptroller of the Currency (OCC) is the primary regulator for national banks. National banks filed nearly 41 percent of the total reports.

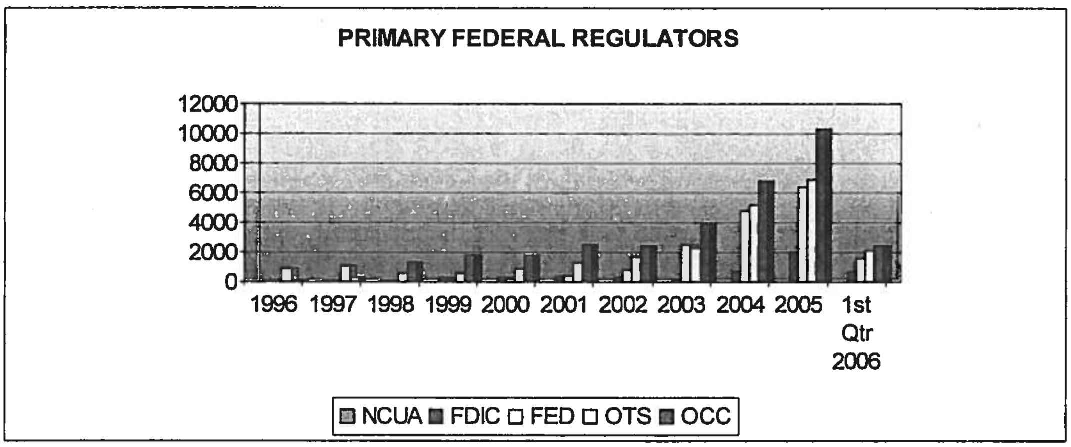

Figure 9

Fraud Locations

SARs contain data fields for subject addresses, the filer's main office address, and the branch address where the suspicious activity was discovered. In the SARs reviewed

FCIC_REQ_A000000098

in this study, suspicious activity occurred in - or was otherwise associated with - all 50 states, the District of Columbia, Puerto Rico, Guam, and American Samoa.

The subject address provides the best source for identifying the geographic location of real estate involved in mortgage loan fraud because most residential mortgage loan applicants intend to reside on the property used to secure the loan. Figure 10 provides a comparison of the address states for the filer and branch offices, and reported subjects, as provided on depository institution SARs filed on mortgage loan fraud between April 1, 1996 and March 31, 2006.

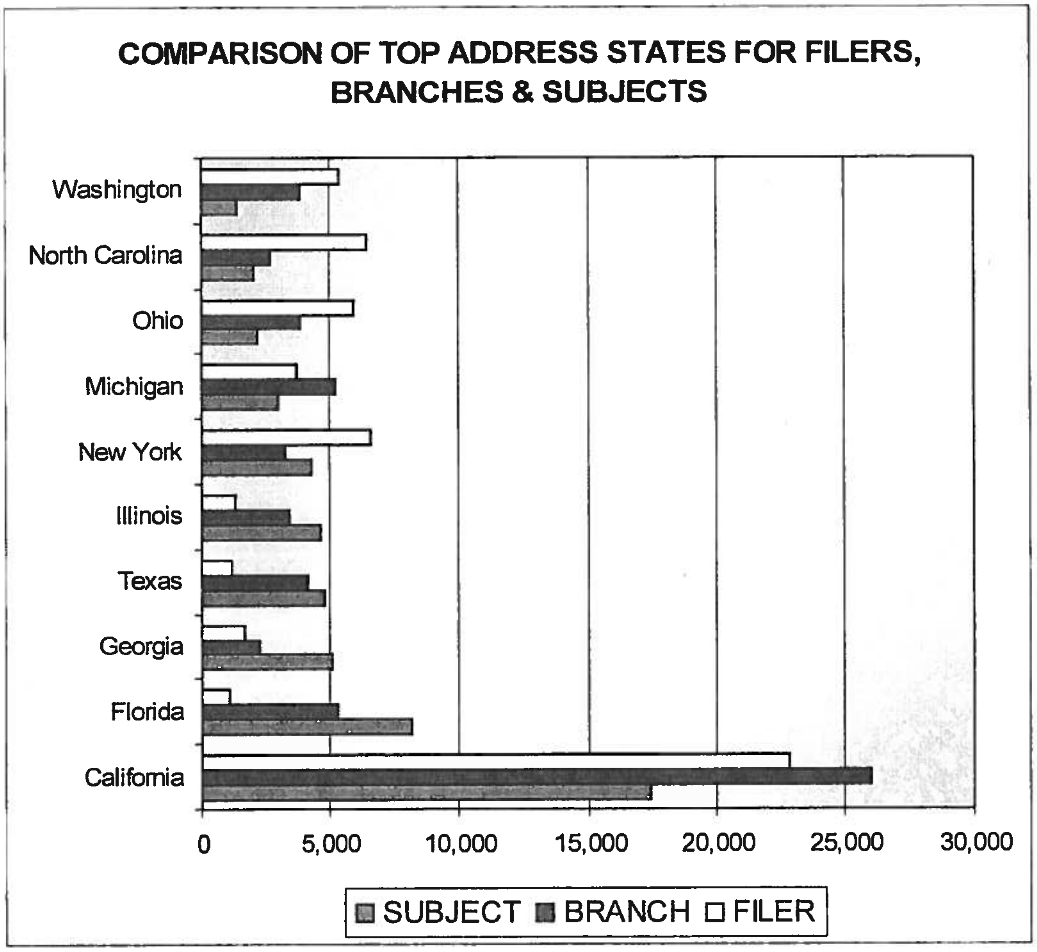

Figure 10

During 2005, the top five reported subject address states were California, Florida, Illinois, Texas, and Georgia.

Reported Suspicious Activities in Sampled Narratives

Loan Types

In the sampled narratives, purchase of residential property was the most frequently reported loan purpose, followed by refinance, home equity, and second trust loans. New construction loans made up a relatively small percentage of the sampled narratives:

- Residential real estate purchase loans – 880 (83.65%);
- Residential refinance loans (76), home equity/lines of credit (28), FHA Title One loans (20), second Trust loans (4) – (12.17%); and
- New construction loans – 16 (1.52%).

Material Misrepresentation/False Statements

Material misrepresentation and false statements were reported on 692 (65.78%) of the sampled narratives.[12] Identity fraud was reported on 160 (23.12%) of the narratives and identity theft was reported on 27 (3.9%) of the narratives.[13] Mortgage brokers or correspondent lenders initiated the loans in 254 (36.71%) of these reports. Following are the types of loan falsifications reported in the sampled narratives.

- Altered bank statements;
- Altered or fraudulent earnings documentation such as W-2s and income tax returns;
- Fraudulent letters of credit;
- Fabricated letters of gift;
- Misrepresentation of employment;
- Altered credit scores;
- Invalid social security numbers;

[12] Material misrepresentation relating to straw buyers, appraisal fraud, or property flipping are addressed in subsequent paragraphs.
[13] For the purpose of this report, identity fraud is differentiated from identity theft. Identity fraud as used here refers to the loan applicant's use of a non-existent social security number or a number taken from the social security death index, along with the use of the borrower's true personal identifiers (name, date of birth, address). The loan applicant intends to use the Social Security number to qualify for a loan, either because the borrower does not have a number or because the borrower's credit rating associated with their true number is inadequate for approval. Identity theft, on the other hand, is an attempt to obtain credit in another person's name.

- Silent second trust;[14]
- Failure to fully disclose the borrower's debts or assets; or
- Mortgage brokers using the identities of prior customers to obtain loans for customers who were otherwise unable to qualify.

Misrepresentation of Loan Purpose

Misrepresentation of loan purpose or misuse of loan proceeds was described in 129 (12.26%) of the sampled narratives. Mortgage brokers or correspondent lenders originated the loans described on 37 (28.68%) of the reports of misrepresentation or misuse of loan funds.

Misuse of FHA Title One loans was reported in 20 (15.5%) of these narratives. FHA Title One loans may be used to finance permanent home improvements that protect or improve the basic livability or utility of the property. The funds cannot be used for debt consolidation, cash-out, or any non-home related expenses, or for luxury items such as swimming pools or hot tubs.

The most commonly reported misrepresentation was occupancy fraud, which occurs when the borrower fails to occupy the property, although the loan application specified the property was the borrower's primary residence. Occupancy fraud was reported in 104 (80.62%) of these reports. Possible motivations for misrepresentation of the loan purpose are to purchase investment property with more favorable loan rates than would be available if a lender knew the property was intended for use other than as a primary residence, or to launder funds from illicit activity.

Appraisal Fraud and Property Flipping

Appraisal fraud and fraudulent property flipping were described in 111 of the sampled reports (10.55%). Appraisal fraud is frequently associated with fraudulent property flipping. Filers indicated on 48 (42.34%) of these reports that they suspected the fraudulent activity was perpetrated with the collusion of mortgage brokers, appraisers, borrowers, and/or real estate agents/brokers.

Lenders rely on accurate appraisals to ensure that loans are fully secured. Appraisal fraud occurs when appraisers fail to accurately evaluate the property, or when the appraiser deliberately becomes party to a scheme to defraud the lender, the borrower, or both. The Appraisal Institute and the American Society of Appraisers testified that "…it is common for mortgage brokers, lenders, realty agents and others with a vested

[14] A silent second trust occurs when the seller takes back a second trust from the buyer in lieu of a cash down payment. The lender is not aware of the second trust.

interest to seek out inflated appraisals to facilitate transactions because it pays them to do so."[15] Higher sales prices typically generate higher fees for brokers, lenders, real estate agents, and loan settlement offices, and higher earnings for real estate investors. Appraisal fraud has a snowball effect on inflating real estate values, with fraudulent values being entered into real estate multiple listing systems and then used by legitimate appraisers as comparable values for determining market values for neighborhood properties. Some commonly reported types of appraisal fraud found in the sampled narratives are:

- Appraisers failed to use comparable properties to establish property values;

- Appraisers failed to physically visit the property and based the appraisal solely on comparable properties, *i.e.,* the actual condition of the property was not factored into the appraisal;

- Appraisers participated in a fraud scheme such as flipping; or

- A licensed appraiser's name and seal were used by unauthorized persons.

Fraudulent property flipping is purchasing property and artificially inflating its value. The fraud perpetrators frequently use identity theft, straw borrowers and industry insiders to effect property flipping schemes. Ultimately, the property is resold for 50 to 100 percent of its original cost. In the end, the loan amount exceeds the value of the property and the lender sustains a loss when the loan defaults. The following fraudulent activities were reported in the sampled narratives that described property flipping.

- Nearly 64 percent of sampled narratives described collusion by sellers, appraisers, and mortgage brokers in connection with property flipping.

- Nearly 14 percent of the sampled narratives described the use of straw buyers.

The number of sampled narratives that specified fraudulent property flipping activity remained steady over the past four years. A significant spike in reports describing appraisal fraud was seen in 2004, but there was a slight decrease in the trend in 2005. This does not necessarily indicate appraisal fraud and fraudulent property flipping are decreasing, especially since activities associated with flipping (straw buyers and false statements) are increasing. Figure 11 depicts the reporting trend for appraisal fraud and fraudulent property flipping as described in the sampled narratives.

[15] Testimony presented on behalf of the Appraisal Institute, the American Society of Appraisers, and the American Society of Farm Managers and Rural Appraisers before the House Committee on Financial Services Subcommittee on Housing and Community Opportunity and the Subcommittee on Financial Institutions and Consumer Credit on Legislative Solutions to Abusive Mortgage Lending Practices, May 24, 2005.

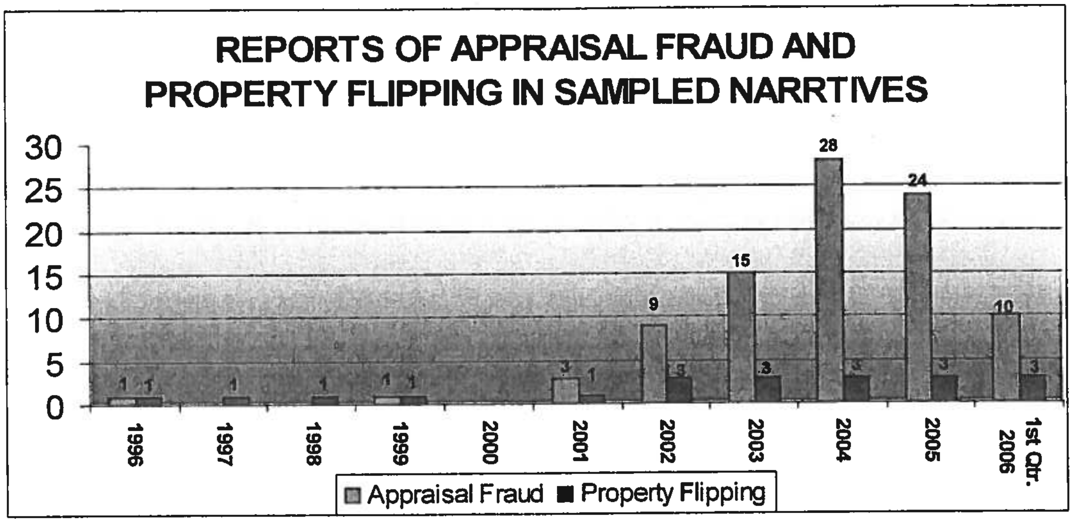

Figure 11

Property flipping and appraisal fraud have received a lot of attention from the media, real estate professionals, and lawmakers. Some actions taken to combat fraudulent property flipping are:

- The Housing and Urban Development regulation "Prohibition of Property Flipping in HUD's Single Family Mortgage Insurance Programs; Final Rule" (codified in 24 C.F.R. part 203) makes certain frequently flipped properties ineligible for Federal Housing Administration mortgage insurance. The regulation, which became effective in June 2003, may have impeded some flipping schemes;

- Some home builders include clauses in their sales contracts that prohibit buyers from placing their houses back on the market for a period of time after closing – usually one year.[16] There is a question whether this type of contract clause is legally enforceable under applicable state law; and

- Some states have adopted new or enhanced appraisal standards and appraisal licensing requirements.

<u>Straw buyers</u>

The use of straw buyers to obtain mortgage loans was specifically described in 27 (2.57%) of the sampled narratives. Mortgage brokers or correspondent lenders processed loans in 21 (77.78%) of these sampled narratives.

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[16] REAL ESTATE JOURNAL.COM, The Wall Street Journal – Guide to Property, October 3, 2005. http://www.realestatejournal.com/buysell/tactics/20050927-sichelman.html, accessed October 5, 2005.

Straw buyers are reported in the narratives of 2,566 SARs (3.1% of the total of 82,851) reports. Figure 12 displays the total number of mortgage loan fraud SARs that revealed the use of straw buyers.

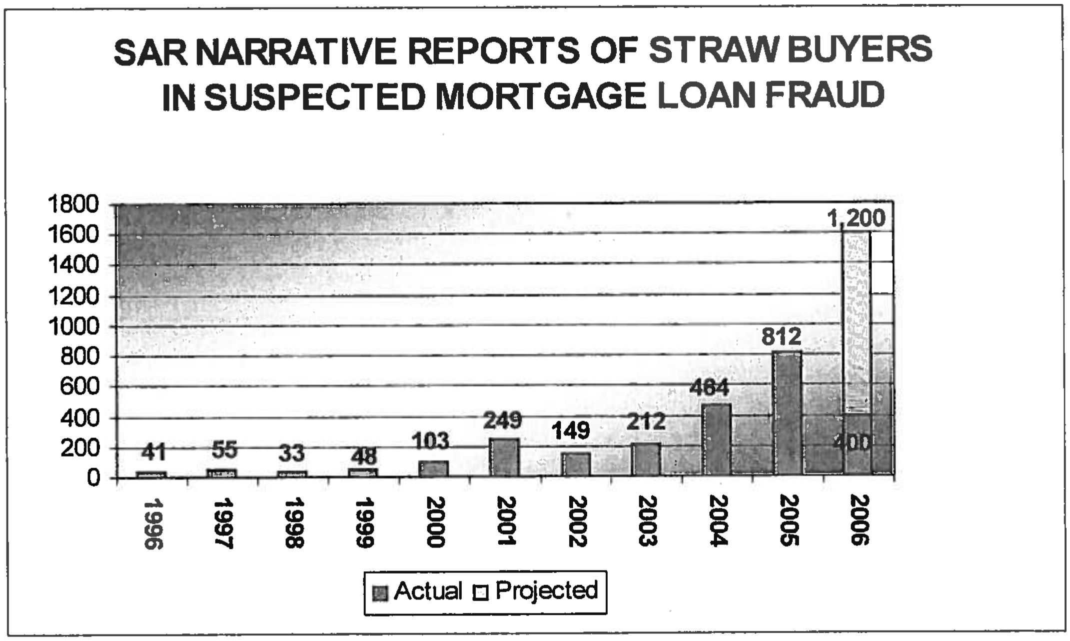

Figure 12

Forged Documents

Use of forged documents was reported on 20 (1.9%) of the sampled narratives, with correspondent lenders or mortgage brokers processing the loans described in five of those reports. The types of activity reported include the following:

- Borrowers forged co-owners' signatures to loan documents (most often one spouse forging the other spouse's signature without prior knowledge or permission);
- Loan closing services forged applicants' signatures on loan documents (possibly to expedite the loan process); or
- Builders forged borrowers' names on loan draw documents.

Other Fraudulent Activity

Other types of fraudulent activity reported in the sampled narratives included:

- Loan closing services failed to properly disburse loan proceeds or pay off underlying property liens, including prior mortgage trusts. Loan settlement offices were also reported for failure to pay insurance premiums from funds collected at settlement;

- Borrowers signed multiple mortgages on the same property from multiple lenders. The mortgage settlements were held within a short period of time to prevent the lenders from discovering the fraud;

- Loan closing services failed to record the mortgage in property land records;

- Prior lenders failed to release home equity loans in land record offices after receiving mortgage pay-off, causing the new lender's loans to have a subordinate position. Homeowners continued to use the prior lines of credit in addition to the new loan to obtain an extension of credit that exceeded the property value;

- Violations of the Mortgage Broker Practices Act by mortgage brokers who abused the terms of a power of attorney;

- Mortgage brokers or correspondent lenders failed to ensure all loan documentation was properly signed;

- Real Estate Settlement Procedures Act (RESPA) violations by lenders accepting kickbacks from mortgage brokers;

- Non-arm's-length sales occurred when parties to the real estate transaction failed to disclose relationships between the buyers and sellers. Knowledge of a non-arm's-length sale would alert lenders to scrutinize loan packages more carefully;

- Elder exploitation where older individuals were persuaded to sign loan documents without understanding borrower rights and responsibilities under applicable federal and state law;

- Unofficial loan assumption occurred when property ownership was transferred without the knowledge of lenders. This could indicate that a straw buyer was used to obtain the loan, with the property title being transferred to the actual owner after the loan disbursement;

- Theft of debit card or convenience checks associated with home equity lines of credit;

- Fraudulent bankruptcy filings to stall or prevent foreclosure; and

- Suspected use of real estate purchases to launder criminal proceeds.

Emerging Mortgage Fraud Schemes

Asset Rental Fraud

Nine (less than one percent) of the sampled SAR narratives reported asset rental fraud. Mortgage brokers or correspondent lenders processed the loans in six of those reports. This is a fraudulent scheme designed to exaggerate or inflate the stated value of a borrower's assets. Filers reported that funds were temporarily deposited into the loan applicant's bank account for the time required to qualify for a loan. The funds came from friends or family, or even from mortgage brokers attempting to qualify an ineligible borrower. The temporary funds were withdrawn from the bank account after the loans were approved.

One elaborate asset rental fraud scheme reported in a news article involved deposits of funds into bank accounts established in a prospective borrower's name, with the deposited funds being temporarily "rented" for a fee. The customary fee charged for this "service" was reportedly approximately five percent of the deposited funds. The service also may include verification of employment and income in any amount for an additional fee of one percent of the claimed annual income.[17]

Debt Elimination Fraud

Debt elimination schemes were reported in ten (less than one percent) of the sampled narratives. Filers described borrowers attempting to pay off their mortgages with non-negotiable checks, or fake instruments such as bills of exchange or subrogation and security bonds. Filers described specious arguments in which the borrowers claimed the mortgage was invalid and the debt never existed.[18] The arguments relied on an unreasonable interpretation of Section 1-207 of the Uniform Commercial Code that has never been affirmed or supported by any court or governmental authority.

Other types of debt elimination schemes reported in the SARs were attempts to fraudulently release mortgage liens from municipal land records. Once the land title appeared clear of all mortgage debt, the homeowner could theoretically obtain another mortgage loan based on what appeared to be a clear title. The threat this fraud scheme presents is that a subsequent lender could believe it had a first priority lien on property when in reality there could be little or no equity to secure the loan.

Reports of debt elimination schemes were described in 430 SARs (less than one percent of the SARs reporting mortgage loan fraud) filed between April 1, 1996 and

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[17] Kenneth Harney, "Now You Can Rent Assets To Qualify For A Loan," *The Baltimore Sun*, August 28, 2005.

[18] Borrowers who presented these specious arguments are believed to belong to groups that believe U.S. laws and regulations, along with banking regulations, do not apply to them. A typical debt elimination fraud scheme involved the presentation of numerous documents containing frivolous arguments that the subject mortgage was invalid. The arguments presented in the documents avowed that funds were never loaned, despite the fact that the borrower received the proceeds. Successful culmination of this scheme would result in the filing of a fraudulent mortgage discharge.

March 31, 2006. Figure 13 depicts the filing trend for debt elimination fraud through March 31, 2006.

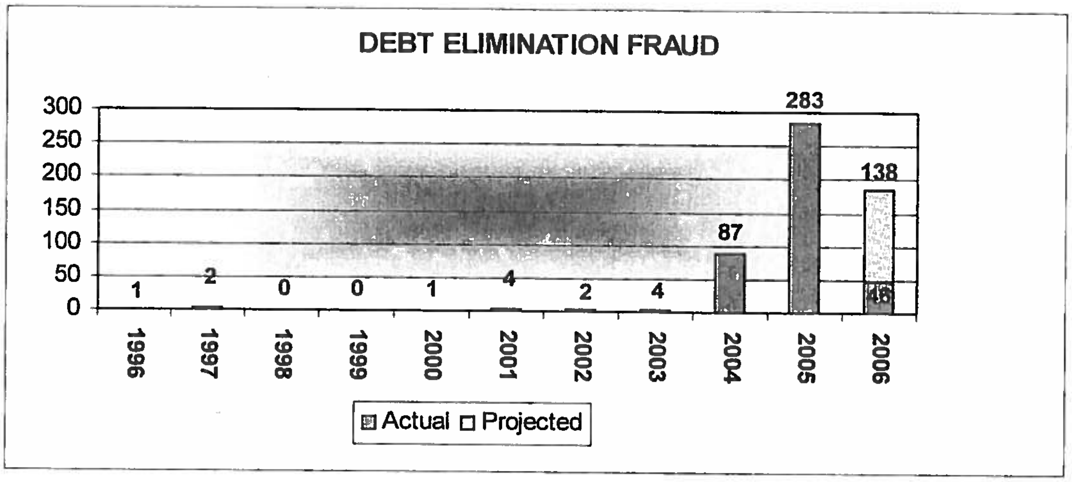


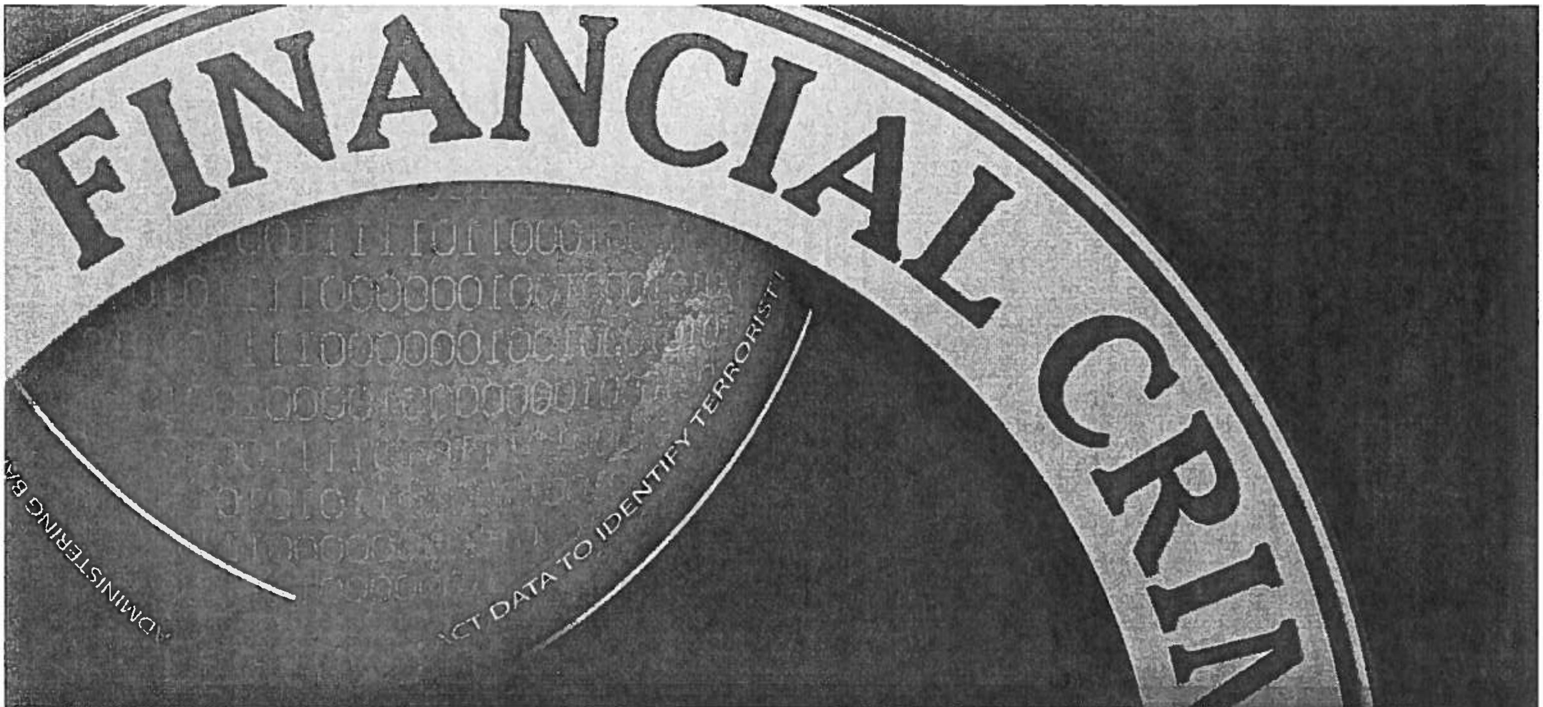
Figure 13

Conclusion

The study of the depository institution SARs describing mortgage loan fraud confirms reports of fraud associated with mortgage loans continues to grow – although it is unclear if this is primarily due to an increase in the number of fraudulent loans or an increase in awareness of this suspected fraudulent activity. It is apparent from the number of pending fraud cases reported by the Federal Bureau of Investigation (721 in 2005, up from 534 in 2004) that the awareness of mortgage loan fraud is increasing.[19] See Figure 2 for a comparison of the percentage of growth in total depository institution SARs filings to the growth in reports of mortgage loan fraud.

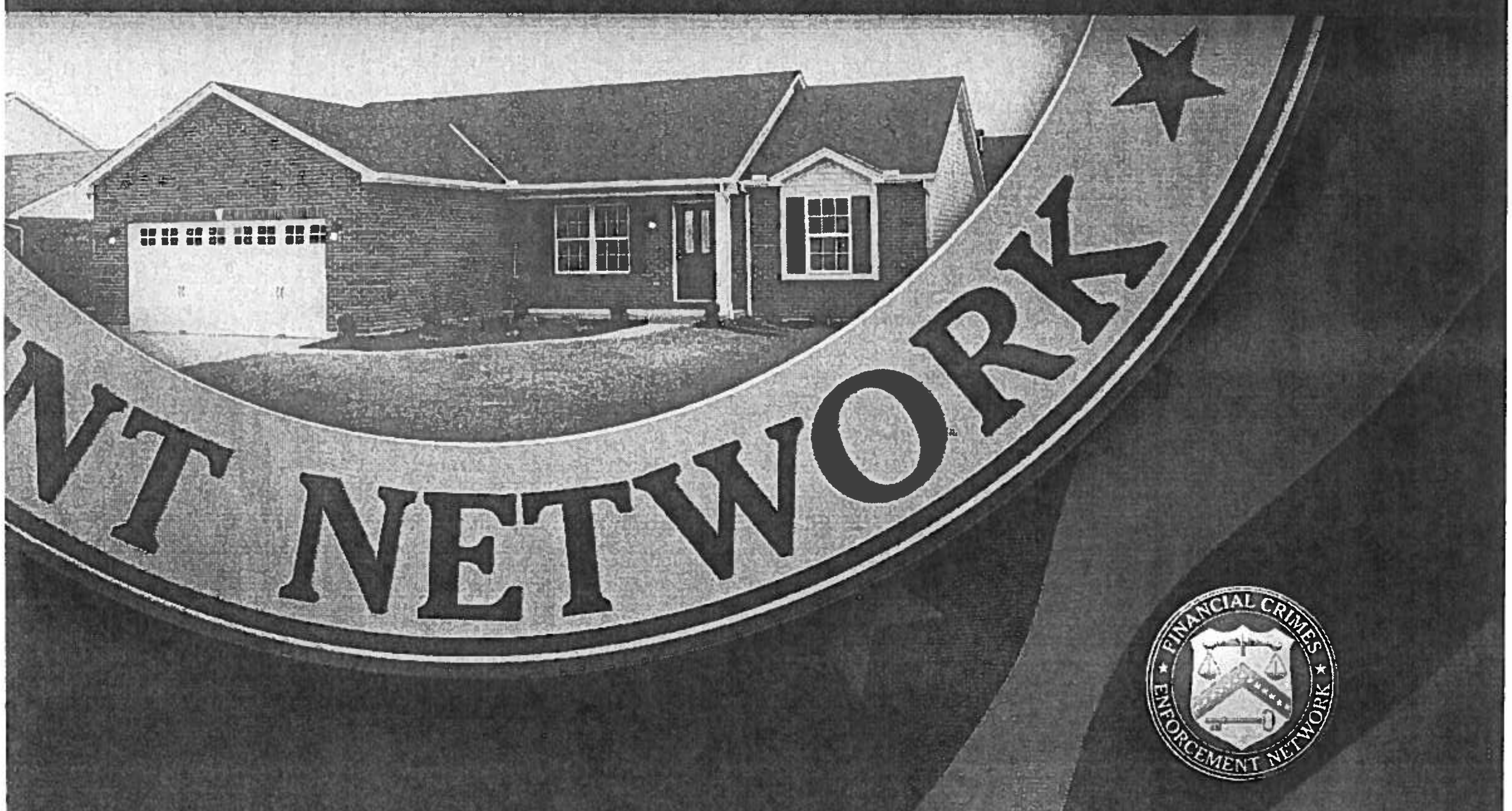
High home prices coupled with rising mortgage rates result in a reduction in housing affordability. In response to this trend, the housing industry is expecting a slow down in mortgage loan originations, a decrease in housing sales, and a slowing in housing price gains. The slow down in the growth of housing prices could result in the housing industry becoming less attractive to investors, which in turn could result in a reduction in the reports of fraud for profit. The current housing trend could also lead to an increase in fraud for housing as the increased costs of housing decreases the number of persons who qualify for mortgage loans. The current trend of rising interest rates and slowing housing equity growth could result in an increase in debt elimination fraud schemes, especially for homeowners with adjustable rate mortgages and interest only loans.

[19] Federal Bureau of Investigation, Press Release, "Mortgage Fraud operation "Quick Flip", December 14, 2005. Http://www.fbi.gov/pressrel/pressrel05/quickflip121405.htm. Accessed May 16, 2006.



Mortgage Loan Fraud

An Update of Trends based Upon
an Analysis of Suspicious Activity Reports
April 2008



Mortgage Loan Fraud

An Update of Trends based Upon
an Analysis of Suspicious Activity Reports

April 2008

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Introduction

Following a large increase in depository institution Suspicious Activity Report (SAR) filings on mortgage loan fraud, the Financial Crimes Enforcement Network (FinCEN) issued a report in November 2006 describing trends and patterns shown in SARs reporting suspected mortgage loan fraud filed between April 1, 1996 and March 31, 2006.[1] FinCEN has continued to monitor these reports. This analysis updates the previous report by reviewing SARs filed between April 2006 and March 2007.

1. "Mortgage Loan Fraud: An Industry Assessment based upon Suspicious Activity Report Analysis," see http://www.fincen.gov/MortgageLoanFraud.pdf.

Executive Summary

In calendar year 2006, financial institutions filed 37,313 SARs citing suspected mortgage loan fraud, a 44% increase from the preceding year, compared to a 7% overall increase of depository institution SAR filings. One reason for this increase may be that lenders are increasingly identifying suspected fraud prior to loan approval and reporting this activity. Suspected fraud was detected prior to loan disbursements in 31% of the mortgage loan fraud SARs filed between April 1, 2006 and March 31, 2007, compared to 21% during the preceding ten years.

Total SAR filings in 2006 on suspected mortgage loan fraud, when divided by the subject's state address,[2] showed the greatest increases in Illinois (75.80%), California (71.29%), Florida (53.04%), Michigan (51.50%), and Arizona (48.73%).[3]

Mortgage brokers initiated the loans reported on 58% of the SARs sampled for this report. SAR reporting includes examples of brokers acting both as active participants in the reported fraudulent activity, and as intermediaries that did not verify information submitted on the loan application.

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2. An increase in the number of subjects does not directly correlate into increased transactions. Since real estate transactions involve multiple parties, SARs frequently list multiple subjects in a single report. Some increases in reported subjects result from filers completing SARs more accurately or more thoroughly.
   Similarly, as some SARs indicate multiple subjects living in two or more states, these particular SARs may be included in multiple state totals. Consequently, total state filings, when listed by the subject's state, do not match the total number of SARs filers completed during the reviewed period.
3. These percentages represent the increase in SAR filings between 2005 and 2006. In this report, when percentages are in parenthesis, they are taken from a statistically representative sample unless noted otherwise, as here. Also, as many SARs contain multiple categories, such as subjects and activity types, some statistical tables and information contained in this report may exceed 100 percent.

Reports of suspected identity fraud and identity theft[4] associated with mortgage loan fraud continued to increase for the period reviewed. Reports of suspected identity theft in conjunction with mortgage loan fraud increased 95.62% over the previous study. Cases of suspected identity fraud were predominantly associated with fraud for housing.[5] Victims of identity theft have had their properties encumbered with loans or property titles fraudulently transferred, effectively having their homes stolen.

Filers specified that loans were subprime in 79 SARs (0.19%) for the reviewed period. Without this specification, it is not possible to determine whether mortgages described in the remaining SARs were subprime loans.

Sources for this Report

- Filing trends and patterns were identified based on data fields contained by all Suspicious Activity Reports (SARs) filed, where filers indicated mortgage loan fraud as a suspected activity.
- Additional filing trends and patterns were identified based on a statistically representative sample of SARs, where filers indicated mortgage loan fraud as a suspected activity.

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4. For the purpose of this report, identity fraud was defined as the unauthorized use of a social security number issued to another individual or use of an invented social security number for the purpose of obtaining credit. Because the perpetrator used his/her true personal identifiers (i.e., name, address, and date of birth), there was no apparent attempt to steal another person's identity. Identity theft involved an attempt to obtain credit using another person's identity. The distinction made between identity fraud and identity theft is intended solely for the purpose of this report, and is not intended to establish legal definitions of these terms.
5. Mortgage loan fraud can be divided into two broad categories: fraud for housing and fraud for profit. Fraud for housing generally involves material misrepresentation or omission of information with the intent to deceive or mislead a lender into extending credit that would likely not be offered if the true facts were known. Fraud for housing is generally committed by home buyers attempting to purchase homes for their personal use. In contrast, the motivation behind fraud for profit is money. Fraud for profit involves the same misuse of information with the intent to deceive or mislead the lender into extending credit that the lender would likely not have offered if the true facts were known, but the perpetrators of the fraud abscond with the proceeds of the loan, with little or no intention to purchase or actually occupy the house. Suspicious activity reporting confirms that fraud for profit is often committed with the complicity of industry insiders such as mortgage brokers, real estate agents, property appraisers, and settlement agents (attorneys and title examiners).

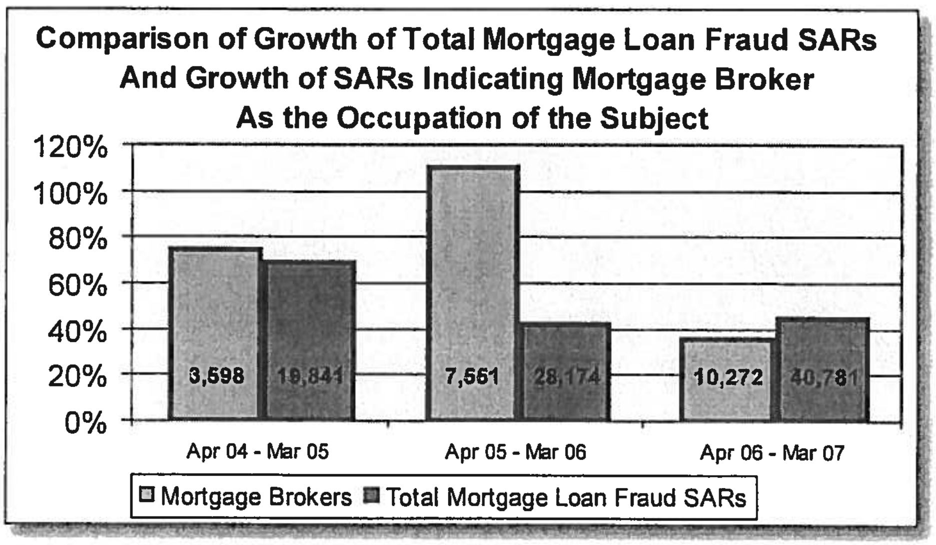
Vulnerabilities Identified

Filings on Mortgage Brokers

A growing number of SARs report that mortgage brokers initiated the fraudulent loan applications. Filers are increasingly listing mortgage brokers as subjects in these SARs.

Figure 1 depicts a three year growth trend for total mortgage fraud comparing SAR filings and those reporting mortgage brokers as subjects. SARs reporting mortgage brokers as subjects comprise over one quarter of the total mortgage loan fraud SARs filed for the period between April 1, 2006 and March 31, 2007.

Figure 1



Appraisal Fraud

Reports of fraudulent appraisals continue to increase in SARs reporting mortgage loan fraud. Filers of nearly 13% of the narratives sampled for this report suspected appraisers as participants in the reported fraud. This represents an increase of two percentage points from the 11% reported in the 2006 FinCEN Mortgage Loan Fraud report. All fraudulent flipping[6] and nearly all other organized fraud schemes that were reviewed relied on fraudulent appraisals. A small number of sampled narratives reported the fraud was conducted through the theft of licensed appraisers' identity and license information. The increase in reporting of appraisal fraud and theft of licensed appraiser information underscores the value of independent verification of appraisal documentation.

Vulnerabilities in Specified Mortgage Products

Although many SAR narratives did not identify the mortgage product involved in suspected mortgage loan fraud activities, some associated trends and vulnerabilities were deduced from those narratives that did specify the mortgage product. A small number of narratives specified that loans were subprime.[7]

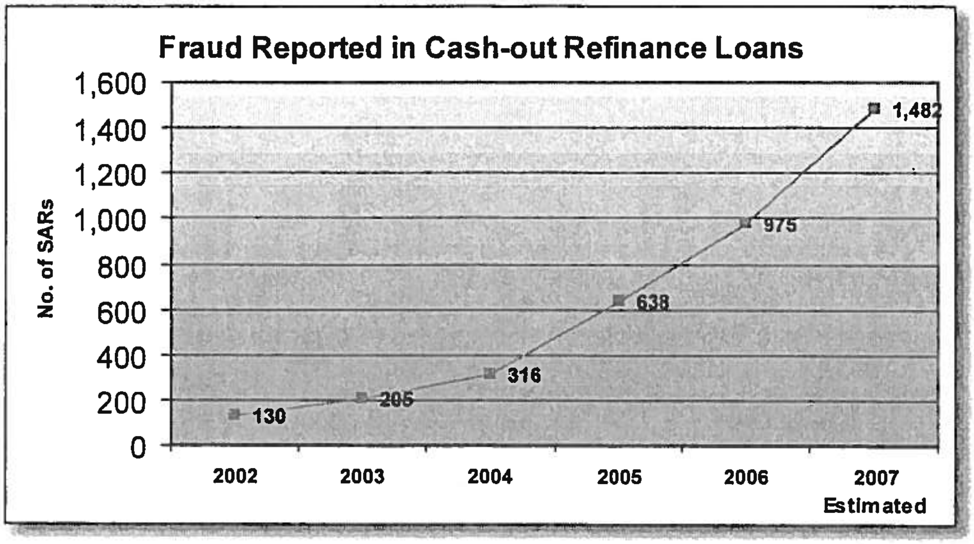
Trend for Suspected Fraud in Cash-Out Refinance Loans

Filers identified "cash-out refinance loans"[8] in 3.35% of the SARs reporting suspected mortgage loan fraud filed between April 1, 2006 and March 31, 2007. Over the past six years, the study revealed a significant growth in the number of depository institution SARs reporting suspected fraud in these loan products. There was a nearly 53% increase in suspected fraud in these loans between 2005 and 2006.

6. Property Flips: Property is purchased, falsely appraised at a higher value, and then quickly sold. What makes property flipping illegal is that the appraisal information is fraudulent. The schemes typically involve fraudulent appraisals, doctored loan documents, and inflation of the buyer's income.
7. For the period April 1, 2006 through March 31, 2007, 79 SAR narratives (0.19% of total filings) specified suspected fraudulent loans were subprime. Other SAR narratives do not provide sufficient details to make this determination.
8. A cash-out refinance loan is a refinanced loan granted for an amount greater than what the borrower owes on the prior loan. The additional amount of the refinance is funded by existing equity.

Figure 2 depicts this trend and projects the number for 2007.[9]

Figure 2



Trend for Suspected Fraud in Stated Income/ Low or No Document Loans

Filers specified that the mortgage product was a stated income, low or no document loan in 1.55% (633) of all SARs filed for suspected mortgage loan fraud between April 1, 2006 and March 31, 2007.[10] This represented nearly a 69% increase in loans thus specified from the previous one year period (375).

In the smaller sample reviewed, sixty-nine (3.9%) narratives specified the mortgage product was a stated income or a low or no document loan. Filers reported the suspected fraud was detected prior to loan financing on 18.84% of the reports for these mortgage products. In comparison to other loans identified in the sample, filers reported that they detected the suspected fraud prior to loan funding in 33.52% of full document purchase loans.

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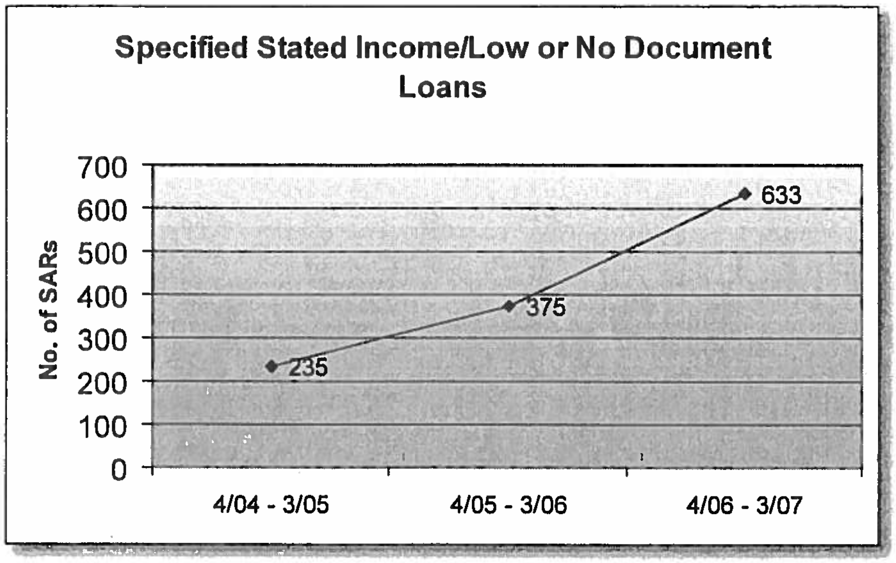
9. Projection is based on increases observed in comparisons of 1st quarters 2006 and 2007.
10. "A 'No Doc' loan is one in which extensive documentation of income, credit history, deposits, etc., is not required because of the size of the downpayment, usually 25% or more. Theoretically, the value of the collateral will protect the lender." FDIC, *Risk Management Manual of Examination Policies, Section 9.1 - Bank Fraud and Insider Abuse*, http://www.fdic.gov/regulations/safety/manual/section9-1.html.

Figure 3 provides a three year reporting trend for these mortgage products.

Figure 3



Home Equity Lines of Credit

Filers identified suspected fraud in home equity lines of credit on 1,492 (3.66%) of the SARs reporting mortgage loan fraud that were filed between April 1, 2006 and March 31, 2007. Over 61% of the suspected fraudulent home equity loans identified in the sampled narratives were classified as fraud for profit.

Fraudulent Activities and Red Flags

Overview of Fraudulent Activities

A sample of 1,769 depository institution SAR narratives was reviewed to identify additional trends and patterns reported in those narratives. The sampled SARs were reviewed to determine the types of activity and participants reported in the narratives.

Figure 4 provides the types of suspected fraudulent activities identified in the narratives.[11]

FIGURE 4

ACTIVITIES REPORTED IN SAMPLED SAR NARRATIVES

Activity	No. of SARs	% of Sampled SARs
Misrepresentation of income/assets/debts	761	43.02%
Forged/fraudulent documents	496	28.04%
Occupancy fraud	255	14.41%
Appraisal fraud	232	13.11%
ID fraud	180	10.18%
Straw buyers	100	5.65%
ID theft	61	3.45%
Flipping	48	2.71%

11. In this chart, percentages may exceed 100 percent, as many SAR narratives include descriptions of multiple fraudulent activities.

Figure 5 provides a comparison of activity type by fraud type,[12] i.e. fraud for profit or fraud for housing.[13]

FIGURE 5

REPORTED FRAUDULENT ACTIVITY BY TYPE OF FRAUD

Type of Activity	Fraud For Profit	Profit % of Activity	Fraud For Housing	Housing % of Activity
Misrepresentation of income/ assets/debts	239	31.41%	519	68.20%
Forged/fraudulent documents	97	19.56%	395	79.64%
Occupancy Fraud	241	94.51%	14	5.49%
Appraisal Fraud	140	60.34%	77	33.19%
Straw buyers	83	83.00%	15	15.00%
ID Fraud	6	3.33%	174	96.67%
ID Theft	61	100.00%	0	0.00%
Flipping	48	100.00%	0	0.00%

Figure 6 provides a comparison of the reported activities and participants reviewed in the sample.[14]

12. Not all SAR narratives provide sufficient details to determine if the activity appears to be fraud for housing or fraud for profit. Consequently, totals in Figure 5 are sometimes lower than totals in Figure 4.
13. For a fuller discussion of fraud for profit and fraud for housing, see page 37.
14. Most of these SARs include multiple subjects; totals do not reflect SAR volume (see Table 4 for SAR totals).

FIGURE 6

REPORTED FRAUDULENT ACTIVITY BY PARTICIPANT								
Participant	**Misrepresentation of income/ assets/debts**	**Forged/ fraudulent documents**	**Occupancy Fraud**	**Appraisal Fraud**	**Straw buyers**	**ID Fraud**	**ID Theft**	**Flipping**
Appraiser	47 (6.18%)	16 (3.23%)	42 (16.47%)	215 (92.67%)	25 (25%)	1(less than 1%)	3 (4.92%)	48 (100%)
Borrower	663 (87.12%)	412 (83.06%)	179 (70.20%)	91 (39.22%)	69 (69%)	171 (95%)	25 (40.98%)	28 (58.33%)
Builder	1 (less than 1%)	1(less than 1%)	1 (less than 1%)	4 (1.72%)	0	0	0	2 (4.17%)
Correspondent Lender	15 (1.97%)	4 (less than 1%)	3 (1.18%)	4 (1.72%)	2 (2%)	3 (1.67%)	0	1 (2.08%)
Insider (loan officer)	3 (less than 1%)	11 (2.22%)	4 (1.57%)	6 (2.59%)	3 (3%)	1 (less than 1%)	1 (1.64%)	1 (2.08%)
Investor	47 (6.18%)	5 (1.00%)	51 (20%)	22 (9.48%)	11 (11%)	1 (less than 1%)	0	7 (14.58%)
Mortgage Broker	488 (64.13%)	338 (68.15%)	158 (61.96%)	113 (48.71%)	66 (66%)	72 (40%)	39 (63.93%)	33 (68.75%)
Realtor	9 (1.18%)	4 (less than 1%)	4 (1.57%)	6 (2.59%)	4 (4%)	0	3 (4.92%)	3 (6.25%)
Seller	12 (1.58%)	8 (1.61%)	20 (7.84%)	26 (11.21%)	21 (21%)	0	0	14 (29.17%)
Settlement Services (includes attorneys and notaries)	12 (1.58%)	9 (1.81%)	4 (1.57%)	6 (2.59%)	4 (4%)	1 (less than 1%)	1 (1.64%)	2 (4.17%)

Commonly Reported Variations of Mortgage Fraud

Activities identified through a narrative analysis of the sampled SARs follow.

- Misrepresentation of income/assets/debts (43.02%). Material misrepresentation of income, assets, or debts was seen in both reports of fraud for housing (68.20%) and fraud for profit (31.41%). The suspected fraudulent loans were identified during post loan audits (56.37%); pre-funding reviews (24.44%); and upon loan defaults (15.90%). The reported activity involved fraudulent misrepresentation of employment and income and/or failure to disclose all debts or assets, such as additional real properties owned. These suspected misrepresentations resulted in higher debt to income ratios than considered acceptable, and would likely have precluded the loan issuance if reported accurately. Early payment defaults were reported in 5.12% of these narratives. Mortgage brokers initiated the loans on 64.13% of these reports. Forged/fraudulent documents (15.64%) and occupancy fraud (13.53%) were the most commonly reported activities in conjunction with misrepresentation of income, assets, or debts.

- Forged/fraudulent documents (28.04%). Filers reported submission of fraudulent W-2s, tax returns, verifications of deposit; verifications of rent; credit reports; and forged signatures on loan documents submitted to support income and assets. This activity was seen in fraud for housing (79.64%) and fraud for profit (19.56%). Mortgage brokers initiated the loans on 68.15% of the reports describing this activity. The suspected fraudulent activity was detected during pre-loan fund reviews (52.42%); post loan audits (31.05%); loan defaults (9.88%); and victims reporting forged signatures (3.83%).

- Occupancy fraud (14.41%). SARs reporting misrepresentation of the borrower's intent to occupy the property as a primary residence most frequently were associated with fraud for profit (94.51%). Generally, this misrepresentation was perpetrated in order to obtain a more favorable finance rate. Real estate investors participated in occupancy fraud for profit in 20% of these reports. A small percentage of the reports involving occupancy fraud (5.49%) described individuals acting as straw buyers for family members in order to help them obtain property. Mortgage brokers originated the loans involving suspected occupancy fraud on 61.96% of these reports.

- Appraisal Fraud (13.11%). Narratives indicating appraisal fraud described suspected fraud for profit in 60.34% and fraud for housing in 33.19% of filings. Generally the suspected fraud was committed through the use of inappropriate comparable properties to inflate property evaluations; inaccurate descriptions of the subject properties (failure to cite deficiencies or needed repairs); theft of a licensed appraiser's license number, or forgery of licensed appraiser's signature. In addition to appraisers, participants in loans where reviewed SARs indicated suspected appraisal fraud included: borrowers/investors (48.71%); mortgage brokers (48.71%); sellers (11.21%); loan settlement providers (including attorneys, and notaries) (2.59%); insider loan officers (2.59%); and correspondent lenders (1.72%).

- ID Fraud (10.18%). Identity fraud, the unauthorized and illegal use of another person's Social Security Number or a fraudulent (invented) Social Security Number not yet issued by the Social Security Administration, was nearly always classified as fraud for housing. Mortgage brokers reportedly originated 40% of the loans that were reported for identity fraud. Borrowers requested a change of the Social Security Number associated with their loans on 7.26% of these reports, thereby highlighting a likely identity fraud. Individuals who were associated with an ITIN[15] after obtaining a loan with a Social Security Number were identified on 17.22% of these reports. Filers identified the use of an ITIN prior to loan funding on 67.74% of the reports.

- Straw buyers (5.65%). Straw buyers were used in both fraud for profit (83%) and fraud for housing (15%) schemes. In the cases of fraud for housing, filers described individuals acting as straw buyers to help family and friends obtain property. Filers noted that mortgage brokers initiated the loans on 66% of narratives describing straw buyers. Many of the reports described individuals acting as straw buyers who failed to disclose all of their assets and liabilities, such as additional properties and mortgages they held.

- ID Theft (3.45%). Identity theft involved the actual theft of another person's true identity with the intention of obtaining a loan. All of the SARs reporting identity theft were classified as fraud for profit. Mortgage brokers originated the loans on 63.93% of the reports of identity theft. Suspected elder exploitation was described in six (9.84%) of the identity theft reports. Victims informed filers of identity theft activity in 65.57% of these reports. Filers identified the activity prior to funding the loan on 18.03% of the reports.

15. The IRS issues ITINs to help individuals comply with the U.S. tax laws, and to provide a means to efficiently process and account for tax returns and payments for those who do not have, nor are eligible for SSNs.

- Flipping (2.71%). All narratives describing flipping were classified as fraud for profit. Appraisal fraud was a part of fraudulent flipping on all narratives. Filers noted that mortgage brokers originated the loans on 68.75% of the narratives describing flipping.

Elaborate Mortgage Fraud Schemes

Although the numbers of SAR narratives describing elaborate mortgage fraud schemes did not constitute a particularly significant percentage of the entire sample, some of these narratives described apparent fraud for profit schemes that were notably elaborate and organized. These schemes are described below.

- Mortgage rescue schemes. Seven of the sampled narratives described fraudulent mortgage rescue schemes. Fraud perpetrators preyed on individuals threatened with foreclosure of their homes. Typically, the home owner was told that if they signed a quit claim deed for the benefit of the rescuer, the mortgage would be paid and the homeowner could continue living in the house with the promise that the property would be deeded back when the homeowner was able to obtain refinancing. The rescuer recorded the quit claim deed and then sold the property. Whereas in these instances, the borrower was the victim of the fraud, another type of mortgage rescue scheme defrauded the lender. In these cases, borrowers participated as straw buyers to purchase property and then quit claim the property back to the seller. This was considered a type of mortgage rescue scheme since typically the sellers were in default when the transfers occurred.

- "Freeman in nature" schemes. Four reports described attempted fraudulent payoffs with "Freeman in nature" arguments.[16] These arguments claimed that no money exchanged hands (i.e., the loan was merely a paper transaction), therefore there was no duty to repay the mortgage. Suspected Freeman schemes made up less than 1% of the sampled narratives, but they represent a danger to both lenders and homeowners. The reviewed Freeman schemes frequently resulted in the filing of fraudulent lien releases in county land records endangering the lender's loan security. Ultimately, homeowners who participate in these schemes lose their homes.

16. "Freeman in nature" arguments refer to specious arguments that avow that the funds were never loaned and therefore the borrower has no duty to repay the mortgage. These arguments rely on an unreasonable interpretation of Section 1-207 of the Uniform Commercial Code that has never been affirmed or supported by any court or governmental authority.

- Asset rental. Ten of the sampled narratives described suspected fraudulent attempts to temporarily inflate borrowers' assets in order to qualify them for loans. Typically, the borrower's name was added to an existing account. After the institution holding the account verified the assets in that account, the borrower's name was removed. Eight (80%) of these reports were submitted by the institutions that were requested to prepare verifications of deposit. The filers noticed that the funds were withdrawn or the names were removed shortly after a verification of deposit request was completed. These proactive reports demonstrated an awareness of this type of fraud and provided examples of successful industry efforts to identify them.

  Institutions receiving verification of deposit (VOD) requests are well positioned to detect and prevent some asset rental schemes. It may be a red flag when an account holder repeatedly adds new names to an account, then drops them shortly after the bank responds to a VOD. In these cases, the account holder may have added the loan applicant's name to the account to boost the latter's (apparent) available assets. Recurring incidents of this type of asset rental suggest that the asset renter likely has a direct connection to the loan processor, either a broker or a bank insider that routinely arranges for loans. Banks tracking suspicious activity that includes VOD requests can note on their SAR the party that requests the VOD in either the subject field or the narrative, as is appropriate.

  Other instances of asset rental were detected when filers noted that funds were temporarily deposited into the loan applicant's bank account for the time required to qualify for a loan. The funds came from friends or family, or even from mortgage brokers attempting to qualify an ineligible borrower. The temporary funds were withdrawn from the bank account after the loans were approved. Since these transactions only occur once, they are more difficult to detect than using the method above. However, the asset renter faces greater risk of losing his or her borrowed funds.

- Fraudulent investment schemes. Borrowers obtained loans for multiple properties within a short period of time. Frequently the subject properties were located in states outside the borrower's home state. The fraudulent activities generally included appraisal fraud, occupancy fraud, fraudulent property flipping, forged or fraudulent documents, and misrepresentation of assets and debts. These schemes also included borrowers participating in fraudulent real estate investment schemes by agreeing to have their personal credit used to acquire mortgages in return for a fee plus the promise of additional commissions when the property was resold. Investors were told the properties would be renovated and sold in approximately one year, and that mortgage payments would be made with rental income. The fraudulent activities generally included appraisal fraud, asset rental fraud, occupancy fraud, straw buyer, and misrepresentation of assets and debts. Ultimately the borrowers were left owing mortgages that exceeded the property value.

- Creating false down payments for properties. Activities included depositing advances from credit cards into bank accounts then using those funds to obtain official checks payable to a title company. The funds were later returned from the title company to the bank account. In reality, the property was obtained for no money down, while creating a false appearance to the lender that the borrower had made a down payment. Another variation reported was the disguising of purchase loans as refinance loans with no money down and possibly cash back at the time of settlement. In reality the property is transferred to the borrower at the time the "refinance" loan is closed. This type of activity increases the likelihood the borrower will default on the loan since the borrower has no financial vested interest, since their earnest money was funded by a loan.

  Lenders may find it helpful to review the HUD-1 settlement statement for disbursements to unknown individuals or entities. These disbursements may represent payments to the sellers.

- Short payoff. Inflated appraisals were used to obtain the subject loans. Borrowers defaulted on the loans and claimed a fraudulent hardship, such as loss of employment or illness. The borrowers further claimed they were victims of appraisal fraud and requested that the lenders accept short payoffs. The proposed payoffs were based on legitimate appraisals that were significantly less (40 to 60 percent less) than the appraisals used to obtain the loans.

- Fraudulent credit reports. Employees of a credit bureau changed credit reports to fraudulently improve credit profiles by removing legitimate negative information and adding positive information.

  These reports suggest that some lenders may reduce the likelihood of fraud by obtaining credit information from all three major credit bureaus.

- Property Theft.

  - Property was sold with the promise of granting a life estate to the seller. The deed was altered to remove the life estate provision prior to recording. The property was then resold without the life estate provision in a true arms-length transaction, and a mortgage was placed against the property. The original homeowner, the purchaser, and the subsequent mortgage holder were left to sort out the legal and financial consequences of this fraud. Sampled narratives frequently specified that victims of this type of fraud were elderly.

  - Loan applications were made in the name of deceased owners. The fraud perpetrator needs to work quickly before heirs can file wills or estate executor documents with the courts. This type of fraud is aided by rapid loan processing.

  - Individuals stole the identities of property owners to allow them to sell the property to another individual who assumed the identity of another true person. In this scheme, the existing mortgage on the property was paid off with a new mortgage. The perpetrators received the difference between the sales price and the loan payoff. Therefore, this fraud scheme is more profitable when perpetrated against homeowners with a large amount of equity, i.e., where market value exceeds the outstanding debt on the home. The legitimate homeowners discover the fraud when they are informed that their mortgage has been paid in full.

- ID theft of the true homeowner's identity to apply for home equity lines of credit or cash-out refinancing. "Shotgunning" is frequently a part of this fraud. In this scheme, the borrower applies for multiple loans from multiple lenders on the same property in a short period of time. This allows the identity thief to take advantage of lag time in recording the mortgages. Consequently, lenders are unable to identify the existence of the other loans. By the time the lender is aware of the other mortgages, the loan payment has already been provided. Successful applications usually result in first payment defaults.

Protective Measures

Effective Fraud Detection Measures Used by Filers

Filers reported various measures for detecting potential mortgage loan fraud involving particular examination procedures and red flag indicators. There are a variety of legitimate transactions that can raise a red flag, and the mere presence of a red flag does not automatically indicate suspicious or illicit activity. The following red flags and detection measures were derived from a review of SAR narratives describing mortgage loan fraud detection measures.

Some lending institutions rely heavily, though not exclusively, on submitting brokers to perform proper due diligence checks on the loan applicant. Sampled SAR narratives suggest that lending institutions performing independent due diligence on the borrower and conducting re-verification of documents increase their ability to detect fraud. In many cases, these checks can quickly identify document fraud. Additionally, by tracking failure rates of loans associated with particular brokers, lenders are detecting systematic abuses.

In many cases, applying simple reasonability tests are sufficient to detect fraudulent documents. For instance, a much greater than normal increase in year-to-year income or an occupational income far higher than those of others in the same line of work can present a red flag. An effective measure to detect fraudulent documents includes performing routine tests to ensure the applicant's reported Social Security and Medicare withholdings do not exceed the limits established by law.

Borrowers purchasing property described as a primary residence, but outside of their home states, or located an unreasonable commuting distance from their stated employer, could be an indication that the borrowers do not truly intend for the property to be their principal residence. This could be an indication of straw buyer involvement or that the property is intended as an investment rather than a principal residence.

Mortgage brokers or borrowers that always use the same appraiser can be a red flag for appraisal fraud in some instances.

In some cases, identity theft can be detected and prevented by ensuring that the borrower's signature matches on all documents. Sampled SAR narratives show multiple instances of alert reviewers detecting fraudulent applications by comparing document signatures and finding discrepancies. Alert loan settlement providers can also prevent ID theft by ensuring that all parties present acceptable photo identification and ensuring that all documents are signed in front of a licensed notary public.

Multiple problematic loan applications containing the same parties working in conjunction with one another may also be a red flag for organized fraud. For example, numerous transactions involving the same mortgage broker, seller, appraiser, and settlement agency may be a red flag for a fraudulent arrangement.

Other Protective Measures

As noted below in the section on "Findings Observed from Sampled Narratives," financial institutions are increasingly detecting fraud prior to loan funding.[17] The most effective financial institutions observed in the sample achieved this during the underwriting process by re-verifying the information provided in the loan application. Various federal regulatory agencies have issued guidance in response to consumer protection concerns and for reasons of safety and soundness. This guidance may provide further insight on fraud detection. Some of these documents include guidance on issuing subprime loans,[18] and best foreclosure prevention practices.[19] In addition, various state agencies have offered guidance to banks on mortgage lending practices as well.[20]

Lenders are encouraged to use the loan settlement statement (frequently the Form HUD-1) to identify clues about possible loan fraud prior to loan disbursal. Close scrutiny of where the loan funds are going could identify potential fraud prior to loan disbursement. Anecdotal reporting by law enforcement suggests that an atypically large disbursement or more of the funds to an entity or individual whose role in the transaction is not readily apparent could be an indication of fraud.

17. See subsection *Fraud Detection*.

18. For an example of this, see *Statement on Subprime Mortgage Lending*, issued jointly by the Office of the Comptroller of the Currency, Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision, and National Credit Union Administration. The full document can be found at: http://www.occ.treas.gov/ftp/release/2007-64a.pdf.

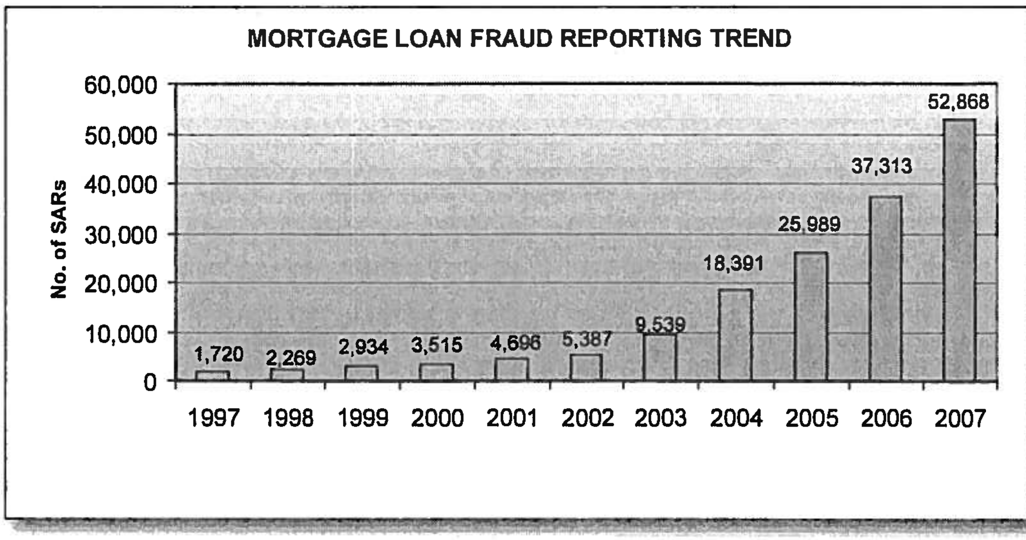
19. For example, see *Foreclosure Prevention: Improving Contact with Borrowers*, Office of the Comptroller of the Currency, http://www.occ.treas.gov/cdd/Foreclosure_Prevention_Insights.pdf.

20. For instance, various guidelines can be found on the Conference of State Bank Supervisors website; see http://www.csbs.org.

Trends and Patterns in Total SARs Reporting Mortgage Loan Fraud

SARs reporting suspected mortgage loan fraud continue to increase. This study includes SARs reporting suspected mortgage loan fraud filed between April 1, 2006 and March 31, 2007. *Figure 7* below provides a graphic depiction of the filing trend of SARs reporting suspected mortgage loan fraud.

Figure 7



Quick Facts

- Financial institutions filed 37,313 SARs citing suspected mortgage fraud in 2006, a 44% increase from 2005.
- A comparison of 1st quarters 2006 and 2007 shows a 37% increase in SARs identifying mortgage fraud.

A comparison of SARs reporting suspected mortgage loan fraud for the first quarter of 2006 to the first quarter of 2007 revealed a growth of 36.79%.

Figure 8 provides this comparison.

FIGURE 8

COMPARISON OF 1ST QTR 2006 TO 1ST QTR 2007			
	2006	***2007***	***Percentage of Growth***
January	2,087	3,422	63.97%
February	2,301	3,522	53.06%
March	3,034	3,946	30.06%
Total	**9,428**	**12,897**	**36.79%**

Growth in SARs reporting mortgage loan fraud continues to outpace the growth of total depository institution SARs. *Figure 9* provides the percentages of growth for all depository institution SARs and depository institution SARs reporting mortgage loan fraud while *Figure 10* provides a graphic depiction of the growth.

FIGURE 9

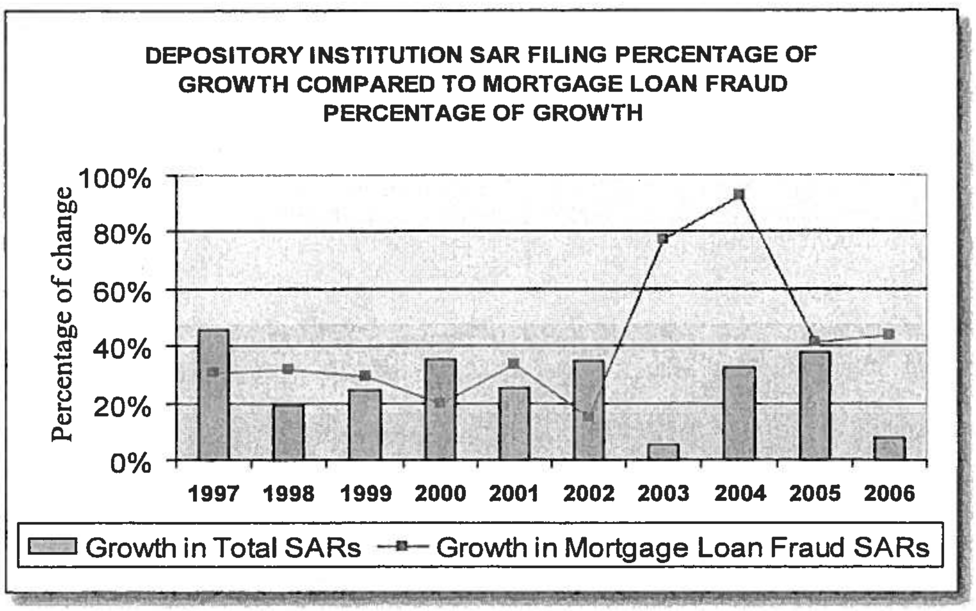
COMPARISON OF GROWTH IN TOTAL DEPOSITORY SARs TO GROWTH IN SARs REPORTING MORTGAGE LOAN FRAUD				
Year	***Total Depository Institution SAR Filings***	***Mortgage Loan Fraud SARs***	***Growth in Total Depository SARs***	***Growth in Mortgage Loan Fraud SARs***
1996	62,388	1,318	N/A	N/A
1997	81,197	1,720	45.81%	30.50%
1998	96,521	2,269	18.87%	31.92%
1999	120,505	2,934	24.85%	29.31%

*(**FIGURE 9** continued on the next page)*

(FIGURE 9 continued from the previous page)

Year	Total Depository Institution SAR Filings	Mortgage Loan Fraud SARs	Growth in Total Depository SARs	Growth in Mortgage Loan Fraud SARs
2000	162,720	3,515	35.03%	19.80%
2001	203,538	4,696	25.08%	33.60%
2002	273,823	5,387	34.53%	14.71%
2003	288,343	9,539	5.30%	77.07%
2004	381,671	18,391	32.37%	92.80%
2005	522,655	25,989	36.94%	41.31%
2006	567,080	37,313	7.75%	43.57%
TOTAL	**2,757,367**	**113,071**		

FIGURE 10



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Characterizations of Suspicious Activity

Many reports included more than one characterization of suspicious activity in addition to mortgage loan fraud.[21] False statement was the most reported suspicious activity in conjunction with mortgage loan fraud. *Figure 11* reveals secondary characterizations of suspicious activities reported in conjunction with mortgage loan fraud and compares this to percentages from the preceding ten years. Reports of identity theft doubled from 2% to 4% of the SARs filed. Although the overall numbers of reports were small, computer intrusion also saw a significant percentage increase.

FIGURE 11

COMPARISON OF INITIAL AND UPDATED REPORTS BY CHARACTERIZATION OF SUSPICIOUS ACTIVITY

Characterization of Suspicious Activity	*Updated Report (4/06 – 3/07)*	*Initial Report (4/96 – 3/06)*	*Percentage of Change*
Mortgage Loan Fraud	100.00%	100.00%	0.00%
False Statement	29.43%	18.58%	58.42%
Other	4.65%	3.80%	22.36%
Identity Theft	4.17%	2.13%	95.62%
Consumer Loan Fraud	1.48%	0.84%	74.99%
Misuse of Position or Self Dealing	0.71%	1.47%	-51.79%
BSA/Structuring/Money Laundering	0.60%	0.31%	95.25%
Check Fraud	0.26%	0.31%	-14.28%

(FIGURE 11 continued on the next page)

21. In our examination in mortgage loan fraud SARs, we identified 69 SARs with multiple activity characterizations that contained one or more mischaracterizations of financial crimes, including primary activities and those secondary to mortgage loan fraud. As the full 69 only reflect about one-tenth of one percent of all mortgage loan fraud SARs, the errors are not statistically significant.

(FIGURE 11 continued from the previous page)

Characterization of Suspicious Activity	Updated Report (4/06 – 3/07)	Initial Report (4/96 – 3/06)	Percentage of Change
Counterfeit Instrument	0.19%	0.26%	-26.97%
Defalcation/Embezzlement	0.15%	0.45%	-66.77%
Computer Intrusion	0.13%	0.04%	214.01%
Wire Transfer Fraud	0.12%	0.20%	-39.89%
Mysterious Disappearance[22]	n/a	n/a	n/a
Counterfeit Check	0.07%	0.08%	-17.55%
Check Kiting	0.05%	0.07%	-37.73%
Credit Card Fraud	0.04%	0.07%	-42.97%
Bribery/Gratuity	0.03%	0.08%	-64.14%
Terrorist Financing[23]	n/a	n/a	n/a
Debit Card Fraud	0.00%	0.03%	-100.00%
Commercial Loan Fraud	0.00%	0.49%	-100.00%
Counterfeit Credit/Debit Card	0.00%	0.01%	-100.00%

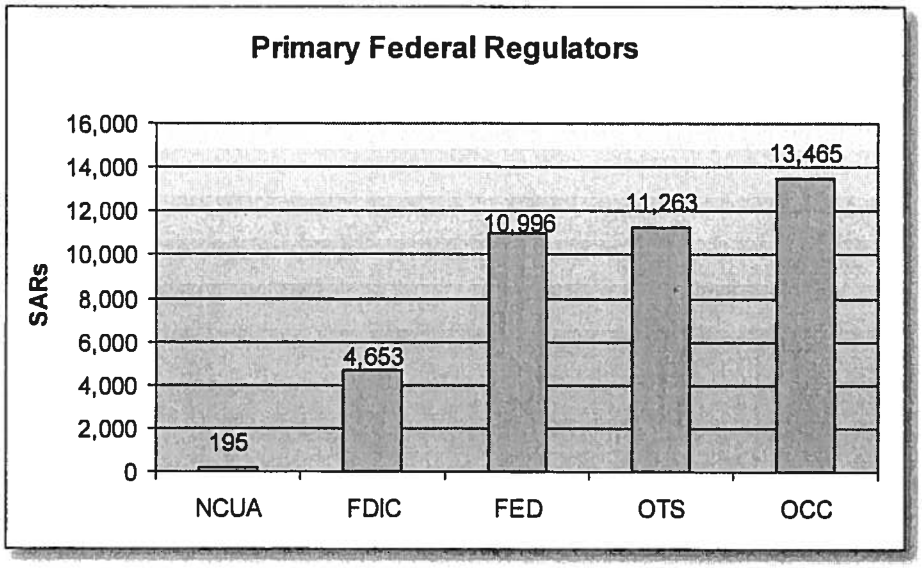
22. Approximately half of the 30 reports characterized as mysterious disappearance appear to be misclassified. These mischaracterizations likely resulted from human or computer errors. For example, several SARs specified multiple activities including mortgage loan fraud, terrorist financing, identity theft, mysterious disappearance, but for all these SARs the activities were in fact attempts to evade filing thresholds for BSA documents, as gleaned from the filers' thorough narrative descriptions.

23. Although twelve SARs listed terrorist financing in conjunction with mortgage loan fraud, a close review of those SARs revealed that all these reports were mischaracterized.

Primary Federal Regulators

Figure 12 displays the primary federal regulators identified in the reports of mortgage loan fraud.[24] National banks with offices located throughout the country made up the largest group of lenders reporting mortgage loan fraud. The Office of the Comptroller of the Currency (OCC) is the primary regulator for national banks. National banks filed about a third of the total reports.

Figure 12



The Office of Federal Housing Enterprise Oversight (OFHEO) is the federal regulator for two government sponsored enterprises — Fannie Mae and Freddie Mac. In 2006, OFHEO adopted a final rule which established a process for the enterprises' reporting of possible mortgage fraud to OFHEO and corresponding reporting to FinCEN. As this process continues to develop, FinCEN will continue to monitor these filings for developing trends.

Quick Facts

- The top five subject states for reported mortgage fraud were California, Florida, Illinois, Georgia, and Texas.
- SAR filings on suspected mortgage fraud subjects increased by more than 50% in ten subject states over the previous year.

24. Some SARs did not indicate the primary regulator.

Top Filing Institutions

In all, 788 depository institutions and their subsidiaries filed 40,781 SARs on suspected mortgage loan fraud (6.8% of total SARs filed in the same period) during the period April 1, 2006 through March 31, 2007. The top 10 filers that listed mortgage loan fraud as a category account for 61% of these SARs, while the top 25 filers account for 87% of the total.

Fraud Locations

SARs contain data fields for subject addresses, the filer's main office address, and the filer's branch address where the suspicious activity was discovered. Because the subject address provides the best source for identifying geographic locations of real estate involved in mortgage loan fraud, this study identified the location of the fraud by the subject address. This is because most residential mortgage loan applicants intend to reside on the property used to secure the loan. In the SARs reviewed in this study, suspicious activity occurred in, or was otherwise associated with, all 50 states, the District of Columbia, Puerto Rico, and American Samoa.

Figure 13 provides the top 20 subject states by the number of depository institution SARs filed in 2006 along with a comparison to the 2005 filings and the percentage of change for the two years. *Figure 13* also provides the per capita income and state ranking for those 20 states based on per capita income. The top five reported subject address states were California, Florida, Illinois, Georgia, and Texas. This represented a change in position from the initial report where the top five subject address states were California, Florida, Georgia, Texas and Illinois. Illinois moved from fifth position to third and Georgia and Texas moved from third and fourth to fourth and fifth positions. New Jersey, Arizona and Ohio replaced Ohio, North Carolina and Washington in the seventh through tenth positions, respectively. Note that twelve of these states were ranked within the top twenty U.S. per capita income states.

FIGURE 13

TOP 20 SUBJECT STATES[25]
(Number of SARs Indicating a Listed Subject is a Resident in the State)

State	2006 Depository Institution SARs	2005 Depository Institution SARs	Percentage Of Change	2006 Per Capita Income (Projected)[26]	Rank In U.S. (per capita income)
California	8,109	4,734	71.29%	$38,956	11
Florida	3,552	2,321	53.04%	$35,798	20
Illinois	2,477	1,409	75.80%	$38,215	13
Georgia	2,265	1,770	27.97%	$31,891	38
Texas	2,185	1,557	40.33%	$34,257	25
New York	1,797	1,228	46.34%	$42,392	5

(FIGURE 13 continued on the next page)

25. This table shows the total number of SARs per state, where the SARs included the subject's address within that state. As some SARs indicate subjects in two or more states, these particular SARs may be counted multiple times in this table. Total state filings when listed by subject, as here, do not match the total number of SARs filed for the reviewed period.

26. Per capita income and state ranking obtained from the U.S. Department of Commerce, Bureau of Economic Analysis, www.bea.gov/index.htm.

(*FIGURE 13 continued from the previous page*)

State	2006 Depository Institution SARs	2005 Depository Institution SARs	Percentage Of Change	2006 Per Capita Income (Projected)	Rank In U.S. (per capita income)
Michigan	1,671	1,103	51.50%	$33,847	27
New Jersey	1,119	771	45.14%	$46,344	2
Arizona	1,050	706	48.73%	$31,458	39
Ohio	957	765	25.10%	$33,338	29
Virginia	818	581	40.79%	$39,173	9
Colorado	817	687	18.92%	$39,186	8
Maryland	803	573	40.14%	$44,077	4
Minnesota	758	426	77.93%	$38,712	12
North Carolina	644	605	6.45%	$32,234	36
Indiana	640	435	47.13%	$32,526	33
Pennsylvania	635	553	14.83%	$36,680	18
Missouri	605	487	24.23%	$32,705	31
Washington	584	480	21.67%	$37,423	14
Nevada	562	361	55.68%	$37,089	17

Figure 14 provides the percentage of change in reporting for all subject states along with data from the U.S. Department of Commerce, Bureau of Economics reporting the per capita income and state rankings for 2006 (projected). Although Alaska had only 38 SARs reporting mortgage loan fraud in 2006, it was the state with the largest growth in reports of mortgage loan fraud by percentage increase. States with negative growth included South Dakota, Iowa, Vermont, South Carolina, New Mexico, and Kansas. Eleven of the twenty states showing the greatest increase in reported subjects were ranked within the top twenty states for per capita income.

FIGURE 14

PERCENTAGE OF CHANGE IN REPORTED SUBJECT STATES

State	2006 Depository Institution SARs	2005 Depository Institution SARs	Percentage Of Change	2006 Per Capita Income (Projected)[27]	Rank In U.S.(per capita income)
Alaska	38	8	375.00%	$37,271	16
Rhode Island	164	47	248.94%	$37,388	15
Minnesota	758	426	77.93%	$38,712	12
Illinois	2,477	1,409	75.80%	$38,215	13
Massachusetts	477	276	72.83%	$45,877	3
California	8,109	4,734	71.29%	$38,956	11
Mississippi	150	92	63.04%	$26,535	50
Nevada	562	361	55.68%	$37,089	17
Florida	3,552	2,321	53.04%	$35,798	20
Michigan	1,671	1,103	51.50%	$33,847	27
Arizona	1,050	706	48.73%	$31,458	39

(FIGURE 14 continued on the next page)

27. Per capita income and state ranking obtained from the U.S. Department of Commerce, Bureau of Economic Analysis, www.bea.gov/index.htm.

(FIGURE 14 continued from the previous page)

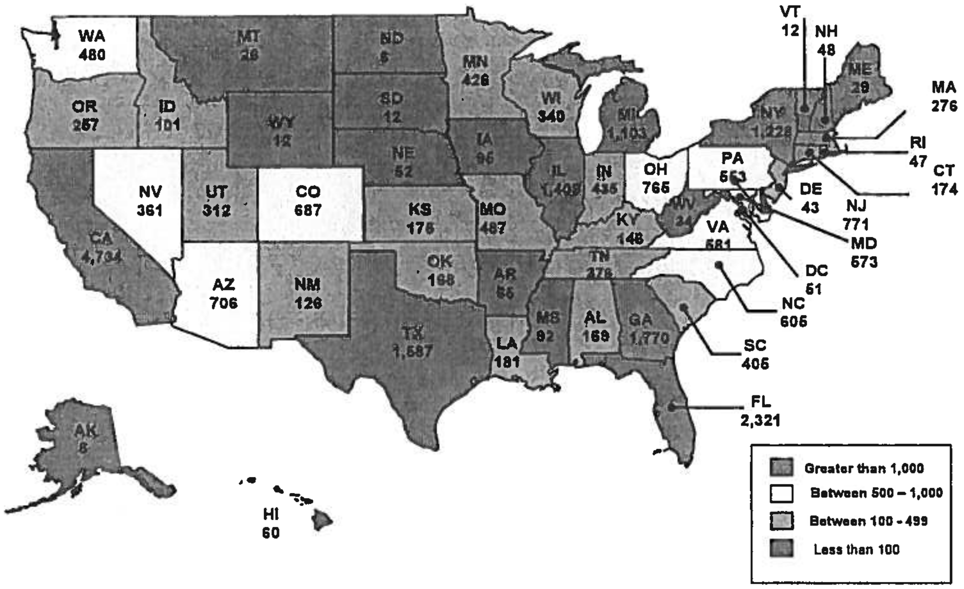
State	2006 Depository Institution SARs	2005 Depository Institution SARs	Percentage Of Change	2006 Per Capita Income (Projected)	Rank In U.S.(per capita income)
Indiana	640	435	47.13%	$32,526	33
Idaho	148	101	46.53%	$29,952	43
New York	1,797	1,228	46.34%	$42,392	5
Arkansas	95	65	46.15%	$27,935	48
Wisconsin	495	340	45.59%	$34,701	22
New Jersey	1,119	771	45.14%	$46,344	2
Connecticut	252	174	44.83%	$49,852	1
Maine	42	29	44.83%	$32,348	34
Alabama	242	169	43.20%	$31,295	40
Virginia	818	581	40.79%	$39,173	9
Texas	2,185	1,557	40.33%	$34,257	25
Maryland	803	573	40.14%	$44,077	4
Utah	414	312	32.69%	$29,108	47
District of Columbia	67	51	31.37%	$55,755	--
Tennessee	483	376	28.46%	$32,304	35
Georgia	2,265	1,770	27.97%	$31,891	38
New Hampshire	61	48	27.08%	$39,311	7
Montana	33	26	26.92%	$30,688	42
Ohio	957	765	25.10%	$33,338	29
Missouri	605	487	24.23%	$32,705	31

(FIGURE 14 continued on the next page)

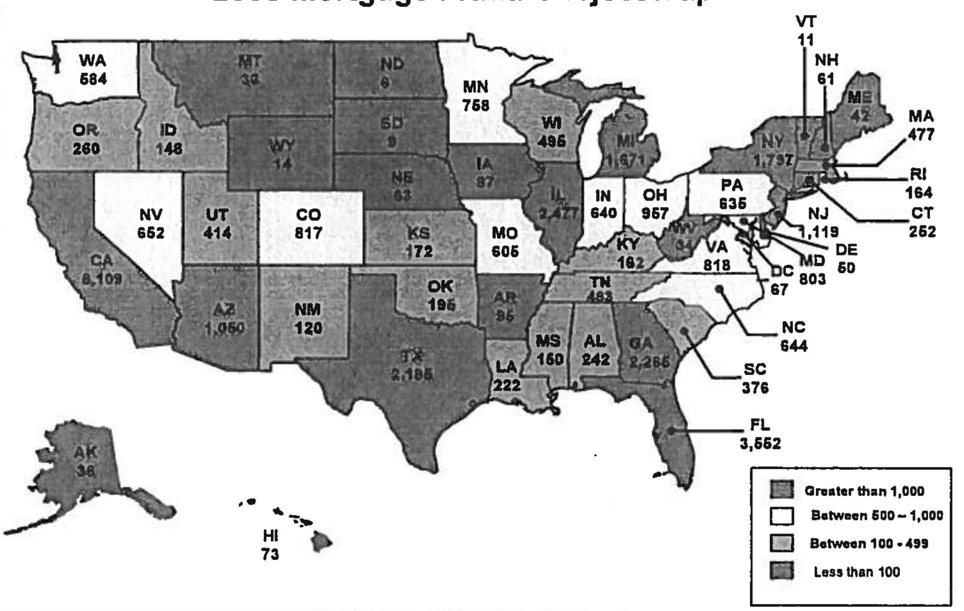
(FIGURE 14 continued from the previous page)

State	2006 Depository Institution SARs	2005 Depository Institution SARs	Percentage Of Change	2006 Per Capita Income (Projected)	Rank In U.S.(per capita income)
Louisiana	222	181	22.65%	$30,952	41
Washington	584	480	21.67%	$37,423	14
Hawaii	73	60	21.67%	$36,299	19
Nebraska	63	52	21.15%	$34,397	23
Colorado	817	687	18.92%	$39,186	8
Wyoming	14	12	16.67%	$40,676	6
Delaware	50	43	16.28%	$39,022	10
Oklahoma	195	168	16.07%	$32,210	37
Pennsylvania	635	553	14.83%	$36,680	18
Kentucky	162	146	10.96%	$29,352	46
North Carolina	644	605	6.45%	$32,234	36
Oregon	260	257	1.17%	$33,666	28
West Virginia	34	34	0.00%	$27,897	49
North Dakota	6	6	0.00%	$32,552	32
Kansas	172	175	-1.71%	$34,743	21
New Mexico	120	126	-4.76%	$29,673	44
South Carolina	376	405	-7.16%	$29,515	45
Vermont	11	12	-8.33%	$34,264	24
Iowa	87	95	-8.42%	$33,236	30
South Dakota	9	12	-25.00%	$33,929	26

2005 Mortgage Fraud Subject Map



2006 Mortgage Fraud Subject Map



The maps above depict the volume of SARs identifying subject states associated with suspected mortgage loan fraud for 2005 and 2006.

Individual Taxpayer Identification Number (ITIN)

Filers reported an increase in the number of borrowers that provided ITINs,[28] often represented as SSNs, on mortgage loan applications. *Figure 15* displays the growing number of suspected mortgage loan fraud SARs reporting individuals who are associated with an ITIN.

FIGURE 15

MORTGAGE LOAN FRAUD SARs REPORTING USE OF ITINs

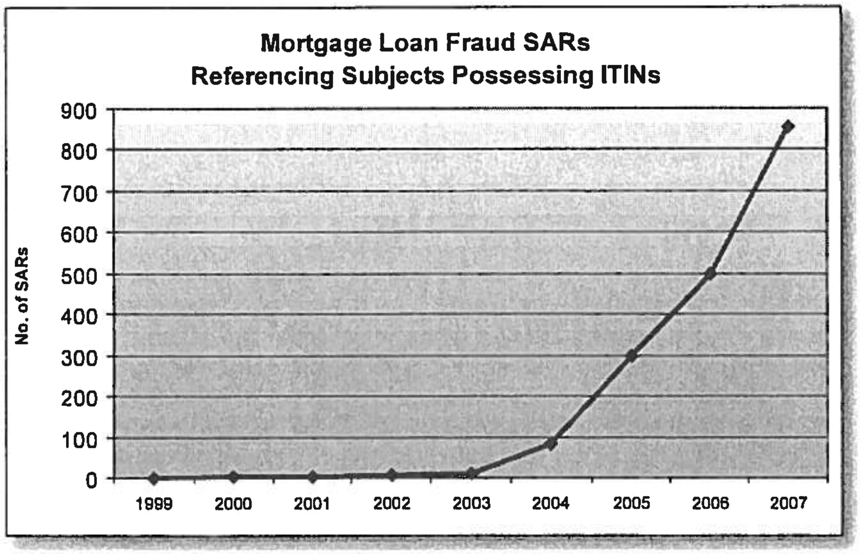
	1999	2000	2001	2002	2003	2004	2005	2006	2007[29]	TOTAL
January				1		1	20	44	35	101
February						1	20	43	52	116
March				1		3	16	66	110	196
April					4	1	7	39	137	188
May	1			4	5	2	27	42	62	143
June						0	24	43	131	198
July						8	31	33	41	113
August				1		19	14	41	29	104
September						7	31	29	60	127
October					1	4	24	52	77	158
November		2	2			14	50	39	43	150
December			1		3	22	33	29	79	167
Total	1	2	3	7	13	82	297	500	856	1,761

28. An ITIN is a nine-digit number issued by the U.S. Internal Revenue Service (IRS) to individuals who are required for U.S. tax purposes to have a U.S. taxpayer identification number but who do not have, and are not eligible to obtain, a social security number (SSN). See IRS Discussion of ITINs at http://www.irs.gov. For additional compliance guidance, see *The SAR Activity Review: Trends, Tips & Issues*, Issue 11, Section 4, "Tips on SAR Form Preparation and Filing," at http://www.fincen.gov/sarreviewissue11.pdf.

29. Totals for November and December 2007 may not be complete due to processing.

Figure 16 provides a graphic depiction of the filing trend for reports of individuals associated with both an ITIN and a SSN.

FIGURE 16



Findings Observed from Sampled Narratives

A sample of 1,769 depository institution SAR narratives was reviewed to identify additional trends and patterns reported in those narratives. Comparisons to the findings in the FinCEN report published November 2006 were made whenever possible. The percentages presented frequently do not add up to 100% because not all narratives provided sufficient information to determine classifications such as loan types, fraud types, and activities.

Types of Fraud

Mortgage fraud is generally divided into two broad categories: fraud for housing and fraud for profit. Fraud for housing was the most common type reported in the sampled narratives (60%).[30] Fraud for profit was reported in just over 36% of the sampled narratives.

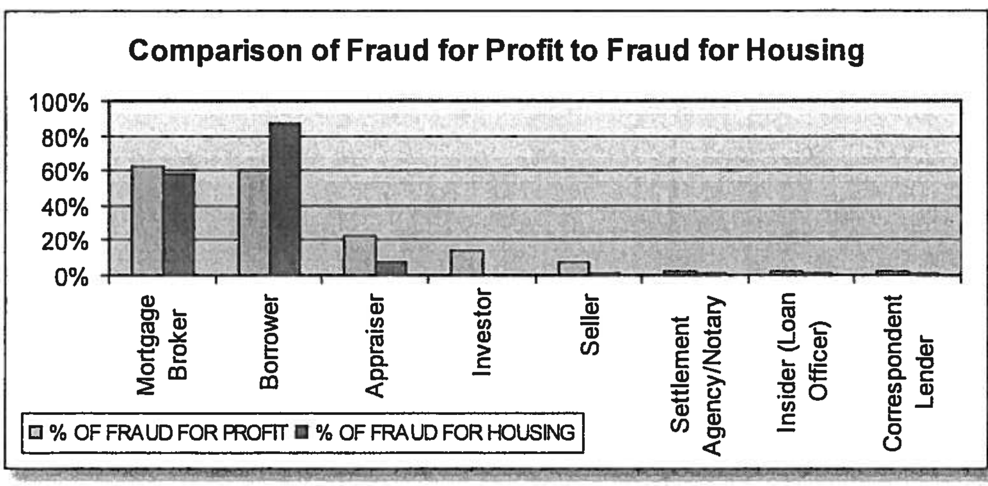
30. For this study, occurrences are classified as fraud for profit in SARs where 1) the filers specifically state their suspicion is about fraud for profit, 2) the filers do not specifically state it is fraud for housing, 3) the narrative describes subjects other than the borrower as suspected primary participants, 4) the filer specifically notes possible occupancy fraud, or 5) the suspected fraudulent loan is not a first mortgage. Absent any of these criteria, other reports are classified as fraud for housing, when the filer named the borrower as a subject.

Figures 17 and *18* displays the types of participants in these fraud categories and show the frequency of their mention in each category.

FIGURE 17

COMPARISON OF FRAUD FOR PROFIT AND HOUSING BY PARTICIPANT		
Participant	***Percentage of Participants in SARs Describing Fraud For Profit***	***Percentage of Participants in SARs Describing Fraud For Housing***
Mortgage Broker	62.07%	58.55%
Borrower	60.66%	87.06%
Appraiser	23.04%	7.46%
Investor	14.42%	0.00%
Seller	7.52%	0.76%
Settlement Agency/Notary	2.66%	1.13%
Insider (Loan Officer)	2.35%	1.13%
Correspondent Lender	1.72%	1.42%

FIGURE 18



Reports describing suspected fraud for housing referenced purchase loans most often, followed by refinance, 2nd trust, and home equity loans. All reports regarding construction loans described suspected fraud for profit. Home equity loans had the second highest percentage of fraud for profit with 2nd trust, refinance, and purchase loans showing the next highest percentages.

Figure 19 illustrates a comparison of the type of fraud by loan type as seen in the sampled narratives.

FIGURE 19

LOAN TYPE COMPARISON FOR TYPE OF FRAUD

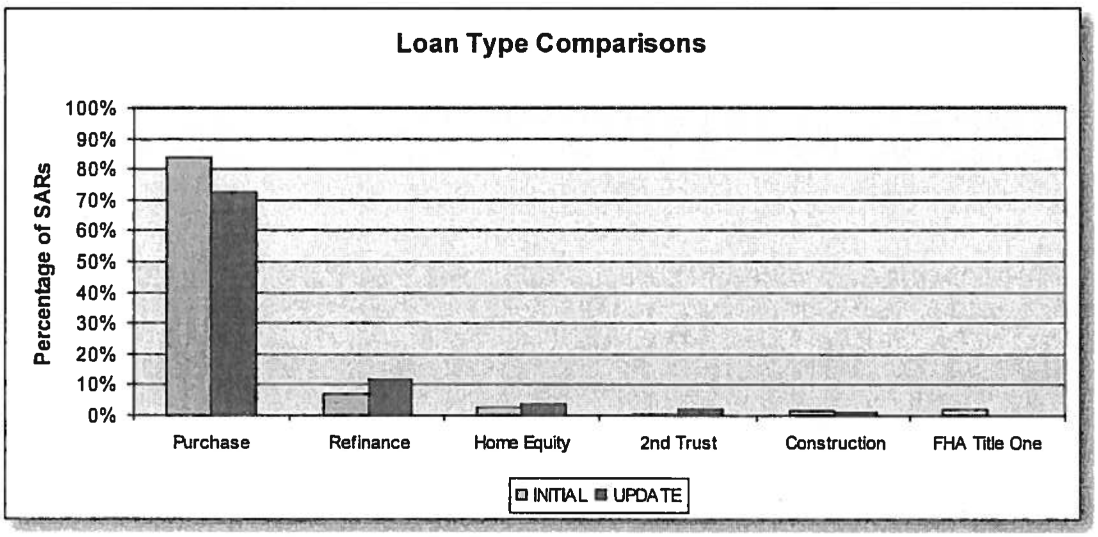
Loan Type	*Profit*	*Percentage of Loan Type*	*Housing*	*Percentage of Loan Type*
Purchase	440	34.00%	840	64.91%
Refinance	93	45.15%	112	54.37%
2nd Trust	20	47.62%	22	52.38%
Home Equity	38	61.29%	24	38.71%
Construction	19	100.00%	0	0%
Total	**610**		**998**	

Loan Types

Loans for purchasing houses, either for a primary residence, second home, or investment, were the most commonly reported loan types detailing suspected fraud, at 72.75%. Other types of loans reported were: refinance (12.04%), home equity (3.5%), 2nd trust (2.37%), and construction (1.07%). Some significant changes were found by comparing loan types reported in FinCEN's previous mortgage fraud report to loan types reported during the update period. The percentage of fraudulent construction loans and purchase loans reported experienced a decrease while reports of fraud in 2nd trust, refinance, and home equity loans increased.

Figure 20 displays the comparison.

FIGURE 20



Filers specified that loans were subprime in 79 SARs (0.19%) for the reviewed period. Without this specification, it is not possible to determine whether mortgages described in the remaining SARs were subprime loans.

Filers did not identify any FHA Title One loans in the sampled narratives reviewed for this update report. It is unknown if there was a decrease in reports of fraud in FHA Title One loans, or if the filers simply did not identify the loans as such. Filers did note that six purchase loans and one refinance loan were FHA insured loans.

Figure 21 provides a comparison of loan types for the initial and updated reports.

FIGURE 21

REPORT COMPARISON			
Loan Type	***Initial Report***	***Updated Report***	***Percentage Of Change***
Purchase	83.65%	72.75%	-13.03%
Refinance	7.21%	12.04%	66.99%
Home Equity	2.66%	3.50%	31.76%
2nd Trust	0.38%	2.37%	524.80%
Construction	1.52%	1.07%	-29.34%
FHA Title One	1.90%	0.00%	-100.00%

Filers noted in the sampled narratives that 54 (25.35%) of the refinance loans were "cash-out refinance." Additionally, filers noted that 7.41% of the cash-out refinance loans were early defaults; half of those were first payment defaults.

Early Payment Default

Filers reported that early payment defaults triggered suspicion that loans may have been obtained through fraudulent methods in 71 (4%) of the

Quick Facts

- Early payment defaults were indicated in only 4% of sampled narratives.
- Suspected fraud detected during foreclosure rose by 23%.

sampled narratives. Twenty-five (35.21%) of those narratives specified a first payment default. Filers reported early payment defaults were moderately more common in fraud for profit (57.75%) than fraud for housing (42.25%).

Figure 22 displays the types of loans where early payment defaults were detected.

FIGURE 22

EARLY DEFAULT BY LOAN TYPE		
Loan Type	**No. Of SARs**	**Percentage Of Loan Type**
Purchase	53	4.12%
Refinance	13	6.10%
2nd Trust	3	7.14%
Home Equity	2	3.23%

Figure 23 provides a comparison of suspected fraud for profit and fraud for housing by loan type.

FIGURE 23

EARLY PAYMENT DEFAULT COMPARISON BY FRAUD TYPE		
Type of Loan	**Profit**	**Housing**
Purchase	29	24
Refinance	9	4
Home Equity	2	0
2nd Trust	1	2
Total	**41**	**30**

Stated Income/Low Document or No Document Loans

Filers reported in 69 (3.90%) of the sampled narratives that the reviewed loans were Stated Income, Low Document or No Document loans. Mortgage brokers originated nearly 80% of these loans. Filers reported that fraud for housing (49.28%) and fraud for profit (47.83%) were nearly equally represented in these loans. Nearly 9% of these loans were early payment defaults; 50% of those were first payment defaults.

Figure 24 below displays the types of loans granted as low/no document or stated income.

FIGURE 24

STATED INCOME/LOW or NO DOCUMENT LOANS		
Loan Type	***Low Doc/Stated Income***	***Percentage Of Low Doc***
Purchase	55	79.71%
Refinance	12	17.39%
Home Equity	2	2.90%
2nd Trust	0	0.00%
Construction	0	0.00%

Fraud Detection

Filers reported they detected the possibility of fraud in various phases of the loan process: pre-finance, post finance audit, loan default; and through reports by victims, law enforcement, and even the borrowers themselves. SARs noting detection during post finance audits also reported that the loans were performing and current at the time the SARs were filed.

Figure 25 below displays a comparison of when the suspected fraud was detected in FinCEN's initial report to when it was detected in the updated report. The comparison shows that there was nearly a 50% increase in the percentage of SARs specifying fraud detection prior to loan funding. SARs reporting that the filers detected possible fraud after loan defaults increased nearly 23%. As shown in *Figure 25,* fraud detection by law enforcement increased by 71%. Filers reported they were contacted by law enforcement to report that their customer was under investigation for loan fraud or to subpoena records for their investigation.

FIGURE 25

REPORT COMPARISON			
When Detected	***Initial Report***	***Updated Report***	***Percentage Of Change***
Post Finance Audit	59.13%	42.34%	-28.39%
Pre-Finance	20.72%	30.98%	49.50%
Default	11.88%	14.58%	22.71%
Victim	2.38%	3.79%	59.48%
Law Enforcement	0.76%	1.30%	70.95%
Borrower	0.57%	1.07%	87.61%

As shown in *Figure 25* above, there was a more than 59% increase in detection through contact by victims of fraud, mostly identity theft cases. One explanation for the increase in victim reports could be greater consumer awareness of identity theft and greater use of free annual credit bureau checks, resulting in more frequent credit report checks.

Figure 25 also shows a nearly 88% increase in the reports of borrowers contacting lenders to request a change in the Social Security Number associated with their loans. The borrowers were, in effect, revealing that they used a fraudulent Social Security Number at the time the loan was initiated.

Securities and Futures Industries (SAR-SFs)

In this updated study, FinCEN also examined Suspicious Activity Reports by securities firms involved in the issuance and sale of mortgage-backed securities. Eighteen filers submitted 36 Suspicious Activity Report by the Securities and Futures Industries (SAR-SF) forms indicating activity involving suspected mortgage loan fraud from the mandated reporting date of January 1, 2003 through May 1, 2007. These reports were retrieved using narrative searches for the terms: "securitized loans," "mortgage loan," within three words of "pooled investment," "real estate securities," "collateralized mortgage," "mortgage insurance," "sub-prime" and "fraud" within three words of "mortgage."[31]

These SAR-SFs reported the following activities:

- Asset fraud. Filers reported that account statements provided as proof of a borrower's assets had been fraudulently altered. This fraud was discovered when lenders requested re-verifications of the account statements.
- Securities accounts containing proceeds from possible mortgage fraud. Filers reported that individuals identified in news media articles as either suspected or convicted of mortgage loan fraud held accounts with the filers. No filers were able to confirm if the accounts were funded with proceeds from the fraudulent activity. Accounts held by these subjects were included in on-going due diligence programs.
- Life insurance policies possibly funded with proceeds from possible mortgage fraud. Two life insurance companies reported that their clients were identified in news media as being associated with mortgage loan fraud. The filers could not determine if the policies were funded with proceeds derived from mortgage fraud schemes. The news articles were reviewed as part of on-going due diligence programs.

31. The searches did not retrieve SAR-SFs reporting fraud in securitized or pooled mortgages.

Conclusion

A review of SARs suggests that although reports of suspected mortgage loan fraud continue to grow, the filers appeared to be initiating more stringent practices to prevent it. Although reports of mortgage loan fraud increased, a higher percentage of filers over previous years indicated detection of potential fraud earlier in the loan process. Reports that were reviewed demonstrated due diligence measures strengthened, at least in part, by practicing a thorough verification of data received from third parties. Consequently, the reviewed SAR filings showed a pre-funding fraud detection rate of nearly 31%, an improvement of ten percentage points over the previous years.

Narrative details in the reviewed SARs identified mortgage brokers as the loan originators for the majority of the suspected fraudulent loans; 1,025 of 1,769 narratives (nearly 58%) disclosed that the loans were originated by mortgage brokers. Details from sampled narratives identified depository institution filers as loan originators in 179 SARs (10%). Of those SARs, the fraud was detected prior to loan financing on 60 SARs (nearly 34%). Since mortgage brokers are not required to file suspicious activity reports, the number of applications rejected by mortgage brokers for suspected mortgage fraud can not be estimated from SAR filings.

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The SAR Activity Review – By the Numbers
Issue 13 (January 2010)

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[1] Formerly Form TD F 90-22.56.

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Section 4: **<u>Suspicious Activity Report by Securities & Futures Industries (FinCEN Form 101),[2] from January 1, 2000 through June 30, 2009</u>**

Exhibit 1:	Filings by Year & Month
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Exhibit 8:	Type of Suspicious Activity by State & Territory by Year

[2] Includes suspicious activity reported by a certain segment of the insurance industry (those insurance companies offering covered products), since May 2, 2006. See footnote 4.

Introduction

Welcome to the thirteenth issue of *The SAR Activity Review – By the Numbers*, a compilation of numerical data gathered from Suspicious Activity Report (SAR) forms filed by depository institutions since April 1, 1996, certain Money Services Businesses (MSB) since January 2002,[3] casinos and card clubs since August 1, 1996, segments of the securities and futures industries since January 2003, and certain segments of the insurance industry since May 2006.[4] *By the Numbers* serves as a companion piece to the *SAR Activity Review - Trends, Tips & Issues*, which provides information about the preparation, use, and utility of SARs.

By the Numbers is published twice a year, and covers two filing periods: January 1 to June 30, and July 1 to December 31. The numerical data from the filing periods is available on FinCEN's website after the end of each period. Issue 12 of *By the Numbers* (July 2009) covered SARs filed through December 31, 2008, and may be accessed through the following link: http://www.fincen.gov/news_room/rp/files/sar_by_numb_12.pdf.

In Issue 8 (June 2007), FinCEN introduced a new reporting format for on-line readers by enhancing the data provided in Exhibit 2 for depository institution SARs. This feature allowed readers to link from a U.S. state to various visual representations of the numerical data, including graphs, charts and maps showing "hot spots." In Issue 10 (May 2008), we added this data enhancement feature to Section 3, Exhibit 2 (for casinos and card clubs SARs). In Issue 12 (July 2009), we added the enhancement to Section 4, Exhibit 2 (for securities & futures industries SARs). Note that this data enhancement feature is produced only for even-numbered issues of *By the Numbers*, which contain a full year of data. Look for the next update for this reporting format in Issue 14.

A review of the numerical data generated for Issue 13 reveals some interesting facts. In the first six months of 2009, the total volume of SARs within the Bank Secrecy Act (BSA) database increased 9%, compared to the corresponding six-month period in 2008. From January 1, 2009 to June 30, 2009, non-depository institution SARs increased 8%, compared to the corresponding six-month period in 2008. Non-depository institution SARs comprised roughly 43% of all reports filed, unchanged when compared to the corresponding six-month period in 2008.

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[3] Although the mandatory suspicious activity reporting requirement for certain money services businesses became effective on January 1, 2002, the Suspicious Activity Report by Money Services Business (SAR-MSB) form was not available for industry use until October 1, 2002. (MSB filers reported suspicious activity on Form TD F 90-22.47, between January 1, 2002 and September 31, 2002. The filing data for that nine-month period is included in Section 1 of this report. Some filers continued using TD F 90-22.47 after the SAR-MSB form became effective on October 1, 2002. That filing data also is found in Section 1.)

[4] A dedicated SAR form for insurance companies has not been released. Therefore, FinCEN instructed insurance companies to use FinCEN Form 101, Suspicious Activity Report by the Securities and Futures Industries. As a result, filing data for certain segments of the insurance industry are included in Section 4.

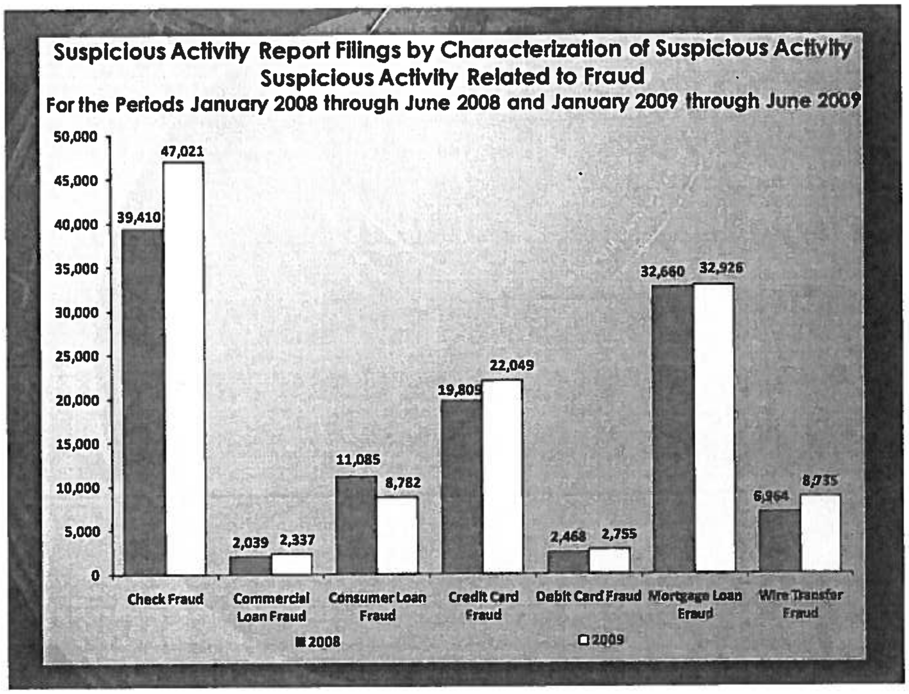
	Number of Suspicious Activity Report Filings by Year										
Form	1996 – 1999[5]	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009[6]
Depository Institution	360,611	162,720	203,538	273,823	288,343	381,671	522,655	567,080	649,176	732,563	376,018
Money Services Business	-	-	-	5,723	209,512	296,284	383,567	496,400	578,439	531,761	268,588
Casinos and Card Clubs	1,123	464	1,377	1,827	5,095	5,754	6,072	7,285	9,943	11,162	5,660
Securities & Futures Industries	-	-	-	-	4,267	5,705	6,936	8,129	12,881	15,104	9,078
Subtotal	361,734	163,184	204,915	281,373	507,217	689,414	919,230	1,078,894	1,250,439	1,290,590	659,344
Total	**7,406,334**										

Suspicious Activity Report by Depository Institution / TD F 90-22.47 (from April 1, 1996 through June 30, 2009)

- Twenty-seven percent of the forms filed in the first six months of 2009 can be attributed to suspected fraud-related activities (check fraud, mortgage loan fraud, consumer loan fraud, wire transfer fraud, commercial loan fraud, credit card fraud and debit card fraud), based on the Characterization of Suspicious Activity selected in the reports by filers. The following table depicts the comparisons of those specific fraud-related activities for depository institution SARs filed between January and June 2008 with those filed between January and June 2009.

[5] Filing years 1996 - 1999 represent an aggregate total for this period. See previous editions of *By the Numbers* for an annual breakdown for years 1996 through 1999.

[6] Represents SARs filed through the first six months of 2009. The full 2009 numbers will appear in Issue 14.



- The number of depository institution SARs identifying Mortgage Loan Fraud[7] as a Characterization of Suspicious Activity continues to rise. The first six months of 2009 revealed a slight increase (1%) in the number of Mortgage Loan Fraud suspicious activity reports compared to reports filed during the same period in 2008. This increase is in contrast to a 39.31% increase when comparing the first six months of 2007 and 2008. Mortgage Loan Fraud presently ranks third, compared to ranking sixth in the corresponding six-month reporting period in 2008.
- Reported instances of Check Fraud increased 19% in the first six months of 2009, compared to the corresponding six-month reporting period in 2008. Two other check-related suspicious activities not depicted in the table also saw change during this period. SARs listing Counterfeit Check increased 36%, compared to the corresponding six-month period in 2008. Reported instances of Check Kiting decreased 13% in the first six months of 2009, compared to the corresponding six-month reporting period in 2008.

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[7] For additional information gleaned from SARs involving Mortgage Loan Fraud, see FinCEN's five past analytic products at http://www.fincen.gov: Mortgage Loan Fraud Update (published in *The SAR Activity Review - Trends, Tips & Issues* [Issue 16, October 2009]) PDF Only; *Mortgage Loan Fraud Connections with Other Financial Crime* (March 2009) PDF Only; *Filing Trends in Mortgage Loan Fraud* (February 2009) PDF Only; *Mortgage Loan Fraud: An Update of Trends based Upon an Analysis of Suspicious Activity Reports* (April 2008) PDF Only; and *FinCEN Mortgage Loan Fraud Assessment* (November 2006) HTML | PDF

- Since January 2000, a total of 60,143 depository institution SARs have been filed identifying Wire Transfer Fraud as the Characterization of Suspicious Activity. Of these reports, 39% were filed in 2008 and during the first half of 2009. Additionally, in the first six months of 2009, Wire Transfer Fraud filings increased 25%, compared to the corresponding six-month reporting period in 2008.

Other trends observed in depository institution SARs:

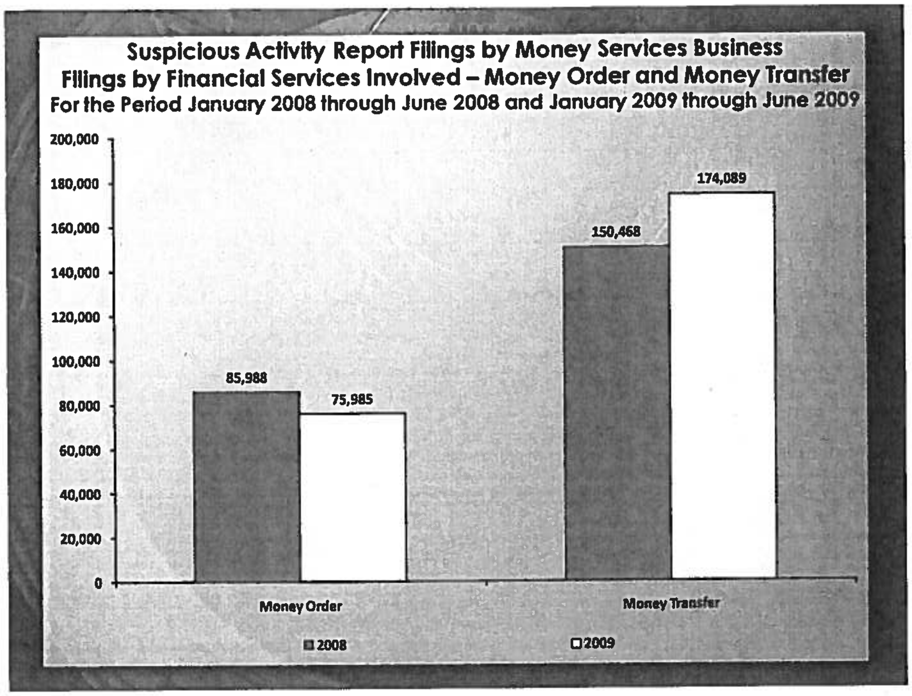
- The volume of SAR filings in the first six months of 2009 increased 9%, compared to reports filed during the same period in 2008.
- Between January 1 and June 30, 2009, depository institution SARs characterizing Computer Intrusion as the type of suspicious activity increased 75%, compared to the corresponding six-month reporting period in 2008.
- In the first six months of 2009, the number of SARs where filers identified the Primary Federal Regulator as Comptroller of the Currency increased 31%, compared to the corresponding six-month period in 2008.
- Suspicious Activity Reports indicating Office of Thrift Supervision as the Primary Federal Regulator decreased 54% in the first six months of 2009, compared to the corresponding six-month reporting period in 2008.
- The number of depository institution SARs where filers specified "Broker" as the Relationship to Financial Institution decreased 46% in the first six months of 2009, compared to the corresponding six-month reporting period in 2008.
- SARs indicating the subject's Relationship to Financial Institution as "Director" increased 28% in the first six months of 2009, compared to the corresponding six-month reporting period in 2008.

Suspicious Activity Report by Money Services Business / FinCEN Form 109 (from October 1, 2002[8] through June 30, 2009)[9]

- The volume of MSB filings in the first six months of 2009 increased 7%, compared to SARs filed during the same period in 2008.
- In 2009, filers continued to report money transfers and money orders as the leading types of financial service related to suspicious activity. In the first six months of 2009, reports on money transfers increased 16%, compared to reports filed during the same period in 2008. At the same time, reports on money order activity decreased 12%.

[8] See footnote 3.

[9] FinCEN Form 109 (formerly TD F 90-22.56), which replaced the original SAR-MSB form, became effective on March 31, 2007. Form 109 eliminated field 2, "Type of Filer," which explains the significant increase in reports where the type of filer was unspecified (left blank). Therefore, Section 2, Exhibit 6 (SAR-MSB Filings by Type of Filer) has been eliminated as an exhibit.



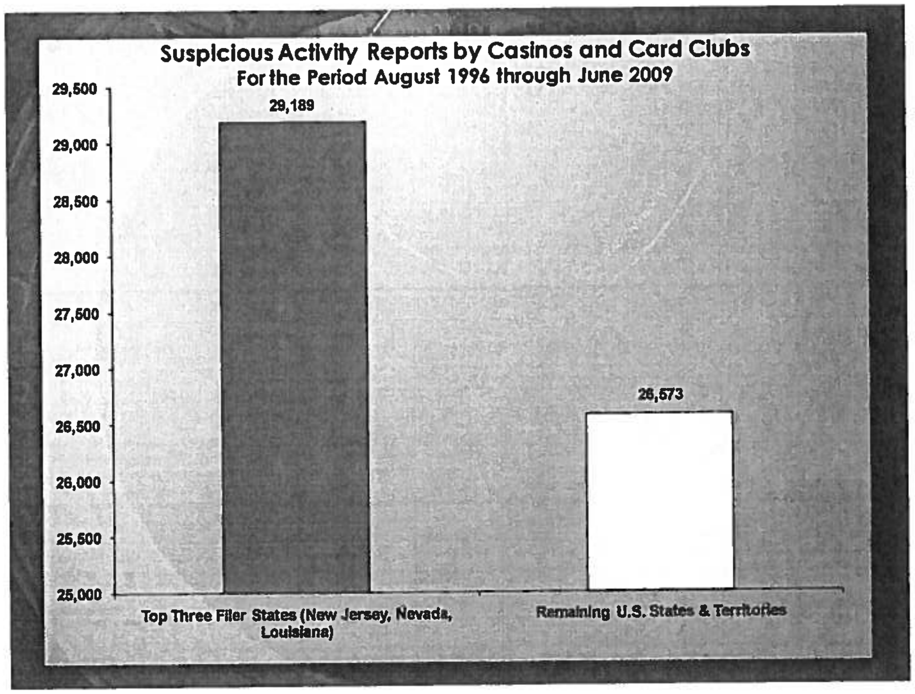
- Reports involving money transfers accounted for 65% of the MSB filings for the period, followed by reports involving money orders which comprised 28%.
- The number of instances where MSB filers listed Traveler's Checks as the Financial Service Involved increased 76% in the first six months of 2009, compared to reports filed during the same period in 2008.
- In the first six months of 2009, SAR-MSBs characterizing the suspicious activity as "Same individual(s) using multiple locations over a short time period" increased 25%, compared to reports filed during the same period in 2008.
- SAR-MSB filings characterizing the suspicious activity as "Changes spelling or arrangement of name" decreased in 2008, down 62% from the previous year. However, the first six months of 2009 revealed an increase of 18%, compared to reports filed during the same period in 2008.

Suspicious Activity Report by Casinos and Card Clubs / FinCEN Form 102 and, previously, TD F 90-22.49 (from the reporting date in January 1, 2000 through June 30, 2009)[10]

- The number of SARs filed by casinos and card clubs for the first six months of 2009 increased 5%, compared to reports filed during the same period in 2008.

[10] Also includes 85 forms filed by casinos and card clubs in August 1996 prior to the mandatory reporting requirement.

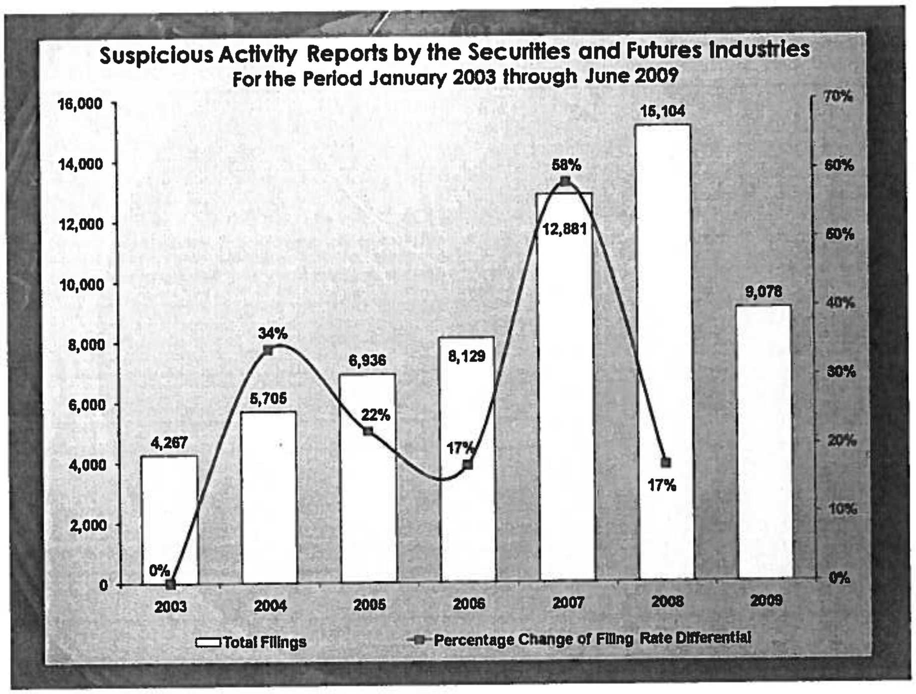
- The number of casino and card club SARs submitted by filers from three states (New Jersey-15,764 reports; Nevada-10,026 reports; and Louisiana-3,399 reports) accounted for 52% of all casino and card club filings from August 1996 through June 2009.



- The number of casino SARs which identified "Unusual Use of Negotiable Instruments (Checks)" as the type of suspicious activity increased 16% during the first six months of 2009.
- In the first six months of 2009, casino SARs characterizing the suspicious activity as "Minimal Gaming with Large Transactions" revealed an increase of 9%, compared to the corresponding six-month reporting period in 2008.
- State licensed casino filings increased 8%, and Tribal licensed casino filings increased 2%, in the first six months of 2009 when compared to reports filed during the same period in 2008.
- The number of casino SARs reporting "Check Fraud (Includes Counterfeit)" rose 18% during the first six months of 2009.
- The number of casino SARs identifying "No Apparent Business or Lawful Purpose" as the type of suspicious activity rose 38% in the first six months of 2009 over those filed during the same period in 2008.

Suspicious Activity Report by the Securities and Futures Industries / FinCEN Form 101 (from the mandated reporting date in January 2003 through June 30, 2009)[11]

- Overall suspicious activity reporting volume has increased every year since the inception of such reporting by the securities and futures industries. Filing rate differentials modestly declined from 2004 through 2006, increased significantly in 2007, and decreased substantially in 2008. The total suspicious activity reporting volume in the first six months of 2009 increased 29%, compared to the same period in 2008.



- In the first six months of 2009, the number of SAR-SFs characterizing the suspicious activity type as Bribery/Gratuity increased 95%, nearly surpassing the number for all of 2008.
- SAR-SF filings characterizing the suspicious activity type as Check Fraud increased 19%, when compared to the corresponding six-month period in 2008.
- In the first six months of 2009, the number of SAR-SFs characterizing the suspicious activity type as Computer Intrusion decreased 41%, compared to the corresponding six-month period in 2008.
- SAR-SF filings characterizing the suspicious activity type as Wash or Other Fictitious Trading experienced a notable increase (150%) in the first six months of 2009.

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[11] See footnote 2 regarding SARs filed by certain segments of the insurance industry with mandatory reporting requirements effective May 2, 2006.

- In 2009, the suspicious activity types of Mail Fraud and Significant Wire or Other Transaction without Economic Purpose saw increases of 52% and 56%, respectively, compared to reports filed during the same period in 2008.
- SAR-SFs characterizing the suspicious activity type as Wire Fraud increased 35%, compared to the corresponding six-month period in 2008.
- SAR-SF filings characterizing the instrument types as Foreign Currency Futures and Foreign Currencies increased significantly in the first six months of 2009 compared to the corresponding six-month period in 2008. Foreign Currency Futures and Foreign Currencies filings in the first six months of 2009 were 450 and 252, respectively, up from 17 and 83 during the same period in 2008.
- The filer types identified in the category "Type of Reporting Institution or Individual" also saw significant increases in certain categories in the first half of 2009: Securities Brokers – Clearing and Introducing (35% and 19%, respectively); Securities Dealer (27%); and Securities Floor Broker which rose from 12 reported instances in the first six months of 2008 to 201 during the same period in 2009. The number of SAR-SFs which identified the filer as a Futures Commission Merchant increased substantially (453%) from 185 reported instances in the first six months of 2008 to 1,023 filed between January and June 2009, surpassing the number (786) for all of 2008.

As always, we welcome your suggestions and comments. Questions regarding present, past, or future issues of *By the Numbers* may be directed to FinCEN's Regulatory Policy and Programs Division, Office of Regulatory Analysis at (703) 905-3968 or by contacting webmaster@fincen.gov.

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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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.

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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

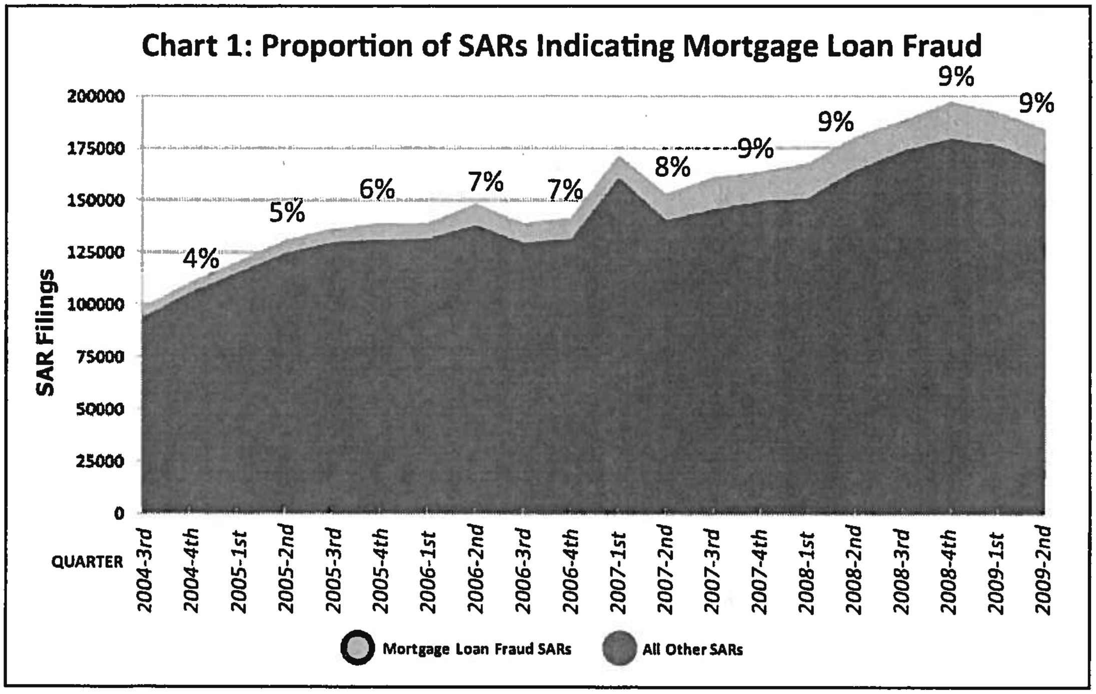
This update to FinCEN's prior Mortgage Loan Fraud (MLF) studies looks at filings during the first six months of 2009 and provides new information on subject roles and geographic locations. Two illustrations provide rankings by State and metropolitan areas for subject locations reported during this period. 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]

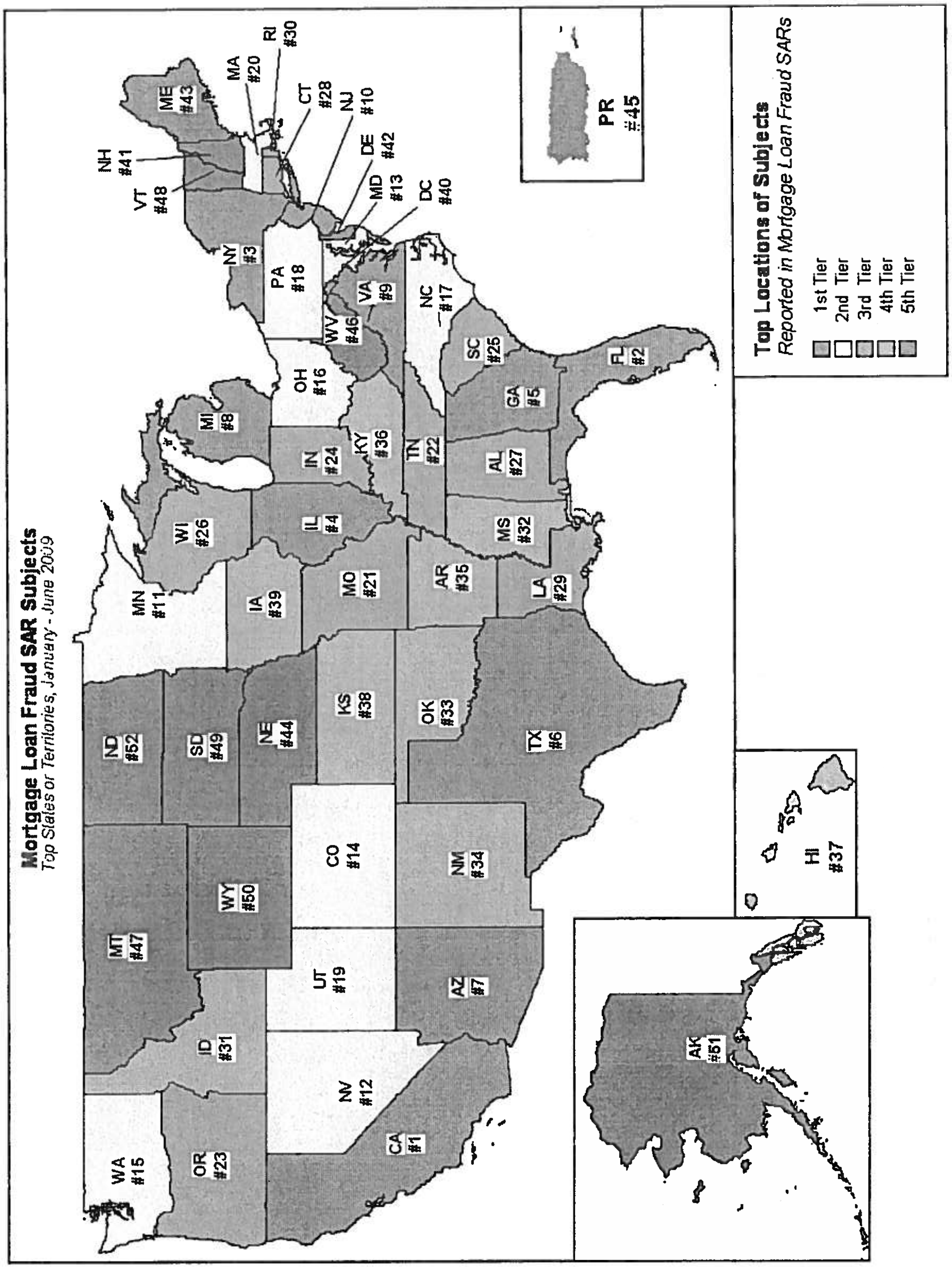
5. SAR Part II, 301.

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
MI #8
IN #24
KY #36
TN #22
MS #32
AL #27
GA #5
FL #2
SC #25
NC #17
VA #9
WV #46
OH #16
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
HI #37
AK #51

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	43	Kansas City, MO-KS	202
19	Houston-Sugar Land-Baytown, TX	777	44	Virginia Beach-Norfolk-Newport News, VA-NC	183
20	Denver-Aurora, CO	711	45	Vallejo-Fairfield, CA	183
21	Seattle-Tacoma-Bellevue, WA	672	46	Milwaukee-Waukesha-West Allis, WI	162
22	Philadelphia-Camden-Wilmington, PA-NJ-DE-MD	562	47	Fresno, CA	161
23	Cape Coral-Fort Myers, FL	499	48	Palm Bay-Melbourne-Titusville, FL	160
24	Boston-Cambridge-Quincy, MA-NH	497	49	Provo-Orem, UT	156
25	Portland-Vancouver-Beaverton, OR-WA	481	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

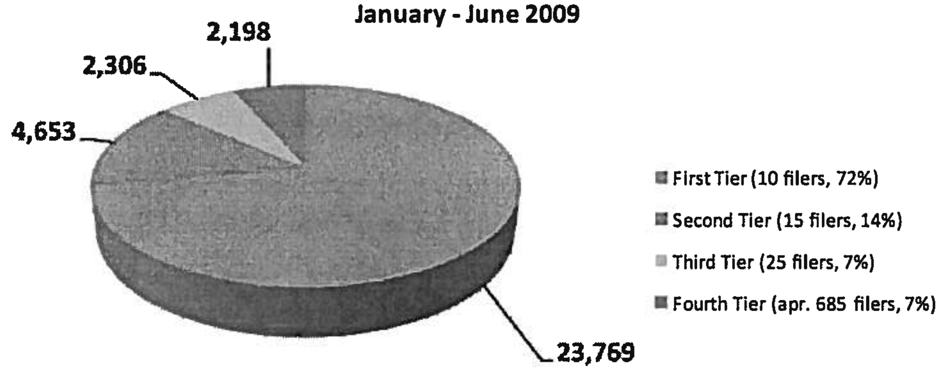
In some MLF SARs, filers provided additional information about activities by using the "Other" suspicious activity field. Table 5 provides a list of the most frequent types of "Other" activities filers described in this field.

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

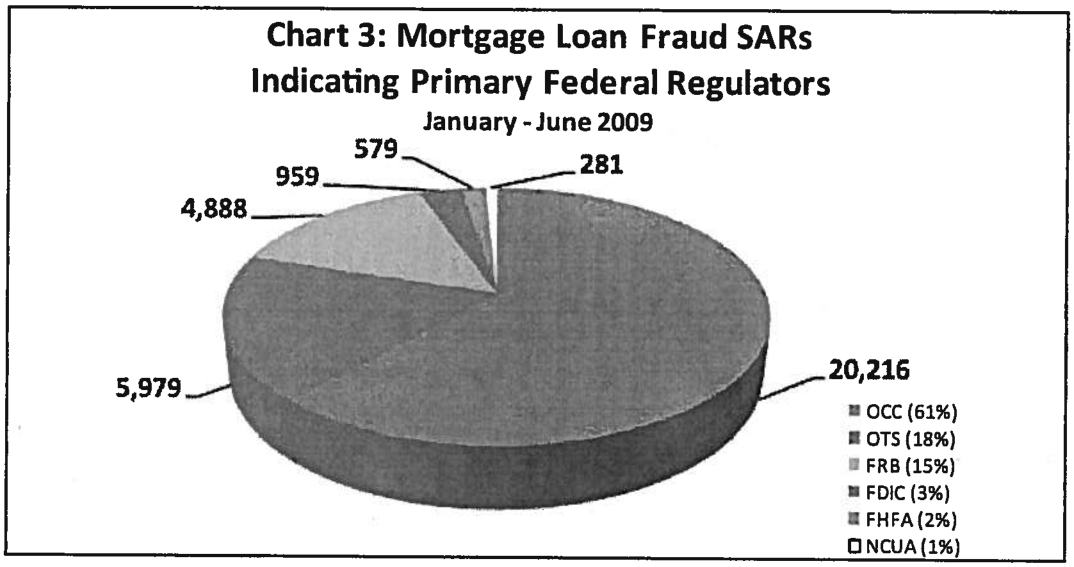
In the first half of 2009, approximately 735 financial institutions submitted MLF SARs, or about 50 more filers compared to the same period in 2008. The top 50 filers submitted 93 percent of all MLF SARs, consistent with the same 2008 filing period. However, MLF SARs submitted by the top 10 filers increased 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.

Chart 2: Mortgage Loan Fraud SAR Filings Concentration Among Filers
January - June 2009



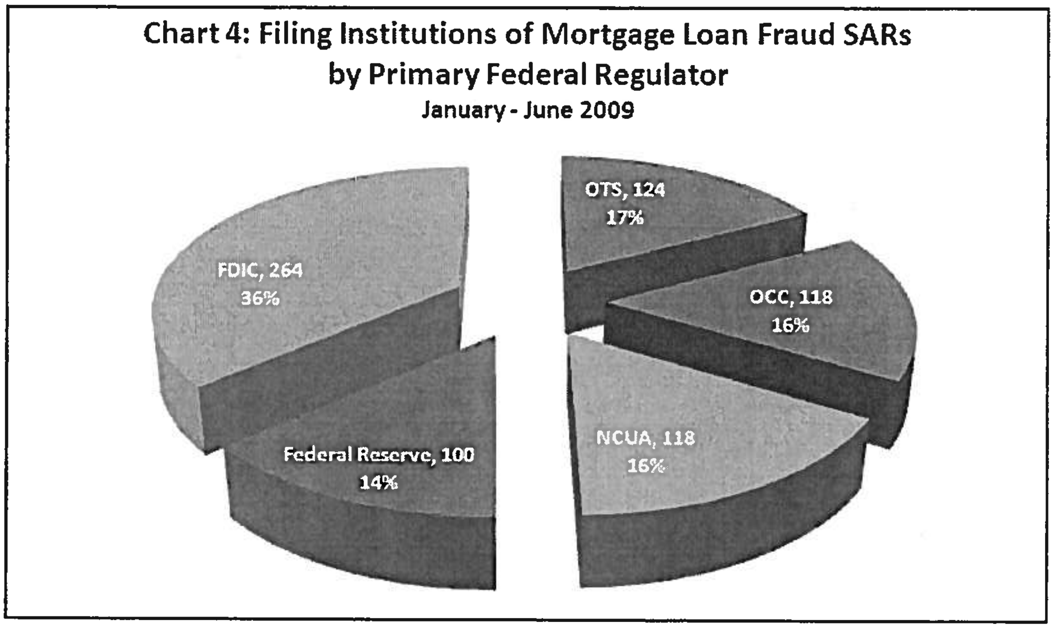
Federal Regulators

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).

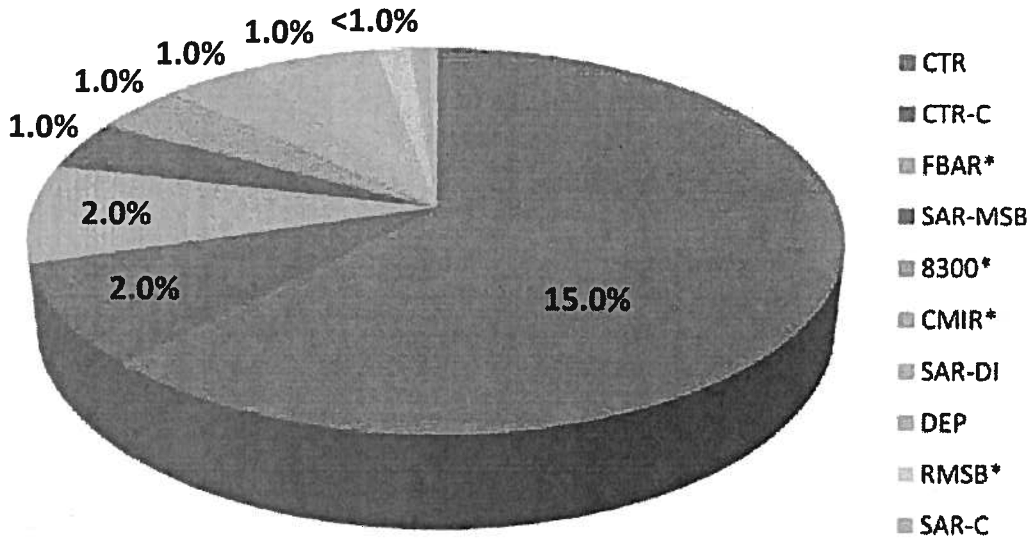
Exhibit 1. Comparison of Electronic and Paper Bank Secrecy Act (BSA) Filings (2008)

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?

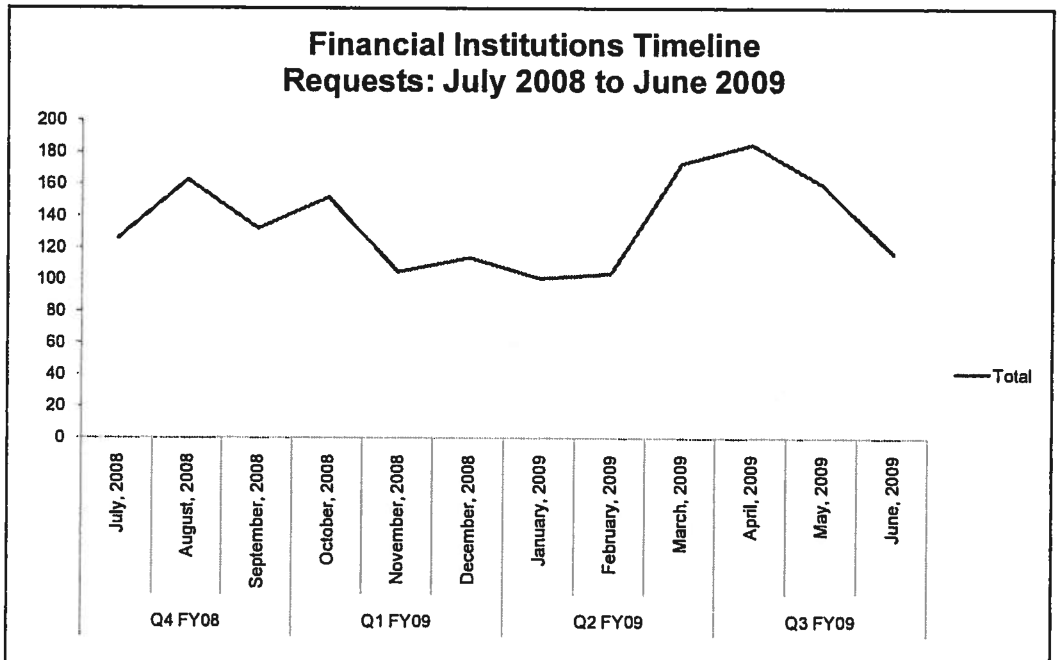
Once a financial institution has determined that E-Filing is the right choice, enrollment is simple and free. Institutions need only apply for a system account by going to the BSA E-Filing home page located at http://bsaefiling.fincen.treas.gov/, calling the BSA E-Filing Help Desk at 888-827-2778 (option 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]



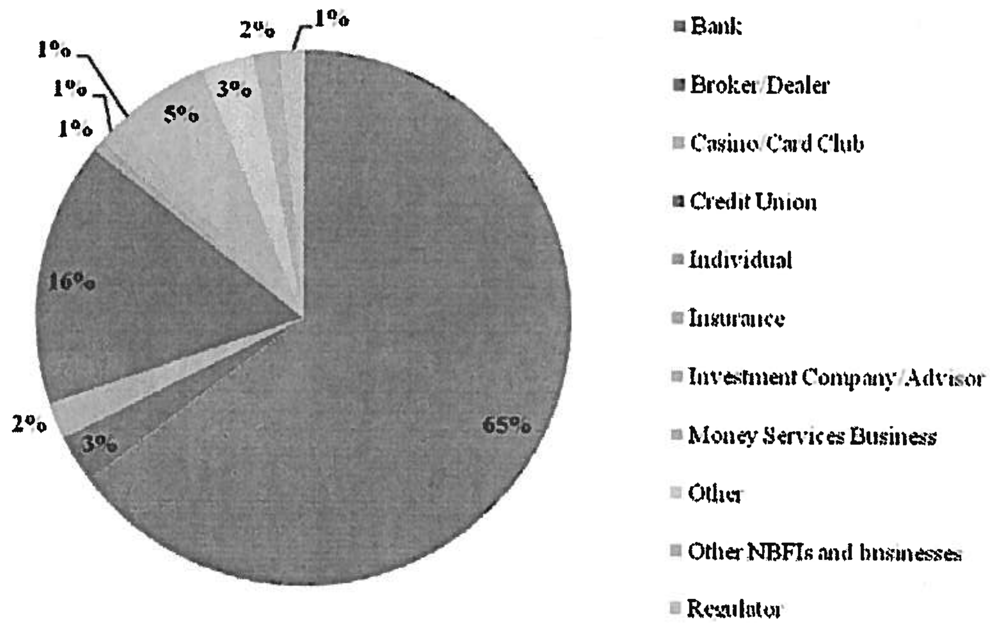
11. All information provided in this publication has been aggregated to ensure each individual requestor's confidentiality.

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
July 28, 2009

Contact: Alicia Maxey Greene
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

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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.

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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?"

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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.