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REVIEWING FinCEN OVERSIGHT REPORTS

HEARING

BEFORE THE

SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

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REVIEWING FinCEN OVERSIGHT REPORTS

Wednesday, April 28, 2010

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2:07 p.m., in room 2128, Rayburn House Office Building, Hon. Dennis Moore [chairman of the subcommittee] presiding.

Members present: Representatives Moore of Kansas, Lynch, Adler; Biggert, McHenry, and Paulsen.

Chairman MOORE OF KANSAS. This hearing of the Subcommittee on Oversight and Investigations of the House Financial Services Committee will come to order.

Our hearing this afternoon is entitled, "Reviewing FinCEN Oversight Reports." We will begin this hearing with members' opening statements up to 10 minutes per side, and then we will hear testimony from our witnesses. For each witness panel, members will have up to 5 minutes each to question our witnesses.

The Chair advises our witnesses to please keep your opening statements to 5 minutes to keep things moving so we can get to members' questions. Also, any unanswered question can always be followed up in writing for the record.

Without objection, all members' opening statements will be made a part of the record, and I will now recognize myself for up to 5 minutes for an opening statement.

The Financial Crimes Enforcement Network or FinCEN was first established by the Treasury Department in 1990 to provide a government-wide multi-source financial intelligence and analysis network.

The organization was later formalized as an official bureau within the Treasury Department by the USA PATRIOT Act of 2001, when the Bank Secrecy Act's scope was expanded to focus on stopping terrorist financing as well as money laundering.

FinCEN administers the Bank Secrecy Act (BSA) and is responsible for the process in which financial institutions file suspicious activity reports or SARs. FinCEN will then analyze that information and provide the information analysis to a wide range of law enforcement, intelligence, and regulatory agencies.

As we know too well, the tragic attacks on the United States on September 11, 2001, exposed our broken intelligence system where one agency knew one thing but another agency did not know and

was not empowered with that vital information to try to prevent these attacks.

While most of our focus in Congress this past year has been to provide tough TARP oversight and strengthen our financial regulatory system following the financial crisis of 2008, stopping terrorist financing and money laundering remain top priorities.

Let me be clear. We must remain vigilant and ensure that our law enforcement and other agencies have all the information they need to do their job in better protecting our country. Our constituents expect and deserve nothing less.

Today, we will be reviewing three oversight reports—one by the Treasury Inspector General, and two by GAO—that examined FinCEN's efforts to improve SAR data quality and communication with law enforcement. With limited resources, FinCEN must leverage resources to do much better in both.

I look forward to hearing how FinCEN has responded to these oversight reports and learning what concrete steps they have taken to address the recommendations made by GAO and the Treasury IG.

While I am glad we have the Treasury IG testifying today on FinCEN oversight, I am not pleased Congress has effectively tied his hands and put his office and other Inspectors General under a tremendous burden with the material loss review mandates.

While learning lessons from bank failures is important, tough oversight of fraudulent loan modification schemes, private bank BSA compliance, and many other priorities are just as important.

Under the bipartisan leadership of Representatives Steve Driehaus and Christopher Lee of this subcommittee, the House acted last year by passing H.R. 3330 to provide the flexibility that our Inspectors General desperately needed.

I was pleased to see a version of our legislation in the Senate financial regulatory reform bill, but as is often the case, when comparing House and Senate legislation, our version, we believe, is clearly better, and we will continue fighting to fully empower our Inspectors General with the oversight tools they need.

I now recognize for 5 minutes the ranking member of the subcommittee and my colleague from Illinois—it is not Judy Biggert, she is not here right now—I am going to recognize Mr. McHenry, Patrick McHenry.

Mr. MCHENRY. That might be a slight insult to Judy. She is much more attractive and a nicer lady.

[laughter]

Mr. MCHENRY. Thank you, Mr. Chairman. Thank you for holding the hearing today. Obviously, Treasury and FinCEN are certainly vital in the United States to stop the money laundering and financing of terror.

Law enforcement needs a quick dependable way to track the money involved in crimes, and financial institutions often serve as the first line of defense in preventing financial crimes and providing critical information to law enforcement. This is a complex and difficult task, obviously, but it is also imperative that we make certain it is done correctly.

Since its inception, FinCEN has had to depend on the IRS for the bulk of its computing and data storage, a situation that made sense at first, but is now at best inefficient.

Congress last year approved an amendment by Congressman Paulsen, who is here today on the subcommittee, to start the process of updating FinCEN's computers, but unfortunately, the Obama Administration has reduced its Fiscal Year 2011 budget requests for FinCEN by nearly 10 percent.

FinCEN needs the proper resources to do its job, and that means it must have its own computer system and the clear responsibility to make sure it works correctly.

It is unrealistic to imagine that every suspicious activity report will result in an investigation or a conviction, but FinCEN and law enforcement should have the hardware and software and other resources to search data reported by financial institutions quickly and thoroughly. Faulty data is unacceptable, whatever the reason.

If online retailers can instantly see that an order being placed is missing essential data, certainly FinCEN and the IRS should have the capacity and capability to detect incomplete suspicious activity reports and see the missing data.

I look forward to hearing from the witnesses, especially the IG and the GAO, and I look forward to seeing an ongoing discussion about FinCEN's necessary resources to do its job.

I yield back.

Chairman MOORE OF KANSAS. The Chair now recognizes Mr. Lynch from Massachusetts for up to 5 minutes.

Mr. LYNCH. Thank you, Mr. Chairman. I want to thank you for holding this very important hearing today. I would like to welcome our witnesses and thank them for their willingness to help the committee with its work.

I have met with GAO, as well as Director Freis, regarding the reports that I, together with Chairman Frank, requested some time ago, and I am eager to discuss them further during this hearing.

I wanted to provide some context, however, as to my own experience with FinCEN, and my knowledge of the good work that they do.

FinCEN's mission to provide a government-wide, multi-source financial intelligence and analysis network is global and often goes unknown or unrecognized. FinCEN's regulatory responsibilities include administering the Bank Secrecy Act, the United States' primary anti-money laundering counterterrorist financing regulatory regime.

They also support law enforcement, intelligence and regulatory agencies through the sharing and analysis of financial intelligence, and lastly, and this is the area that I work with them most often on, I am proud to be the co-chair of the Anti-Terrorist Financing Task Force, which builds global cooperation and offers technical expertise among financial intelligence units throughout the world.

The recent GAO study found that suspicious activity report filings increased from 163,000 per year in 2000 to 649,000 per year in 2007. I can only imagine that has increased since then.

This is an immense amount of information to manage and review. FinCEN works with every major administrative department to detect fraud and abuse, from the Federal Housing Authority, try-

ing to help identify bad lenders, to Health and Human Services, to root out fraud in the reimbursement process.

FinCEN opens up its database and provides essential information in numerous cases each year. FinCEN's responsibility was also broadened under the 2001 PATRIOT Act which expanded the Bank Secrecy Act to include money laundering and terrorist financing.

FinCEN plays a dual role in supporting domestic law enforcement and intelligence agencies through sharing their analysis of financial intelligence while simultaneously building that global cooperation with our counterparties in financial intelligence units (FIUs) around the world.

In my travels abroad to the Middle East and other regions, I have been able to meet with FIUs in a variety of countries to view FinCEN's international work firsthand.

As the co-chair of the Task Force on Terrorist Financing and Anti-Proliferation, I visited countries like Morocco, Tunisia, Jordan, and Afghanistan. We worked together in the West Bank. We have some problems in Gaza as well.

I am just very thankful for FinCEN's help and guidance in all of those important places doing important work to combat the flow of illicit funds to terrorist organizations.

I have seen the relationships developed between foreign governments and our Treasury officials. The information FinCEN can provide those FIUs is invaluable. These relationships formed as international governments establish FIUs and join FATF, the Financial Action Task Force, are key to FinCEN's long-term success in combating financial terrorism, both in the United States and abroad.

However, despite this important dynamic, I am concerned that due to budget constraints, private contractors are increasingly doing the work that FinCEN has done in the past.

In its 2006 report, FATF cited FinCEN's important role in facilitating domestic coordination and cooperation. However, it also warned that it is essential that FinCEN maintain its key role within the anti-money laundering and counterterrorism financing chain, and without proper funding and a presence in the international community, FinCEN cannot maintain that leadership role.

The Obama Administration announced in November of 2009 an initiative to hold accountable those who helped bring about the last financial crisis. While that is commendable, this program is comprised of more than 20 Federal agencies including FinCEN, 94 U.S. Attorney Offices, and State and local partners, and provides FinCEN with no additional resources to do all that extra work and coordinate and contribute to the Task Force.

This is just one recent but glaring example of how FinCEN is spread far too thin with too few resources to adequately accomplish its mission.

I am amazed that they do as much as they fo, as well as they do it, given the resources they have been given.

I look forward to addressing these issues in the future and helping FinCEN maintain its prominence within the intelligence and law enforcement communities.

Mr. Chairman, thank you very, very much for your willingness to hold this hearing, and thank you for the time, and I look forward to hearing from our witnesses.

Chairman MOORE OF KANSAS. Thank you, Mr. Lynch. I appreciate your testimony. Next, Mr. Paulsen has requested 2 minutes. Mr. Paulsen, you are recognized, sir, for 2 minutes.

Mr. PAULSEN. Thank you, Mr. Chairman. I also want to thank you for holding today's hearing. I appreciate it.

Financial institutions often serve as the first line of defense in detecting financial crimes and providing critical information to law enforcement, and the information that is provided to government organizations by FinCEN is essential to catching criminals and defeating terrorism ultimately.

The ability to follow the money trail provides our intelligence and law enforcement community with information that leads to a broader understanding of terrorist organizations and drug dealers.

As my colleague, Representative McHenry, had mentioned just a little while ago, I offered an amendment during last year's appropriations process to help provide funding to FinCen for additional resources to more effectively combat financial crimes, and it was my hope that this funding would be used to help provide needed support and coordination with Federal, State, and local law enforcement.

I look forward to hearing more about the modernization that FinCEN is currently undergoing and I look forward to the testimony today, and thank the witnesses for coming before us today, Mr. Chairman.

Chairman MOORE OF KANSAS. Thank you, sir. I am pleased to introduce our first panel of witnesses. First, we will hear from Mr. James Freis, Jr., Director of the Financial Crimes Enforcement Network, FinCEN, at the U.S. Department of the Treasury. Then, we will hear from the Honorable Eric Thorson, Inspector General for the Treasury Department.

We are glad to have you testify before our subcommittee again, Inspector General Thorson.

Without objection, your written statements will be made a part of the record.

Director Freis, you are recognized for 5 minutes to provide a brief summary of your statement, sir.

STATEMENT OF JAMES H. FREIS, Jr., DIRECTOR, FINANCIAL CRIMES ENFORCEMENT NETWORK (FinCEN)

Mr. FREIS. Thank you. Chairman Moore, members of the subcommittee, I am Jim Freis, the Director of FinCEN. It is a pleasure to be here today to discuss the findings from oversight reports published by the GAO and the Treasury Inspector General that review FinCEN's support to law enforcement and the quality and usefulness of suspicious activity reports, known as SARs.

With the exception of the IG report on SAR quality, which is no longer representative of today's SAR quality standards, FinCEN agrees with the findings and recommendations included in these reports, and I am pleased to say that significant progress has been made on all fronts to improve upon the areas identified as in need of improvement.

As the Inspector General notes in his testimony, the findings included in his report are based on SAR filings from Fiscal Year 2006, and do not take into account the significant efforts we have

made since then toward the overall objective, which he and I share, to improve both the quality and the accuracy of SAR data.

With respect to the GAO's examination into how FinCEN's mission, services, and resources in support of law enforcement agencies have evolved, FinCEN concurs with the findings and recommendations of this report, and we are encouraged to see that it recognized the value of our efforts and the unique expertise we provide in addition to correctly illustrating our important role in supporting law enforcement's prosecution of financial crimes, all this while balancing the needs and priorities of over 300 Federal, State, and local law enforcement agencies, and providing regular and ongoing support to Federal and State regulatory authorities and foreign law enforcement around the world.

The report made a series of recommendations for actions that are designed to maximize the relevance and usefulness of FinCEN's law enforcement support capabilities, such as establishing a process for informing law enforcement agencies and soliciting input about the availability of our various analytical products and the process for selecting which products to pursue.

As I note in my affirmative testimony, in October 2009, FinCEN's Office of Law Enforcement Support initiated an effort to address communication with law enforcement on three levels: first, our analytical products; second, the work flow process; and third, outreach. As part of this effort, FinCEN has developed plain language descriptions of the types of analytical products and services we provide and the data sources and analytical tools available to us. These descriptions are designed for broad dissemination to all levels of Federal, State, and local law enforcement to enhance the communication and understanding of the various analytical products and services available.

Regarding the GAO's examination into the degree to which law enforcement agencies actively use SARs for investigative purposes, FinCEN was pleased with the results, and we believe it represents a meaningful body of empirical data from which the Congress can glean in order to satisfy questions regarding the vital role SARs play in safeguarding our financial system.

The report also notes the efforts taken by FinCEN to improve the quality of SAR filings, and the increased and improved use of SAR data by law enforcement and regulatory authorities at all levels of government.

In its conclusion, the GAO recommended that FinCEN further develop a strategy that fully incorporates certain practices to enhance collaboration among Federal agencies into the form change process.

We agreed with the recommendation, which dovetails with an initiative FinCEN began well in advance of the report's publication. Over the past several years, we have been working toward modernizing our form management process to enable us to take advantage of the advances in electronic form development.

In doing so, we consult stakeholders to whom we have delegated BSA examination authority, law enforcement, regulated financial institutions, and the interested public.

We will continue to prioritize this multi-stakeholder comprehensive approach to form change collaboration which in turn will more than satisfy the GAO's recommendation.

Financial crimes and other illicit activities are unfortunately here to stay, and we will remain vigilant in our mission to safeguard the financial system from those who wish to manipulate it for unscrupulous purposes.

FinCEN is more committed than ever to maximizing the strengths and commonalities that exist between us, our law enforcement counterparts, and the industries we are responsible for regulating.

We are very encouraged by the progress we have made thus far, and we are dedicated to continuing to build on these accomplishments by leveraging our resources, to not only assist law enforcement in holding criminal actors accountable, but to continue our proactive analysis of emerging trends and patterns in evoking our regulatory authorities to help stop crime before it is committed.

Thank you for inviting me to testify before you today. I would be happy to answer any questions you may have.

[The prepared statement of Director Freis can be found on page 32 of the appendix.]

Chairman MOORE OF KANSAS. Thank you, Mr. Freis. I will advise the panel members, subcommittee members here, and the people in the room that votes were called about 3 or 4 minutes ago. We still have more than 10 minutes left.

The Chair at this time is going to recognize Mr. Thorson for testimony for up to 5 minutes, and following his testimony, we will recess for votes. Committee members will go over and vote and then return as quickly as possible so we can resume this hearing.

Mr. Thorson, you are recognized for up to 5 minutes, sir.

STATEMENT OF THE HONORABLE ERIC M. THORSON, INSPECTOR GENERAL, U.S. DEPARTMENT OF THE TREASURY

Mr. THORSON. Chairman Moore and members of the subcommittee, I appreciate the opportunity to appear before you this afternoon to discuss my office's most recent oversight report on FinCEN.

That report, which we issued in January of this year, addressed data quality with suspicious activity reports or SARs, filed with FinCEN by banks and other financial institutions.

As a brief background about my office, we provide independent audit and investigative oversight of most of Treasury's programs and operations. Our oversight includes FinCEN's administration of the Bank Secrecy Act or BSA.

I consider oversight in Treasury's role in preventing money laundering and combating terrorist financing to be among our highest priority work. To that end, we first designated this area as one of Treasury's most significant management and performance challenges back in 1999 and have continued to do so since then.

We have also conducted a number of audits of this area in the last decade or so, including many of FinCEN, as our resources have allowed.

To be clear, our office identified Treasury's critical role in preventing money laundering and combating terrorist financing as high risk well before the horrific events of September 11, 2001.

Unfortunately, much of the information I am presenting to you today is based on work that my office conducted some time ago, although I believe the conditions remain relevant.

The current financial crisis has had a major impact on my office's ability to do work in this and other critical areas which I will discuss later.

As the administrator for BSA, FinCEN requires banks, thrifts, credit unions, money services businesses, and others to file SARs for transactions that the institution knows, suspects or has reason to suspect are intended to evade Federal law or regulation, involve illegally obtained funds, or have no business or apparent lawful purpose.

FinCEN established the SAR database in 1996 as a single collection point for SARs to provide law enforcement agencies with critical information for specific criminal investigations, as well as to facilitate comprehensive analyses of trends and patterns in financial activity.

Filers of SAR reports are required to provide accurate information and face penalties if they do not. This is more than a matter of what is legally required.

As FinCEN stated in October 2009, "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."

We have accomplished four audits on the accuracy and completeness of SARs in FinCEN's database since 1999, and as Director Freis pointed out, our latest review was actually started in 2007, but was significantly delayed due to our failed bank workload.

That audit found that SARs filed during Fiscal Year 2006 often lacked critical information or included inaccurate data. Specifically, we found that 59 percent of the 1.1 million SARs filed in 2006 contained omissions or incorrect, inconsistent or inappropriate information in one or more of the 17 data fields that FinCEN deemed critical to law enforcement.

SARs filed by money services businesses had the highest percentage of data quality problems, 88 percent, followed by SARs filed by securities and futures firms, 50 percent, casino's and card clubs, 49 percent, and depository institutions, 34 percent.

The fields that most often had missing or erroneous data were related to the subject's taxpayer identification number, address, and name. We believe that the filer should have used more due diligence in preparing them.

To improve SAR data quality, we recommended that FinCEN: number one, continue and enhance its filer education and outreach programs; and two, identify significant and recurring SAR quality problems for follow-up.

FinCEN agreed with our recommendations and they identified a number of steps it has already taken to enhance filer education. Also, FinCEN told us that it has put a SAR validation process in place that identifies all SAR filings with significant errors for its compliance staff to monitor.

We consider these actions an excellent response to our recommendations.

As requested, I will now briefly address the impact of the failed bank reviews to Treasury IG's FinCEN oversight.

As you recall, I testified before this subcommittee in May of last year on this very matter. We are congressionally mandated to review the causes of failed banks and the OCC or OTS supervision exercised over those failed institutions whenever the failure results in a loss of $25 million or more to the Deposit Insurance Fund.

Since the current economic crisis began, my audit staff has done little else but conduct material loss reviews. In this regard, we have completed 17 reviews and have another 35 in progress. Regrettably, I believe my office will be busy conducting such reviews for some time to come.

While these reviews are important, we are simply not learning that much new with each successive review. The requirement is also precluding us from doing other important oversight work.

Last July, with the much appreciated support by Chairman Moore and this subcommittee, the House passed H.R. 3330 to increase that threshold to $200 million, while prudently requiring some level of review of all bank failures.

As you pointed out, sir, the current bill, Senate 3217, as introduced, did include a provision to raise that threshold.

Lastly, FinCEN faces many challenges as administrator of the BSA, particularly with respect to the fact that it must rely on other regulators to ensure their regulated industries comply with BSA requirements.

While a lot of focus is on the current financial crisis, we must remember the terrorists and criminals still are busy.

Therefore, I applaud the subcommittee for its attention to FinCEN's important role in administering BSA.

That concludes my statement.

[The prepared statement of Inspector General Thorson can be found on page 80 of the appendix.]

Chairman MOORE OF KANSAS. Thank you, Mr. Thorson. We will at this time recess the subcommittee. I would ask all subcommittee members to come back here immediately upon completion of votes on the House Floor.

I would ask our witnesses to remain available for questioning when we get back, and I think we have four votes, I believe. It will probably take half an hour to 40 minutes, but we will be back as quickly as we can.

All subcommittee members, please return. We will stand in recess.

[recess]

Chairman MOORE OF KANSAS. The subcommittee is called back to order. I ask unanimous consent that we enter into the record the three oversight reports we are examining today: the GAO report of February 27, 2009, entitled, "The Bank Secrecy Act, Suspicious Activity Report Use is Increasing, but FinCEN Needs to Further Develop and Document Its Form Revision Process"; the GAO report of December 14, 2009, entitled, "Anti-Money Laundering, Improved Communication Could Enhance the Support FinCEN Provides to Law Enforcement"; and finally, the Treasury IG report of January

19, 2010, entitled, "SAR Data Quality Requires FinCEN's Continued Attention."

Without objection, these reports will be made a part of the record.

I now recognize myself for 5 minutes for questions.

I want to start with Treasury Inspector General Thorson. Before I focus on FinCEN, Inspector General Thorson, if Congress were to enact H.R. 3330 to give your office and others the flexibility you need to better manage your resources and provide better oversight, what kinds of things with respect to FinCEN would your office be able to examine and report to Congress on?

I presume the House legislation would be better for your office than the Senate language in the financial reg reform bill; is that correct, sir?

Mr. THORSON. Yes. There are a number of things that raising that threshold would allow us to do. Specifically, with regard to FinCEN, I would have to refer to our audit plan, and we can certainly provide that for you.

The idea and why we requested the increase in the threshold was to free up some of the audit resources. Certainly, aside from FinCEN, there are a lot of things within the Treasury Department that we have had to postpone that really are a major part of what our office is there for.

I am giving you a little broader answer than you were probably looking for, but there are a number of things we would like to be able to do, and this would certainly help.

Chairman MOORE OF KANSAS. Thank you, sir. Director Freis, thank you for your testimony and for your public service.

In the Treasury IG's January report, they list the top 25 depository institutions, including IndyMac and NetBank, that had errors in over half of their SAR data in Fiscal Year 2006, and recommend that FinCEN should notify Federal regulators of these problems.

Has your Bureau done so, and has FinCEN seen any improvements or more errors with depository institutions, especially in the past 2 years, as they have dealt with the financial crisis?

Any comments, sir?

Mr. FREIS. Yes, Mr. Chairman. We have developed a process within FinCEN that is consistent with those recommendations, to work very closely with the supervisors of the financial institutions, so we do examine for problems in the filing of all our reports, not just SARs, and we follow up directly with the supervisor, and then the supervisor will monitor to see improvements.

I am happy to say that we have seen a continual increase in the quality of the reports from the financial industry.

Chairman MOORE OF KANSAS. Mr. Thorson, do you have any comments on that?

Mr. THORSON. First of all, we are very happy to see that and certainly accept FinCEN's explanations of the changes they have made. We obviously have not had a chance to look at that since then.

I think all of us here have the same goal, and that is to do whatever we can do to increase the efficiency and effectiveness of FinCEN, as it helps all of us.

Chairman MOORE OF KANSAS. Director Freis, on page one of your testimony, you note "FinCEN's efforts to maintain the 'proper balance' between reporting requirements imposed upon the industry and the need to ensure information gets to law enforcement officials."

Which do you believe FinCEN does better, improving SAR data quality and working with industry on reporting requirements or working with law enforcement to get the information to them?

Mr. FREIS. I do not think it is a choice between the two, Mr. Chairman. I think our mission is to get information to law enforcement and increasing the quality is making that information more accessible to law enforcement.

Ultimately, a large part of what I have tried to do in our dialogue with the financial industry is show them how it is in their interest, and particularly in these economic times when we are fighting the people who are trying to rip off the bank or rip off the customers and customers who lose money are not good customers for your bank. We have a common interest with the financial industry.

Chairman MOORE OF KANSAS. Thank you. Inspector General Thorson, from what you know, would you encourage FinCEN to do a better job working with industry on SAR data quality or working with law enforcement?

Mr. THORSON. I think really both of those things but certainly the quality when you talk, for instance, IndyMac, one of the banks that we looked at after it failed, had an 86 percent error rate.

Everybody has the desire to certainly improve on those kinds of things, and I think what Director Freis has been saying is they are addressing it.

You asked what would that threshold on MLRs improve on, that is one of the things that we would certainly be able to do, validate the actions taken on SARs as well as their IT modernization that he also mentioned.

Chairman MOORE OF KANSAS. Thank you, sir. My time has expired. Mr. Paulsen, you are recognized for 5 minutes.

Mr. PAULSEN. Thank you, Mr. Chairman. I will ask just a couple of questions. First, I will go to you, Mr. Thorson, if I could.

Probably the most interesting part of your testimony comes at the end where you address FinCEN's IT system. I would like to ask you three questions at once and you can tackle them altogether, I guess, more or less.

Number one, if FinCEN could stand up its own computer system, would that system address a lot of the data quality and form updating issues you and the GAO address?

Number two, Treasury in general, not just FinCEN, has had a lot of difficulty with newer computer systems. Would you summarize now and then maybe give us a larger written report later on how FinCEN can successfully manage a transition to its own system?

Number three, what in your view is the cause for the morphing of the FinCEN OFAC tracking system? What are its prospects for success, and is there anything that Congress can or should do in that capacity?

Mr. THORSON. With the number of questions, I would like to provide you a very accurate answer, and I will do that in writing.

One thing you mentioned was how do we implement this or how does FinCEN successfully implement that. I just would give you the answer I would give you on any major program, whether it is FinCEN or DOD. In this case, an IT program would start with a good solid plan of what it is you want to do, and what it is going to cost.

In this case with Treasury, I would involve the Office of the CIO, and I would have strong independent oversight. That oversight is not there to second guess everything they do at all. It is there really to help them to make sure that they are looking at things that maybe they had not thought of.

I hesitate to use the word "partner" because we are independent of everything. The truth is that is what our goal is, to help them accomplish their mission.

A strong independent oversight would also be one of the factors I would put in there.

Mr. PAULSEN. Thank you. Mr. Freis, let me just follow up. As I mentioned earlier in my opening statement, FinCEN's mission and work to help safeguard the financial system and aid our law enforcement community is important. I support that certainly as we all do.

As I mentioned in my opening statement, I am interested in FinCEN's ongoing modernization efforts. Will the modernization efforts that FinCEN is currently carrying out help resolve some of the issues that have been laid out in some of the reports that we have discussed that now have been brought up specifically?

I am interested in how the modernization has helped you or helped you partner essentially with other agencies.

Mr. FREIS. Yes, indeed. The modernization is designed to address some of the issues that you mentioned and some of the issues that are in the GAO reports.

Very consistent with what Mr. Thorson just said, the most important aspect in going to a big project, a big investment like this, is appropriate planning. We have been planning for a period of 3½ years for this IT modernization. It has been an unprecedented level of collaboration with all of the stakeholders.

By that, I mean bringing together our law enforcement customers because ultimately, once again, we are trying to get them the data they need to fight the criminals, and working with the regulatory authorities on whom we rely for ensuring compliance and appropriate reporting by the regulated industries, and also working with the industry.

Any way that we can help simplify their efforts to get us lower costs more quickly is a benefit to everyone, both the industry and law enforcement and of course, the general public, that we are looking to protect.

We also have established significant levels of oversight with this program. First, making sure that we bring together the stakeholders that need to be closely involved.

Mr. Thorson mentioned the Treasury CIO. We have a management executive group that oversees the work in the IT modernization, and that consists of myself as the Director of FinCEN, the

Treasury CIO personally, and one of the two Deputy Commissioners at the IRS.

As you know, we are transitioning the system in part from the IRS to FinCEN. Those are the three primary stakeholders. We work together in terms of the overall department priorities and working very closely with the Office of Management and Budget to make sure that they are helping us as we leverage across the different parts of the entire Administration.

Mr. PAULSEN. Thank you. My time is just wrapping up now. Mr. Thorson, if you have some follow-up in written form, I think that would be very helpful as well.

Thank you, Mr. Chairman.

Chairman MOORE OF KANSAS. Thank you. The Chair at this time recognizes Mr. Lynch for 5 minutes, sir.

Mr. LYNCH. Thank you again, Mr. Chairman.

Director Freis, and this actually applies to Mr. Thorson as well, in this tight budget environment, it is not likely that we are going to see any increases for staffing. Director Freis, how many folks do you have handling your whole operation right now?

Mr. FREIS. We have 325 people as of today.

Mr. LYNCH. You are handling a global operation, trying to interface with governments all over the world. I have seen you do that. You have 300 domestic law enforcement agencies that you have to deal with. Now, we have just added some more responsibility with respect to these financial institutions that we want you to interface with. You are doing work with the top oversight panel.

Realistically, I do not see this getting better. I do not see the funding for your people getting better.

GAO, you are sort of in the same boat, where just doing this oversight in addition to what we are already requiring you to do on material loss at these banks.

I just see this system stretching further towards the breaking point. How do you expect to handle all this responsibility with no additional people, no additional money, and at the same time ramping up this new technology?

I am just trying to figure out how this works and how this gets better.

Mr. FREIS. We appreciate your support and we certainly appreciate the direction from the Congress in helping us to prioritize the funding that we have received for the IT modernization. It is a critical aspect.

When I look back at our statutory mission, what Congress laid out for us, more than half of it talks about our IT management functions and the way the single investment at FinCEN can leverage across all aspects of the government.

Mr. LYNCH. Director, I appreciate that. I have more meter maids in my city than you have folks to handle your responsibility around the world. You have far greater responsibility, with all due respect to my meter maids, they do a wonderful job as well.

It is just trying to match the resources to the job that needs to be done. Unless we change our budgetary priorities to give you the tools you need to do your job, I just see a failure coming. There will be a failure and then everybody will throw up their hands and say, why did we not fund FinCEN, why did we not provide the re-

sources that they needed to do their job, how did this failure happen? It will all be in retrospect looking back at some colossal intelligence failure that continues to go on.

I, for one, support getting you more resources and increasing your staffing commensurate with the responsibilities that we have given you.

We are not nearly there in terms of the importance of the job that you do.

Like I said earlier in my statement, I am amazed that you do as much as you do with the little resources that you have. You have to be maxed out here in terms of all the responsibilities that you have.

I think it is disingenuous sometimes for Congress to come down on you and say, why are you not doing this, why are you not doing that? You have to cooperate better. You have to communicate better. Just covering all the bases you have to cover is a job in itself.

Is there any hope that at least with the technology upgrade—are there ways we can do this to multiply the effectiveness of the employees that you have using new technology?

Mr. Shaul from Mr. Frank's office, who has been helping me with some of the SAR stuff, has suggested, for instance, if we could move to a bar coding type of method to track SARs and to make them more complete, some of that information will be embedded so we do not have the problems that we had with IndyBank.

Is that something that you think might be helpful as a force multiplier so you are not running around doing the stuff manually or less efficiently than you might be doing?

Mr. FREIS. Certainly, the IT can be a force multiplier, but most of what we are doing in terms of the IT modernization, one of the core pillars of it, is moving away from paper and manual processing to leveraging that electronically.

Right now, the people who are doing that manual processing are IRS employees. We, as the Treasury Department and the government will benefit from that, FinCEN will not benefit—

Chairman MOORE OF KANSAS. The gentleman's time has expired.

Mr. LYNCH. Thank you, Mr. Chairman.

Chairman MOORE OF KANSAS. I want to thank our witnesses for testifying here today, Mr. Freis and Mr. Thorson, Inspector General Thorson. Thank you both for testifying.

If you have any additional comments to make, please make those in writing and submit them. I will excuse you at this time and call our second panel, if you would please be seated. Thank you, gentlemen.

We will convene with the second panel of witnesses. I am pleased to introduce our second panel. First, we will hear from Mr. Richard J. Hillman, Managing Director, Financial Markets and Community Investment, with the Government Accountability Office.

Then, we will hear from Ms. Eileen Larence, Director, Homeland Security and Justice Issues, also with GAO.

Without objection, your written statements will be made a part of the record. Mr. Hillman, sir, you are recognized for 5 minutes.

STATEMENT OF RICHARD J. HILLMAN, MANAGING DIRECTOR, FINANCIAL MARKETS AND COMMUNITY INVESTMENT, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Mr. HILLMAN. Thank you, Mr. Chairman. I appreciate the opportunity to be here today to discuss recent work we have completed at FinCEN.

My statement today is based upon GAO's 2009 report on the use of suspicious activity reports and challenges FinCEN has encountered in its form revisions process.

Specifically, I will discuss three issues: factors that have contributed to an increase in the number of SAR filings for depository institutions; actions taken by FinCEN and law enforcement agencies to improve the quality of SAR reporting; and challenges FinCEN encountered in its attempt to revise the SAR form in 2006, and steps FinCEN could take to improve collaboration in its form revision process.

Regarding the first issue, SAR filings have increased significantly from 2000 through 2008. Total SAR filings by depository institutions have more than quadrupled from about 163,000 in 2000 to more than 732,000 in 2008.

Two key factors largely explain the increase: first, automated monitoring systems can flag multiple indicators of suspicious activity and identify significantly more unusual activity than manual monitoring; and second, several public enforcement actions against a few depository institutions prompted other institutions to more closely look at their clients and account activities.

Another factor has been institutions' greater awareness of and training of Bank Secrecy Act requirements after September 11, 2001.

As you know, SARs are a key information source for law enforcement agencies, as well as the Federal regulators. Because the information they contain is critical for investigations of money laundering, terrorist financing, and other financial crimes, it is important that filers accurately fill out the reports.

FinCEN and law enforcement agencies have taken some actions to improve the quality of SAR filings and educate filers about their usefulness. For example, FinCEN and Federal law enforcement representatives regularly participate in anti-money laundering issues, including events focused on SARs.

Moreover, law enforcement representatives said they also establish relationships with depository institutions to communicate with staff about crafting useful SAR narratives.

In addition, FinCEN, law enforcement agencies, and financial regulators have taken steps in recent years to make better use of SAR filings. For example, FinCEN uses SARs to provide analytical products to law enforcement agencies and financial regulators. Some law enforcement agencies use SAR data with their own datasets to facilitate complex analytical processes, and Federal, State, and local law enforcement representatives have collaborated to review and start investigations based upon SARs in their areas.

Financial regulators are also using SARs. For example, they use them in their examinations process to assess compliance and take action against abuses by depository institution insiders.

Finally, our view of FinCEN's form revision process for the SARs highlights challenges and weaknesses in FinCEN's management of multi-agency efforts. I will note that not only does FinCEN need to coordinate and collaborate with numerous law enforcement agencies and financial regulators, it also relies on the IRS for information technology support of BSA data including SARs, specifically.

FinCEN developed a revised form in 2006, but then learned that it could not be used because of information technology limitations that the IRS could not address.

Furthermore, some law enforcement groups expressed concerns that certain of the 2006 revisions could be detrimental to their investigations.

Bank regulators, on the other hand, were satisfied with the revisions. In short, FinCEN's stakeholders had not all been involved early enough in the process.

In 2008, FinCEN developed a new process for revising forms, including SARs, which may increase collaboration with some stakeholders. However, available documentation on the process did not detail the degree to which the new process would incorporate GAO identified best practices for enhancing and sustaining Federal agency collaboration efforts.

For example, it did not specify roles and responsibilities for stakeholders or depict monitoring, evaluation or reporting mechanisms. Therefore, we recommended that FinCEN further develop and document its strategy to fully incorporate certain of these practices into their revision process and distribute that documentation to all stakeholders.

In recent discussions with FinCEN officials, we have learned that it is taking some additional steps toward greater collaboration with law enforcement agency representatives, prosecutors, and multi-agency law enforcement teams and others to determine the contents of the form, but it is still too soon to determine the effectiveness of this process.

In closing, I would like to note that the story of the SARs revision process highlights some of the key long-standing concerns that we identified over the years concerning FinCEN's ability to carry out its mission effectively given that it must depend on other agencies.

We recognize that the mission of FinCEN creates some of its own challenges but we also believe that management has opportunities to strengthen its coordination and collaboration across agencies.

Mr. Chairman, thank you, and I will be happy to answer any questions at the appropriate time.

[The prepared statement of Mr. Hillman can be found on page 47 of the appendix.]

Chairman MOORE OF KANSAS. Thank you, Mr. Hillman.

Ms. Larence, you are recognized for 5 minutes, ma'am.

STATEMENT OF EILEEN R. LARENCE, DIRECTOR, HOMELAND SECURITY AND JUSTICE, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Ms. LARENCE. Mr. Chairman and members of the subcommittee, I appreciate the opportunity to summarize our review of FinCEN's support to Federal, State, and local law enforcement as they inves-

tigate and prosecute terrorist financing, money laundering, and other financial crimes.

In some ways, parts of FinCEN are in transition as they examine how to continue to be a relevant and meaningful resource to its more than 300 law enforcement customers.

As more of these customers obtain direct access to the financial data FinCEN collects under the Bank Secrecy Act, they could do their own data queries and analyses and decrease the request to FinCEN for this kind of tactical case support by about 80 percent so FinCEN could examine other ways it could support law enforcement and effectively use its resources.

The agency decided that it could use its expert knowledge about the financial data to conduct more complex and strategic analyses. For example, the agency could identify new patterns and emerging trends that could forewarn of new financial concerns.

Given the evolving role of FinCEN, we surveyed Federal and State law enforcement agencies, including FinCEN's primary customers, to determine how useful they found FinCEN's current services and products.

In general, the 25 law enforcement agencies responding to our survey in late 2008 found these services and products useful, and cited three in particular as most useful: first, having this direct access to the financial data; second, having liaisons at FinCEN; and third, being able to use FinCEN's secure communications to query U.S. financial institutions for data on persons or organizations under investigation, a capability that the PATRIOT Act provided.

Law enforcement also reported that some of FinCEN's complex analytical products are particularly helpful in their investigations. This is especially true of technical reference manuals that cover issues such as Internet payment mechanisms.

We identified four relatively easy commonsense ways that FinCEN could improve its working relationship and communications with law enforcement and help the agency be more relevant and responsive to these customers, increase the value and impact of its analyses, and ensure it uses its limited resources effectively.

First, FinCEN could better inform law enforcement about the types of complex analytic products it can provide and let law enforcement know when it issues a new product. At the time of our review, 14 of the 25 law enforcement agencies had not received any or only one of FinCEN's strategic analytic products since 2004.

Second, FinCEN could better define the types of requests for analytic support it will accept and the criteria it will use to set priorities for its analytic resources. FinCEN could also let law enforcement know whether and why it accepted or rejected a request.

These basic practices would help build FinCEN's customer relations with law enforcement.

Third, FinCEN could more actively solicit law enforcement's input on ongoing as well as planned analyses, significantly increasing their usefulness and relevance.

Fourth and finally, FinCEN could establish a mechanism for agencies to provide law enforcement sensitive comments on proposed regulatory changes so as not to compromise key investigative techniques or strategies.

The good news is that the Director acknowledges that FinCEN agreed with our recommendations. In fact, because we were doing work at the committee's request in the agency, FinCEN itself conducted its own internal study and acknowledged similar concerns as those we had identified.

Last week, we asked FinCEN for an update, and learned it is initiating or plans to initiate corrective actions in a number of these areas. As Director Freis acknowledged, it is drafting both a menu of products and services, as well as a menu of resources that it plans to distribute electronically to law enforcement.

It is also drafting a survey to determine what information law enforcement needs to support their investigations and a new form to capture and track requests for analytic support.

In addition, FinCEN has developed a process to let law enforcement know the agency will fulfill a request, and furthermore, FinCEN organized some of its staff and workload so as to better engage law enforcement. And finally, FinCEN did solicit law enforcement input on a recent proposed regulatory change up-front before the change was a done deal, although in part, Congress provided them direction to do this.

The agency is establishing a way for law enforcement to submit sensitive comments on proposed changes.

Mr. Chairman, these are all good steps. FinCEN just needs to implement them and then track their success to ensure that the agency is using its resources most effectively in meeting law enforcement's needs.

This will help to ensure that parts of FinCEN will survive.

The subcommittee's support for FinCEN and oversight of its contributions will help to ensure that it is following through on these reforms.

This concludes my statement. I would be happy to answer any questions.

[The prepared statement of Ms. Larence can be found on page 62 of the appendix.]

Chairman MOORE OF KANSAS. My thanks to both witnesses for their testimony. I appreciate that very much. I will recognize myself for 5 minutes for questions.

Ms. Larence, with respect to law enforcement and how FinCEN prioritizes which reports they do, how should they improve that priority system? Should they permit law enforcement to help decide, for example, perhaps a request from the FBI Director has a higher priority than an FBI agent in Seattle?

Would involving law enforcement in that prioritization system help?

Ms. LARENCE. Yes. We think that involving law enforcement in setting the criteria would help, but then also making sure FinCEN is transparent about that criteria. We do not argue that law enforcement should call all the shots because law enforcement itself recognizes that FinCEN brings particular expertise to the table because they have access to all of the data and because they have a broad perspective across the industry, regulators, and law enforcement itself. Law enforcement would just like to be more of a partner in that process.

Chairman MOORE OF KANSAS. Thank you. Since you each focused on separate issues, it may be difficult for you both to give us a sense of which problem is more urgent, better communication with law enforcement or improving SAR data quality.

How would each of you rank your respective issue on a scale of one to five, five meaning FinCEN is doing a great job, and one meaning they need to improve?

Mr. Hillman, do you have any thoughts, sir?

Mr. HILLMAN. Similar to the last panel, I believe that both of the actions that you are calling for are essential for FinCEN in achieving its mission. It must work with other regulators and other depository institutions in accomplishing its mission. It must serve law enforcement in meeting its terrorist financing and other financial crimes' work.

I would put a high priority on both of those activities because if they were unsuccessful, then our country would be unsuccessful.

Chairman MOORE OF KANSAS. Thank you, sir. Ms. Larence, do you have any comments?

Ms. LARENCE. Clearly, the law enforcement community found direct access to the data itself the most important service that FinCEN can provide, so I would argue that is where FinCEN would need to put its priorities.

Chairman MOORE OF KANSAS. Thank you. Starting with you, Mr. Hillman, has FinCEN been responsive to GAO's recommendations? What additional steps should they take or focus on to improve their performance?

Mr. HILLMAN. One of the major areas we found in our report on the SAR activities was that their forms revision process was not a collaborative process. They had made changes to that form and many individuals within the law enforcement community, specifically SAR review teams in other High Intensity Financial Crime Areas (HIFCA) had limited ability to influence the changes that they wanted to make to those forms.

Since that recommendation was made, FinCEN has really taken to heart the need to ratchet up their coordination and communication in the forms revision process. We have seen substantial efforts on the part of the organization in obtaining views from outside parties early in the process, much of what we had recommended in the past.

What we have not seen, however, are some other important facets of collaboration, including identifying and reporting and evaluating progress associated with their initiatives.

We are also concerned that we have not really seen a plan for the effective implementation of this modernization effort, and given past progress in the information technology area, a plan is very important.

Chairman MOORE OF KANSAS. Thank you, sir. The Chair next recognizes Mr. Paulsen for 5 minutes, sir.

Mr. PAULSEN. Thank you, Mr. Chairman. Maybe I will start with Mr. Hillman. Mr. Hillman, what are your views as to the current level of budgetary funding provided to FinCEN? Do they have adequate resources to effectively carry out their mission?

Mr. HILLMAN. We really have not looked at the resources that have been provided to the organization. However, we do acknowl-

edge the unenviable task that it has in achieving its multiple mission responsibilities, relying on the limited resources it does have and the other regulators at its disposal.

Given that environment, that just puts a premium on ensuring effective collaboration and coordination across all of the financial regulators, law enforcement agencies, depository institutions, and others that are producing BSA data for that organization.

That is what we have emphasized with FinCEN, improving its opportunities to collaborate and coordinate to get the biggest investment it can from the resources that it has.

Mr. PAULSEN. How important is it from your perspective for FinCEN to complete its SAR form revision process and how often do you think such a review or changes should take place in the future, given the changing nature of the financial system and of financial crimes?

Mr. HILLMAN. They are required by law—from the Paperwork Reduction Act—to review their forms process every 3 years. They generally look at those forms a little bit ahead of that schedule to ensure they can complete that review in a timely fashion.

I believe they are doing a diligent job in looking at their forms revisions. What we have found, however, is that the revisions that they have made had not been fully coordinated with others to determine that those form changes were going to improve the efficiency of the process, and then once they had decided on the revisions that they wanted to make, they had not coordinated effectively with the IRS and they were even in fact unable to implement the revisions they were proposing.

Today, FinCEN is still using forms that they developed in 2003 in their forms revision process, and are unable to use technology to enhance their efforts going forward.

Mr. PAULSEN. Ms. Larence, as you probably know, FinCEN issued a report on fraud in the mortgage market well before the bubble collapsed. It was virtually ignored by the law enforcement community.

Should FinCEN be held responsible for reports and information that are simply not used by law enforcement? Do you have any suggestions on that front at all?

Ms. LARENCE. In talking with some of the FBI agents and liaisons, I think they felt like FinCEN brought a different perspective to that issue than the FBI could. The FBI has access to different information and takes a case perspective.

They thought FinCEN could bring value but they would have liked to have maybe collaborated with FinCEN more.

FinCEN itself in its internal review admitted that what they hear from law enforcement is the quality of their reports is very high, but sometimes the relevance is not as high. We argue if they would collaborate more with law enforcement to determine what kinds of information they need, what they are focusing on, they would stand a better chance to be more relevant.

Mr. PAULSEN. Regarding GAO's recommendation that FinCEN establish a process to inform law enforcement about the availability of completed analytical products, the December 2009 report indicated that FinCEN was not inclined to share certain products

completed for one customer with other law enforcement agencies due to confidentiality rules.

How should FinCEN handle this situation so that vital data and reports can be made available to all law enforcement agencies?

Ms. LARENCE. A couple of things. They do follow what they call the third party rule. That is, they would ask the originating agency if they could have permission to share, and how extensively could they share, those products.

What we heard from law enforcement was they would just like to even know that the product existed, and that way they may be able to pursue channels to get that information.

It looks from what FinCEN is telling us, we have not had a chance to audit that yet, but they have put a process in place, both to better inform and market their products as well as to communicate better with law enforcement on their responses to law enforcement's requests.

Mr. PAULSEN. Thank you, Mr. Chairman.

Chairman MOORE OF KANSAS. Thank you, sir. The Chair recognizes Mr. Lynch for 5 minutes.

Mr. LYNCH. Thank you again, Mr. Chairman. Let me ask both of you. We are talking a lot about FinCEN's responsibility to interact and collaborate with law enforcement. That is just one-third of what their mission is.

They also have a mission with 325 employees, they have 300 law enforcement agencies, then they have every single reporting financial services firm in the country, thousands, and then on top of that, they have 160 countries that currently have financial intelligence units—116, excuse me, and we are working on maybe another 40 right now to try to get financial intelligence units stood up, and FinCEN is working on those.

They have 325 employees. I think it is mind boggling to expect anybody to be able to do that with that small a number of employees. I just do not see it happening. These folks are stretched thin.

I know you did not look specifically at that, but do you have any—

Mr. HILLMAN. That actually was not the scope of our review in looking at SARs and SAR revisions, but it is clear FinCEN has a daunting responsibility with the resources that it has. It continues to put a premium on proper guidance and forms to the other regulators and depository institutions that supports its activities.

In the recent past, we have seen a ratcheting up on the part of FinCEN in putting a good guidance out on their Web site for others on attending conferences. We learned that between 2006 and 2008, FinCEN representatives had attended over 300 different conferences and multi-agency groups to spread the word as to what types of activities they were hoping to see achieved.

Law enforcement is doing the same thing and working with depository institutions and helping to ensure they get adequate and high-quality narratives in these SAR forms.

We just need to continue to leverage the available resources to accomplish the goals and mission of FinCEN.

Mr. LYNCH. Right now, it seems like FinCEN is going out to these different agencies. They went out to California and they have been working closely with the FBI.

Ironically, the FBI has put as many resources into analyzing the information provided by FinCEN than we have provided FinCEN to actually develop the data and provide the intelligence. It is sort of backwards.

I just do not know how long we can continue to do that. I know FinCEN has a connection with all these different departments. We are providing extra resources to these other agencies, and yet we are level funding FinCEN that is providing all these agencies.

I just see organizationally, it is a real problem. I do not know how to get past that without providing additional resources to FinCEN.

Ms. Larence?

Ms. LARENCE. We tried very hard to be able to help answer that question, at least in terms of the work they are providing to law enforcement, through the Analysis and Liaison Division.

FinCEN needs to be able to demonstrate this is what we are doing with the resources that we have right now in terms of supporting the law enforcement community. Here are the critical gaps or here are the missed opportunities that we have to be able to provide significant support. FinCEN needs to be able to demonstrate these gaps.

We just had a hard time getting that kind of management information to be able to make that story.

Mr. LYNCH. Let me ask, in your reports and in your analysis in looking at this, is FinCEN bringing in—you would think that one way we might be able to close that gap is to sort of bring in the law enforcement people, do a number of seminars on the financial analysis products that they have.

I know there is outreach. I am not so sure that is the best use of their time. Maybe bring all those folks into Washington and do a bunch of these conferences and do a training on the products and on the data and how to use FinCEN better.

Of course, that is going to be a double-edged sword because they are going to get more and more SARs. They are going to get more and more business. It is sort of like the problem I had with some of my local hospitals. They are losing money on every patient. Then they do outreach and they get more patients coming into the hospital and they are losing even more money. It is sort of a downward spiral of a self-fulfilling prophecy.

That is the problem that FinCEN has. I do not think they are doing it purposely. By not doing outreach, they are probably reserving some of their resources that they have.

Any thoughts on that?

Ms. LARENCE. I think they have some existing channels that they can use more effectively. They have a bi-monthly roundtable with law enforcement. They have changed the agenda already where they are better publicizing the products and they are using the roundtable to solicit ideas from law enforcement about the kinds of issues and analyses that would be helpful. They have already taken some steps there.

They have been increasing their attendance at conferences and doing outreach. They have been partnering with some of the IGs to get the word out. They are looking at using the available channels that they have.

I think also with issuing these menus of products and services and resources and using their existing gateway and secure outreach portals that they have to law enforcement just to publicize them will help a lot.

Mr. LYNCH. Thank you. Thank you both. I yield back.

Chairman MOORE OF KANSAS. Thank you. I understand that Ranking Member Judy Biggert is on her way. If Mr. Paulsen has any additional questions, he can go ahead at this time until she arrives.

Mr. PAULSEN. Thank you, Mr. Chairman. Just a couple of follow-up questions for Mr. Hillman, if I could.

As you know, the suspicious activity report, the SAR report filings continue to increase. However, the quality of SAR filings continues to be an issue in depository institutions.

Officials have commented they would like clear guidance on what law enforcement looks for, what they really want, what they find useful in these reports.

Based on your work, what actions have FinCEN and law enforcement agencies taken to assist financial institutions in improving the quality of the SAR filings, and what should be done in the future on this front?

Mr. HILLMAN. This is one area that has been a continual concern on the part of depository institutions, concern that they do not know exactly how law enforcement is using this data, not knowing how exactly how to satisfy those needs.

We have found, however, that FinCEN has done a number of things to improve communication and coordination with the depository institutions and to educate them about the importance of SAR filings.

For example, they have a variety of written products reporting trends in SAR data, providing tips on SAR filings. They have also posted a variety of guidance on their Web site.

One important piece of guidance outlined the 10 most important common filing errors in SARs and steps to avoid them. In 2008, they also produced a guideline from SAR filings on proceeds and foreign corruption.

FinCEN representatives, as I previously mentioned, also are participating in a number of conferences for depository institutions to share information with them and law enforcement is doing the same, to best assist depository institutions in providing the right information on SAR narratives and to help depository institutions better understand the types of information that they need for their investigative activities.

Going forward, FinCEN really needs to continue to educate filers on the important uses of SARs and the benefits to law enforcement.

Mr. PAULSEN. One more question. In the past, financial industry officials have expressed concerns about the extent to which law enforcement agencies use suspicious activity reports and whether the effort put into filing them is actually helping law enforcement investigations.

Just again a quick follow-up, because I think you had a little bit of this in your answer, but what steps have FinCEN, law enforcement, and others taken to make better use of SARs in general? This is a common theme I think we hear.

Mr. HILLMAN. Absolutely. FinCEN, law enforcement, and financial institution regulators are each taking steps to ensure they are using quality information that is available from SARs.

FinCEN, as we previously discussed, has produced various nonpublic analytical products and they have also pushed out bulk downloads of their SAR data to law enforcement organizations and others for them to combine that SAR information and other BSA information with other investigative information they have at their disposal to enrich their investigative activities.

We have also seen some concerns being expressed by law enforcement agencies and others who use SAR forms, basically going to concerns with the formatting and the efficiency of the downloading process.

A couple of important concerns have to do with the fact that SAR narratives produced on their systems come forth in all capital letters. There is no additional formatting for an individual, a SARs review team, for example, who may be looking at hundred of these SARs in an individual instance, from better understanding what was in that data.

We also have had concerns expressed by financial regulators in that the downloads that are available in producing SARs analyses do not allow regulators to provide all the SARs that they need in that analysis at one point in time. There are concerns their analyses may not be fully complete.

In addition, financial regulators have expressed concerns that the data input that is being provided by FinCEN, and to some extent by the IRS as well, is not producing accurate results.

There are opportunities for FinCEN and the IRS to improve the uploading of information in their systems.

Mr. PAULSEN. Thank you, Mr. Chairman.

Chairman MOORE OF KANSAS. Thank you, Mr. Paulsen, for your questions. Now I recognize for 5 minutes for questions the ranking member of the subcommittee, my colleague and friend from Illinois, Ranking Member Judy Biggert.

Ms. Biggert?

Mrs. BIGGERT. Thank you very much, Mr. Chairman. Thank you for giving me the opportunity to ask questions. I, unfortunately, have been in a markup all day. We still have eight amendments to go. I had quite a few amendments. It usually does not last this long.

Chairman MOORE OF KANSAS. We are glad you are here.

Mrs. BIGGERT. My first question would be, what are the answers to addressing FinCEN's shortcomings and what does FinCEN need to do their job and to do it well? Is it new authority? Resources? Is it a set timeframe to update information systems? Briefly.

Mr. HILLMAN. I will take the issue on the information systems. I believe that is one of the significant challenges facing this organization at the time.

They have had a dismal record in the past in establishing robust and successful information technology modernization initiatives, and they are undergoing one now as we speak.

The advice that I would provide to FinCEN is that they take the time to thoroughly develop a plan for moving forward in their information technology initiative before implementing individual steps,

and that they solicit the input of Treasury's Chief Information Officer in their deliberations on their modernization efforts.

The Director, when he was here earlier this afternoon, discussed the fact that the CIO himself is on a panel with the Director and the Deputy Commissioner to oversee the modernization effort.

FinCEN itself as an organization with so few resources, it really could leverage the technology expertise available in the Information Office to achieve its purposes more effectively.

Ms. LARENCE. In terms of the issues that we looked at, these are not new findings. FinCEN had several internal studies starting in 2005, 2006, and 2008. FinCEN knows what it needs to do. It just needs to do it. It needs to track it to make sure the changes are effective. It needs to hold itself accountable with law enforcement for these changes.

I think setting timeframes and establishing an accountability system where it publicly reports out to law enforcement and to the Congress on what its commitments are and whether it is making those commitments.

Mrs. BIGGERT. Do you think Congress should set a timeline or a certain time when they should complete—outline the specific goals?

I know the same situation is really in HUD, every year we ask them if they have their information system up and running and the technology, and it just keeps delaying and delaying.

How can Congress get them moving and should there be a deadline set?

Mr. HILLMAN. I believe that it would be important for Congress to request a plan from FinCEN as to how it intends to successfully modernize its information technology, and then to request periodic progress reports on their activities.

In that way, there would be some very important oversight from the Congress in ensuring that FinCEN is making true progress in achieving its ultimate goals.

Ms. LARENCE. We noticed in the most recent work on proposed regulatory changes that FinCEN collaborated very well with the law enforcement agencies within DHS, in part because Congress directed them to do that through statute.

It is pretty clear that if Congress gave support and incentives such as setting recurring timeframes and holding FinCEN accountable to them, that does help.

Mrs. BIGGERT. I think in the first panel, Director Freis said we have been planning for 3½ years and now they restarted the planning process. How much time do you think it would take them to complete the process of updating their technology?

Mr. HILLMAN. With their current technology efforts, the staff within FinCEN, when we were updating the status of our recommendations for this hearing, were reluctant to share with us any timeframes for completing any individual efforts, but suggested that the total modernization effort was likely not to be completed until 2014.

Mrs. BIGGERT. Does law enforcement find FinCEN more or less relevant now that agencies can access and analyze the Bank Secrecy Act data on their own?

Ms. LARENCE. What we found in our review is that kind of case-specific tactical support the agencies are now doing themselves, so they did not really need FinCEN to do that for them.

They did recognize that FinCEN had valuable expertise, again, because FinCEN understood industry, regulators, and law enforcement. They do think FinCEN could have a more strategic and forward-looking approach to trying to anticipate issues, looking for patterns and trends in the data.

Law enforcement does think FinCEN brings value to the table. They just want to collaborate better so they have an opportunity to help to define with FinCEN the kinds of analyses that will be most relevant and useful to support their investigations and their cases.

Mrs. BIGGERT. Do you think law enforcement really needs these complex analyses?

Ms. LARENCE. I think they find them very helpful, if they are timely and useful. What we heard is if FinCEN involved law enforcement in helping to again define what to pursue in those analyses and also get them involved on ongoing reviews, that would help the information to meet law enforcement's needs and be more relevant than it is today.

Mrs. BIGGERT. Do you see some of the agencies, law enforcement agencies, need FinCEN more to help them conduct their investigations and prosecutions than others?

Ms. LARENCE. We did note that they have now more than 300 potential law enforcement customers. These range from some of the five biggest players, such as the DEA, the FBI, and ICE, down to smaller State law enforcement agencies, and to some extent, even local law enforcement agencies.

These agencies are going to need a variety of skills and support from FinCEN. I think FinCEN has a lot of potential customers out there.

Mrs. BIGGERT. Thank you. Thank you both for being here. Thank you, Mr. Chairman. I yield back.

Chairman MOORE OF KANSAS. My thanks to the distinguished lady from Illinois. Again, I want to thank our witnesses for their testimony this afternoon.

Today's hearing was helpful in improving our understanding of the challenges facing FinCEN and ways those challenges can be addressed. This is something we will continue to monitor closely.

The Chair notes that some members may have additional questions for our witnesses which they may wish to submit in writing. Without objection, the hearing record will remain open for 30 days for members to submit written questions to these witnesses and to place their responses in the record.

Again, I want to thank the witnesses for appearing today and for your testimony. The hearing is adjourned. Thank you all.

[Whereupon, at 4:47 p.m., the hearing was adjourned.]

A P P E N D I X

April 28, 2010

Opening Statement of Chairman Dennis Moore
Financial Services Subcommittee on Oversight and Investigations
April 28, 2010

The Financial Crimes Enforcement Network, or "FinCEN", was first established by the Treasury Department in 1990 to provide a government-wide, multisource financial intelligence and analysis network. The organization was later formalized as an official bureau within the Treasury Department by the USA PATRIOT Act of 2001, when the Bank Secrecy Act's (BSA) scope was expanded to focus on stopping terrorist financing as well as money laundering. FinCEN administers BSA and is responsible for the process in which financial institutions file suspicious activity reports, or SARs. FinCEN will then analyze that information and provide the information and analysis to a wide range of law enforcement, intelligence and regulatory agencies.

As we know too well, the tragic attacks on the United States on September 11, 2001, exposed our broken intelligence system where one agency knew one thing, but another agency did not and was not empowered with that vital information to try and prevent those attacks. While most of our focus in Congress this past year has been to provide tough TARP oversight and strengthen our financial regulatory system following the financial crisis of 2008, stopping terrorist financing and money laundering remain top priorities. Let me be clear -- we must remain vigilant and ensure that our law enforcement and other agencies have all the information they need to do their job better in protecting us. Our constituents expect and deserve nothing less.

Today, we will be reviewing three oversight reports – one by the Treasury Inspector General, and two by GAO – that examine FinCEN's efforts to improve SAR data quality and communication with law enforcement. With limited resources, FinCEN must leverage resources to do much better in both. I look forward to hearing how FinCEN has responded to these oversight reports, and learning what concrete steps they have taken since to address the recommendations made by GAO and the Treasury IG.

And while I'm glad we have the Treasury IG testifying today on FinCEN oversight, I am not pleased Congress has effectively tied his hands and put his office and other Inspectors General under a tremendous burden with the material loss review mandates. While learning lessons from bank failures is important, tough oversight of fraudulent loan modification schemes, private bank BSA compliance, and many other priorities are just as important. Under the bipartisan leadership of Reps. Steve Driehaus and Christopher Lee of this subcommittee, the House acted last year by passing H.R. 3330 to provide the flexibility our Inspectors General desperately need. I was pleased to see a version of our legislation in the Senate financial regulatory reform bill, but as is often the case when comparing House and Senate legislation, our version is clearly better and we will continue fighting to fully empower our Inspectors General with the oversight tools they need.

REP. STEPHEN F. LYNCH
Committee on Financial Services Subcommittee on Oversight and Investigations
"Reviewing FinCen Oversight Reports"
April 28, 2010

THANK YOU, CHAIRMAN MOORE, FOR HOLDING THIS HEARING TODAY. I'D LIKE TO WELCOME OUR WITNESSES AND THANK THEM FOR HELPING THE COMMITTEE WITH ITS WORK.

I'VE MET WITH GAO AS WELL AS DIRECTOR FREIS REGARDING THE REPORTS THAT I, TOGETHER WITH CHAIRMAN FRANK REQUESTED AND I'M EAGER TO DISCUSS THEM FURTHER DURING THIS HEARING. I WANTED TO PROVIDE SOME CONTEXT AS TO MY EXPERIENCE WITH FINCEN, HOWEVER, AND MY KNOWLEDGE OF THE GOOD WORK THEY DO.

FINCEN'S MISSION, "TO PROVIDE A GOVERNMENT-WIDE, MULTI-SOURCE FINANCIAL INTELLIGENCE AND ANALYSIS NETWORK" IS GLOBAL AND OFTEN UNKNOWN OR UNRECOGNIZED.

FINCEN'S REGULATORY RESPONSIBILITIES INCLUDE ADMINISTERING THE BANK SECRECY ACT, (BSA), OVERSEEING FINANCIAL INSTITUTIONS' RECORDKEEPING AND REPORTING THROUGH SUSPICIOUS ACTION REPORTS (SARS) TO PROTECT AGAINST INTERNATIONAL TERRORISM.

A RECENT GAO STUDY FOUND THAT SAR FILINGS INCREASED FROM 163,000 PER YEAR IN 2000 TO 649,000 PER YEAR IN 2007. THIS IS AN IMMENSE AMOUNT OF INFORMATION TO MANAGE AND REVIEW. FINCEN WORKS WITH EVERY MAJOR ADMINISTRATIVE

DEPARTMENT TO DETECT FRAUD AND ABUSE. FROM FHA TO HELP IDENTIFY BAD LENDERS TO HHS TO ROOT OUT FRAUD IN THE REIMBURSEMENT PROCESS, FINCEN OPENS UP ITS DATABASE AND PROVIDES ESSENTIAL INFORMATION IN NUMEROUS CASES EACH YEAR.

FINCEN'S RESPONSIBILITY WAS ALSO BROADENED UNDER THE 2001 PATRIOT ACT, WHICH EXPANDED THE BANK SECRECY ACT TO INCLUDE MONEY LAUNDERING AND TERRORIST FINANCING. FINCEN PLAYS A DUAL ROLE IN SUPPORTING DOMESTIC LAW ENFORCEMENT AND INTELLIGENCE AGENCIES THROUGH SHARING THEIR ANALYSIS OF FINANCIAL INTELLIGENCE WHILE SIMULTANEOUSLY BUILDING GLOBAL COOPERATION WITH OUR COUNTERPART FINANCIAL INTELLIGENCE UNITS (FIUs).

IN MY TRAVELS ABROAD TO THE MIDDLE EAST AND OTHER REGIONS, I'VE BEEN ABLE TO MEET WITH FIUs IN A VARIETY OF COUNTRIES TO VIEW FINCEN'S INTERNATIONAL WORK FIRST-HAND. AS THE CO-CHAIR OF THE TASK FORCE ON TERRORIST FINANCING AND ANTI-PROLIFERATION, I'VE VISITED COUNTRIES LIKE MOROCCO, TUNISIA AND JORDAN THAT, THANKS TO FINCEN'S HELP AND GUIDANCE, ARE DOING IMPORTANT WORK TO COMBAT THE FLOW OF ILLICIT FUNDS.

I'VE SEEN THE RELATIONSHIPS DEVELOP BETWEEN FOREIGN GOVERNMENTS AND TREASURY OFFICIALS, THE INFORMATION FINCEN CAN PROVIDE FIUs IS INVALUABLE.

THESE RELATIONSHIPS, FORMED AS INTERNATIONAL GOVERNMENTS ESTABLISH FIUs AND JOIN FATF, (THE FINANCIAL ACTION TASK FORCE), ARE KEY TO FINCEN'S LONG-TERM SUCCESS IN COMBATING FINANCIAL TERRORISM BOTH IN THE U.S. AND ABROAD. HOWEVER, DESPITE THIS IMPORTANT DYNAMIC, I'M CONCERNED THAT DUE TO BUDGET CONSTRAINTS, PRIVATE CONTRACTORS ARE INCREASINGLY DOING THE WORK THAT FINCEN HAS DONE IN THE PAST.

IN ITS 2006 REPORT, FATF CITED FINCEN'S IMPORTANT ROLE IN FACILITATING DOMESTIC COORDINATION AND COOPERATION. HOWEVER, IT ALSO WARNED THAT IT'S ESSENTIAL THAT FINCEN MAINTAIN ITS KEY ROLE WITHIN THE ANTI-MONEY LAUNDERING/COUNTER-TERRORISM FINANCING CHAIN. WITHOUT PROPER FUNDING AND A PRESENCE IN THE INTERNATIONAL COMMUNITY, FINCEN CANNOT MAINTAIN ITS LEADERSHIP ROLE.

THE OBAMA ADMINISTRATION ANNOUNCED IN NOVEMBER OF 2009 AN INITIATIVE TO HOLD ACCOUNTABLE THOSE WHO HELPED BRING ABOUT THE LAST FINANCIAL CRISIS. WHILE COMMENDABLE, THIS PROGRAM IS COMPRISED OF MORE THAN 20 FEDERAL AGENCIES, (INCLUDING FINCEN), 94 US ATTORNEY'S OFFICES, AND STATE AND LOCAL PARTNERS, BUT PROVIDES FINCEN NO ADDITIONAL RESOURCES TO HELP COORDINATE AND CONTRIBUTE TO THE TASK FORCE. THIS IS JUST ONE RECENT EXAMPLE OF HOW FINCEN IS SPREAD TOO THIN, WITH TOO FEW RESOURCES TO ADEQUATELY ACCOMPLISH ITS MISSION.

I LOOK FORWARD TO ADDRESSING THESE ISSUES IN THE FUTURE AND HELPING FINCEN MAINTAIN ITS PROMINANT ROLE WITHIN THE INTELLIGENCE AND LAW ENFORCEMENT COMMUNITIES. THANK YOU, MR. CHAIRMAN, FOR MY TIME AND I LOOK FORWARD TO HEARING FROM OUR WITNESSES.

Statement of James H. Freis, Jr., Director
Financial Crimes Enforcement Network
United States Department of the Treasury

Before the United States House of Representatives
Committee on Financial Services
Subcommittee on Oversight and Investigations

April 28, 2010

Chairman Moore, Ranking Member Biggert, and distinguished Members of the Subcommittee, I am Jim Freis, Director of the Financial Crimes Enforcement Network (FinCEN), and I appreciate the opportunity to appear before you today to discuss the findings and recommendations from two recent Government Accountability Office (GAO) reports, (1) *Anti-Money Laundering: Improved Communication Could Enhance the Support FinCEN Provides to Law Enforcement*; and, (2) *Bank Secrecy Act: Suspicious Activity Report Use is Increasing, but FinCEN Needs to Further Develop and Document Its Form Revision Process*. As the administrator of the Bank Secrecy Act (BSA), FinCEN continually strives to maintain the proper balance between the reporting requirements imposed upon the financial services industry, and the need to ensure an unimpeded flow of important, useful information to law enforcement officials. We appreciate the GAO's objective analyses in these important reports, and we believe that they underscore FinCEN's continued accomplishments and commitment to these very objectives. Moreover, given the significant fraud, money laundering, and terrorist financing vulnerabilities facing our nation's financial system, we believe FinCEN's role is even more important now than when the BSA was signed into law 40 years ago.

As understanding grows of the importance of BSA reports to almost any investigation of a financial component, FinCEN will continue to broadly leverage its support to Federal, State and local authorities. We take our responsibilities very seriously, and we look forward to working with the Members of this Subcommittee and the entire Congress in our united fight to safeguard the U.S. financial system against all types of illicit financial activities. In addition to discussing the findings of the reports, I will also briefly discuss a few of our many significant, recent accomplishments as we fulfill our mandate as the United States' Financial Intelligence Unit (FIU).

Background on FinCEN

FinCEN's mission is to enhance U.S. national security, detect criminal activity, and safeguard financial systems from abuse by promoting transparency in the U.S. and international financial

systems. FinCEN works to achieve its mission through a broad range of interrelated strategies, including:

- Administering the BSA - the United States' primary anti-money laundering/counter-terrorist financing regulatory regime;
- Supporting law enforcement, intelligence, and regulatory agencies through the sharing and analysis of financial intelligence; and
- Building global cooperation and technical expertise among financial intelligence units throughout the world.

To accomplish these activities, FinCEN employs a team comprised of approximately 325 dedicated Federal employees, including analysts, regulatory specialists, international specialists, technology experts, administrators, managers, and Federal agents who fall within one of the following mission areas:

Regulatory Policy and Programs - FinCEN issues regulations, regulatory rulings, and interpretive guidance; coordinates and assists State and Federal regulatory agencies to consistently apply BSA compliance standards in their examination of financial institutions; and takes enforcement action against financial institutions that demonstrate systemic or egregious non-compliance. These activities span the breadth of the financial services industries, including — but not limited to — banks and other depository institutions; money services businesses; securities broker-dealers; mutual funds; futures commission merchants and introducing brokers in commodities; dealers in precious metals, precious stones, or jewels; insurance companies; and casinos.

Analysis and Liaison Services - FinCEN provides Federal, State, and local law enforcement and regulatory authorities with different methods of direct access to reports that financial institutions submit pursuant to the BSA. FinCEN also combines BSA data with other sources of information to produce analytic products supporting the needs of law enforcement, intelligence, regulatory, and other financial intelligence unit customers. Products range in complexity from traditional subject-related research to more advanced analytic work including geographic assessments of money laundering threats.

International Cooperation - FinCEN is one of 116 recognized national financial intelligence units around the globe that collectively constitute the Egmont Group. FinCEN plays a lead role in fostering international efforts to combat money laundering and terrorist financing among these financial intelligence units, focusing our efforts on intensifying international cooperation and collaboration, and promoting international best practices to maximize information sharing.

GAO Report: Anti-Money Laundering: Improved Communication Could Enhance the Support FinCEN Provides to Law Enforcement

Based primarily on issues raised at a May 10, 2007 hearing held in the Subcommittee on Oversight and Investigations, the House Committee on Financial Services asked the GAO to examine how FinCEN's mission, services, and resources in support of law enforcement agencies have evolved over the years. In doing so, the Committee directed the GAO to review how these areas have evolved in response to statutory, technological, or other changes; what constraints, if any, there are on FinCEN's ability to serve law enforcement agencies; and, what changes, if any, to FinCEN's mission, services, and resources would enable the agency to better serve law enforcement agencies. To accomplish this goal, the GAO analyzed statutes governing FinCEN's mission and documentation describing the support it provides to law enforcement agencies (LEAs), such as annual reports, and selected a sample of 29 LEAs, including primary users of FinCEN's services and products, and obtained their opinions through a survey and interviews. A final report was delivered to the Committee in December 2009.

FinCEN concurred with the findings and recommendations of this report, and we were pleased to see that the final product recognized the value of FinCEN's efforts and the unique expertise we provide related to the BSA. We were also pleased that the report correctly illustrates the Bureau's important role in supporting law enforcement agencies' prosecution of financial crimes, while balancing the needs, interests, and priorities of over 300 Federal, State, and local law enforcement agencies with differing authorities and jurisdictions, and our regular and ongoing support to Federal and State regulatory authorities and foreign law enforcement around the world.

Findings in Brief

Title III of the USA PATRIOT Act (USAPA)[i] significantly expanded the role of Federal agencies in the prevention, detection, and prosecution of financial crimes by increasing the number of financial institutions and organizations subject to the BSA. The USAPA amended certain reporting requirements and anti-money laundering provisions of the BSA, for which FinCEN issued regulations that added BSA requirements and provisions to institutions not previously covered and extended the anti-money laundering framework to also encompass countering terrorist financing. This wholesale expansion of BSA authorities significantly impacted FinCEN's mission and increased our responsibilities, and provided law enforcement agencies access to BSA data from additional industries. As the report identifies, FinCEN is the administrator of one of the largest law enforcement financial transaction reporting systems in the world, which is a repository of all recordkeeping and reporting requirements by financial institutions mandated or authorized under the BSA. The BSA also authorizes the Secretary of the Treasury to issue regulations requiring financial institutions to retain records and file reports with a high degree of usefulness in criminal, tax, and regulatory investigations, and in the conduct of intelligence or counterintelligence activities to protect against international terrorism. Since 1994, the authority to carry out this mandate has been delegated to the Director of FinCEN.

In addition to promulgating reporting requirements for regulated industries, FinCEN in its regulatory capacity develops policy and provides guidance to other agencies, analyzes BSA data for trends and patterns, and enforces compliance, both individually and with other agencies, to

ensure financial institutions' compliance with BSA program obligations. One of FinCEN's strongest operational capabilities for supporting the law enforcement community is our ability to analyze BSA data, in concert with other available resource databases, to develop analytic products and services to assist in the investigation and prosecution of illicit financiers. Some examples of support identified in the report are:

- Basic analytic support, which involves routine checks of the BSA database and other databases using names of suspects and other information provided by the requesting law enforcement agency;

- Complex analytic products, where FinCEN provides a range of complex analytic products in support of the efforts of law enforcement agencies and can include any of the following:
    - Complex tactical case support;
    - Strategic analysis projects or trend analyses;
    - Technical reference manuals; and
    - Policy-level strategic projects.

- In-house assistance, where among other accommodations FinCEN provides office space for law enforcement agencies to visit to perform research or to locate full-time liaisons at our headquarters, to facilitate their agencies' access to FinCEN's services and products; and

- Training, such as how to access BSA data and use it in support of financial crimes investigations.

According to the report, law enforcement agencies find access to BSA data and the accompanying FinCEN support to be a useful tool in their efforts to thwart financial crimes; moreover, the report illustrates how the evolution of FinCEN's mission has expanded our ability to increase the production and variety of more complex analytical products. Several of these products are the direct result of regular and ongoing solicitation of law enforcement input and in some cases are suitable for dissemination to a broad law enforcement audience. FinCEN is committed to improving communication, and as I will discuss in more detail shortly, we are currently working with law enforcement to foster better interaction on both ends. Conversely, some law enforcement agencies cited concerns with how FinCEN, upon receiving requests for complex analytical projects, determines which ones we can or cannot support at a particular point in time. FinCEN strives to provide the best and most strategic support to our law enforcement counterparts, subject to capacity restrictions on the volume we can handle.

We fully understand and appreciate the high degree of importance our expertise plays in informing law enforcement investigations, which is why in October 2009 our Analysis and Liaison Division (ALD) realigned its resources to better meet law enforcement's needs. This included the creation a new office, the Office of Trend and Issue Analysis (OTI), dedicating a small team of analysts to provide proactive analysis of BSA data and communicate regularly

with law enforcement agents in the field. Among other duties and responsibilities, the team will be dedicated to:

- Developing baselines for BSA filings and using those baselines to identify emerging trends to assist our partners;
- Providing our partners with regular, tailored, macro-level analysis that can better inform or support their priority-setting and resource allocation efforts;
- Refining general analytical business requirements and exploring potential technical solutions to broad analytical problems;
- Developing methodologies for the systematic review of newly filed BSA documents to enable more timely detection and exploitation of financial intelligence.

Additionally, ALD reassigned its field representatives, along with several "1811" (Federal agent) resources, to the Office of Law Enforcement Support (OLE). This has afforded OLE the opportunity to utilize its own Federal agents and their experience to enhance communication with law enforcement customers. By combining analytical and investigative experience, OLE can be more effective in assessing and directly serving law enforcement needs. Moreover, the field representatives occupy a unique position in FinCEN to the extent that they are analysts who are co-located with law enforcement personnel at a working level in various locations throughout the country, including High Intensity Financial Crimes Areas (HIFCAs), High Intensity Drug Trafficking Areas (HIDTAs), and the Organized Crime Drug Enforcement Task Force's Fusion Center. OLE is working to more closely integrate the field representatives and 1811s into the OLE operation in order to better understand and serve law enforcement needs.

As noted in GAO's report, OLE historically applied certain criterion to determining whether to accept a request for case support, which included the following guidelines:

- The volume of BSA data available relevant to the case to ensure that it enables FinCEN to do substantive analysis that we believe will have an impact on the case;

- The requesting law enforcement agency's willingness to work directly with FinCEN analysts so that FinCEN can better focus our efforts in support of the request;

- The potential complexity of the case and the BSA data involved — we preferred to accept complex cases in which we would analyze the data in unique ways that the law enforcement agency would not be able to accomplish with its own software and/or expertise; and

- The potential benefit to FinCEN and its potential to enhance our knowledge — we generally chose cases that would help us target our proactive analyses or demonstrate our commitment to and focus on current issues of interest — to share insights not only with the requester, but potentially also the broader law enforcement community.

In October 2009, at FinCEN's regular Law Enforcement Roundtable meeting, we announced to our law enforcement customers and partners that we were abolishing this so-called "complex case criteria." As we develop new means of assessing workloads and priorities, FinCEN has begun assessing each request on its own merits and determining whether we have available resources to respond at the time. In the first two quarters of Fiscal Year 2010 respectively, OLE received approximately 30% and 60% more requests for analytical support from 40% more individual law enforcement agencies than in any other quarters of Fiscal Years 2007-2009. In addition, in those same two quarters, OLE completed nearly three times as many complex analytical products as in any other six-month period in Fiscal Years 2007-2009. In addition, FinCEN's BSA IT Modernization efforts will improve BSA data quality, as well as our ability to share the BSA data and analytical tools with our law enforcement partners.

As I have noted, improved communication with law enforcement agencies is a priority for FinCEN, and we will continue to build on the steps already taken to maximize our existing resources and to more actively solicit input from law enforcement about the development of our complex analytic products. In doing so, we will continue to encourage law enforcement agencies to utilize the avenues for feedback already available. One example is FinCEN's annual customer satisfaction survey, which we provide to those domestic law enforcement customers that requested or received case support from FinCEN during the previous year. The survey solicits our customers' impressions of the thoroughness, relevancy, and usefulness of the analytical products we provide. Another example is the one-page feedback form FinCEN distributes with every analytic product we provide to law enforcement customers. The feedback form contains five "Yes/No" questions intended to capture whether the product was useful in an investigation, was delivered in a timely way, involved networking with another law enforcement agency, and whether the customer was satisfied overall with FinCEN's service. Maximum participation in these areas is a crucial part of how FinCEN stays informed on how to best manage our analytical resources across the broadest spectrum of law enforcement equities.

FinCEN also exercises our authority under Section 314(a) of the USAPA to further assist law enforcement agencies in their investigations. Under 314(a), FinCEN is able to respond to a law enforcement request for information by reaching out to over 44,000 contacts at over 22,000 financial institutions across the country for potential information related to significant money laundering and terrorist investigations. These are targeted requests to financial institutions made every two weeks which come with specific querying instructions and response deadline of two weeks from receipt. Based upon our proven track record of success and pursuant to international treaty provisions, FinCEN recently expanded the 314(a) program to international and domestic State and local users, which entails the following:

- International Users: In order to satisfy U.S. treaty obligations with certain foreign governments, FinCEN extended the use of the 314(a) program to include certain foreign law enforcement agencies. On June 25, 2003, the Agreement on Mutual Legal Assistance between the United States and the European Union (U.S.-EU MLAT) was signed. Article 4 of the U.S.-EU MLAT (entitled Identification of Bank Information) obligates a requested Signatory State to search on a centralized basis for bank accounts within its territory that may be important to a criminal or terrorist investigation in the

requesting Signatory State. In negotiating the terms of Article 4, the United States expressly envisioned that the 314(a) program would be utilized to meet our obligations under this treaty and thus, EU member states would be able to submit case requests to the 314(a) program under these stringent guidelines. Expanding this process to include certain foreign law enforcement requesters will greatly benefit the United States by granting law enforcement agencies in the United States reciprocal rights to obtain information about accounts in those countries.

- State and Local Users: FinCEN has also extended the 314(a) program to domestic State and local law enforcement users. Money laundering and terrorist-related financial crimes are not limited by jurisdiction or geography. Detection and deterrence of these crimes require information sharing across all levels of investigative authorities, to include State and local law enforcement, to ensure the broadest U.S. Government action. Access to the 314(a) program by State and local law enforcement agencies will provide a platform from which they can more effectively and efficiently fill information gaps, including those connected with multi-jurisdictional financial transactions, in the same manner as Federal law enforcement agencies. This expansion of the 314(a) program, in certain limited circumstances, to include State and local law enforcement authorities, will benefit overall efforts to ensure that all law enforcement resources are made available to combat money laundering and terrorist financing.

Report Recommendations

The report made a series of recommendations for action that are designed to maximize the relevance and usefulness of FinCEN's law enforcement support capabilities. As noted by the GAO, FinCEN completed our own assessment in 2008 and developed a plan to better solicit input from law enforcement agencies for the review and selection of analytical product proposals. Accordingly, FinCEN concurs with the GAO's recommendations, which also endeavor to improve communications and support to the law enforcement community. The specific recommendations and FinCEN's anticipated action are as follows:

Recommendation 1: Clarify and communicate to law enforcement agencies the various types of complex analytical products FinCEN can provide and establish a process for informing law enforcement agencies about the availability of these products.

Recommendation 2: Complete a plan, including identifying the specific actions FinCEN will take, to better assess law enforcement needs, and make the division's operations more transparent to FinCEN's law enforcement customers. This plan should include a mechanism for FinCEN to communicate to law enforcement agencies its decision-making process for selecting complex analytical products to pursue and why FinCEN rejects a request.

Recommendation 3: Establish a systematic process for actively soliciting input from law enforcement agencies and incorporating this input into the selection and development of its analytical products.

Planned Corrective Action: As mentioned previously, in October 2009 FinCEN's Office of Law Enforcement Support (OLE) initiated an effort to address communication with law enforcement on three levels: analytical products, workflow process, and outreach. This effort is designed to adapt our own 2008 plan to the new organizational structure within the Analysis and Liaison Division, which I described previously. As part of this effort, OLE has developed plain language descriptions of (1) the types of analytical products and services it provides to law enforcement; and (2) the data sources and analytical tools available to FinCEN. These descriptions are designed for broad dissemination to all levels of Federal, State, and local law enforcement to enhance communication about and understanding of the various analytical products and services available through FinCEN.

Additionally, the team assessing workflow processes and outreach efforts will make recommendations that will include provisions for better assessment of law enforcement needs and more insight into FinCEN's decision-making on complex analytical products. The team has developed and is preparing to test a new data collection form for the internal use of FinCEN personnel. As FinCEN personnel interact with law enforcement agency representatives to discuss analytical support requests, FinCEN personnel will collect a consistent set of information on this form. Thus, every request for analytical support will include certain information necessary to the work planning process. A FinCEN analyst will then add their professional assessment of the best methods for servicing the request, the resources needed, the probability of success, and his or her recommendation whether to proceed as requested, suggest a different approach, or not to support the request. This record, created by OLE personnel will be captured in FinCEN's case management system and will provide the basis for work planning decisions and the details captured on these forms will be made available to our law enforcement partners to explain FinCEN's work planning decisions.

The team assessing outreach efforts is developing plans for regular, structured communication with law enforcement about the services, products, and capabilities FinCEN offers. OLE will implement the recommendations from all of these teams during the course of Fiscal Year 2010. We are committed to serving the evolving needs of our law enforcement customers, and we will remain open going forward to suggestions to improve these processes as well as the usefulness of our products.

Recommendation 4: Develop a mechanism to collect law enforcement sensitive information from law enforcement agencies during the public comment period of the Notice of Proposed Rulemaking (NPRM) process.

Planned Corrective Action:

FinCEN has developed a mechanism that involves a two-prong approach for collecting law enforcement sensitive information during the public notice and comment period of an NPRM without making the comments publicly available.

The two-prong approach involves: (1) providing our law enforcement stakeholders (LE) with notice that an NPRM has been published in the Federal Register and advising them that they can provide LE sensitive information without FinCEN making the comments publicly available, and

(2) using the Federal Docket Management System (FDMS) to ensure that LE-sensitive information is not posted publicly.

At the time of publication of each NPRM, FinCEN will advise LE, through the FinCEN LE liaisons, that they may provide LE-sensitive information and that FinCEN will not post those comments or make them publicly available. FDMS provides for a secure venue for LE agencies to submit LE-sensitive information. LE commenters can easily access FDMS through its public interface on the internet at the *regulations.gov* website, and FinCEN can control public access to those documents through the FDMS docket management interface.

GAO Report: Bank Secrecy Act: Suspicious Activity Report Use is Increasing, but FinCEN Needs to Further Develop and Document Its Form Revision Process

In response to concerns expressed by some depository institutions regarding both the resource challenges involved with BSA compliance, as well as the degree to which law enforcement agencies actively use Suspicious Activity Reports (SARs) and other BSA-related forms, the House Committee on Financial Services requested that the GAO examine a number of factors related to the reporting of suspicious activity. In doing so, the Committee directed the GAO to assess the factors affecting the number of SARs filed; actions agencies have taken to improve the usefulness of SARs; Federal agencies' use of SARs; and, the effectiveness of the process used to revise SAR forms. In conducting its examination, the GAO reviewed current statutes and analyzed various SAR filings, and conducted comprehensive interviews with FinCEN, our counterparts in law enforcement and regulatory agencies, and several depository institutions. A final report was submitted to the Committee in February 2009.

FinCEN was pleased with the results of the final report, and we consider it a comprehensive and objective analysis of SAR usage and usefulness. The surveyed views of the entire spectrum of stakeholders represents a meaningful body of empirical data from which the Congress can glean in order to satisfy any questions regarding the vital role SARs play in safeguarding our financial system from illicit financiers. Let me emphasize from the outset that while the specific focus of this report is SARs, the distinct but equally important information obtained through the filing of Currency Transaction Reports (CTRs), which complements the information obtained through SARs, enhances the effectiveness of the entire reporting structure in combating financial crimes. As the GAO pointed out in a 2008 report entitled: *Bank Secrecy Act: Increased Use of Exemption Provisions Could Reduce Currency Transaction Reporting While Maintaining Usefulness to Law Enforcement Efforts*, filing one report does not diminish the need for the other. [ii]

Findings in Brief

The GAO identified several factors contributing to the increase in SAR filings by depository institutions. Some of the more prominent factors included a heightened awareness of suspicious activity stemming from a post-September 11th regulatory environment; a more mainstream deployment of automated systems designed to detect and identify suspicious activity at a

significantly higher rate than traditional methods of manual monitoring; greater awareness of BSA violations and an increased emphasis on related training; and improved guidance on BSA examinations. GAO also noted the efforts taken by FinCEN to improve the quality of SAR filings and to foster greater awareness of their degree of usefulness. This includes:

- Publishing official Guidance and Advisories on red flag indicators, common filing errors, and other acute areas of concern for filing institutions;
- Publishing on a semiannual basis the SAR Activity Review: *Trends, Tips and Issues* which addresses topics related to suspicious activity reporting and offers tips in SAR preparation;
- Participating in conferences and other industry outreach events to discuss BSA issues;
- Publishing examples of SAR usage in recent law enforcement investigations and prosecutions; and
- Establishing a SAR Subcommittee on the Bank Secrecy Act Advisory Group (BSAAG)[iii].

In addition to the types of publically available reports outlined above, the GAO also noted the numerous ways in which FinCEN uses SAR data to provide several types of both public and nonpublic analytical products to Federal and State law enforcement and regulatory agencies. FinCEN also maintains a database of its own proactive casework and its support of other agencies' investigations, and we use these datasets to inform our strategic analytical products, which are created both proactively and reactively in response to requests from law enforcement agencies.

Increased and improved use of SAR data is not limited to FinCEN alone. As the GAO reported, law enforcement agencies have taken a variety of actions to increase their use of SARs in investigations. The report notes that many Federal agencies, both individually and in collaboration with other agencies, have taken actions to more effectively analyze SAR data, particularly by better integrating BSA data with other law enforcement data. This includes maximizing their access to BSA data bulk downloads to perform sophisticated analyses more readily than through traditional methods of accessing the BSA database remotely and querying it for specific records. For example, the Federal Bureau of Investigation (FBI) — one of FinCEN's largest and most frequent users of BSA data — incorporates SARs into its own Investigative Data Warehouse, in addition to direct queries through FinCEN's systems. These are used by the FBI to further individual investigations and to identify financial patterns associated with money laundering, bank fraud, and other illicit financial activities. FBI officials told the GAO that the FBI uses the results from SAR analyses in cross-program investigations of criminal, terrorist, and intelligence networks. In addition, the FBI has developed a new tool that allows users in the field to quickly and easily categorize, prioritize, and analyze suspects named in SARs and other available intelligence. The FBI's opinion of SAR data as a powerful and effective investigative tool is widely documented. To illustrate my point, consider the comments made by John S. Pistole, Deputy Director of the FBI, in his speech before the American Bankers

Association/American Bar Association Money Laundering Enforcement Conference in Washington, D.C. on October 22, 2007. In his speech, Deputy Director Pistole indicated:

> "Records produced and maintained pursuant to the Bank Secrecy Act are especially vital weapons in our arsenal — particularly Suspicious Activity Reports and Currency Transaction Reports. Every single one of our terrorism investigations has a financial sub-file — and one of the first things on our checklist is to query FinCEN for BSA reports that match the subject. You would be amazed at how much valuable intelligence they produce — especially SARs and CTRs.
>
> As we have seen since the September 11th attacks, terrorists don't necessarily need huge sums of money to plan and carry out an attack. In a sample of FBI cases, about 42 percent of subjects had BSA reports filed. About 50 percent of those reports reflected transactions of $20,000 or less. This produces a vast amount of financial intelligence."[iv]

More recently, in testimony before the Senate Judiciary Committee focusing on the FBI's mortgage fraud efforts, Deputy Director Pistole spoke to the importance of utilizing lead information from SARs in its efforts to combat fraud, and he also noted the many interagency efforts the FBI has underway with FinCEN and others to tackle mortgage fraud.[v] These are just two of several examples that underscore the indispensible role SARs play in all aspects of a criminal investigation by scores of Federal, State, and local law enforcement agencies.

Report Recommendation

The report carries with it one recommendation for action. In its conclusion, the GAO recommended that the Secretary of the Treasury direct FinCEN to further develop a strategy that fully incorporates certain GAO-identified practices to enhance and sustain collaboration among Federal agencies into the forms-change process for reports filed by financial institutions. We agreed with the recommendation, which dovetails with an initiative FinCEN began well in advance of the report's publication. Over the past several years, FinCEN has been working toward modernizing our forms management process to enable us to take advantage of the advances in dynamic electronic forms.[vi] We have established Directives detailing our management team's procedures and the team's makeup. Currently, our forms team is comprised of eight staff members from across the agency. Our team is co-chaired by the Office of Regulatory Policy's information collection manager, and the Office of Technology Solutions and Services Division's Bank Secrecy Act database manager. Our forms team consists of representatives from the Regulatory Policy and Program Division's Office of Compliance and Office of Regulatory Analysis, special agents from our Office of Liaison Services, analysts from our Analysis and Liaison and International Programs Divisions, and representatives from the Office of Chief Counsel.

Changes to the various information collection tools may be in response to statutory or regulatory changes, which are implemented as soon as the necessary data elements are finalized and

database changes can be programmed. Currently, we are operating under severe restrictions in making any database or forms changes due to major data system limitations. Changes today can take from 12 to 18 months or more depending on the significance of the change. We anticipate future progress in this area as we transform and modernize our IT environment.

Our current stakeholders are law enforcement,[vii] the Federal functional regulators to whom FinCEN has delegated BSA examination authority,[viii] and regulated financial institutions, including the interested public. Under the normal process of forms management, we accept suggested edits and/or changes from our stakeholders as they are submitted. We attempt to control the frequency of change by tying the routine changes and updates to the normal three year cycle of the Office of Management and Budget's (OMB's) Paperwork Reduction Act (PRA) review and renewal process.

The forms change review process begins six to eight months in advance of a form's OMB expiration date (normally three years after the last OMB approval). After completing the internal FinCEN staff and management review, the FinCEN Data Management Council, which consists of representatives from all of FinCEN's government stakeholders, is briefed and given the opportunity to provide further input. Once final agreement has been reached, the requested action is published in the Federal Register, requesting public comment on the proposed action. Once received, comments are reviewed and accepted or rejected. If rejected, an explanation is provided in the final submission to OMB requesting approval of the requested action. FinCEN believes that this multi-stakeholder, comprehensive approach to forms change collaboration will more than satisfy the GAO's recommendation.

Recent Significant Accomplishments

In addition to the work FinCEN does as part of fulfilling the above aspects of our statutory mandate, there are several other areas where we dedicate significant staff resources in order to assist in Administration priorities, to promote transparency in government, or to better inform ourselves and the industries we regulate. The below are just a few of our recent initiatives and collaborations intended to maximize the use of BSA data.

Combating Mortgage Foreclosure Rescue Scams

Just over a year ago, Treasury Secretary Geithner, along with Attorney General Holder, Secretary of Housing and Urban Development Donovan, and Federal Trade Commission Chairman Leibowitz, announced a major interagency effort to combat foreclosure rescue scams. Two specific initiatives were included as the Treasury Department's primary efforts to the joint response.

First, FinCEN issued an advisory[ix] to help financial institutions spot questionable loan modification schemes and report that information for law enforcement purposes. The advisory provides "red flags" for financial institutions that may indicate a loan modification or foreclosure rescue scam.

Second, the Treasury announced an advanced targeting effort — coordinated by FinCEN — to deter fraudulent activity and combat fraudulent loan modification schemes. FinCEN, working with our partners from the law enforcement and regulatory communities, is utilizing information provided by the financial industry, along with other information supplied by participating agencies, to identify possible loan modification fraud suspects for civil and criminal investigations. This research initiative uses SAR filings specifically related to loan modification/ foreclosure rescue to identify targets for referral to appropriate law enforcement authorities.

By serving as a networking and deconfliction center, FinCEN is also helping law enforcement agencies streamline and coordinate their efforts so that the resources of multiple investigative and prosecutorial agencies are focused in the most efficient way. This cooperative effort will maximize government resources to shut down fraudulent companies more quickly than before, target companies that otherwise would have gone unnoticed 'under the radar,' and will increase our knowledge of how these companies operate, enhancing our efforts to identify and prosecute individuals involved in mortgage fraud scams. In recent years, a broad range of efforts to combat fraud in the housing markets has seen the greatest concentration of FinCEN efforts. As the criminal activity has evolved, so have our analysis and proactive efforts to support law enforcement, building from fraud in loan origination, to the efforts to combat loan modification scams, and our more recent activity to combat fraud in reverse mortgage transactions.

Financial Fraud Enforcement Task Force

In November 2009, President Obama established the Financial Fraud Enforcement Task Force (FFETF) to hold accountable those who helped bring about the last financial crisis, and to prevent another crisis from happening. The task force is improving efforts across the government and with State and local partners to investigate and prosecute significant financial crimes, ensure just and effective punishment for those who perpetrate financial crimes, recover proceeds for victims, and address financial discrimination in the lending and financial markets.

With more than 20 Federal agencies, 94 U.S. Attorneys Offices and State and local partners, the FFETF is the broadest coalition of law enforcement, investigatory and regulatory agencies ever assembled to combat fraud. FinCEN has been actively involved in these efforts, as SARs are one of the best sources of lead information for law enforcement in fighting financial crime, and because of FinCEN's ability to build upon our existing network of support to law enforcement at the Federal, State and local levels and the financial regulators. Of the three Task Force committees enumerated in President Obama's Executive Order, FinCEN serves together with the Justice Department's Executive Office for United States Attorneys as co-chair of the Training and Information Sharing Committee. Since its creation, several criminal actors have been brought to justice through the combined investigative, analytical, and prosecutorial strengths of this initiative, which is reflected on the Task Force's Web site[x], along with a wide list of resources and information dedicated to helping find and report suspected cases of financial fraud.

Financial Institutions Outreach Initiative

In January 2008, in an effort to better inform our regulatory rulemaking and guidance responsibilities, FinCEN began a Financial Institutions Outreach Initiative with representatives from a variety of industries that fall under BSA regulatory requirements. During the first stage of the initiative, FinCEN conducted outreach meetings with some of the nation's largest depository institutions,[xi] and in 2009 meetings were held with the nation's largest money services businesses. We are currently in the midst of an outreach initiative with smaller depository institutions and we will continue to conduct additional initiatives with other industry groups that fall under our purview. The Financial Institutions Outreach Initiative contributes to FinCEN's broader understanding of financial industry practices in applying the BSA and provides new insights into what information institutions need to more effectively implement their anti-money laundering programs. Furthermore, as a result of these dialogues, law enforcement investigators and regulators will receive increasingly better information to act against financial crime and illicit activities.

Strategic Partnership with SIGTARP and Inspectors General

FinCEN is also partnering with numerous other Federal agencies on a broad, multi-agency task force announced by the Inspector General for the Troubled Asset Relief Program (SIGTARP), in coordination with the Special Inspector General for the Board of Governors of the Federal Reserve System (FRB-OIG). FinCEN analysts were initial contributors to the efforts to combat abuse of these programs critical to stabilizing the economy and restoring growth. Additionally, FinCEN entered into a Memorandum of Understanding (MOU) with SIGTARP that provides it direct access to BSA reports, and we are also providing regular training to the SIGTARP staff on money flows and on how to effectively use BSA data for their analytical purposes. We also worked with the SIGTARP's Investigations Division and Counsel to develop and circulate a joint advisory to financial institutions on reporting suspicious activity related to criminal use of TARP funds. This proactive initiative combines law enforcement, civil and criminal resources to deter, detect, investigate, and prosecute any efforts to profit criminally from the Term Asset-Backed Securities Loan Facility (TALF).[xii] We continue to help ensure that leads from the financial industry are properly investigated.

More broadly, we are working with Offices of Inspectors General (OIG) around the country to support their efforts to root out the waste, fraud, and abuse in a range of government programs from housing to Medicare to military contracting to food stamps. For example, FinCEN is providing the Housing and Urban Development Inspector General (HUD-IG) technical training and support to use BSA data in mortgage fraud cases and assisting them in a strategic effort to proactively identify mortgage fraud in Federal Housing Administration (FHA) loans by generating leads and potential investigative subjects through SAR analysis. These leads will assist them by identifying potential fraud by industry insiders, finding mortgage fraud "hot spots," and reducing labor intensive research for investigators by centralizing and streamlining the identification of potential frauds as reported in SARs. Most recently, we have worked together with the HUD-IG to issue an Advisory to financial institutions that highlights potential fraud schemes targeting seniors and the FHA Home Equity Conversion Mortgage (HECM) program and suggests key words for those financial institutions to use when completing related SARs.

Conclusion

Financial crimes and other illicit activities are unfortunately here to stay, and FinCEN must remain vigilant in its mission to safeguard the financial system from those who wish to manipulate it for unscrupulous purposes. FinCEN is more committed than ever to maximizing the strengths and commonalities that exist between us, our law enforcement counterparts, and the industries we are responsible for regulating. Identifying these areas cannot be done in a vacuum, and FinCEN will continue to work with our colleagues at the Federal and State banking regulatory agencies, law enforcement officials, and industry representatives, including the members of the BSAAG, to continue to develop solutions that foster a safe and reliable financial system while promoting efficiency and effectiveness in BSA application. We are very encouraged by the progress we have made thus far, and we are dedicated to continuing to build on these accomplishments as we chart a course for the future. Thank you for inviting me to testify before you today. I would be happy to answer any questions you may have.

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[i] http://www.fincen.gov/statutes_regs/patriot/index.html

[ii] http://www.gao.gov/new.items/d08355.pdf

[iii] The Bank Secrecy Act Advisory Group was created by Congress in 1992 and consists of representatives from Federal regulatory and law enforcement agencies, financial institutions, and trade groups in order to actively solicit advice on the administration of the Bank Secrecy Act.

[iv] http://www.fbi.gov/pressrel/speeches/pistole102207.htm

[v] Pistole, John. Statement before the Senate Judiciary Committee, Washington, D.C. 11 February 2009.

[vi] Dynamic forms are capable of automatically expanding to collect multiple instances of recurring information; Dynamic forms are programmable to auto-fill static data and establish required fields along with the appropriate validations to verify the accuracy of entered information.

[vii] Federal law enforcement participates in the initial planning. State and local law enforcement may comment during the 60-day public comment period under the Paperwork Reduction Act (PRA) review process.

[viii] The Federal Reserve Board (Fed), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the National Credit Union Administration (NCUA), the Federal Deposit Insurance Corporation (FDIC), the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), and the Internal Revenue Service (IRS).

[ix] http://www.fincen.gov/statutes_regs/guidance/html/fin-2009-a001.html

[x] www.stopfraud.gov

[xi] http://www.fincen.gov/news_room/rp/reports/pdf/Bank_Report.pdf

[xii] http://www.fincen.gov/news_room/nr/pdf/20090311.pdf

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BANK SECRECY ACT

FinCEN Needs to Further Develop Its Form Revision Process For Suspicious Activity Reports

Statement of Richard J. Hillman, Managing Director
Financial Markets and Community Investment

GAO-10-609T

April 28, 2010

GAO
Accountability·Integrity·Reliability
Highlights

Highlights of GAO-10-609T, a testimony before the Subcommittee on Oversight and Investigations, Committee on Financial Services, House of Representatives

BANK SECRECY ACT

FinCEN Needs to Further Develop Its Form Revision Process for Suspicious Activity Reports

Why GAO Did This Study

To assist law enforcement agencies in their efforts to combat money laundering, terrorist financing, and other financial crimes, the Bank Secrecy Act (BSA) requires financial institutions to file suspicious activity reports (SAR) to inform the federal government of transactions related to possible violations of law or regulation. Depository institutions have been concerned about the resources required to file SARs and the extent to which SARs are used.

The Subcommittee asked GAO to discuss our February 2009 report on suspicious activity reporting. Specifically, this testimony discusses (1) factors affecting the number of SARs filed, (2) actions agencies have taken to improve the usefulness of SARs, (3) federal agencies' use of SARs, and (4) the effectiveness of the process used to revise SAR forms.

To respond to the request, GAO relied primarily on the February 2009 report titled *Bank Secrecy Act: Suspicious Activity Report Use Is Increasing, but FinCEN Needs to Further Develop and Document Its Form Revision Process* (GAO-09-226), and updated it with additional information provided by FinCEN. In that report, GAO recommended that FinCEN work to further develop a strategy that fully incorporates certain GAO-identified practices to enhance and sustain collaboration among federal agencies into the forms-change process.

View GAO-10-609T or key components. For more information, contact Richard J. Hillman at (202) 512-8678 or hillmanr@gao.gov.

What GAO Found

In 2000 through 2008, total SAR filings by depository institutions increased from about 163,000 to 732,000 per year; representatives from federal regulators, law enforcement, and depository institutions with whom GAO spoke attributed the increase mainly to two factors. First, automated monitoring systems can flag multiple indicators of suspicious activities and identify significantly more unusual activity than manual monitoring. Second, several public enforcement actions against a few depository institutions prompted other institutions to look more closely at client and account activities. Other factors include institutions' greater awareness of and training on BSA requirements after September 11, 2001 and more regulator guidance for BSA examinations.

FinCEN and law enforcement agencies have taken actions to improve the quality of SAR filings and educate filers about their usefulness. Since 2000, FinCEN has issued written products with the purpose of making SAR filings more useful to law enforcement. FinCEN and federal law enforcement agency representatives regularly participate in outreach on BSA/anti-money laundering, including events focused on SARs. Law enforcement agency representatives said they also establish relationships with depository institutions to communicate with staff about crafting useful SAR narratives.

FinCEN, law enforcement agencies, and financial regulators use SARs in investigations and financial institution examinations and have taken steps in recent years to make better use of them. FinCEN uses SARs to provide public and nonpublic analytical products to law enforcement agencies and depository institution regulators. Some federal law enforcement agencies have facilitated complex analyses by using SAR data with their own data sets. Federal, state, and local law enforcement agencies collaborate to review and start investigations based on SARs filed in their areas. Regulators use SARs in their examination process to assess compliance and take action against abuse by depository institution insiders.

After revising a SAR form in 2006 that could not be used because of information technology limitations, in 2008, FinCEN developed a new process for revising BSA forms, including SARs, that may increase collaboration with some stakeholders, including some law enforcement groups concerned that certain of the 2006 revisions could be detrimental to investigations. Available documentation on the process did not detail the degree to which the new process would incorporate GAO-identified best practices for enhancing and sustaining federal agency collaboration. For example, it did not specify roles and responsibilities for stakeholders or depict monitoring, evaluating, and reporting mechanisms. According to FinCEN officials, it is taking some additional steps toward obtaining greater collaboration with law enforcement agency representatives, prosecutors, and multi-agency law enforcement teams and others to determine the contents of the form, but it is too soon to determine the effectiveness of the process.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss our work on the use of suspicious activity (SAR) reports by federal law enforcement and regulatory agencies and the U.S. Department of the Treasury Financial Crimes Enforcement Network's (FinCEN) recent efforts to implement a new process to revise SARs and other Bank Secrecy Act (BSA) forms.[1] FinCEN administers BSA and its implementing regulations. To assist law enforcement agencies in their efforts to combat money laundering, terrorist financing, and other financial crimes, BSA requires financial institutions to file SARs to inform the federal government of transactions related to possible violations of law or regulation.[2]

Depository institutions have had to submit SARs since 1996, longer than any other type of financial institutions, and they file the majority of these reports—in 2008, they filed 732,563 SARs. These institutions have expressed concerns in congressional testimony about resource challenges involved in complying with SAR-related requirements and the extent to which law enforcement agencies use SARs and other reports BSA requires. Federal law enforcement agency officials have testified that they review and use SARs proactively—separately and in multiagency teams—to identify potential money laundering cases and trends, as well as using them in ongoing investigations of terrorism financing and other financial crimes. Depository institution officials have commented they lack clear guidance on what law enforcement looks for and finds useful in these reports.

We reported in February 2009 that FinCEN revised the SAR form for depository institutions in 2006 but could not implement it because of information technology limitations.[3] In 2008, FinCEN developed a new process for revising BSA forms (including SARs) that could increase collaboration with some stakeholders, including some law enforcement groups concerned that certain 2006 revisions could be detrimental to investigations. Law enforcement representatives' views on the revised

[1] 12 U.S.C. §§ 1829b, 1951-1959, and 31 U.S.C. §§ 5311 et seq.

[2] 31 U.S.C. § 5318(g) provides for the reporting of suspicious activities. FinCEN's SAR regulations may be found at 31 C.F.R. §§ 103.15 to 103.21.

[3] GAO, Bank Secrecy Act: Suspicious Activity Report Use Is Increasing, but FinCEN Needs to Further Develop and Document Its Form Revision Process, GAO-09-226 (Washington, D.C.: Feb. 27, 2009).

form were mixed—some expressed concerns that changes on the revised form could diminish the utility of the form for investigative purposes.

My statement today is based on our February 2009 report, and additional information provided by FinCEN related to recent developments in its efforts to further educate SAR filers and implement a new process to revise SARs and other forms in tandem with its strategy to modernize information technology. Specifically, this statement focuses on (1) underlying factors that affect the number of SAR filings by depository institutions, (2) actions federal and law enforcement agencies have taken to improve the usefulness of SARs, (3) ways in which federal agencies use SARs and actions they have taken to make better use of them, and (4) whether the process FinCEN uses to revise SAR forms is effective in assuring that information collected is appropriate for law enforcement needs.

For our 2009 report, we reviewed relevant laws, regulations, agency documents and past GAO work. We interviewed representatives from federal banking regulators—the Board of Governors of the Federal Reserve System (Federal Reserve), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA).[4] We also interviewed representatives from federal law enforcement agencies, including the Secret Service, the Internal Revenue Service-Criminal Investigation (IRS-CI), Immigration and Customs Enforcement (ICE), the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), and the Department of Justice (DOJ). We also obtained and analyzed data from FinCEN on depository institutions' SAR filings for calendar years 2000–2007. We interviewed representatives of 15 randomly selected depository institutions that filed various levels of SARs during 2007 about their experiences with SAR filing. We interviewed representatives from randomly selected SAR review teams (multiagency teams with federal, state, and local law enforcement representation) and from High Intensity Financial Crime Areas (HIFCA) throughout the country. To update this information, we interviewed FinCEN officials and reviewed documents related to the new SAR form revision process. We also updated the number of SAR filings made by depository institutions.

[4]We use "federal banking regulators" to refer collectively to the regulators of depository institutions (banks, thrifts, and federally chartered credit unions).

We conducted our work for the February 2009 report between July 2007 through February 2009 and updated information in April 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our finding and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

The Secretary of the Treasury delegated overall authority for enforcement of, and compliance with, BSA and its implementing regulations to the Director of FinCEN. FinCEN develops policy and provides guidance to other agencies, analyzes BSA data for trends and patterns, and pursues enforcement actions when warranted. It also relies on other agencies in implementing the BSA framework. These activities include (1) ensuring compliance with BSA requirements to report suspicious activity, (2) collecting and storing reported information, and (3) taking enforcement actions or conducting investigations of criminal financial activity.

The Secretary of the Treasury delegated BSA examination authority for depository institutions to five banking regulators—the Federal Reserve, OCC, OTS, FDIC, and NCUA.[5] The regulators conduct periodic on-site safety and soundness and compliance examinations to assess an institution's financial condition, policies and procedures, adherence to BSA regulations (for example, filing of SARs and other BSA-related reports), and compliance with other laws and regulations.

[5]31 C.F.R. § 103.56(b)(1)-(5). Each examination of an insured depository institution also must include a review of the institution's BSA compliance procedures by the appropriate federal regulator, which has independent examination authority. 12 U.S.C. § 1818(s) and 12 U.S.C. §1786(q)(2).

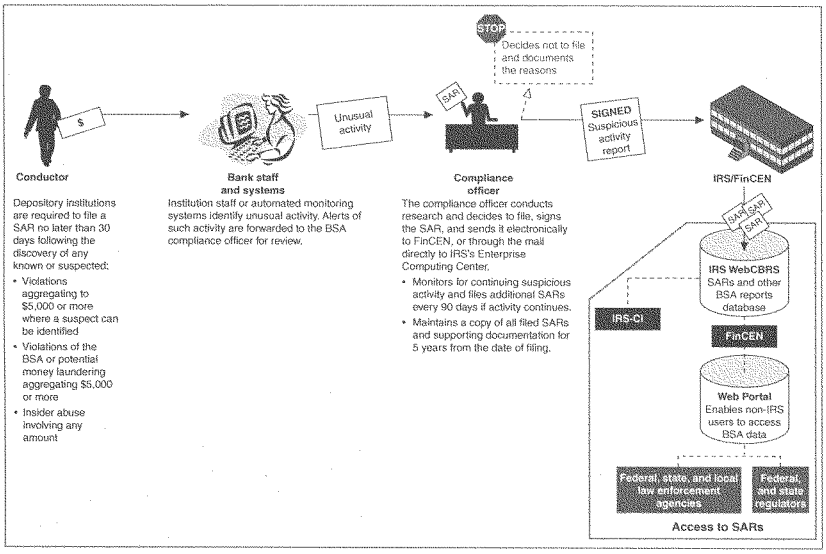
Financial institutions must report any suspicious transaction relevant to a possible violation of a law.[6] In 1996, FinCEN required banks and other depository institutions to report, on a SAR form, certain suspicious transactions involving possible violations of law or regulation, including money laundering.[7] In the same year, federal banking regulators required depository institutions to report suspected money laundering and other suspicious activities using the SAR form. IRS's Enterprise Computing Center–Detroit serves as the central point of collection and storage of these data.[8] Figure 1 summarizes the process for filing and accessing SARs.

[6]Pub. L. No. 102-550, title XV, § 1517(b), 106 Stat. 3672 (Oct. 28, 1992). Before 1996, depository institutions reported suspicious activity on criminal referral forms filed with their respective primary federal financial regulator and federal law enforcement agencies. See 60 Fed. Reg. 46556, 46557 (Sept. 7, 1995). The USA PATRIOT Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (Oct. 26, 2001), expands SAR reporting requirements to nondepository institutions such as money services businesses, the securities and futures industries, and insurance companies. FinCEN developed a SAR form for money services businesses—68 Fed. Reg. 6613, 6615 (Feb. 10, 2003) and 67 Fed. Reg. 48704 (July 18, 2002)—and forms for other types of financial institutions. FinCEN has not issued a SAR form for insurance companies, which use the securities and futures form. Recently revised forms to facilitate joint filing by depository institutions, casinos and card clubs, insurance companies, and the securities and futures industries were postponed because of data quality initiatives. 72 Fed. Reg. 23891 (May 1, 2007).

[7]61 Fed. Reg. 4326 (Feb. 5, 1996).

[8]IRS investigators and other authorized officials access the data system directly through IRS's Intranet site in what is known as WebCBRS. FinCEN controls non-IRS law enforcement users' access to BSA data in WebCBRS, through Secure Outreach, which functions as a portal. Agencies without direct access may visit FinCEN's offices and access BSA data directly; these users are referred to as "platform users."

Figure 1: The Process for Filing and Accessing SARs



Sources: GAO analysis; Art Explosion (images).

Federal regulators and FinCEN can bring formal enforcement actions, including civil money penalties, against institutions for violations of BSA. Formal enforcement actions generally are used to address cases involving systemic, repeated noncompliance; failure to respond to supervisory warnings; and other violations. However, most cases of BSA noncompliance are corrected within the examination framework through supervisory actions or letters that document the institution's commitment to take corrective action. In addition, DOJ may bring criminal actions against individuals and corporations, including depository and other financial institutions, for money laundering offenses and certain BSA violations. The actions may result in criminal fines, imprisonment, and

forfeiture actions. Institutions and individuals willfully violating BSA and its implementing regulations, and structuring transactions to evade BSA reporting requirements, are subject to criminal fines, prison, or both.[9]

Law enforcement agencies housed in DOJ and the Department of Homeland Security use SARs for investigations of money laundering, terrorist financing, and other financial crimes. Agencies in DOJ involved in efforts to combat money laundering and terrorist financing include FBI; DEA; the Department's Criminal and National Security Divisions; the Bureau of Alcohol, Tobacco, Firearms, and Explosives; the Executive Office for U.S. Attorneys; and U.S. Attorneys Offices. The Secret Service and ICE (in Homeland Security) also investigate cases involving money laundering and terrorist activities. IRS-CI uses BSA information to investigate possible cases of money laundering and terrorist financing activities. Federal and multiagency law enforcement teams, which may include state and local law enforcement representatives, also use SAR data to provide additional information about subjects during ongoing investigations.

Multiple Factors Contributed to Increases in Depository Institutions' SAR Filings

From 2000 through 2007, depository institutions filed an increasing number of SARs each year and representatives from federal regulators, law enforcement, and depository institutions with whom we spoke attributed the increase to a number of factors. According to FinCEN data, SAR filings by depository institutions increased from approximately 163,000 in 2000 to more than 732,000 in 2008. In our report, our analysis of SAR and banking data from 2004 through 2007 indicates that the growth rates in SAR filings varied over time among depository institutions of different asset sizes. For example, the greatest increase in SARs filed during this period by the largest depository institutions occurred from 2004 to 2005, and SARs filed by small credit unions nearly doubled from 2005 to 2006.

Representatives of federal banking regulators, law enforcement agencies, and depository institutions most frequently attributed the increase to two factors: technological advances and the effect of public enforcement actions on institutions. According to the representatives, automated transaction monitoring systems can flag multiple indicators of suspicious activity and identify much more unusual activity than could be identified

[9] 31 U.S.C. §§ 5322 and 5324(d).

manually. At the largest depository institutions, these systems conduct complex analyses incorporating customer profiles. The representatives also said that issuance of several public enforcement actions in 2004 and 2005 with civil money penalties and forfeitures up to $40 million against a few depository institutions prompted many institutions to file more SARs. FinCEN and the federal banking regulators took the actions because of systemic BSA program noncompliance, which included failures to meet SAR filing requirements. More recently in March 2010, government actions taken against one depository institution for BSA violations, including SARs violations, included $160 million in penalties and fines.

Depository institution representatives with whom we spoke cited a third factor for increases—concerns they would receive criticisms during examinations about decisions not to file SARs. To avoid such criticism, they said their institutions filed SARs even when they thought them unnecessary—a practice sometimes called "defensive SAR filing." However, according to the federal regulators and some law enforcement officials with whom we spoke, there is no means of determining what, if any, portion of the increase in filings could be attributed to defensive filing. The representatives suggested additional factors as contributing to the increase, including greater awareness of BSA requirements after September 11, 2001, more regulator guidance for BSA examinations, and more BSA-related training at the institutions.

FinCEN and Law Enforcement Agencies Have Acted to Educate Filers about The Usefulness of SARs and Improve the Quality of Their Filings

FinCEN and law enforcement agencies have taken multiple actions to educate filers about SARs usefulness and improve the quality of SAR filings. Since 2000, FinCEN has issued written products with the purpose of educating filers and making filings more useful to law enforcement. These include (1) a regularly issued publication that gives tips on topics such as the preparation of SARs and (2) guidance for depository institutions and other SAR filers. For example, in its *SAR Activity Review: Trends, Tips and Issues*—FinCEN regularly provides information on suspicious activity reporting, trends, and data analyses, law enforcement cases assisted by BSA data, and other issues. In 2008 and in 2009, the publication included information on suspicious activity reviews by a state banking regulator and securities regulators, respectively. In 2009, FinCEN issued guidance on filing SARs for mortgage loan modification and foreclosure rescue scams and in 2010 began an effort to promote electronic filing of BSA forms targeted at current paper filers. FinCEN representatives regularly participate in outreach events on BSA and anti-money laundering issues, including events on SARs. FinCEN also chairs the Bank Secrecy Act Advisory Group—a forum for federal agencies and

financial industry representatives to discuss BSA administration, including SAR-related issues. Federal law enforcement agency representatives said they improved SARs' usefulness by conducting outreach events and establishing relationships with depository institutions in their local areas to communicate with staff about crafting useful SAR narratives. Representatives from some multiagency law enforcement teams told us that they subsequently noticed improved SAR narratives from local depository institutions.

Federal Agencies Use SARs in a Variety of Ways and Have Taken a Number of Actions in Recent Years to Make Better Use of Them

FinCEN, law enforcement agencies, and banking regulators use SARs in investigations and depository institution examinations and took steps in recent years to make better use of them. FinCEN uses SARs to provide a number of public and nonpublic analytical products to law enforcement agencies and depository institution regulators. In 2004 and 2005, several federal law enforcement agencies signed memorandums of understanding with FinCEN to receive bulk BSA data, including SARs. They combined these data with information from their law enforcement databases to facilitate more complex and comprehensive analyses. Different team structures have been established to better analyze SARs. For example, in 2000 and again in 2003, DOJ issued guidance that encouraged the formation of SAR review teams with federal, state, and local representation. Each month, these teams review SARs filed in their areas to determine which would merit additional investigation. In 2006, DOJ and IRS-CI collaborated on a pilot to create task forces and augment SAR review teams with federal prosecutors in selected districts. These task forces specifically investigate possible BSA violations with potential for seizures or forfeitures. The regulators also use SARs for scoping their depository institution examinations and review SARs relating to known or suspected unlawful activities by current and former institution-affiliated parties, including officers, directors, and employees.

Although law enforcement agency representatives generally were satisfied with their ability to access BSA data, various agencies and multiagency teams we interviewed said that formatting and other issues related to the data system slowed their downloads and reviews. In 2009, FinCEN officials described how features of FinCEN's planned modernization effort for information technology could address these issues. FinCEN and IRS officials said that, when budgetary resources were available, these and other data management challenges would be addressed as part of FinCEN's modernization plan, developed in collaboration with IRS. FinCEN officials recently told us that they have begun the first phase of

the information technology modernization, which they anticipate will last through fiscal year 2014.

FinCEN's Initial Steps in New Form Revision Process Did Not Include Some Important Collaborative Practices and Mechanisms

We reported in 2009 that FinCEN encountered a number of problems in its 2006 revision of the SAR form and in 2008, developed a new process for form revisions. However, the available information on the process was limited and did not fully indicate how FinCEN would avoid or address some of the problems previously encountered. In 2006, FinCEN and the federal banking regulators issued proposed substantive and formatting revisions to the SAR form. The revisions were finalized but, because of technology limitations with IRS's data management system, the revised form has not been implemented. Law enforcement agency officials we interviewed had mixed views on the proposed revisions. They generally supported most of the proposed revisions, but some felt they had been insufficiently consulted and also expressed concerns that some revisions could affect their work negatively. For example, one change would replace the name and title of a person with personal knowledge about the suspicious activity reported on the form with a contact office, possibly increasing the time it would take law enforcement investigators to reach a person knowledgeable about the activity. However, banking regulators supported this change because of concerns that a SAR listing a named contact could jeopardize the safety and privacy of that person if it were inappropriately disclosed.

In 2008, FinCEN developed a new process that it planned to use in future revisions of BSA forms, including SARs. Early documentation for the process suggested some greater stakeholder involvement at early stages, but subsequent documentation we reviewed did not indicate that FinCEN fully incorporated certain GAO-identified practices that can enhance and sustain collaboration among federal agencies.[10] Such practices include defining a common outcome; agreeing on respective roles and responsibilities, including how the collaborative effort will be led; and creating the means to collect information on, monitor, evaluate, and report efforts.

In our 2009 report, we determined that if FinCEN more fully incorporated some of these practices it might achieve some potential benefits—such as

[10]GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, GAO-06-15 (Washington, D.C.: Oct. 21, 2005).

greater consensus from all stakeholders on proposed SAR form revisions. We recommended that the Secretary of the Treasury direct the Director of FinCEN to further develop and document its strategy to fully incorporate certain of these practices into the revision process and distribute that documentation to all stakeholders. In written comments on the report, the FinCEN Director generally agreed with our recommendation and noted that FinCEN recognized the need to work with a diverse range of stakeholders to revise BSA forms.

Recent implementation of FinCEN's process suggests greater collaboration with stakeholders on defining a common outcome and establishing roles and responsibilities and planned steps, which could result in more sustained collaboration. According to FinCEN officials, FinCEN's implementation of the process generally would involve three phases. The initial phase has involved collaboration with a wider range of stakeholders than in the past. For example, in addition to collaboration with IRS information technology staff we previously identified, current documentation indicates that FinCEN has collaborated in more detail with federal law enforcement agency representatives, federal financial regulators, representatives from SAR review teams and other multiagency law enforcement teams, and prosecutors to determine the content of a revised SAR form. FinCEN also obtained and adopted input from other stakeholders, such as banking industry representatives, in the Bank Secrecy Act Advisory Group. FinCEN officials plan to obtain and adopt input from its Data Management Council (DMC), after providing its members the opportunity to consult with colleagues at their respective agencies.[11] They also plan to conduct a focus group of DMC members to obtain feedback on how the new forms revision process is working and use that feedback to modify the process. However, because FinCEN has not yet completed implementation of its form revision process, it is too soon to determine the effectiveness of the process.

[11]In fiscal year 2007, FinCEN established its Data Management Council as part of an initiative to maximize BSA data quality and value. The council is aimed at ensuring internal and external data users have clear means of identifying and communicating data issues, requirements, and business priorities, among other goals. Members of the council include approximately 35 representatives from FinCEN, law enforcement and regulatory agencies, and the Internal Revenue Service, which collects and processes BSA data and uses that data for compliance reviews and criminal investigations.

Mr. Chairman and Members of the subcommittee, I appreciate this opportunity to discuss this important issue and would be happy to answer any questions you might have.

Contact and Acknowledgments

For further information regarding this testimony, contact Richard J. Hillman at (202) 512-8678. Contact points at our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals making major contributions to this statement included Toni Gillich, Kay Kuhlman, Linda Rego, and Barbara Roesmann.

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ANTI-MONEY LAUNDERING

Better Communication Could Enhance the Support FinCEN Provides to Law Enforcement

Statement of Eileen R. Larence
Director, Homeland Security and Justice

GAO-10-622T

April 28, 2010

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Highlights

Highlights of GAO-10-622T, a testimony before the Subcommittee on Oversight and Investigations, Financial Services Committee, House of Representatives

ANTI-MONEY LAUNDERING

Better Communication Could Enhance the Support FinCEN Provides to Law Enforcement

Why GAO Did This Study

Financial investigations are used to combat money laundering and terrorist financing, crimes that can destabilize national economies and threaten global security. The Financial Crimes Enforcement Network (FinCEN), within the Department of the Treasury, supports law enforcement agencies (LEAs) in their efforts to investigate financial crimes by providing them with services and products, such as access to financial data, analysis, and case support. This statement discusses the extent to which the law enforcement community finds FinCEN's support useful in its efforts to investigate and prosecute financial crimes. This statement is based on work GAO completed and issued in December 2009.

What GAO Recommends

In December 2009, GAO recommended that, among other things, FinCEN clarify the types of complex analytic products it can provide to LEAs; establish a process for soliciting input regarding the development of analytic products; and develop a mechanism to collect sensitive information from LEAs regarding regulatory changes. FinCEN agreed with our recommendations and outlined efforts it plans to take in response to our findings.

View GAO-10-622T or key components. For more information, contact Eileen Larence at (202) 512-8777 or larencee@gao.gov.

What GAO Found

In December 2009, we reported that the majority of 25 LEAs GAO surveyed found FinCEN's support useful in their efforts to investigate and prosecute financial crimes, but FinCEN could enhance its support by better informing LEAs about its services and products and actively soliciting their input. Of the 20 LEAs that responded to a question GAO posed about which FinCEN services they found most useful, 16 LEAs cited direct access to Bank Secrecy Act data—records of financial transactions possibly indicative of money laundering that FinCEN collects—as the most valuable service FinCEN provides. Additionally, 11 federal LEAs cited a tool that allows federal LEAs to reach out, through FinCEN, to financial institutions nationwide to locate financial information related to ongoing investigations as a key service offered by FinCEN. To further enhance the value and relevance of its analytic work to LEAs, FinCEN has sought to increase development of complex analytic products, such as reports identifying trends and patterns in money laundering. Sixteen law enforcement agencies GAO surveyed reported that they generally found these complex analytic products useful.

However, we reported that three of five LEAs that are among FinCEN's primary federal customers stated that FinCEN does not provide detailed information about the various types of complex analytic products it can provide. Three of FinCEN's primary customers also stated that they would like more information about when completed products become available. In December 2009, we recommended that FinCEN clarify the types of complex analytic products it can provide to LEAs. FinCEN agreed with our recommendation and in April 2010 outlined plans to improve communication with law enforcement regarding FinCEN's services, products, and capabilities. All five LEAs also reported that FinCEN does not actively seek LEAs' input about ongoing or planned analytic products, though four of these LEAs believed that doing so could improve the quality and relevance of the products FinCEN provides to its customers. We recommended that FinCEN establish a process for soliciting input regarding the development of its analytic products. FinCEN agreed with our recommendation and in April 2010 outlined a number of steps it plans to take to better assess law enforcement needs, including ongoing efforts to solicit input from LEAs. Finally, liaisons from four of FinCEN's top five federal LEAs reported that their agencies do not have sufficient opportunities to provide input when FinCEN is considering regulatory changes because their comments often contain sensitive information that may compromise investigative techniques or strategies used in ongoing investigations. We recommended that FinCEN develop a mechanism to collect sensitive information regarding regulatory changes from LEAs. In April 2010, FinCEN reported that it developed an approach for collecting sensitive information without making the comments publicly available.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the services and products that the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) provides to law enforcement in support of their efforts to investigate money laundering, terrorist financing, and other financial crimes. Successful investigations into financial crimes can support the prosecution of money laundering, drug trafficking, and terrorist financing—crimes that have the potential to destabilize national economies and threaten global security. The Bank Secrecy Act (BSA), enacted in 1970, authorized the Secretary of the Treasury to establish anti-money laundering record keeping and reporting requirements for domestic financial institutions to help prevent abuse of the nation's financial system.[1] The BSA has three main objectives: create an investigative audit trail through regulatory reporting standards; impose civil and criminal penalties for noncompliance; and improve the detection of criminal, tax, and regulatory violations. Under the BSA's reporting requirements, financial institutions must retain records and file BSA reports when doing so would have a high degree of usefulness in criminal, tax, and regulatory investigations or in the conduct of intelligence activities to protect against international terrorism. For example, suspicious activity reports (SARs) are filed by financial institutions to inform the federal government of any suspicious transaction related to a possible violation of law or regulation.[2]

FinCEN, established in 1990 to oversee the administration of the BSA, helps to prevent financial crime by serving as a governmentwide, service-oriented, financial information-sharing agency to more than 275 federal

[1] Bank Secrecy Act, titles I and II of Pub. L. No. 91-508, 84 Stat. 1114 (1970) (codified as amended in 12 U.S.C. §§ 1829b, 1951-1959; 31 U.S.C. §§ 5311-5332). The BSA requires financial institutions to maintain records on financial transactions including suspicious activity that may be related to money laundering or other financial crimes.

[2] Under the regulations administered by FinCEN, a SAR is generally required when a transaction is conducted or attempted by, at, or through a financial institution that involves or aggregates at least $5,000 in funds or other assets and the institution knows, suspects, or has reason to suspect that the transaction: involves funds derived from illegal activities; is intended or conducted in order to hide or disguise funds or assets derived from illegal activities as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation; is designed to evade any reporting requirement under federal law or other BSA requirement; has no business or apparent lawful purpose; or the transaction is not the sort in which the customer would normally be expected to engage and there is no reasonable explanation known for the transaction; or involves use of the institution to facilitate criminal activity. See 31 C.F.R. §§ 103.15-.21.

and state law enforcement agencies. In supporting law enforcement, FinCEN administers the financial transaction reporting system for the recordkeeping and reporting requirements mandated or authorized under the BSA. FinCEN is also responsible for the administration of BSA compliance in the financial industry and, as such, indirectly works to support law enforcement by developing and implementing regulatory standards so that law enforcement agencies have accurate and relevant information for conducting financial crimes investigations. Among other things, the support FinCEN provides to domestic law enforcement agencies in their efforts to investigate and prosecute financial crimes includes providing access to the BSA data to identify individuals, financial transactions, or accounts suspected of being connected to money laundering, terrorist financing, or other financial crimes. FinCEN also responds to requests from law enforcement agencies for information pertaining to specific investigations, and produces analytic products covering a range of issues related to financial crimes.[3] For example, FinCEN has produced strategic reports examining the processes and actors, both licit and illicit, involved in the flow of currency between the United States and neighboring countries along various regions of the U.S. borders. We issued a report in December 2009 that addressed FinCEN's role in supporting law enforcement efforts to investigate and prosecute financial crimes such as money laundering and terrorist financing.[4] My statement today highlights findings and recommendations from that report and addresses the extent to which the law enforcement community finds FinCEN's support useful in their efforts to address such crimes.

For our December 2009 report, among other things, we surveyed a nonprobability sample of 29 federal and state law enforcement agencies that included the primary users of FinCEN's services and products in fiscal years 2001 through 2007. In total, we received usable questionnaires from 25 of the 29 agencies we surveyed. We asked them about the extent to

[3] FinCEN also collaborates with international counterparts in other countries to facilitate sharing of financial information between domestic and international law enforcement agencies. For more information, see GAO, *International Financial Crime: Treasury's Roles and Responsibilities Relating to Selected Provisions of the USA PATRIOT Act*, GAO-06-483 (Washington, D.C.: May 12, 2006).

[4] GAO, *Anti-Money Laundering: Improved Communication Could Enhance the Support FinCEN Provides to Law Enforcement*, GAO-10-141 (Washington, D.C.: Dec. 14, 2009).

which they found FinCEN's services and products useful.[5] We also interviewed officials from 8 of the 25 federal and state law enforcement agencies responding to our questionnaire including the agencies that FinCEN has identified as its top five federal law enforcement customers regarding the extent to which FinCEN's support has contributed to their investigations of financial crimes.[6] We also reviewed a number of FinCEN reports and strategic plans including an internal assessment of the support FinCEN's Analysis and Liaison Division (ALD) provides to its domestic law enforcement customers.[7] We conducted this work in accordance with generally accepted government auditing standards. More detail on our scope and methodology is included in our December 2009 report.[8]

[5] Nonprobability sampling is a method of sampling when nonstatistical judgment is used to select members of the sample, using specific characteristics of the population as criteria. Results from nonprobability samples cannot be used to make inferences about a population, because in a nonprobability sample some elements of the population being studied have no chance or an unknown chance of being selected as part of the sample.

[6] FinCEN has identified the following agencies as its top five federal law enforcement customers: the Drug Enforcement Administration, the Federal Bureau of Investigation, Immigration and Customs Enforcement, the U.S. Secret Service, and the Internal Revenue Service's Criminal Investigation Division.

[7] FinCEN's Analysis and Liaison Division (ALD) is the division primarily responsible for providing support to law enforcement agencies.

[8] GAO-10-141.

Law Enforcement Finds a Number of FinCEN's Services and Products Useful, but Would Like More Information about Select Products and Opportunities to Provide FinCEN with Input about Some Types of Support

In our December 2009 report, we found that law enforcement agencies we surveyed generally reported finding FinCEN's services and products useful, citing direct access to BSA data, on-site liaisons, and access to financial information on people or organizations suspected of being involved in significant money laundering or terrorist financing activities—known as the 314(a) process—as those that are among the most useful.[9] However, we found that FinCEN could (1) better inform law enforcement of the types of complex analytic products that it can provide, (2) more clearly define the types of requests for complex analytic support that it will accept, and (3) actively solicit input on the development of complex analytic products in order to help law enforcement better utilize FinCEN's expertise and enhance the value of the products it provides to law enforcement. Finally, we found that while FinCEN has taken initial steps to more actively solicit law enforcement input on proposed regulatory actions, FinCEN lacks a mechanism to allow law enforcement agencies to submit sensitive information regarding the potential impact of proposed regulatory actions on financial crimes investigations.

Law enforcement agencies cited direct access to BSA Data, the 314(a) process, and on-site liaisons as the most useful services FinCEN provides. Most law enforcement agencies responding to our survey (16 out of 20) cited direct access to BSA data as most useful and 19 out of 22 agencies responding indicated that BSA data was the FinCEN service they used most often.[10] Liaisons from three of FinCEN's top five federal law enforcement customers noted that direct access to the BSA database provides law enforcement a means to access these data in order to help identify, deter, and detect money laundering or other potential financial crimes related to a range of criminal activity. As a result of the

[9] The "314(a) process" refers to section 314(a) of the USA PATRIOT Act which required the Secretary of the Treasury to issue regulations to encourage further cooperation among financial institutions, financial regulatory authorities, and law enforcement authorities to promote sharing information regarding individuals, entities, and organizations engaged in or reasonably suspected of engaging in terrorist acts or money laundering activities, and to permit the sharing of information by law enforcement and regulatory authorities with financial institutions regarding persons reasonably suspected of engaging in terrorist acts or money laundering activity. 31 U.S.C. § 5311 note (Cooperative Efforts to Deter Money Laundering). See also 31 C.F.R. § 103.100.

[10] Although a total of 25 law enforcement agencies responded to our questionnaire, all 25 agencies did not provide responses to each question. For example, a total of 20 agencies responded to the question regarding which FinCEN service or product they found to be most useful, and 22 agencies responded to the question regarding which FinCEN service they use most often.

Uniting and Strengthening America By Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), FinCEN also introduced a new tool to further assist federal law enforcement agencies in their investigations of financial crimes.[11] This tool, developed by FinCEN in response to Section 314(a) of the USA PATRIOT Act, enables federal law enforcement agencies to reach out to financial institutions across the country for potential information related to financial crimes investigations. FinCEN facilitates the 314(a) process through the use of a secure communications system. This system allows law enforcement to quickly locate financial data, such as open accounts and financial transactions related to ongoing investigations of persons, entities, or organizations suspected of being involved in significant money laundering or terrorist financing activities. Federal law enforcement agencies reported that the 314(a) process is a key service offered by FinCEN that provides case-specific and timely information to support ongoing law enforcement investigations. Specifically, all 11 federal agencies we surveyed that had a basis to judge the 314(a) process responded that it was either very or extremely helpful. Finally, law enforcement agencies reported that being able to maintain agency liaisons on-site at FinCEN is another valuable service FinCEN provides, facilitating law enforcement agency access to FinCEN's services and products.[12] Specifically, all 9 of the federal law enforcement agencies responding to the questionnaire that indicated they had on-site liaisons reported that it was extremely helpful.

FinCEN has sought to increase its production of more complex analytic products, which law enforcement agencies report are also helpful in financial crimes investigations. As more law enforcement agencies gained the ability to directly access the BSA data and conduct their own searches of the data, their reliance on FinCEN to conduct basic queries on their behalf has decreased. We reported that from 2004 through 2007, requests to FinCEN to conduct such queries decreased 80 percent from 2,048 to 409.[13] As a result, FinCEN has identified a need to redefine its

[11] Pub. L. No. 107-56, 115 Stat. 272 (2001).

[12] FinCEN provides office space for law enforcement agencies to locate full-time liaisons at FinCEN's headquarters in Vienna, Virginia to facilitate their agencies' access to FinCEN's services and products.

[13] FinCEN did not track the number of basic queries requested by law enforcement agencies before fiscal year 2004, so FinCEN was unable to provide us these data for fiscal years 2001 through 2003.

role in supporting law enforcement agencies and to enhance the value and relevance of its analytic work. As part of this effort, in recent years FinCEN has sought to increase its production of more sophisticated complex analytic products. These products range from complex tactical case support requiring large-scale BSA data analysis, to a variety of strategic projects, studies, and trend analyses intended to identify and explain money laundering methodologies or assess threats posed by large-scale money laundering and terrorist financing activities. For example, in 2007 FinCEN provided a study to one law enforcement agency that identified currency flows between the United States and another country which helped this agency to identify potential patterns in drug trafficking. Based on responses to our survey and interviews, law enforcement agencies reported general satisfaction with FinCEN's analytic products. For example, when asked why they requested analytic support from FinCEN, 15 out of 17 agencies that indicated they had made such requests reported that they did so because they believed FinCEN has unique expertise related to analyzing the BSA data.[14] Additionally, liaisons from all of FinCEN's top five federal law enforcement customers specifically highlighted technical reference manuals as one of the most useful complex analytic products FinCEN produces. FinCEN's technical reference manuals provide practical information on a variety of issues, including how particular financial transfer or payment mechanisms may be used to launder money.

FinCEN could better inform law enforcement about the types of complex analytic products it can provide and when those products become available. We reported that according to liaisons from three of FinCEN's top five federal law enforcement customers, FinCEN does not provide detailed information about each type of product that would help law enforcement agencies to fully understand the various types of support FinCEN can provide.[15] Senior ALD officials also acknowledged that they could clarify and better communicate to their law enforcement customers

[14] Law enforcement agencies were asked about their reasons for requesting *any* type of analytic support from FinCEN, including requests for both basic and complex analytic products.

[15] Our interviews with law enforcement agencies including interviews with the liaisons of the five federal agencies that use the most FinCEN services and products involved aspects of each agency's experiences working with FinCEN. As a consequence, we did not ask the same questions of all liaisons in these interviews. Officials with these agencies volunteered this information; therefore, we do not know the extent to which the other agencies had concerns regarding outreach.

the various types of complex analytic products FinCEN can provide. In addition, in both interviews and in response to open-ended survey questions, officials from 7 of the 25 law enforcement agencies we surveyed, including three of FinCEN's top five federal law enforcement customers, also indicated that they would like more information about when completed products become available.[16] These liaisons noted that because FinCEN does not actively communicate with them about when completed products are available, they may not be aware of all of FinCEN's products that could be useful in their investigations of financial crimes. Similarly, an official from one of FinCEN's top five federal law enforcement customers noted that, in some cases, analyses FinCEN conducts for one customer might also be useful to the investigations of other financial crimes.

In an internal report generated by ALD staff in August 2008, ALD officials acknowledged that law enforcement liaisons reported that they would like FinCEN to provide clear guidance on the dissemination of its products.[17] FinCEN officials also noted that they typically observe the "third-party rule" on dissemination of information obtained from the requesting agency and, in some cases, this may limit their ability to share products that are completed in response to a request from a single customer. The rule generally provides that information properly released by one agency to another agency cannot be released by the recipient agency to a third agency without prior knowledge and consent of the agency that originally provided the information. The third-party rule applies to all data and information FinCEN receives from the agencies with which it works on a specific project. However, officials further stated that they are committed to looking for ways to better publicize FinCEN's analytic work and will continue to do so within the framework of adequately protecting the information provided to them. While we recognize the need for FinCEN to protect sensitive information, establishing a process to clarify and communicate to law enforcement when and under what circumstances FinCEN can or will attempt to share analytic products with other law

[16] Because officials volunteered this information in both interviews and in response to open-ended survey questions, we do not know the extent to which other agencies had similar concerns.

[17] In 2008, ALD conducted an internal assessment of the support the division provides to its domestic law enforcement customers. The resulting internal report, provided to senior FinCEN management in August 2008, assesses the division's efforts to measure the requirements of FinCEN's law enforcement customers and align the resources and efforts of ALD personnel to satisfy those requirements. This report outlined several recommendations designed to enhance FinCEN support and better meet the needs of its law enforcement customers.

enforcement customers will help ensure that it is effectively carrying out its mission to support the investigation and prosecution of financial crimes. We recommended that FinCEN clarify and communicate to law enforcement agencies the various types of complex analytic products FinCEN can provide and establish a process for informing law enforcement agencies about the availability of these products. FinCEN agreed with our recommendation and outlined plans it would take in order to improve communication with law enforcement regarding the services, products, and capabilities FinCEN offers. In response to our report, FinCEN officials stated that they would compile an inventory of analytic products historically produced, those FinCEN should produce, and those requested by law enforcement. FinCEN officials reported that it would consult with law enforcement partners to refine its recommendations, and then categorize and describe the types of analytic products for law enforcement.

In April 2010, we obtained updated information from FinCEN on the status of its efforts to address our recommendations. Specifically, FinCEN officials stated that its Office of Law Enforcement Support (OLE) created a draft "Menu of Products and Services" which is intended to clarify the types of products and services FinCEN's analytical operation can provide. According to FinCEN officials, OLE also created a draft "Menu of Resources" which describes the data sources and other tools available to FinCEN analysts that can be utilized in the course of their analytical support operations. These officials explained that, while these documents are still in draft form, once they are finalized, they will be distributed to its law enforcement customers through FinCEN's Secure Outreach Portal, on their intranet, and through direct and e-mail contact between FinCEN personnel and external agencies.

Defining the types of requests for complex analytic support that FinCEN will accept could also help law enforcement better utilize FinCEN's expertise in analyzing the BSA data. While FinCEN has informed law enforcement that it is now focusing the support it provides predominantly on those requests that it considers to be for complex analytic support, we found that it could better inform law enforcement about its decision-making process regarding what requests it will accept or reject. Law enforcement agencies may submit requests for complex analysis in support of specific investigations;[18] however, in interviews with

[18] This type of support may involve large-scale, in-depth BSA data analysis related to specific law enforcement investigations.

officials from FinCEN's top five federal law enforcement customers, liaisons from two of these agencies stated that they did not fully understand what types of cases FinCEN is willing and able to support.[19] Furthermore, in response to an open-ended survey question on FinCEN's analytic support, officials from two other law enforcement agencies reported that they do not fully understand FinCEN's decision-making process for accepting or rejecting requests for support. These agencies indicated that while they understand that FinCEN has limited staff and resources to dedicate to analytic support, FinCEN has not been consistent in responding to their requests for support and does not always provide explanations why specific requests were rejected.

In addition, in the internal report generated by ALD staff in August 2008, ALD officials acknowledged confusion among law enforcement customers about the types of requests FinCEN will accept, as well as law enforcement agencies' concern that FinCEN does not sufficiently explain the reasons for declining specific requests for support. Senior officials acknowledged the report's findings and as a first step, reorganized ALD in October 2009 in order to realign resources to better meet law enforcement's needs. For example, FinCEN officials reported that they created a new office within ALD that is responsible for providing proactive analysis of BSA data and communicating regularly with law enforcement agents in the field. The officials stated that they believe the creation of this office will allow them to leverage analytical assets and abilities across FinCEN to better inform all of their partners within the law enforcement, intelligence, regulatory, and financial communities. ALD also identified the development and implementation of processes to improve communication with its law enforcement customers as a 2010 priority. We recommended that FinCEN complete a plan, including identifying the specific actions FinCEN will take to better assess law enforcement needs, and make the division's operations more transparent to FinCEN's law enforcement customers. This plan should include a mechanism for FinCEN to communicate to law enforcement agencies its decision-making process for selecting complex analytic products to pursue and why FinCEN rejects a request. FinCEN agreed with our recommendation and stated that in October 2009, it began an effort to address communication with law enforcement on three levels: analytical products, workflow process, and outreach. The teams assessing workflow processes and

[19] Because officials volunteered information about their concerns during interviews, we do not know the extent to which the other three agencies may have similar concerns.

outreach efforts will make recommendations that will include provisions for better assessment of law enforcement needs and more insight into FinCEN's decision-making on complex analytical products.

In April 2010, FinCEN officials reported that they have taken steps to collect information about law enforcement customer's priorities, needs, and plans. For example, FinCEN officials reported plans to create a survey to capture law enforcement agencies' specific investigative focus and needs. Furthermore, the officials stated that personnel from the Office of Law Enforcement Support working in consultation with law enforcement representatives drafted a new data collection form for documenting requests for analytic support from law enforcement. FinCEN officials also reported that they have established a process for reviewing and responding to requests and informing the requester of FinCEN's final decision. According to FinCEN officials, once requests have been reviewed, completed forms will be scanned and retained for future reference so that requestors may be informed as to why requests were accepted or denied.

Actively soliciting input on the development of complex analytic products could help FinCEN enhance their value to law enforcement agencies. While FinCEN communicates with its law enforcement customers about a variety of issues, we reported that the agency could enhance the value of its complex analytic work by more actively soliciting law enforcement's input about ongoing or planned analytic work. In interviews with officials from FinCEN's top five federal law enforcement customers, liaisons from all five agencies reported that FinCEN does not consistently seek their input about ongoing or planned analytic work. Four of the liaisons stated that, as a result, they do not have regular opportunities to provide FinCEN with meaningful input about what types of products would be useful to them, potentially creating a gap between the products the agency generates and the products that its law enforcement customers need and want. Similarly, three other law enforcement liaisons noted that FinCEN does not provide them with regular opportunities to make proposals regarding the types of complex analytic products FinCEN should undertake. According to FinCEN officials, while the agency primarily relies on ad hoc communication with law enforcement agencies—such as talking with law enforcement representatives located on-site, with law enforcement representatives at conferences, or with individual agents in the field—FinCEN does not have a systematic process for soliciting input from law enforcement agencies on the development of its complex analytic work.

In their August 2008 internal report, ALD officials acknowledged the concerns of its law enforcement customers regarding their lack of opportunities to provide input on FinCEN's planned complex analytic work, and that FinCEN does not always solicit or incorporate law enforcement input in the selection of these products. As a solution, the internal report recommended that the law enforcement roundtable be used as a forum to discuss proposals for analytic products with FinCEN's law enforcement customers.[20] While this is a productive step, relying solely on the roundtable may not allow opportunities for some of FinCEN's other law enforcement stakeholders to provide input because the roundtable is typically only attended by federal law enforcement customers. Furthermore, not all of FinCEN's federal law enforcement customers are able to regularly attend these meetings.[21]

FinCEN does use annual surveys and feedback forms to obtain feedback from law enforcement on the usefulness of some completed products, although these surveys and forms are not designed to obtain detailed information on the full range of services and products FinCEN provides. For example, the annual surveys do not cover other analytic products such as FinCEN's strategic analysis reports or its technical reference guides. Actively soliciting stakeholder input and providing transparency with regard to decision making are GAO-identified best practices for effectively meeting stakeholder needs. Incorporating these best practices could help FinCEN maximize the usefulness of its support. FinCEN officials emphasized that law enforcement also has a responsibility to provide constructive input on FinCEN's services and products. While we recognize that communication between FinCEN and its law enforcement customers is a shared responsibility, actively soliciting stakeholder input will allow FinCEN to capture stakeholder interests and better incorporate law enforcement perspectives into the development of complex analytic products. As a result, we recommended that FinCEN establish a systematic process for actively soliciting input from law enforcement agencies and incorporating this input into the selection and development

[20] FinCEN holds a series of bimonthly meetings with some federal law enforcement representatives, known as the law enforcement roundtable. The roundtable is primarily used for general information sharing, such as discussing the current missions of participating agencies or providing updates about the 314(a) process. According to FinCEN officials, the agency does not use the roundtable to discuss ongoing investigations or to solicit input from law enforcement about the development and prioritization of its complex analytic products.

[21] FinCEN's state and local law enforcement customers do not attend the law enforcement roundtable.

of its analytic products. FinCEN agreed with this recommendation and outlined efforts it plans to undertake in response to our findings. In October 2009, according to FinCEN officials, ALD established an Office of Trend and Issue Analysis (OTI) which is to focus on the development of strategic-level analysis of Bank Secrecy Act data. FinCEN officials also reported that ALD reassigned a number of its field representatives to OLE in order to better utilize their experience and to enhance communication with law enforcement customers. Finally, FinCEN stated that it also plans to design an institutional process for collecting the kind of information required to gain broader insight into its law enforcement partners' priorities. In providing updates on their efforts to address our recommendations, FinCEN officials stated that they are making a concerted effort to engage their law enforcement customers at a variety of organization levels to determine their key priorities and how FinCEN can best support their priorities and strategic goals.

FinCEN has taken initial steps to more actively solicit law enforcement input on proposed regulatory actions, but lacks a mechanism for collecting sensitive information about these actions. Regulatory changes instituted by FinCEN can affect the content or structure of BSA data used in law enforcement investigations as well as law enforcement's efforts to indict and prosecute financial crimes. However, we reported that liaisons from four of FinCEN's top five federal law enforcement customers reported concerns that their agencies do not have sufficient opportunities to provide input when FinCEN is considering proposed regulatory changes. The internal report ALD generated in August 2008 also recognized that changes to BSA regulations have the potential to alter the kind of information that financial institutions report. The report also acknowledged federal law enforcement agencies' concerns that FinCEN does not generally engage them in the identification and resolution of regulatory issues that might influence law enforcement operations. According to senior FinCEN officials, the agency recognizes the need to do a better job of obtaining law enforcement input on proposed regulatory changes in the future and did so in one recent case. Specifically, in developing regulations in 2009 related to stored value cards, such as prepaid debit cards and gifts cards, FinCEN held multiple meetings with representatives from its top five federal law enforcement customers specifically designed to obtain their input and provide

recommendations on developing the proposed regulation.[22] FinCEN also used the law enforcement roundtable to inform agencies about the planned regulatory changes. FinCEN's efforts to actively solicit law enforcement input in this case are encouraging, and continuing such efforts would help ensure that law enforcement input is considered before regulatory changes are made.

Once FinCEN has decided to move forward with a proposed regulatory change, it follows the process laid out in the Administrative Procedure Act (APA) for obtaining official comments on the proposal from interested stakeholders including regulators, financial institutions, and law enforcement agencies. The APA prescribes uniform standards for rulemaking and most federal rules are promulgated using the APA-established informal rulemaking process, also known as "notice and comment" rulemaking. Generally, a notice of proposed rulemaking (NPRM) is published in the Federal Register announcing an agency's intent to promulgate a rule to the public.[23] However, we reported that liaisons from four of FinCEN's top five federal law enforcement customers reported that the public record is not always the most appropriate venue for providing comments on proposed regulatory changes because their comments often contain law enforcement sensitive information. According to these officials, raising these concerns in a public forum may compromise key investigative techniques or strategies used in ongoing

[22] Stored value cards are prepaid debit cards that use magnetic stripe technology to store information about funds that have been prepaid to the card. Payroll cards, government benefit cards, gift cards, and telephone cards are examples of stored value cards. Stored value cards often allow holders to transfer money values anonymously without being subject to the same controls required of institutions that deal with credit and debit cards. While there are many forms and uses of stored value cards in the marketplace, there are two main categories: (1) single-purpose or "closed-loop" cards, such as gift cards, which can only be used to purchase goods at particular retailers, or prepaid telephone cards, which can only be used to make telephone calls, and (2) multipurpose or "open-loop" cards, which can be used to make debit transactions at a wide variety of retail locations, as well as for other purposes, such as receiving direct deposits and withdrawing cash from ATMs.

[23] The APA requires that the NPRM include a statement of the time, place, and nature of the public rulemaking proceedings, reference to the legal authority under which the rule is proposed, and the terms or substance of the proposed rule or a description of the subjects and issues involved. The NPRM also generally includes the timing and manner in which the public may comment on the proposed rule. E.O. 12866 states that most rulemakings should include a comment period of 60 days, and most agencies do provide a 60-day or longer comment period for complex or controversial rules. After issuance of the NPRM, agencies are generally required to place public comments as well as other supporting materials in a rulemaking docket which must be available for public inspection.

investigations. According to FinCEN officials, at the time of our review, they did not have a systematic process for soliciting law enforcement-sensitive comments on proposed regulatory changes in a nonpublic docket. The importance of stakeholder input in the process of proposing regulatory changes is well established—it is the basis for the public comment period in the NPRM process. In order to improve FinCEN's efforts to receive important information necessary to making decisions about proposed regulatory changes, we recommended that FinCEN develop a mechanism to collect law enforcement sensitive information from law enforcement agencies during the public comment period of the NPRM process. FinCEN agreed with our recommendation and stated that it would determine and implement appropriate ways to communicate to the law enforcement community its ability to receive and use law enforcement sensitive information in this context. In April 2010, FinCEN officials stated that they have developed an approach for collecting law enforcement sensitive information during the public notice and comment period of the NPRM process without making the comments publicly available. According to FinCEN officials, FinCEN will advise law enforcement, through the law enforcement liaisons, that they may provide law enforcement sensitive information at the time of publication of each NPRM and inform them that FinCEN will not post those comments or make them publicly available.

Mr. Chairman, this concludes my statement. I would be pleased to respond to any questions that you or other Members of the Subcommittee may have.

Contacts and Acknowledgements

For questions about this statement, please contact Eileen R. Larence at (202) 512-8777 or larencee@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement.

In addition to the contact above, individuals making key contributions to this statement include Kirk Kiester, Assistant Director; Samantha Carter, and Linda Miller. Additionally, key contributors to our December 2009 report include Hugh Paquette, Miriam Hill, David Alexander, George Quinn, Jr., Billy Commons, Jan Montgomery, and Sally Williamson.

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STATEMENT OF THE HONORABLE ERIC M. THORSON

INSPECTOR GENERAL

DEPARTMENT OF THE TREASURY

BEFORE THE HOUSE COMMITTEE ON FINANCIAL SERVICES

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

APRIL 28, 2010

2:00 PM

Chairman Moore, Ranking Member Biggert, and Members of the Subcommittee, thank you for the opportunity to appear before you this afternoon to discuss my office's most recent oversight report on the Financial Crimes Enforcement Network (FinCEN), *SAR Data Quality Requires FinCEN's Continued Attention* (OIG-10-030; issued January 19, 2010).

As requested in your invitation, my testimony will cover the findings in this report, the key report recommendations, FinCEN's response, and any prospective views to improve Suspicious Activity Report (SAR) data quality. As also asked, I will discuss how the current wave of bank failures requiring material loss reviews have impacted my office's ability to conduct oversight of FinCEN's activities. Lastly, I will share some observations with respect to FinCEN for the Congress to consider moving forward.

Treasury Office of Inspector General Overview

Before I discuss our report on SAR data quality, I would like to give some background about my office. We provide independent audit and investigative oversight of the programs and operations of the Department of the Treasury as well as its bureaus, excluding the Internal Revenue Service (IRS) and the Troubled Asset Relief Program, also known as TARP. In addition to overseeing Treasury's programs

and operations to combat money laundering and terrorist financing, we oversee Treasury's financial institution regulators, the Office of the Comptroller of the Currency (OCC) and Office of Thrift Supervision (OTS), and Treasury programs and operations to manage federal collections and payments systems, manage and account for the public debt, maintain government-wide financial accounting records, manufacture the Nation's currency and coins, collect revenue on alcohol and tobacco products and regulate those industries, provide domestic assistance through the Office of the Fiscal Assistant Secretary and the Community Development Financial Institutions Fund, and international assistance through multilateral financial institutions. Our current on-board staffing level is about 145 which breaks down as follows: 100 personnel in the Office of Audit and 20 personnel in the Office of Investigations. The remaining personnel include my deputy, my legal counsel, our administrative support staff, and me. Our fiscal year 2010 budget appropriation is $29.7 million.

FinCEN's Role to Combat Financial Crime and Terrorist Financing and the Importance of SARs to the Effort

Money laundering activities are designed to conceal or disguise the nature, location, source, ownership, or control of money (currency or currency equivalents such as checks and electronic transfers) to avoid a transaction reporting requirement under state or federal law or to disguise the fact that the money was acquired by illegal means. Terrorist financing provides a person or group the opportunity to collect funds with the intention of intimidating a population or compelling a government or international organization to abstain from carrying out an act through the threat of violence. The funding may be derived from criminal activities or legitimate sources. Regardless, the techniques to fund terrorism can be similar to those used to launder money.

Enacted in 1970, the Bank Secrecy Act (BSA)[1] requires that financial institutions maintain records and reports which help identify the source, volume, and

[1] BSA, among other things, authorizes the Secretary of the Treasury to require certain records or reports where they have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.

movement of currency and other monetary instruments transmitted into or out of the United States. This information is passed on to federal officials so that law enforcement can apprehend criminals by following money trails. BSA contains both civil and criminal penalties for violations of its reporting requirements.

Treasury is the lead agency responsible for the federal government's effort to prevent money laundering and combat terrorist financing in the United States. To that end, it established FinCEN in 1990 to provide a government-wide multisource financial intelligence and analysis network. The organization's operation was broadened in 1994 to include regulatory responsibilities for administering BSA. In September 2002, by virtue of the USA PATRIOT Act,[2] the Secretary delegated his authority to implement and administer BSA to FinCEN.[3,4] Within Treasury, FinCEN reports to the Under Secretary for Terrorism and Financial Intelligence.

FinCEN carries out its role by supporting law enforcement, fostering interagency and global cooperation against domestic and international financial crimes, and providing U.S. policy makers with strategic analyses of domestic and worldwide trends and patterns. Furthermore, it collects, analyzes, and shares information with those law enforcement agencies charged with investigating and prosecuting crimes.[5] To ensure BSA compliance, FinCEN promulgates regulation and guidance, and enters into memoranda of understanding (MOU) with federal, state, and other regulators charged with BSA responsibilities.

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[2] The USA PATRIOT Act, among other things, vested the Secretary of the Treasury with additional regulatory powers to combat corruption of U.S. financial institutions for foreign money laundering purposes.

[3] The USA PATRIOT Act also established FinCEN as a bureau within the Treasury Department.

[4] Among other things, the Secretary delegated to the FinCEN Director the authority to take all necessary and appropriate actions to implement and administer Titles I and II of BSA, as amended, including the promulgation and amendment of regulations and the assessment of penalties.

[5] For example, the Federal Bureau of Investigations, the Drug Enforcement Administration, and Executive Office for United States Attorneys within the Department of Justice make use of BSA data when investigating and prosecuting crimes. Additionally, the U.S. Secret Service, Immigration and Customs Enforcement, and Customs and Border Protection within the Department of Homeland Security also use BSA data when investigating counterfeiting of U.S. currency, financial fraud, illegal immigration, smuggling, and money laundering.

Regulations promulgated under BSA require domestic financial institutions (banks, thrifts, credit unions, money services businesses, and others) to file reports for cash transactions exceeding $10,000 and to file SARs for transactions exceeding $5,000 (for money services businesses, the threshold is $2,000) that the institution knows, suspects, or has reason to suspect is intended to evade any federal law or regulation, involves illegally obtained funds, or has no business or apparent lawful purpose. Since 1970, Congress has enacted laws amending BSA that, among other things, have added criminal and civil sanctions for money launderers and made terrorist financing an activity punishable under federal money laundering laws.

FinCEN established the SAR database in 1996 as a single collection point for SARs to provide law enforcement agencies with critical information for specific criminal investigations as well to facilitate comprehensive analyses of trends and patterns in financial activity. FinCEN operates and maintains the SAR database through IRS's Enterprise Computing Center in Detroit. Financial institutions and other required SAR filers can file SARs via paper or electronically through the BSA E-Filing System. SARs are filed when financial institutions note something suspicious about a transaction, including a pattern of cash deposits just below the threshold for filing a Currency Transaction Report (such a pattern is known as "structuring"). SARs are highly valued by law enforcement for providing potential leads to criminal activity, including money laundering, terrorist financing, and, lately, possible mortgage fraud.

Filers of SAR reports are required to provide accurate information and face penalties if they do not. But this is more than a matter of what is legally required. As FinCEN puts it:

> "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."[6]

OIG Oversight of Treasury's Anti-Money Laundering and Combating Terrorist Financing Mission

I consider oversight of Treasury's role in preventing money laundering and combating terrorist financing to be among our highest priority work. To that end, we first designated this area as one of Treasury's most significant management and performance challenges back in 1999 and have continued to do so since that time.[7] We have also conducted a number of audits of this area in the last decade or so, as our resources have allowed. So, to be clear, we identified Treasury's role in preventing money laundering and combating terrorist financing as a significant management challenge and began conducting audits in this area well before the horrific events of September 11, 2001.

Unfortunately, much of the information I am presenting to you today is based on work that my office conducted sometime ago, although I believe the conditions upon which my office reported remain relevant. The financial crisis that began in mid-2007 has had a major impact on my office's ability to do work in this critical area, which I will discuss in more detail later.

SAR Data Quality Problems Reported by Treasury OIG

As mentioned above, the ability of law enforcement agencies to obtain value from BSA records and reports is highly dependent on the accuracy and completeness of the SARs information contained within FinCEN's database. In that regard, since 1999 we have completed four audits on the accuracy and completeness of SARs in

[6] FinCEN, *The SAR Activity Review – Trends, Tips & Issues* (Issue 16, Oct. 2009).
[7] The Reports Consolidation Act of 2000 requires that I provide the Treasury Secretary my office's annual perspective on the most serious management and performance challenges facing the Department. That assessment is included in the Department's annual Agency Financial Report.

FinCEN's database.[8] We completed our latest review in January 2010. We started this audit in 2007 but were delayed significantly due to our material loss review workload. Overall, we found that SARs filed during fiscal year 2006, which we reviewed in their entirety for 17 data fields, often lacked critical information or included inaccurate data.

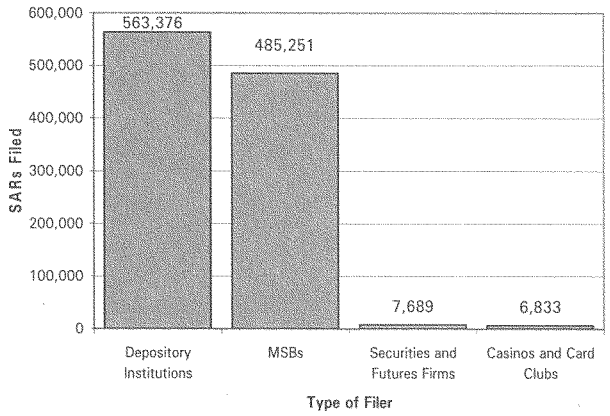
Treasury OIG Audits of SAR Data Quality

Our January 2010 audit report was the fourth we have issued on SAR data quality. The three prior audits found a large percentage of SARs contained missing or inaccurate data. In the most recent of those prior three audits, an audit completed in 2005, we reported that SAR filers disregarded SAR form instructions, did not always understand the violations listed on the SAR form, or were concerned with personal liability (limiting what they decided to report). We also found that an IRS contractor made a number of errors in converting data from paper SARs into electronic files. As a result, there was missing or inaccurate data not being identified or corrected before or after the SARs were entered into the database. We concluded that overall system control weaknesses, broad reliance on financial supervisory regulators to ensure financial institutions' compliance with SAR filing requirements, and factors unique to either the type of filer or the filing means (paper vs electronic) all contributed to the data quality problems. FinCEN concurred with our findings and recommendations and committed to a corrective action plan, but stressed that undue focus on data quality could undermine the overall effectiveness of SAR reporting programs by creating distorted incentives.

The objective of the audit I am discussing today, the one we finished in January 2010, was to evaluate the status of SAR data quality. We reviewed the actions FinCEN took in response to our 2005 audit recommendations, evaluated the processes for receiving and processing SARs as they existed when we started the audit in 2007, and analyzed one year's worth of SAR data—that being the approximately 1.1 million SARs filed during fiscal year 2006. The following chart shows the breakdown of the SARs that we analyzed by filer type.

[8] *SAR Date Quality Requires FinCEN's Continued* Attention, OIG-10-30 (Jan. 19, 2010); *FinCEN: Heightened Management Attention Needed Over Longstanding SAR Data Quality Problems*, OIG-05-033 (Mar. 23, 2005); *FinCEN: Reliability of Suspicious Activity Reports*, OIG-03-035 (Dec. 18, 2002); *The Financial Crimes Enforcement Network Suspicious Activity Reporting System*, OIG-99-032 (Jan. 25, 1999).

Fiscal Year 2006 SARs Filed



Source: Treasury OIG analysis of fiscal year 2006 SAR data.

SAR Date Quality Issues Continued With 2006 Filings

Our audit found that by 2006 SAR data quality had not significantly improved. We found that 59 percent of the 1.1 million SARs contained omissions or incorrect, inconsistent, or inappropriate information in 1 or more of 17 data fields which FinCEN deemed critical to law enforcement. As shown in the table below, SARs filed by money services businesses had the highest percentage of data quality problems (88 percent), followed by SARs filed by securities and futures firms (50 percent), casinos and card clubs (49 percent), and depository institutions (34 percent).

Fiscal Year 2006 SARs With Data Quality Problems

Type of Filer	SARs filed	Problem SARs	Problem SAR percentage
Depository institution	563,376	191,622	34%
Money services businesses	485,251	427,934	88%
Casinos and card clubs	6,833	3,368	49%
Securities and futures firms	7,689	3,822	50%
Total	**1,063,149**	**626,746**	**59%**

Source: Treasury OIG analysis of fiscal year 2006 SAR database.

The critical fields that most often had missing or erroneous data were related to the subject's taxpayer identification number, address, and name. The manner in which many SARs were completed suggests that the filers should have used more due diligence in preparing the submissions. Some of the missing data including the type of suspicious activity, the institution's address, or the location of the suspicious activity, we believe should have been available to the filer.

SAR data quality problems diminish the usefulness of the data for FinCEN, law enforcement, and other users. Although SARs with missing critical data can still have value, we believe more complete and accurate SAR submissions would have much greater value to the users who rely on such information. If I may make an analogy. I view the information contained in FinCEN's SAR database as something akin to a research library. When one does research in such a place, one expects the information contained within it to be complete and accurate. If users of FinCEN's SAR database cannot rely on the information contained within it, that information becomes much less useful on many levels (from collecting data to build a criminal case to developing comprehensive analyses of trends and patterns in financial activity).

We also found a disparity among similar institutions in the percentage of SARs with missing or erroneous data. This disparity raises the question of why certain institutions are consistently able to submit a higher percentage of complete and accurate SARs than others. Although depository institutions showed improvement as a whole from our prior audit -- with the percentage of problem SARs dropping from 56 percent to 34 percent -- data quality problems continued to exist for many, including several large banks and thrifts with assets of $30 billion or greater. These banks and thrifts had a higher than average percentage of fields with missing, incomplete, inconsistent, or inappropriate data. The table below shows the 25 depository institutions where at

least 50 percent of their 2006 SARs had problems. The range of SAR data quality problems within this group of 25, raises questions about why certain institutions have a far greater percentage of problems than others.

Depository Institutions (Top 25) With More Than Half of Their SAR Having Missing, Incomplete, Inconsistent or Inappropriate Data

Depository institution	SARs filed	SARs with problems	Percent of SARs with problems
A	1,005	1,005	100
B	660	660	100
C	488	467	96
D	473	440	93
E	591	541	92
F	3,033	2,699	89
IndyMac Bank, FSB	1,723	1,487	86
G	1,824	1,381	76
H	712	535	75
I	513	386	75
J	3,499	2,600	74
K	661	488	74
L	1,074	757	70
M	605	415	69
N	736	476	65
O	3,213	2,014	63
P	1,982	1,241	63
Q	5,056	3,042	60
R	1,204	727	60
S	763	450	59
T	1,549	875	56
NetBank FSB	875	480	55
U	2,990	1,592	53
V	715	380	53
X	5,238	2,692	51

Source: Treasury OIG analysis of fiscal year 2006 SAR database. Since our audit period, IndyMac Bank FSB and NetBank FSB failed. The names of the active depository institutions in the table were provided to FinCEN.

In addition, we found that certain system controls over the loading and processing of SAR data were weak. The control weaknesses prevented thousands of SARs with errors and other data quality problems from being identified and corrected during SAR processing. The control problems included incorrect recording dates; shifting of data from one field to another, which changed the data's meaning; and missing or unassigned document control numbers used to account for the SARs.

These control weaknesses affected the quality of the SAR data and in some cases the availability of the information to law enforcement. FinCEN management was aware of some, but not all of the control issues identified by our audit and was working to correct the deficiencies. IRS officials stated that they were working with FinCEN to correct the problems related to the processing of BSA data.

During our audit, FinCEN officials stated that our results overstate SAR data quality problems because filers do not have to fill in SAR fields for which they do not have the information. In this regard, FinCEN officials stated that SAR form instructions make it clear that any field for which information is not available should be left blank. To meet SAR legal requirements, a filer only needs to submit a SAR within 30 days of becoming aware of a suspicious transaction, or 60 days if the filer needs more time to identify the subject.

According to FinCEN officials, even a SAR with missing critical data has value to law enforcement. Also, FinCEN expects money services businesses to have more SARs with missing data than depository institutions because depository institutions inherently have more data on individuals they do business with than money services businesses do.

We agree that SARs with missing critical data can have value to law enforcement. However, we believe more complete and accurate SAR submissions would have greater value, particularly when the missing data seems like it should have been readily available to the filer. For example, depository institution filers are supposed to indicate on the SAR form when the subject data are unavailable and left blank. However, this box was not checked for 79 percent of SARs with missing critical subject field data (about 105,000 SARs of about 133,000 SARs filed by depository institutions). Of these SARs, nearly 3,000 SARs had no subject information at all, while others contained limited subject data such as a telephone number or a date of birth. We also noted that even when the box was checked (about 28,000 SARs), indicating that the data was not available, the filer for about 1,600 of these SARs did include either some or all of the subject data.

When we discussed these conditions with FinCEN, we were told that a large volume of "corrected" SARs are submitted following original submissions that augment the original SARs, though these SARs are not always identified as corrected.

FinCEN management further stated that SARs may provide the needed information in the narrative section of the forms. FinCEN was concerned that our findings relative to missing data in SAR fields were not adjusted to take narrative information into consideration. While we appreciate this concern, it was not practical for us to review the narratives for 1.1 million SARs. It should also be noted that providing data in the narrative in lieu of recording the information in a SAR data field is contrary to the instructions for the SAR forms. That said, we also believe that it would be difficult, time-consuming, and costly, for law enforcement doing widespread searches of the database for particular fields of data, to hunt for these data in narratives, on the chance that filers placed important information in the narratives rather than in the correct data fields.

Recommendations and FinCEN Corrective Actions

To further improve SAR data quality, we recommended in our January 2010 report that FinCEN: (1) continue and enhance its filer education and outreach programs; (2) identify and refer to the federal regulators those financial institutions with significant and recurring SAR quality problems; (3) coordinate with IRS to evaluate, implement, and improve controls over SAR data; and (4) request IRS to periodically notify FinCEN of SARs containing significant errors or missing critical data fields.

FinCEN, noting that our findings were based on SAR data filed in fiscal year 2006, cited a number of completed efforts to improve the quality and integrity of SAR data. These efforts include enhancing the BSA electronic filing (E-Filing) system and improving the quality of BSA information through regulatory guidance and outreach. In this regard, FinCEN stated that it had

- issued specific guidance to enhance filer education, which it views as an ongoing responsibility;

- established an initiative to identify systemic filing errors and in fiscal year 2009 worked with federal regulators to resolve over 100 such matters;
- worked with IRS to resolve matters associated with the recording, processing, accounting for, and loading of SARs.

By February 2010, FinCEN also planned to have a SAR validation process in place that identifies all SAR filings with significant errors for its compliance staff to monitor. According to FinCEN, this action has been taken.

Additionally, FinCEN stated that it plans to launch a BSA information technology modernization program in fiscal year 2010. This initiative is aimed at modernizing BSA information management, analysis, and dissemination. Through increased data integrity and analytical tools, the program is designed to provide hundreds of federal, state, and local law enforcement agencies and financial industry regulators better decision-making abilities by increasing the value of BSA information.

We considered FinCEN's actions, taken and planned, to be responsive to our recommendations. We have yet to follow-up on those actions, principally because of our material loss review workload, but plan to do so as resources and priorities permit. That said, we are aware of FinCEN's continued outreach efforts to improve SAR data quality. For example, FinCEN's most recent SAR Activity Review (published October 2009) provided suggestions from law enforcement for preparing more useful SARs as well as a discussion of common errors that should be avoided. We also believe that the SAR validation process that, according to FinCEN, was put in place in February of this year to identify SAR filings with significant errors for compliance monitoring is very important and will be a focus of the next follow-up by my office.

The Subcommittee's invitation asked whether I had any additional facts or recommendations with respect to FinCEN improving its SAR data quality efforts. At this time I do not--other than to say that this is an area that will require continued vigilance on the part of FinCEN.

Impact of Failed Bank Reviews to Treasury OIG's FinCEN Oversight

Because of the unprecedented number of bank failures in the United States over the last 3 years, my office has been forced to defer almost all discretionary audits and delay others that were in process, including many designed to look at Treasury's efforts to prevent money laundering and combat terrorist financing. As the Subcommittee is aware, the Federal Deposit Insurance Corporation Improvement Act of 1991 requires that the Inspector General of the cognizant federal banking agency review and report to that agency when an institution fails and that failure results in a material loss to the Deposit Insurance Fund, where materiality is defined as a loss of $25 million or more. A material loss review determines the causes of the institution's failure and assesses the supervision exercised over the failed institution. Beginning with the failure of NetBank, FSB, in mid-2007, 69 Treasury-regulated (OCC and OTS) financial institutions have failed as of today. Of those, 52 have met the material loss threshold. My office has completed and issued 17 such reviews and we have another 35 in progress. Regrettably, looking forward, I believe my office will be busy conducting such reviews for some time to come.

The current material loss threshold of $25 million was established nearly 20 years ago. I believe that this threshold no longer serves as a reasonable measure of materiality. Last July, with the extraordinary support of Chairman Moore and this Subcommittee, the House passed H.R. 3330, *Improved Oversight by Financial Institutions General Act of 2009,* to increase the material loss review threshold to $200 million while prudently requiring some level of review of all bank failures.

I note that on April 15, 2010, S. 3217, *Restoring American Financial Stability Act of 2010,* was introduced in the Senate. Section 987 of that legislation included a provision to establish the material loss review threshold at (1) $100 million from September 30, 2009, through December 31, 2010; (2) $75 million for 2011; and (3) $50 million for 2012 and beyond.

I continue to believe that an increase in the material loss review threshold is as critical and appropriate today as when I testified on before this Subcommittee last year. We simply are not learning that much new with each successive review we complete and the requirement is precluding us from doing other important oversight work.

I should note that in addition to the failed bank reviews, I have been able to dedicate a small number of resources to oversee a couple of Treasury's newest and most costly programs. Specifically, Treasury's more than $20 billion of non-IRS funds authorized by the American Recovery and Reinvestment Act as well as Treasury's multi-billion investment in Fannie Mae and Freddie Mac that resulted from the passage of the Housing and Economic Recovery Act of 2008. That Act assigned Treasury a number of new authorities and responsibilities with respect to the mortgage giants to include the purchase of securities and obligations of Fannie Mae, Freddie Mac, and the Federal Home Loan Banks under certain conditions and determinations. To that end, as of December 31, 2009, Treasury purchased $225 billion in Fannie and Freddie mortgage-back securities (MBSs) and $110.6 billion in senior preferred stock so that the entities could maintain a positive net worth. Also, while Treasury will not be purchasing anymore MBSs, the prior $400 billion cap on further financial support to maintain a positive net worth through 2012 has been lifted.

Additional Observations With Respect to FinCEN that the Congress Should Consider Going Forward

My testimony has discussed a number of issues and concerns we have had with combating money laundering and terrorist financing. I believe this is a very critical mission for Treasury and I have serious concerns about my office's current inability to adequately oversee the activity because of our material loss review burden. Moreover, some have suggested, in an effort to cut expenses, that some financial institutions may have reduced their compliance staffs during the current financial crisis. The regulators are also very focused on safety and soundness issues, including unwinding failing banks or dealing with the after effects of banks that have already failed. While all this is happening, Congress is simultaneously focused

on regulatory reform. So, I applaud your Subcommittee for not overlooking the importance of sound BSA administration.

I would also like to emphasize that any change in the current regulatory structure, when finalized, must ensure that compliance with BSA (as well as compliance with economic and trade sanctions administered by Treasury's Office of Foreign Assets Control) is not diminished. Furthermore, there are financial sectors that are still fairly new to BSA and USA PATRIOT Act reporting requirements which need to be monitored, including broker/dealers and the insurance industry. IRS, the examiner of non-bank financial institutions, is already challenged with overseeing tens of thousands of money services businesses. Additionally, there are still many old and new challenges to Treasury's efforts to prevent money laundering and combat terrorist financing -- including those presented through financial instruments like stored value cards, the continued profitability in dealing drugs as evidenced by the increasingly violent drug war along the Mexican border, and the continuing efforts of terrorists to pierce our defenses. In all this serves to reinforce the need for us to remain vigilant in this critical area. We cannot let our guard down.

Regarding IRS's maintenance of BSA data, FinCEN attempted but failed (at a cost of over $15 million) to develop its own separate system several years ago. That system, which was known as BSA Direct Retrieval and Sharing (BSA Direct), was supposed to replace FinCEN's reliance on IRS's system. Though the system development effort failed, FinCEN has not abandoned the idea, and is pursuing an BSA Information Technology (IT) Modernization initiative.

Congress did express support for this new project in its consideration of FinCEN's fiscal year 2010 budget, but noted concerns given the failure of BSA Direct. It should further be noted that in December 2009 Congress directed FinCEN to submit semiannual reports to the House and Senate Appropriations Committees summarizing the agency's IT Modernization progress to include milestones planned and achieved, progress on cost and schedule, management of contractor oversight, strategies to involve stakeholders, and acquisition management efforts. Furthermore, based on budget documents that we reviewed, it does not appear that any additional appropriated funds were separately requested to support this initiative for fiscal year 2011. Instead, the documents contained the following

statement – "FinCEN will seek alternate funding from the Treasury Forfeiture Fund to fully implement the planned IT Modernization." Given the high risk nature of system development efforts which oftentimes result in delays, increased costs, and in some cases like BSA Direct, failure, we believe FinCEN's BSA IT Modernization effort requires close oversight going forward.

On a related matter, FinCEN has also been making an effort to upgrade its research, analytical, and informational services capability, as required by the USA PATRIOT Act. An audit we completed several years ago found, however, that limited progress had been made. One impediment is that law enforcement agencies, such as the Federal Bureau of Investigations, prefer to do their own data analysis from a replica copy of the FinCEN database. That audit also found that FinCEN's database to track and report the number of investigative cases, subjects, and strategic analytic products was not accurate or reliable. In this regard, FinCEN partnered with IRS and OFAC to design, develop, and implement a new electronic content management (ECM) system that is scheduled for implementation in September 2011. Treasury received over $12 million in funding for ECM through 2009 and has requested another $5 million in 2011. I must tell you that we are concerned about the ECM project as well. Large system development projects are difficult to do well under that best of circumstances and the Department's track record in the area has not been good. Over time the ECM project has already morphed from a narrowly focused support system for OFAC and FinCEN into a much larger and costlier effort with a different objective and no definitive end in sight. This is another critical area on which I would like to have my office focus, but as I already discussed, with the mandated failed bank reviews and Recovery Act work, my ability to assign resources for other oversight demands is very limited.

That concludes my prepared statement. I will be happy to answer any questions you may have. Thank you.

United States Government Accountability Office

GAO

Report to Congressional Requesters

December 2009

ANTI-MONEY LAUNDERING

Improved Communication Could Enhance the Support FinCEN Provides to Law Enforcement

GAO

Accountability * Integrity * Reliability

GAO-10-141

December 2009

GAO
Accountability·Integrity·Reliability
Highlights

Highlights of GAO-10-141, a report to congressional requesters

ANTI-MONEY LAUNDERING

Improved Communication Could Enhance the Support FinCEN Provides to Law Enforcement

Why GAO Did This Study

Financial investigations are used to combat money laundering and terrorism financing, crimes that can destabilize national economies and threaten global security. The Financial Crimes Enforcement Network (FinCEN) within the Department of the Treasury supports law enforcement agencies (LEAs) in their efforts to investigate financial crimes by providing them with services and products, such as access to financial data, analysis, and case support. As requested, GAO examined the extent to which the law enforcement community finds FinCEN's support useful in its efforts to investigate and prosecute financial crimes. GAO analyzed statutes governing FinCEN's mission and documentation describing the support it provides to LEAs, such as annual reports. Using FinCEN data, GAO selected a sample of 29 LEAs, including primary users of FinCEN's services and products, and obtained their opinions through a survey and interviews. While the results of the survey and interviews are not generalizable, they provide insights about the usefulness of FinCEN's support.

What GAO Recommends

Among other things, GAO recommends that FinCEN improve communication with LEAs about the support it can provide, establish processes for soliciting input and complete a plan outlining the actions FinCEN will take to better meet LEAs needs. The FinCEN Director concurred with the recommendations.

View GAO-10-141 or key components.
For more information, contact Eileen Larence at (202) 512-8777 or larencee@gao.gov.

What GAO Found

The majority of LEAs GAO surveyed reported finding FinCEN's support useful in their efforts to investigate and prosecute financial crimes, but FinCEN could enhance its support by better informing LEAs about its services and products and actively soliciting their input. Of the 20 LEAs that responded to a question GAO posed about which FinCEN services they found most useful, 16 LEAs cited direct access to Bank Secrecy Act data—records of financial transactions possibly indicative of money laundering that FinCEN collects—as the most valuable service FinCEN provides. Additionally, 11 federal LEAs cited a tool that allows federal LEAs to reach out, through FinCEN, to financial institutions nationwide to locate financial information related to ongoing investigations as a key service offered by FinCEN. To further enhance the value and relevance of its analytic work to LEAs, FinCEN has sought to increase development of complex analytic products, such as reports identifying trends and patterns in money laundering. Sixteen law enforcement agencies GAO surveyed reported that they generally found these complex analytic products useful.

However, three of five LEAs that FinCEN identified as its primary federal customers reported that FinCEN does not provide detailed information about the various types of products it can provide. They also stated that they would like more information about when completed products become available. Communicating more detailed information to LEAs could help FinCEN ensure that it is effectively carrying out its mission to support the investigation and prosecution of financial crimes. Moreover, two of these LEAs reported that FinCEN does not communicate to LEAs why it accepts some requests for support and rejects others. Furthermore, FinCEN does not actively seek LEAs' input about ongoing or planned analytic work, though doing so could improve the quality and relevance of its products to its LEA customers. Actively soliciting stakeholder input and providing transparency with regard to decision making are GAO-identified best practices for effectively meeting stakeholder needs. Incorporating these best practices could help FinCEN maximize the usefulness of its support. In October 2009, senior officials in one of the divisions that provides support to LEAs reorganized the division in order to realign resources to better serve law enforcement. The division also developed a planning guide to improve communication with LEAs which includes general descriptions of the types of processes to be implemented. While the development of this guide is a step in the right direction, it does not include detailed information on the specific actions FinCEN plans to take to become more transparent to their law enforcement customers about the division's operations. Completing the plan, including identifying the specific actions FinCEN plans to take to better assess law enforcement's needs, could help FinCEN ensure that its operations are designed in a way so as to maximize their usefulness to its law enforcement customers.

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Abbreviations

ALD	FinCEN's Analysis and Liaison Division
APA	Administrative Procedure Act
BSA	Bank Secrecy Act
CBRS	Currency Banking and Retrieval System
DEA	Drug Enforcement Administration
DHS	Department of Homeland Security
DOJ	Department of Justice
FBI	Federal Bureau of Investigation
FinCEN	Financial Crimes Enforcement Network
FLETC	Federal Law Enforcement Training Center
FTE	Full-Time Equivalent
HIFCA	High Intensity Financial Crime Area
ICE	Immigration and Customs Enforcement
IPD	FinCEN's International Programs Division
IRS	Internal Revenue Service
IRS-CI	Internal Revenue Service–Criminal Investigation
LEAs	Law Enforcement Agencies
MOU	Memorandum of Understanding
NPRM	Notice of Proposed Rulemaking
PRA	Paperwork Reduction Act
RPPD	FinCEN's Regulatory Policy and Programs Division
SAR	Suspicious Activity Report

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United States Government Accountability Office
Washington, DC 20548

December 14, 2009

The Honorable Barney Frank
Chairman
The Honorable Spencer Bachus
Ranking Member
Committee on Financial Services
House of Representatives

The Honorable Stephen F. Lynch
House of Representatives

Successful investigations into financial crimes can support the prosecution of money laundering, drug trafficking, and terrorist financing—crimes that have the potential to destabilize national economies and threaten global security. The Bank Secrecy Act (BSA),[1] enacted in 1970, authorized the Secretary of the Treasury to establish anti-money laundering record keeping and reporting requirements for domestic financial institutions to help prevent abuse of the nation's financial system.[2] The Department of the Treasury's Financial Crimes Enforcement Network (FinCEN), established in 1990 to oversee the administration of the BSA, helps to prevent financial crime by serving as a governmentwide, service-oriented, financial information-sharing agency in support of more than 275 federal and state law enforcement agencies. Specifically, the BSA authorizes FinCEN to require financial institutions to make reports and maintain records that have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis to protect against international terrorism. In addition, the BSA authorizes FinCEN to require financial institutions to establish anti-money laundering programs.[3]

[1]The BSA has three main objectives: create an investigative audit trail through regulatory reporting standards; impose civil and criminal penalties for noncompliance; and improve the detection of criminal, tax, and regulatory violations.

[2]Bank Secrecy Act, titles I and II of Pub. L. No. 91-508, 84 Stat. 1114 (1970) (codified as amended in 12 U.S.C. §§ 1829b, 1951-1959; 31 U.S.C. §§ 5311-5332). The BSA requires financial institutions to maintain records on financial transactions including suspicious activity that may be related to money laundering or other financial crimes.

[3]The Secretary of the Treasury has the authority to administer the BSA and its implementing regulations. This authority has been delegated to the Director of FinCEN. Therefore, we refer to the authority of the Secretary of the Treasury under the BSA synonymously with that of the Director of FinCEN.

Pursuant to its authority, FinCEN collects, maintains, analyzes, and disseminates financial information to law enforcement agencies in support of their investigation and prosecution of financial crimes. This information is maintained in a central database and is commonly referred to as BSA data.[4] Among other things, the support FinCEN provides to domestic law enforcement agencies, in their efforts to investigate and prosecute financial crimes, includes a variety of services and products such as providing access to the BSA data, responding to requests from law enforcement agencies for information pertaining to specific investigations, and producing analytic products covering a range of issues related to financial crimes.[5]

While FinCEN's general mission is to help safeguard the U.S. financial system from such crimes, its specific roles and responsibilities have grown and evolved over time. For example, in the wake of post-9/11 concerns about the threat that terrorist financing can pose to national security, the enactment of the Uniting and Strengthening America By Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) expanded FinCEN's role to include a focus on terrorism financing as well as money laundering.[6] In light of FinCEN's expanded mission, Congress has raised questions about FinCEN's ability to meet the growing demands of its various roles and responsibilities, including the support it provides to law enforcement agencies' efforts to investigate and prosecute financial crimes. This report, as part of a larger body of GAO work that addresses various aspects of FinCEN's role as the administrator of the BSA, addresses FinCEN's role in supporting law enforcement efforts to investigate and prosecute financial crimes, such as

[4]BSA data reported by financial institutions are processed and warehoused by the Internal Revenue Service's Detroit Computing Center in the Currency Banking and Retrieval System (CBRS), more generally known as the BSA database. The BSA database can be accessed through a Web-based interface called WebCBRS. The majority of law enforcement users currently access the BSA database through FinCEN's Gateway/Secure Outreach computer system, which functions as a portal through FinCEN's information technology infrastructure to the BSA database. For more information, see GAO, *Information Security: Further Actions Needed to Address Risks to Bank Secrecy Act Data*, GAO-09-195 (Washington, D.C.: Jan. 30, 2009).

[5]FinCEN also collaborates with international counterparts in other countries to facilitate sharing of financial information between domestic and international law enforcement agencies. For more information, see GAO, *International Financial Crime: Treasury's Roles and Responsibilities Relating to Selected Provisions of the USA PATRIOT Act*, GAO-06-483 (Washington, D.C.: May 12, 2006).

[6]Pub. L. No. 107-56, 115 Stat. 272 (2001).

money laundering and terrorism financing. Specifically, in response to your request, this report examines the extent to which the law enforcement community finds FinCEN's support useful in their efforts to address such crimes.

To answer this question, we first identified the support FinCEN is required to provide to domestic law enforcement agencies as defined by statutes governing FinCEN's mission, including the BSA and the USA PATRIOT Act. We also reviewed and analyzed documentation, such as annual reports and strategic plans, as well as FinCEN's responses to our information requests detailing the support it has provided to law enforcement agencies. In addition, we obtained data about those services and products provided since the enactment of the USA PATRIOT Act in 2001 through 2007 to determine trends in these services and products over that time period. To assess the reliability of these data, we interviewed knowledgeable agency officials about the sources of the data and the controls FinCEN had in place to maintain the integrity of the data and determined that the data were sufficiently reliable for purposes of our report. In addition, we interviewed senior FinCEN management officials regarding FinCEN's mission and responsibilities and how they have changed over time, including how managers characterize the impact that statutory and technological changes have had on FinCEN's organizational structure, culture, and practices as it relates to serving law enforcement. Furthermore, we interviewed officials in FinCEN's Analysis and Liaison Division (ALD), the division primarily responsible for providing support to law enforcement agencies, regarding its current responsibilities and how FinCEN's services and products have changed over time.[7]

We also surveyed a nonprobability sample of 29 federal and state law enforcement agencies that included the primary users of FinCEN's services and products in fiscal years 2001 through 2007 about the extent to which they found FinCEN's services and products useful.[8] We conducted our survey in late 2008. To select our sample, we reviewed FinCEN data to identify federal and state law enforcement agencies that were the primary

[7]ALD consists of the Offices of Intelligence Support, Law Enforcement Support, Liaison Services, and Special Programs Development.

[8]Nonprobability sampling is a method of sampling when nonstatistical judgment is used to select members of the sample, using specific characteristics of the population as criteria. Results from nonprobability samples cannot be used to make inferences about a population, because in a nonprobability sample some elements of the population being studied have no chance or an unknown chance of being selected as part of the sample.

users of one or more of FinCEN's services and products during these 7 fiscal years.[9] We identified 22 agencies to be the primary users of FinCEN's services and products—13 federal agencies and 9 state agencies. The federal agencies we selected were the most frequent users of at least two of FinCEN's services or products, and the state agencies we selected were the most frequent users of at least one of FinCEN's services or products. We also included 2 federal law enforcement agencies with a significant financial crimes or anti-money laundering mission that were not among FinCEN's primary customers but may potentially benefit from FinCEN's services and products. As each of these 24 agencies could have had multiple agents receiving services and products from FinCEN and thus multiple people providing answers to the questionnaire, we requested that the responses reflect each agency's official position about FinCEN.[10] Additionally, we included five of the six High Intensity Financial Crime Areas (HIFCAs) where FinCEN had located liaisons.[11] As these HIFCAs could have had representatives from multiple law enforcement agencies receiving services and products from FinCEN and thus multiple people providing input to answering the questionnaire, we also requested that their responses reflect each HIFCA's official position about FinCEN. For a complete list of the agencies that received GAO's questionnaire, please see appendix I. We did not receive usable questionnaires from four of the five HIFCAs, as representatives from each indicated that they could not provide a single questionnaire that reflected the HIFCA's official position. In total, we received usable questionnaires from 25 of the 29 agencies we

[9]Fiscal year 2007 was the last full year for which data were available at the time we were selecting our sample.

[10]We conducted pretests with two agencies to refine our questions, develop new questions, clarify any ambiguous portions of the questionnaire, and identify any potential biased questions. Because we surveyed a nonprobability sample of law enforcement agencies, there are no sampling errors. There are, however, practical difficulties associated with conducting any survey that may introduce errors, commonly referred to as nonsampling errors. For example, differences in how a particular question is interpreted or the information sources available to respondents can introduce unwanted variability into the survey results. We attempted to minimize these nonsampling errors through careful construction of the questionnaire and the pretests mentioned above.

[11]HIFCAs are high-risk areas established under the Money Laundering and Financial Crimes Strategy Act of 1998, Pub. L. No. 105-310, 112 Stat. 2941, as a means of concentrating and coordinating law enforcement efforts at the federal, state, and local levels to combat money laundering or related financial crime in regions designated as high-intensity money laundering zones. There is a money-laundering action team associated with each HIFCA region composed of relevant federal, state, and local enforcement authorities, prosecutors, and financial regulators. For these purposes of our survey, we considered each HIFCA to be an agency.

surveyed. To assess the reliability of the data we used to select these agencies, we interviewed knowledgeable FinCEN officials about the source of these data and the controls FinCEN had in place to maintain the integrity of the data. We determined that the data were sufficiently reliable for purposes of our report.

We also interviewed officials from 8 of the 25 federal and state law enforcement agencies responding to our questionnaire, including the agencies that FinCEN has identified as its top five federal law enforcement customers. These included two Department of Justice (DOJ) component agencies—the Drug Enforcement Administration (DEA) and the Federal Bureau of Investigation (FBI); two Department of Homeland Security (DHS) component agencies—Immigration and Customs Enforcement (ICE) and the U.S. Secret Service; and one Treasury agency—the Internal Revenue Services' Criminal Investigation Division (IRS-CI). We interviewed the FinCEN liaisons from each of these agencies about the support each agency has received from FinCEN and the extent to which this support has contributed to their investigations of money laundering, terrorist financing, and other financial crimes. Our analysis of FinCEN data verified that these five law enforcement agencies represent FinCEN's federal law enforcement customers with an anti-money laundering mission that are among the top users of BSA data as well as among the top requestors of FinCEN's analytic products. While responses to the survey and interviews cannot be generalized to reflect the views of all of FinCEN's law enforcement customers, we believe that they provide essential perspectives about the usefulness of FinCEN's services and products.

In addition, we reviewed documentation, such as internal planning reports, provided by FinCEN and interviewed senior ALD officials regarding how the agency plans and prioritizes its services and products in support of law enforcement, including how ALD incorporates law enforcement input and feedback into its operations. Furthermore, we interviewed FinCEN officials about their existing policies and practices for planning and prioritizing the support they provide to law enforcement, as well as their practices for incorporating stakeholder input. We compared these efforts with federal best practices for effectively meeting stakeholder needs identified in prior GAO work to determine how FinCEN's processes may differ from or reflect the use of these

recommended practices.[12] We also reviewed an internal ALD assessment of the support the division provides to its domestic law enforcement customers. Our analysis included reviewing the methodology, criteria, and assumptions of the study, and discussing the study's scope, assumptions, and conclusions with FinCEN. As a result of our review and analysis, we determined that the study and its results were reasonable for use in our report. We conducted this performance audit from February 2008 through November 2009 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence provides a reasonable basis for our findings based on our audit objectives.

Background

As part of its mission, one of FinCEN's primary objectives is to provide services and products that enable enhanced detection and deterrence of financial crimes. Specifically, according to FinCEN, part of this objective includes expanding communications with its law enforcement customers to ensure that FinCEN's services and products support and enhance law enforcement operations. FinCEN does not carry out any financial crimes investigations on its own; rather, by serving as a central source for financial intelligence information and analysis, FinCEN supports the investigative and prosecutive efforts of a network of more than 275 law enforcement agencies that includes federal agencies, United States Attorney's offices, state and local law enforcement agencies, and state attorneys general as well as local district attorneys.

In supporting law enforcement agencies, FinCEN administers the largest financial transaction reporting system in the world, which is based on recordkeeping and reporting requirements mandated or authorized under the BSA. This act authorizes the Secretary of the Treasury to issue regulations requiring financial institutions to retain records and file reports when doing so would have a high degree of usefulness in criminal, tax, and regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism. For example, suspicious activity reports

[12]GAO, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: November. 1999) and GAO, *Fisheries Management: Core Principles and a Strategic Approach Would Enhance Stakeholder Participation in Developing Quota-Based Programs*, GAO-06-289 (Washington, D.C.: Feb. 23, 2006).

(SARs) are filed by financial institutions to inform the federal government of any suspicious transaction related to a possible violation of law or regulation.[13] The BSA regulatory framework establishes record keeping and reporting requirements for financial institutions in order to create a paper trail of financial transactions that federal agencies can use to detect illegal activity, such as money laundering or terrorist financing, and to apprehend criminals. Under the BSA framework, primary responsibility rests with the financial institutions in gathering information and passing it to federal officials. In 2001, the USA PATRIOT Act added the authority of the Secretary of the Treasury to issue regulations requiring financial institutions to retain records and file reports when doing so would have a high degree of usefulness in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.[14]

In 1994, the Secretary of the Treasury delegated overall authority for enforcement of, and compliance with, the BSA and its implementing regulations to the Director of FinCEN. To fulfill this role of BSA administration, FinCEN develops policy and provides guidance to other agencies, analyzes BSA data for trends and patterns, and enforces compliance when warranted. For example, FinCEN works with other agencies, such as the Internal Revenue Service (IRS) and federal financial regulatory agencies, to ensure financial institutions' compliance with BSA requirements, such as having an anti-money laundering program and processes in place to report suspicious activity and certain other financial transactions. FinCEN also collects and stores the reported information.

In fiscal year 2009, FinCEN had a budget of approximately $91.5 million and, since fiscal year 2002, the number of full-time staff rose from 222 to

[13]Under the regulations administered by FinCEN, a SAR is generally required when a transaction is conducted or attempted by, at, or through a financial institution that involves or aggregates at least $5,000 in funds or other assets and the institution knows, suspects, or has reason to suspect that the transaction: involves funds derived from illegal activities; is intended or conducted in order to hide or disguise funds or assets derived from illegal activities as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation; is designed to evade any reporting requirement under federal law or other BSA requirement; has no business or apparent lawful purpose; or the transaction is not the sort in which the customer would normally be expected to engage and there is no reasonable explanation known for the transaction; or involves use of the institution to facilitate criminal activity. See 31 C.F.R. §§ 103.15-.21.

[14]Pub. L. No. 107-56, § 358, 115 Stat. 272, 326 (2001).

324, representing an increase of 46 percent over the last 7 years.[15] FinCEN is organized functionally into the Office of the Director and five operational divisions.[16] Among these, FinCEN's ALD is responsible for the majority of services and products provided in support of domestic law enforcement agencies, though the Regulatory Policy and Programs Division and International Programs Division also provide some support. Since fiscal year 2005, ALD's full-time staff has risen from 60 to 77, representing an increase of 28 percent over the last 4 years.[17] ALD analyzes BSA data in conjunction with publicly available information to produce its analytic products. ALD also has access to a variety of other databases that it can use in its analyses, such as information to locate individuals; determine asset ownership; and establish links among individuals, businesses, and assets.[18] In addition, ALD serves as FinCEN's liaison with domestic law enforcement agencies and manages their access to BSA data.

Specific examples of the analytic support ALD provides to law enforcement agencies include the following:

- Basic analytic support: This generally involves routine checks of the BSA database and other databases using names of suspects and other information provided by the requesting law enforcement agency that generally can be completed in 1 or 2 days by a single analyst. FinCEN also initiates its own routine checks of BSA data, such as regular reviews of those data with a potential terrorism connection, which the agency then aggregates and refers to relevant law enforcement agencies. FinCEN completed 409 basic analytic products in fiscal year 2007.

[15]These additional resources were primarily allocated to FinCEN's regulatory and international functions to meet demand associated with expansion of these mission areas.

[16]The five divisions are ALD, the International Programs Division, the Management Programs Division, the Regulatory Policy and Programs Division, and the Technology Solutions and Services Division.

[17]ALD was formed in late fiscal year 2004; therefore, full-time equivalent (FTE) data are not available before fiscal year 2005. Additionally, for comparative purposes, ALD FTE data for fiscal year 2005 does not include FTEs in the Office of Global Support, which was moved to the International Programs Division in fiscal year 2009. Among the 77 employees currently in ALD, 43 are analysts, 7 of whom perform management or administrative functions, and 7 more of which are stationed outside of FinCEN.

[18]FinCEN also has access to other databases, including LexisNexis, Dun and Bradstreet, as well as a variety of other financial and law enforcement databases.

- Complex analytic products: FinCEN also provides a range of complex analytic products in support of the efforts of law enforcement agencies that can take anywhere from several months to several years to complete. FinCEN reported completing 37 complex analytic products in fiscal year 2007. FinCEN's complex analytic products can include the following:
  - Complex tactical case support involves large-scale, in-depth BSA data analysis related to specific law enforcement investigations, which can include preparation of graphic interpretations of BSA data, such as charts that demonstrate the financial links between various entities or organizations, as well as narrative summarizing relevant observations, findings, and recommendations provided by FinCEN analysts.
  - Strategic analysis projects or trend analyses generally represent a range of products that are designed to provide law enforcement officials with intelligence analyses and reports on longer-term or more broadly scoped topics, such as emerging trends, patterns, and issues associated with money laundering and other financial crimes. For example, FinCEN has produced strategic reports examining the processes and actors, both licit and illicit, involved in the flow of currency between the United States and neighboring countries along various regions of the U.S. borders.[19] Strategic analysis projects can also include assessments of threats posed by large-scale money laundering and terrorist financing activities. These projects may be initiated by FinCEN or undertaken as joint projects in collaboration with law enforcement.
  - Technical reference manuals are intended to provide technical information on a variety of issues, including how particular financial transfer or payment mechanisms may be used to launder money.
  - Policy-level strategic projects are high-level analyses intended to shape the development of national policies relating to the regulation of the nation's financial industries, allocation of law enforcement resources to anti-money laundering programs and initiatives, and development of global anti-money laundering and terrorist financing standards, policies, and activities. For example, in 2005 FinCEN participated in the development of the U.S. Money Laundering Threat Assessment, an interagency effort intended to explain how major money laundering methods operate and highlight areas that require further attention.

[19]The flow of currency is the introduction of U.S. dollar banknotes into a foreign country and their repatriation to the United States.

FinCEN provided or participated in the development of these types of products four times in fiscal year 2007.

FinCEN also provides law enforcement agencies with other types of support including the following:

- In-house assistance: FinCEN (1) provides office space for law enforcement agencies to locate full-time liaisons at FinCEN's headquarters in Vienna, Virginia to facilitate their agencies' access to FinCEN's services and products; (2) enables law enforcement personnel who do not have direct access to BSA data to conduct their own research and analysis on-site with FinCEN and provides them office space and database access; and (3) provides FinCEN analysts on location in support of the work of HIFCAs in various regions of the country.

- Training: FinCEN offers training, such as how to access BSA data and use it in support of financial crimes investigations, through a variety of methods, including online training, ad hoc sessions scheduled upon request, and employee participation in related conferences. In addition, two FinCEN specialists located at the Federal Law Enforcement Training Center (FLETC) in Glynco, Georgia, are available to offer training regarding the tools available to agents who conduct financial investigations.

Separate from the above services and products, FinCEN's Regulatory Policy and Programs Division (RPPD) and International Programs Division (IPD) also work with law enforcement to accomplish other agency objectives. For example, RPPD is responsible for the administration of BSA compliance in the financial industry and, as such, indirectly works to support law enforcement by developing and implementing regulatory standards so that law enforcement agencies have accurate and relevant information for conducting financial crimes investigations.[20] This division

[20]RPPD consists of the Office of Regulatory Policy, Office of Compliance, Office of Enforcement, Office of Regulatory Analysis, and Office of Outreach Resources. RPPD develops, modifies, and interprets regulations and regularly responds to requests for clarification of these regulations from state and federal regulatory agencies and the financial industry. It also promotes financial institutions' compliance with BSA regulations by overseeing those federal regulators with delegated BSA responsibilities in various financial sectors, taking appropriate enforcement action against financial institutions that violate the BSA, and promoting improved consistency in BSA compliance examinations through development of an examiners' manual. For more information on our larger body of work on FinCEN and its administration of BSA data, see GAO, *Bank Secrecy Act: Federal Agencies Should Take Action to Further Improve Coordination and Information-Sharing Efforts*, GAO-09-227 (Washington, D.C.: Feb. 12, 2009).

also produces strategic analyses that it initiates or conducts at the request of regulatory agencies on specific cases of BSA noncompliance or on trends and patterns in the financial industry that at times are made available to law enforcement agencies. FinCEN also serves as the Financial Intelligence Unit for the United States. As such, it is responsible for receiving, requesting, analyzing, and disseminating financial information to support domestic law enforcement. FinCEN's International Programs Division serves as the conduit for sharing financial information between domestic law enforcement and foreign financial intelligence units. The International Programs Division also liaises with foreign financial intelligence units to support law enforcement and other U.S. government agencies. Over the last several years, domestic law enforcement has increased its requests to FinCEN for information from foreign financial intelligence units to combat international money laundering, terrorist financing, and other financial crimes.

Law Enforcement Finds a Number of FinCEN's Services and Products Useful, but Would Like More Information about Select Products and Opportunities to Provide FinCEN with Input about Some Types of Support

Law enforcement agencies we surveyed generally reported finding FinCEN's services and products useful, citing direct access to BSA data, on-site liaisons, and access to financial information on people or organizations suspected of being involved in significant money laundering or terrorism financing activities—known as the 314(a) process—as those that are among the most useful.[21] As more law enforcement agencies have gained direct access to the financial data FinCEN manages, the agency has sought to increase production of more complex analytic products, such as those identifying money laundering trends and patterns. While law enforcement agencies reported that they generally found these complex analytic products useful, they also reported that actively soliciting law enforcement input in the development of products as well as improved communication about how FinCEN develops, selects, and disseminates these products could enhance the value of FinCEN's support. While FinCEN has recently taken initial steps to more actively solicit input on proposed regulatory actions, FinCEN has no mechanism to collect comments that may include law enforcement sensitive information in a nonpublic rulemaking record, the inclusion of which could be pertinent to making decisions regarding proposed changes.[22]

Law Enforcement Agencies Cite a Number of FinCEN's Services as Useful, and FinCEN Has Sought to Increase the Production of Complex Analytic Products

[21]Section 314(a) of the USA PATRIOT Act required the Secretary of the Treasury to issue regulations to encourage further cooperation among financial institutions, financial regulatory authorities, and law enforcement authorities to promote sharing information regarding individuals, entities, and organizations engaged in or reasonably suspected of engaging in terrorist acts or money laundering activities, and to permit the sharing of information by law enforcement and regulatory authorities with financial institutions regarding persons reasonably suspected of engaging in terrorist acts or money laundering activity. 31 U.S.C. § 5311 note (Cooperative Efforts to Deter Money Laundering). See also 31 C.F.R. § 103.100.

[22]Comments submitted on proposed regulatory changes are generally made in a public record referred to as a public rulemaking docket which serves as the official repository for documents or information related to an agency's rulemaking activities and may include any public comments received and other information used by agency decision makers.

Law Enforcement Agencies Cited Direct Access to BSA Data, the 314(a) Process, and On-site Liaisons as the Most Useful Services FinCEN Provides

In both interviews and in response to our survey, law enforcement agencies generally reported finding FinCEN's services and products useful, and cited direct access to BSA data, the 314(a) process, and on-site liaisons as among the three most useful services or products FinCEN provides. Title III of the USA PATRIOT Act expanded the role of relevant federal financial agencies in the prevention, detection, and prosecution of financial crimes by, in part, increasing the number of financial institutions and organizations subject to the BSA. The USA PATRIOT Act amended certain reporting requirements and anti-money laundering provisions of the BSA, and as a result, FinCEN issued regulations adding BSA requirements and provisions to institutions not previously covered, such as securities and futures firms and money services businesses. As a result, FinCEN now provides law enforcement agencies with access to these expanded BSA data. In response to our survey, most law enforcement agencies responding (16 out of 20) cited direct access to BSA data as most useful and 19 out of 22 agencies responding indicated that BSA data was the FinCEN service they used most often.[23] Liaisons from three of FinCEN's top five federal law enforcement customers noted that direct access to the BSA database provides law enforcement a means to access these data in order to help identify, deter, and detect money laundering or other potential financial crimes related to a range of criminal activity.

Over the last several years, improvements in technological capabilities have also enabled FinCEN to provide an increasing number of law enforcement agencies with direct access to the BSA database. Rather than relying on FinCEN analysts to conduct queries of BSA data on their behalf, federal, state, and local law enforcement agencies can now access the data directly through a secure Web connection after an agency has entered into a memorandum of understanding (MOU) with FinCEN outlining the parameters of BSA data access, security, and sharing.[24] An MOU typically allows multiple users at each law enforcement agency to access the BSA data. FinCEN provides training and technical support on accessing the data and monitors use to help ensure that the BSA information is properly

[23]Although a total of 25 law enforcement agencies responded to our questionnaire, all 25 agencies did not provide responses to each question. For example, a total of 20 agencies responded to the question regarding which FinCEN service or product they found to be most useful, and 22 agencies responded to the question regarding which FinCEN service they use most often.

[24]FinCEN provides agencies with user access credentials and access to the data through a portal that FinCEN operates, controls, and monitors.

used, disseminated, and secured.[25] Since 2002, the number of MOUs FinCEN had established with law enforcement agencies to govern their access to the BSA database rose from 90 to 278, representing an increase of more than 200 percent over 7 years. Similarly, since 2002 the overall number of BSA data users rose from 903 to 3,535, representing an increase of nearly 300 percent in user accounts over 7 years. Additionally, four of FinCEN's top five federal law enforcement customers—DEA, the FBI, ICE, and the Secret Service—now receive access to larger BSA datasets via bulk a data download link that FinCEN provides to them each month through FinCEN's secure Web site.[26] According to FinCEN officials, direct access to BSA data enables federal and state law enforcement customers to more readily obtain and use the data in their investigations of financial crimes. In many cases, law enforcement is now capable of conducting even more sophisticated BSA analysis, including identifying links in the BSA data and integrating the data with commercially available as well as agency-specific databases (i.e., investigative records).

As a result of the USA PATRIOT Act, FinCEN also introduced a new tool to further assist federal law enforcement agencies in their investigations of financial crimes. In response to Section 314(a) of the USA PATRIOT Act, FinCEN established a process that enables federal law enforcement agencies to reach out, through FinCEN, to more than 45,000 points of contact at more than 27,000 financial institutions across the country for potential information related to financial crimes investigations.[27] FinCEN facilitates the 314(a) process, which was initiated in November 2002, through the use of a secure communications system that allows law enforcement to quickly locate financial data, such as open accounts and financial transactions related to ongoing investigations of persons, entities, or organizations suspected of being involved in significant money laundering or terrorism financing activities. Specifically, FinCEN receives requests from federal law enforcement and, upon review, forwards these requests for financial data to designated contacts within domestic

[25]A GAO report issued in January 2009 found that FinCEN and the IRS must act to better secure BSA data and systems. The report states that although these Treasury agencies have enacted numerous related controls, significant weaknesses existed that impaired their ability to ensure the confidentiality, integrity, and availability of these information and systems. See GAO-09-195.

[26]Because the BSA data are housed at IRS's Detroit Computing Center, IRS officials can access the data directly through their agency's intranet site.

[27]The 314(a) process is not currently made available to state law enforcement agencies. 31 C.F.R. § 103.100.

financial institutions once every 2 weeks.[23] The financial institutions must query their records for data matches, including accounts maintained by the named subject during the preceding 12 months and transactions or transmittals conducted within the last 6 months that are required under law or regulation to be recorded by the financial institution or are recorded and maintained electronically by the institution. Financial institutions have 2 weeks from the transmission date of the request to respond.

Federal law enforcement agencies reported that the 314(a) process is a key service offered by FinCEN that provides case-specific and timely information to support ongoing law enforcement investigations. Specifically, all 11 federal agencies we surveyed that had a basis to judge the 314(a) process responded that it was either very or extremely helpful. Similarly, 10 of these 11 federal agencies reported being very satisfied with FinCEN's ability to respond to 314(a) requests in a timely manner. Further, in an interview, a liaison from one of FinCEN's top five law enforcement customers elaborated on the benefits of this process, stating that it enables law enforcement agencies to access financial information that might not be recorded in the available BSA data and is one of the most efficient tools FinCEN provides.

Finally, law enforcement agencies reported that being able to maintain agency liaisons on-site at FinCEN is another valuable service FinCEN provides, facilitating law enforcement agency access to FinCEN's services and products. In responding to our questionnaire, all nine of the federal law enforcement agencies that indicated they had on-site liaisons reported that it was extremely helpful. For example, in response to a question on agencies' experience with having on-site liaisons, an official from one federal law enforcement agency reported that this facilitates the agency's access to timely financial information in support of financial crimes investigations. Similarly, in an interview, an official from one of FinCEN's top five federal law enforcement customers stated that having a liaison on-

[23]To ensure that Section 314(a) inquiries are being used only for appropriate cases, FinCEN's Section 314(a) process requires federal law enforcement to provide assurances that the request has been subject to appropriate scrutiny at the agency level and that the matter under investigation satisfies FinCEN's standards for processing a formal Section 314(a) inquiry. As such, FinCEN requires each requester to submit a form—which FinCEN reviews before forwarding the request to financial institutions—certifying that the investigation is based on credible evidence of terrorist financing or money laundering.

site also provides opportunities for collaboration with other liaisons from different law enforcement agencies.

FinCEN Has Sought to Increase Production of More Complex Analytic Products, Which Law Enforcement Agencies Report Are Helpful in Financial Crimes Investigations

As more law enforcement agencies gained the ability to directly access the BSA data and conduct their own searches, their reliance on FinCEN to conduct basic queries on their behalf has decreased. From 2004 through 2007, requests to FinCEN to conduct such queries have decreased 80 percent from 2,048 to 409.[29] As a result, FinCEN has identified a need to redefine its role in supporting law enforcement agencies and enhance the value and relevance of its analytic work. As part of this effort, in recent years FinCEN has sought to increase its production of more sophisticated complex analytic products. These products range from complex tactical case support requiring large-scale BSA data analysis, to a variety of strategic projects, studies, and trend analyses intended to identify and explain money laundering methodologies or assess threats posed by large-scale money laundering and terrorist financing activities. For example, in 2007 FinCEN provided a study to one law enforcement agency that identified currency flows between the United States and another country which helped this agency to identify potential patterns in drug trafficking. These strategic analysis projects and trend analyses may be the result of work that FinCEN self-initiates, performs at the request of a law enforcement agency, or jointly undertakes in conjunction with other law enforcement agencies.

Based on responses to our survey and interviews, law enforcement agencies reported general satisfaction with FinCEN's analytic products. For example, of the 16 agencies that indicated they used FinCEN's strategic analysis products, 8 reported the products to be very or extremely helpful, and 8 reported that they were moderately helpful. Similarly, when asked why they requested analytic support from FinCEN, 15 out of 17 agencies that indicated they had made such requests reported that they did so because they believed FinCEN has unique expertise related to analyzing the BSA data.[30] For example, one law enforcement agency noted that FinCEN's ability to conduct large-scale data analysis in

[29]FinCEN did not track the number of basic queries requested by law enforcement agencies before fiscal year 2004, so FinCEN was unable to provide us these data for fiscal years 2001 through 2003.

[30]Law enforcement agencies were asked about their reasons for requesting *any* type of analytic support from FinCEN, including requests for both basic and complex analytic products.

support of specific law enforcement investigations is very useful. Similarly, among the 19 law enforcement agencies that indicated in the questionnaire they had used FinCEN's technical reference manuals, 17 reported that they believed the manuals were either very or extremely helpful. Furthermore, in interviews, the liaisons from all of FinCEN's top five federal law enforcement customers specifically highlighted reference manuals as one of the most useful complex analytic products FinCEN produces. Among the 7 law enforcement agencies that provided additional information about the usefulness of these manuals, officials from all 7 agencies noted that the manuals helped agents to better understand the particular types of financial transactions that may be used in financial crimes. These officials reported that their agencies use the reference manuals both for training purposes and as reference guides in the course of specific investigations. A liaison from one of FinCEN's top five federal law enforcement customers noted that the reference manuals that the liaison's agency posts on its intranet site receive many hits, and manuals covering topics such as Internet payment mechanisms and wire transfers have been particularly helpful to agents in the field. Similarly, according to a senior official from another of these federal law enforcement customers, reference manuals that cover emerging issues, such as technologies that are impacting money laundering, including mobile wire transfers, are particularly helpful for informational and training purposes.

FinCEN Could Enhance Its Support of Financial Crimes Investigations by Better Informing Law Enforcement about Its Products and Actively Soliciting Their Input on Proposed Products and Regulatory Changes

Better Informing Law Enforcement about the Types of Complex Analytic Products FinCEN Can Provide and the Availability of Completed Products Could Help Law Enforcement Utilize the Full Range of FinCEN Products

While law enforcement agencies we surveyed reported general satisfaction with FinCEN's complex analytic products, FinCEN could better inform law enforcement about the types of products it can produce and the availability of completed analytic products. According to liaisons from three of FinCEN's top five federal law enforcement customers, FinCEN does not provide detailed information about each type of product that would help law enforcement agencies to understand the types of support FinCEN can provide.[31] Moreover, FinCEN's Web site states that the agency provides "support of complex investigations" and "strategic analysis," but does not provide further information, such as detailed descriptions or examples of the various complex analytic products it can produce, or information on services and products to better inform stakeholders about available support. Senior ALD officials also acknowledged that they could clarify and better communicate to their law enforcement customers the various types of complex analytic products FinCEN can provide.

In addition, in both interviews and in response to open-ended survey questions, officials from 7 of the 25 law enforcement agencies we surveyed, including three of FinCEN's top five federal law enforcement customers, also indicated that they would like more information about when completed products become available.[32] An official from one of FinCEN's top five federal law enforcement customers noted that, in some cases, analyses FinCEN conducts for one customer might also be useful to the investigations of other financial crimes. While FinCEN officials acknowledged that its customers would like more information about when completed products become available, they stated that their approach to distribution varies from product to product. FinCEN officials said that they inform stakeholders about available products in working groups, conferences, and task forces, but noted they do not have a process to distribute completed analytic products or identify which law enforcement

[31]Our interviews with law enforcement agencies including interviews with the liaisons of the five federal agencies that use the most FinCEN services and products involved aspects of each agency's experiences working with FinCEN. As a consequence, we did not ask the same questions of all liaisons in these interviews. Officials with these agencies volunteered this information; therefore, we do not know the extent to which the other agencies had concerns regarding outreach.

[32]Because officials volunteered this information in both interviews and in response to open-ended survey questions, we do not know the extent to which other agencies had similar concerns.

agencies should receive them.[33] In those cases where FinCEN may decide to more widely distribute a report initiated in response to a request from a single agency, it first asks the requesting agency for its permission to do so after removing any sensitive or agency-specific information as necessary. For example, in 2006, FinCEN completed a study of limited liability companies at the request of a single law enforcement agency but recognized that this report would also be useful to a wider audience. Therefore, the agency subsequently decided to expand the report and made it publicly available on its Web site so that other law enforcement agencies, regulators, and interested parties could have access to the report. FinCEN officials stated that they may also sometimes notify users on the Secure Outreach system about the availability of some analytic reports, but acknowledged that not all law enforcement agents use Secure Outreach on a regular basis so they may not be aware of when such notifications are posted on the system.[34]

However, based on responses to several questions about the availability of analytic products, the majority of the agencies we surveyed had limited knowledge of what strategic analysis products FinCEN had completed that may be useful to them. Specifically, 9 of the 25 agencies noted that they had not received any of the strategic analysis products FinCEN has issued since 2004, and another 5 indicated that they had only received one of these products. Similarly, liaisons from three of FinCEN's top five federal law enforcement customers with whom we spoke reported that FinCEN does not actively communicate with them about when completed products become available, and as a result, it is difficult for these agencies to be aware of all of FinCEN's products that could be useful in their investigations of financial crimes. According to FinCEN officials, some of FinCEN's completed analytic products are suitable for dissemination to a broad law enforcement audience, while others are targeted to a specific law enforcement customer or may contain sensitive information and as a result are only suitable for dissemination to a limited law enforcement audience. However, a liaison from one of FinCEN's top five federal law enforcement customers with whom we spoke noted that it is unclear when

[33]For example, FinCEN reported that, in fiscal year 2009, ALD staff attended 19 conferences to deliver presentations about specific technical reference manuals and attended 17 conferences to do the same for their services and products in general.

[34]The majority of users access BSA data through FinCEN's Secure Outreach system, which functions as a portal through FinCEN's information technology infrastructure to BSA data. Law enforcement agents typically only log into Secure Outreach when conducting queries of the BSA data during open or ongoing investigations.

and under what circumstances FinCEN decides it can or will attempt to share those products that other law enforcement agencies may also find useful. In addition, in an internal report generated by ALD staff in August 2008, ALD officials acknowledged that law enforcement liaisons reported that they would like FinCEN to provide clear guidance on the dissemination of its products.[35] FinCEN's mission is to provide a financial intelligence and analysis network to support the detection, investigation, and prosecution of domestic and international money laundering and other financial crimes. By clarifying what products and services it can provide to its law enforcement customers, and establishing a process for informing them about the availability of completed products that may be of use in their investigations, FinCEN could better ensure that it is effectively carrying out its mission to support the investigation and prosecution of financial crimes.

Defining the Types of Requests for Complex Analytic Support That FinCEN Will Accept Could Help Law Enforcement Better Utilize FinCEN's Expertise in Analyzing the BSA Data

While FinCEN has informed law enforcement that it is now focusing the support it provides predominantly on those requests that it considers to be for complex analytic support, it could better inform law enforcement about its decision-making process regarding what requests it will accept or reject so that law enforcement can determine which requests may warrant FinCEN's involvement. Law enforcement agencies may submit requests for complex analysis in support of specific investigations;[36] however, in interviews with officials from FinCEN's top five federal law enforcement customers, liaisons from two of these agencies stated that they did not fully understand what types of cases FinCEN is willing and able to support.[37] For example, one of these liaisons stated that he understands that the agency wants to focus its support on requests that it considers to be for complex investigative support or strategic analysis. However, he reported that when his agency tried to seek assistance with a complex investigation, FinCEN responded that the request involved so much data

[35]In 2008, ALD conducted an internal assessment of the support the division provides to its domestic law enforcement customers. The resulting internal report, provided to senior FinCEN management in August 2008, assesses the division's efforts to measure the requirements of FinCEN's law enforcement customers and align the resources and efforts of ALD personnel to satisfy those requirements. This report outlined several recommendations designed to enhance FinCEN support and better meet the needs of its law enforcement customers.

[36]As noted earlier, this type of support may involve large-scale, in-depth BSA data analysis related to specific law enforcement investigations.

[37]Because officials volunteered information about their concerns during interviews, we do not know the extent to which the other three agencies may have similar concerns.

that it was unable to handle the volume and complexity of the request. As a result, he said that his agency needs FinCEN's assistance in better understanding what size cases the agency's analysts are willing and able to handle.

Furthermore, in response to an open-ended survey question on FinCEN's analytic support, officials from two other law enforcement agencies reported that they do not fully understand FinCEN's decision-making process for accepting or rejecting requests for support. These agencies indicated that while they understand that FinCEN has limited staff and resources to dedicate to analytic support, FinCEN has not been consistent in responding to their requests for support and does not always provide explanations why specific requests were rejected. In addition, in the internal report generated by ALD staff in August 2008, ALD officials acknowledged confusion among law enforcement customers about the types of requests FinCEN will accept, as well as law enforcement agencies' concern that FinCEN does not sufficiently explain the reasons for declining specific requests for support. The report stated that FinCEN needs to establish a process for the receipt, review, and selection of proposals for complex analytic products as well as to communicate FinCEN's decisions for rejecting requests to law enforcement.

According to FinCEN officials, the agency has established criteria it uses to decide whether to accept a request for case support.[38] However, while senior FinCEN officials told us that they have shared the criteria with law enforcement, these officials acknowledged that the criteria are not precise and are open to interpretation. Furthermore, they noted that they have not sufficiently explained the criteria to law enforcement, discussed how they apply the criteria to individual requests for support, or used them to create guidelines that would allow law enforcement agencies to easily

[38]FinCEN officials informed us that ALD applies the following internal criteria in determining whether or not to accept a request for case support: (1) the BSA data available that relates to the case must enable FinCEN to do substantive analysis that FinCEN officials believe will have an impact on the case (although, according to FinCEN, there is not currently a requirement for a minimum or maximum number of records); (2) the requesting law enforcement agency must be willing to brief FinCEN analysts so that FinCEN can better focus its efforts in support of the request; (3) the potential complexity of the case and the BSA data involved are considerable—FinCEN prefers to accept cases in which it will analyze the data in unique ways that the law enforcement agency would not be able to accomplish with its own software and/or expertise; and (4) the requested case support should benefit FinCEN and enhance FinCEN's knowledge—FinCEN chooses cases that will help it in targeting its proactive analyses or allow it to demonstrate to Congress that it is working on current issues of interest.

understand what types of requests for support FinCEN will accept. ALD's 2008 internal report also acknowledged that FinCEN has not incorporated its internal criteria into established standard operating procedures, or documented them in a way that its customers may access or readily understand. We have previously reported that using an open and clearly defined decision-making process is essential for effectively meeting stakeholder needs.[39] Senior officials acknowledged the report's findings and as a first step, reorganized ALD in October 2009 in order to realign resources to better meet law enforcement's needs. For example, FinCEN officials reported that they created a new office within ALD that is responsible for providing proactive analysis of BSA data and communicating regularly with law enforcement agents in the field. Officials noted that the goal of the office will be to develop products and information on BSA data trends and patterns in order to help inform law enforcement investigations of financial crimes. ALD also identified the development and implementation of processes to improve communication with its law enforcement customers as a 2010 priority. ALD created a planning guide for improving communication with law enforcement that includes a general description of the types of processes to be implemented, the office responsible for implementing these processes, identification of the relevant goal or strategic objective, and quarterly milestones for implementing components of the plan. While the development of this guide is a step in the right direction, the guide does not include detailed information on the specific actions FinCEN plans to take to better assess law enforcement's needs and to become more transparent to their law enforcement customers about the division's operations. Identifying the specific actions FinCEN plans to take to improve communication with law enforcement will help FinCEN ensure that its operations are designed in a way as to maximize its usefulness to its law enforcement customers.

Actively Soliciting Input on the Development of Complex Analytic Products Could Help FinCEN Enhance Their Value to Law Enforcement Agencies

While FinCEN communicates with its law enforcement customers about a variety of issues, the agency could enhance the value of its complex analytic products by more actively soliciting law enforcement's input about ongoing or planned analytic work. According to FinCEN officials, the agency primarily relies on ad hoc communication with law enforcement agencies, such as talking with law enforcement representatives located on-site, with law enforcement representatives at conferences, or with individual agents in the field, to discuss a variety of

[39]GAO-06-289.

issues including its current analytic work. In interviews with officials from FinCEN's top five federal law enforcement customers, liaisons from all five agencies reported that FinCEN does not consistently seek their input about ongoing or planned analytic work. Four of the liaisons stated that, as a result, they do not have regular opportunities to provide FinCEN with meaningful input about what types of products would be useful to them, potentially creating a gap between the products the agency generates and the products that its law enforcement customers need and want. For example, a liaison from one of these four agencies reported that he and other law enforcement liaisons have asked FinCEN to focus more on completing analyses of certain BSA activities by geographic area because most law enforcement agencies do not have the capability to do that kind of analysis in-house and because it would provide them with a valuable tool in interpreting what may constitute unusual activity related to an investigation. However, this official reported that FinCEN has not been responsive to his agency's suggestions for the types of analytic products to pursue. Similarly, three other law enforcement liaisons noted that FinCEN does not provide them with regular opportunities to make proposals regarding the types of complex analytic products FinCEN should undertake.

Beyond ad hoc communication with law enforcement agencies, FinCEN does not have a systematic process for soliciting input from law enforcement agencies on the development of its complex analytic products. While FinCEN holds a series of bimonthly meetings with some federal law enforcement representatives, known as the law enforcement roundtable, the agency uses it primarily for general information sharing, such as discussing the current missions of participating agencies and the offices and divisions within FinCEN or providing updates about the 314(a) process.[40] According to FinCEN officials, the agency does not use the roundtable to discuss ongoing investigations or to solicit input from law enforcement about the development and prioritization of its complex analytic products. According to liaisons from four of FinCEN's top five federal law enforcement customers, FinCEN could improve the quality and relevance of its products by more actively soliciting input from law enforcement during the development of complex analytic products. For

[40]The law enforcement roundtable is typically attended by those federal law enforcement agencies that have liaisons located at FinCEN, though law enforcement agencies that do not have on-site liaisons may also attend the meetings. FinCEN officials acknowledged that not all federal law enforcement agencies attend the meetings and that state and local law enforcement agencies rarely, if ever, attend.

example, one of these liaisons noted that FinCEN does not consistently seek input from those federal law enforcement agencies with experience in specific issue areas that may be able to provide subject matter expertise and help inform FinCEN's analytic work. Furthermore, in their August 2008 internal report, ALD officials acknowledged the concerns of its law enforcement customers regarding their lack of opportunities to provide input on FinCEN's planned complex analytic products, and that FinCEN does not always solicit or incorporate law enforcement input in the selection of complex analytic projects. As a solution, the internal report recommended that the law enforcement roundtable be used as a forum to discuss proposals for analytic products with FinCEN's law enforcement customers. While this is a productive step, relying solely on the roundtable may not allow opportunities for some of FinCEN's other law enforcement stakeholders to provide input because the roundtable is typically only attended by federal law enforcement customers and, even then, not all of these customers are able to regularly attend these meetings.

FinCEN does use annual surveys and feedback forms to obtain feedback from law enforcement on the usefulness of some completed products, although these surveys and forms are not designed to obtain detailed information on the full range of services and products FinCEN provides. FinCEN's annual survey is provided to those domestic law enforcement customers that requested or received case support from FinCEN in the prior fiscal year. The surveys are designed to obtain feedback on various aspects of the specific product received, such as the relevancy, thoroughness, timeliness, and usefulness of the product. FinCEN also attaches one-page feedback forms to analytic products that are distributed to law enforcement customers. The feedback forms contain five questions intended to capture "Yes" or "No" answers on whether and how the product was useful in an investigation, whether the product was received in a timely way, if networking with another law enforcement agency was involved, and if the customer was satisfied overall with FinCEN's service. However, according to FinCEN officials, neither the annual survey nor the feedback forms are designed to obtain detailed information from law enforcement customers on FinCEN's full range of analytic products. For example, the annual surveys do not cover other analytic products such as FinCEN's strategic analysis reports or its technical reference guides. Furthermore, these officials noted that FinCEN does not survey all of its law enforcement customers about their satisfaction with FinCEN's services and products; rather, these surveys are provided only to those law enforcement customers that requested or received support in the previous year.

Moreover, senior FinCEN officials noted that both the annual survey and the feedback forms have typically had very low response rates and FinCEN officials reported that law enforcement does not consistently complete and return the feedback forms and noted that the forms are not a source of significant or meaningful feedback from law enforcement.[41] In discussing the limitations of the feedback forms, some law enforcement officials told us that, in many cases, agents in the field do not complete them because the type of feedback that can be provided to FinCEN immediately after receiving the support is very limited. These officials stated that while law enforcement can speculate that tactical case support provided by FinCEN will eventually be helpful in their case, until the case progresses there is no immediate way for law enforcement to respond to the specific questions in the feedback form regarding how the information was used and if it was useful in expanding the investigation or moving toward an indictment.

Soliciting stakeholder input and involving stakeholders early and throughout the decision-making process are core principles that we have previously identified as best practices for effectively meeting stakeholder needs.[42] In addition, *Standards for Internal Control in the Federal Government* states that it is essential to ensure effective communication with external stakeholders that may have a significant impact on the agency achieving its goals.[43] While FinCEN's annual survey and feedback forms provide law enforcement agencies with an opportunity to give FinCEN feedback about completed products, FinCEN does not actively solicit law enforcement input about ongoing or planned analytic work. FinCEN officials emphasized that law enforcement also has a responsibility to provide constructive input on FinCEN's services and products. While we recognize that communication between FinCEN and its law enforcement customers is a shared responsibility, actively soliciting stakeholder input will allow FinCEN to capture stakeholder interests and better incorporate law enforcement perspectives into the development of complex analytic products. This will in turn increase the usefulness of these products to a wider law enforcement audience and maximize the resources spent on these products. Furthermore, soliciting input from law

[41]FinCEN reported that the overall response rates were 54 and 40 percent, respectively, for the investigative case report and target report surveys distributed in 2007.

[42]GAO-06-28.

[43]GAO/AIMD-00-21.3.1.

enforcement agencies about planned work would provide these agencies with opportunities to share relevant information from their own investigations and experience that could make these products of greater use to a broader range of law enforcement customers.

FinCEN Has Taken Initial Steps to More Actively Solicit Law Enforcement Input on Proposed Regulatory Actions, but Lacks a Mechanism for Collecting Sensitive Information

While FinCEN has recently taken initial steps to more actively solicit input on proposed regulatory actions, FinCEN has no mechanism to collect law enforcement sensitive information in a nonpublic rulemaking docket that could be pertinent to making decisions regarding proposed changes. Regulatory changes instituted by FinCEN can affect the content or structure of BSA data used in law enforcement investigations as well as law enforcement's efforts to indict and prosecute financial crimes. For example, in 2008 FinCEN developed a proposal to renumber the portion of Title 31 of the Code of Federal Regulations which encompasses the regulations promulgated under the BSA and the USA PATRIOT Act related to financial recordkeeping and reporting of currency and foreign transactions. In discussing the potential impact of this proposal, an official from one federal law enforcement agency with a mission that includes a focus on anti-money laundering stated that renumbering the regulations would have a detrimental effect on his agency's day-to-day operations. Because the agency's ongoing indictments and prosecutions of financial crimes are directly linked to very specific regulatory language outlined in the Title 31 regulations, he stated that renumbering these regulations would affect how his office and other federal law enforcement agencies document and track existing investigations. While FinCEN did communicate with some law enforcement customers about the proposed regulatory change, liaisons from two of FinCEN's top five federal law enforcement customers told us that FinCEN did not solicit their input about the potential impact of the change to the Title 31 regulations on their operations before proceeding with plans to implement the regulatory change. Additionally, liaisons from four of FinCEN's top five federal law enforcement customers reported concerns that their agencies do not have sufficient opportunities to provide input when FinCEN is considering proposed regulatory changes.

In February 2009, we reported on similar concerns regarding law enforcement's opportunities to provide input to FinCEN on proposed revisions to Suspicious Activity Report (SAR) forms that institutions file with FinCEN when they detect known or suspected violations of laws or

regulations.[44] Specifically, we found that representatives from law enforcement agencies with liaisons located at FinCEN reported that they were not involved in identifying issues or concerns that could be addressed through revisions to the form for filing SAR data. The report noted that the SAR form contains information that is critical for investigations of money laundering, terrorist financing, and other financial crimes, so it is important that changes to this form be designed to collect the information that is most useful for law enforcement.[45] In this report, we recommended that FinCEN further develop and document its strategy to fully incorporate best practices to help enhance and sustain collaboration among federal agencies in the form change process and distribute that documentation to all stakeholders. FinCEN officials noted that while the agency had taken steps to revise the forms change process, it generally agreed with GAO's recommendation to further document and communicate the recently revised process in order to strengthen collaboration among all stakeholders.

The internal report ALD generated in August 2008 recognized that changes to BSA regulations have the potential to alter the kind of information that financial institutions report as well as federal law enforcement agencies' concerns that FinCEN does not generally engage them in the identification and resolution of regulatory issues that might influence law enforcement operations. The report further acknowledged law enforcement's views that FinCEN typically reported planned regulatory changes to them after the changes were to be implemented rather than first seeking their input on the need for the changes or other possible solutions. Similarly, senior FinCEN officials told us that the agency recognizes the need to do a better job of obtaining law enforcement input on proposed regulatory changes in the future.

In one recent case, FinCEN took steps to more actively solicit input from law enforcement on a proposed regulatory change. Specifically, in developing regulations in 2009 related to stored value cards such as

[44]For more information, see GAO, *Bank Secrecy Act: Suspicious Activity Report Use Is Increasing, but FinCEN Needs to Further Develop and Document Its Form Revision Process*, GAO-09-226 (Washington, D.C.: Feb. 27, 2009).

[45]GAO reported that FinCEN had developed a new process for revising forms but, as it is currently outlined, the process may not achieve some potential benefits that could come from closer adherence to practices that can help enhance and sustain collaboration, such as greater consensus from all stakeholders on proposed SAR form revisions, and fuller documentation of the process. For more information, see GAO-09-226.

prepaid debit cards and gifts cards, in addition to using the law enforcement roundtable to inform agencies about planned regulatory changes, FinCEN held multiple meetings with representatives from its top five federal law enforcement customers specifically designed to obtain their input and provide recommendations on developing the proposed regulation.[46] FinCEN documented this input, provided law enforcement agencies with the opportunity to ensure that it had accurately captured their concerns, and asked them to further elaborate on issues identified as critical to address in developing the proposed regulation. FinCEN officials noted that a number of factors helped to facilitate its efforts to more effectively coordinate with law enforcement in this case. Specifically, legislation requires them to work in consultation with the Secretary of Homeland Security, to issue regulations implementing the BSA, regarding the sale, issuance, redemption, or international transport of stored value, including stored value cards.[47] Similarly, FinCEN officials noted that they were able to coordinate their efforts with previously established working groups on stored value cards within the law enforcement community. FinCEN's efforts to actively solicit law enforcement input in this case are encouraging, and continuing such efforts would help ensure that law enforcement input is considered before regulatory changes are made.

Once FinCEN has decided to move forward with a proposed regulatory change, it follows the process laid out in the Administrative Procedure Act (APA) for obtaining official comments on the proposal from interested stakeholders including regulators, financial institutions, and law enforcement agencies. The act establishes three basic requirements for notice and comment rulemaking: (1) publication of a general notice of the proposed rule in the Federal Register, referred to as the notice of

[46]Stored value cards are prepaid debit cards that use magnetic stripe technology to store information about funds that have been prepaid to the card. Payroll cards, government benefit cards, gift cards, and telephone cards are examples of stored value cards. Stored value cards often allow holders to transfer money values anonymously without being subject to the same controls required of institutions that deal with credit and debit cards. While there are many forms and uses of stored value cards in the marketplace, there are two main categories: (1) single-purpose or "closed-loop" cards, such as gift cards, which can only be used to purchase goods at particular retailers, or prepaid telephone cards, which can only be used to make telephone calls, and (2) multipurpose or "open-loop" cards, which can be used to make debit transactions at a wide variety of retail locations, as well as for other purposes, such as receiving direct deposits and withdrawing cash from ATMs.

[47]Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, § 503, 123 Stat. 1734, 1756 (2009).

proposed rulemaking (NPRM); (2) solicitation and acceptance of data and other information from the public in response to the NPRM; and (3) publication of the final rule.[48] However, liaisons from four of FinCEN's top five federal law enforcement customers reported that the public record is not always the most appropriate venue for providing comments on proposed regulatory changes because their comments often contain law enforcement sensitive information. According to these officials, raising these concerns in a public forum may compromise key investigative techniques or strategies used in ongoing investigations. While agencies generally publish a rulemaking docket that includes all relevant information and public comments pertaining to the development of the rule, some agencies have a process to exclude nonpublic information from this docket.[49] This information can include, but is not limited to, law enforcement sensitive material that would disclose techniques or procedures for law enforcement investigations or prosecutions.[50] According to FinCEN officials, FinCEN does not currently have a systematic process for soliciting law enforcement-sensitive comments on proposed regulatory changes in a nonpublic docket. The importance of stakeholder input in the process of proposing regulatory changes is well established—it is the basis for the public comment period in the NPRM

[48]Generally, the APA is the principal law governing how agencies make rules. The APA prescribes uniform standards for rulemaking and most federal rules are promulgated using the APA-established informal rulemaking process, also known as "notice and comment" rulemaking. Generally, a notice of proposed rulemaking (NPRM) is published in the Federal Register announcing an agency's intent to promulgate a rule to the public. The APA requires that the NPRM include a statement of the time, place, and nature of the public rulemaking proceedings, reference to the legal authority under which the rule is proposed, and the terms or substance of the proposed rule or a description of the subjects and issues involved. The NPRM also generally includes the timing and manner in which the public may comment on the proposed rule. E.O. 12866 states that most rulemakings should include a comment period of 60 days, and most agencies do provide a 60-day or longer comment period for complex or controversial rules. After issuance of the NPRM, agencies are generally required to place public comments as well as other supporting materials in a rulemaking docket which must be available for public inspection.

[49]Some agencies have a specific regulatory provision that allows them to exclude from the public docket submitted information not subject to mandatory disclosure under the Freedom of Information Act. 5 U.S.C. § 552(b). (For example, 28 C.F.R. § 50.17 (d) (Department of Justice)).

[50]Other information that is exempt from mandatory disclosure under the Freedom of Information Act includes, but is not limited to, certain trade secrets and commercial or financial information; personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; certain records or information compiled for law enforcement purposes; and geological and geophysical information and data concerning wells.

process. Establishing a mechanism to solicit law enforcement sensitive information as a part of this comment period could improve FinCEN's efforts to receive important information necessary to making decisions about proposed regulatory changes.

Conclusions

As technology has evolved and increasing numbers of law enforcement customers have gained direct access to BSA data, FinCEN has recognized the need to increase the production of more sophisticated complex analytic products. However, to maximize the benefits of this transition, FinCEN needs to have a clear understanding of what complex analytic products its law enforcement customers may need, as well as to keep them informed about key information regarding its process for selecting and developing these products. By providing clarification to law enforcement agencies about the various types of complex analytic products it can provide and establishing a process for informing law enforcement agencies about the availability of these products, FinCEN could help ensure that law enforcement agencies better understand and more fully utilize FinCEN's products in support of their investigations, in order to better fulfill its mission. Moreover, FinCEN's efforts to realign resources to better meet law enforcement's needs through the reorganization of ALD and the development of a planning guide to improve communication with its law enforcement customers are positive steps. However, identifying the specific actions FinCEN plans to take in order to better assess law enforcement's needs and to become more transparent to its law enforcement customers about the division's operations will help FinCEN ensure that going forward, its operations are designed in such a way as to maximize the usefulness of its support to its law enforcement customers.

While FinCEN's annual survey and feedback forms provide law enforcement with opportunities to give FinCEN feedback on some completed products, FinCEN could also benefit from soliciting input from law enforcement agencies regarding its selection or development of ongoing and planned complex analytic products. By actively working with its law enforcement customers to identify ways to improve communication, FinCEN could help ensure that as it continues to emphasize the production of these products, it is maximizing the relevance of these products to its law enforcement customers. ALD's August 2008 internal report recognizes the potential benefits of soliciting input from stakeholders in its law enforcement roundtable meetings on how FinCEN develops its analytic products. However, doing so before work is initiated and throughout the development process could help ensure that FinCEN is

not only better informed of law enforcement agencies' needs but is better able to take advantage of its law enforcement customers' subject matter expertise in conducting its work. Finally, developing a mechanism to solicit law enforcement sensitive information as part of the public comment period for proposed regulatory changes could improve FinCEN's efforts to receive important information necessary to make decisions about the implementation of these changes.

Recommendations for Executive Action

To help ensure that FinCEN maximizes the relevance and usefulness of the support it provides, we recommend that the Director of FinCEN work in conjunction with its law enforcement customers to take the following four actions:

- Clarify and communicate to law enforcement agencies the various types of complex analytic products FinCEN can provide and establish a process for informing law enforcement agencies about the availability of these products.
- Complete a plan, including identifying the specific actions FinCEN will take, to better assess law enforcement needs, and make the division's operations more transparent to FinCEN's law enforcement customers. This plan should include a mechanism for FinCEN to communicate to law enforcement agencies its decision-making process for selecting complex analytic products to pursue and why FinCEN rejects a request.
- Establish a systematic process for actively soliciting input from law enforcement agencies and incorporating this input into the selection and development of its analytic products.
- Develop a mechanism to collect law enforcement sensitive information from law enforcement agencies during the public comment period of the NPRM process.

Agency Comments and Our Evaluation

We provided a draft of this report to the heads of the Departments of Defense, Justice, Homeland Security, and the Treasury. On November 20, 2009, we received written comments from FinCEN, which are summarized below and reprinted in appendix II. The Department of Defense and the Department of Justice provided technical comments, which we incorporated into this report, where appropriate. On November 17, 2009, the audit liaison for the Department of Homeland Security stated that the department had no comments. In written comments on this report, the FinCEN Director stated that FinCEN concurred with GAO's recommendations to improve communications and support to the law enforcement community. After receiving a copy of our draft report for comment, FinCEN provided us with additional information

documenting that it had reorganized ALD in order to realign resources to better meet law enforcement's needs. The FinCEN Director noted that the realignment better positions the bureau to move forward with actions identified in the ALD internal report, along with the recommendations outlined in our report. As a result, we modified the recommendation language in our draft report to reflect the work that FinCEN had already done.

With regard to our recommendation that FinCEN establish a process to inform law enforcement about the availability of completed products, FinCEN officials noted that they typically observe the "third-party rule" on dissemination of information obtained from the requesting agency and, in some cases, this may limit their ability to share products that are completed in response to a request from a single customer. The rule generally provides that information properly released by one agency to another agency cannot be released by the recipient agency to a third agency without prior knowledge and consent of the agency that originally provided the information. The third-party rule applies to all data and information FinCEN receives from the agencies with which it works on a specific project. However, officials further stated that they are committed to looking for ways to better publicize FinCEN's analytic work and will continue to do so within the framework of adequately protecting the information provided to them. While we recognize the need for FinCEN to protect sensitive information, we believe that establishing a process to clarify and communicate to law enforcement when and under what circumstances FinCEN can or will attempt to share analytic products with other law enforcement customers will help ensure that it is effectively carrying out its mission to support the investigation and prosecution of financial crimes.

We are sending copies of this report to interested congressional committees, the Secretary of the Treasury, the Director of FinCEN, and any other interested parties. In addition, this report also is available at no charge on GAO's Web site at http://www.gao.gov.

If you or your staff have any questions about this report, please contact me at (202) 512-8777, or larencee@gao.gov. Contact points for our Office of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix VI.

Eileen Regen Larence
Director, Homeland Security and Justice Issues

Appendix I: List of Agencies GAO Surveyed

		Federal agency	State agency	One of FinCEN's top five federal law enforcement customers
1	U.S. Immigration and Customs Enforcement	✓		✓
2	Drug Enforcement Administration	✓		✓
3	Federal Bureau of Investigation	✓		✓
4	Internal Revenue Service—Criminal Investigation Division	✓		✓
5	U.S. Secret Service	✓		✓
6	Bureau of Alcohol, Tobacco, Firearms, and Explosives	✓		
7	U.S. Postal Inspection Service	✓		
8	U.S. Customs and Border Protection	✓		
9	Army Criminal Investigations Division	✓		
10	U.S. Attorneys Office—Eastern District of New York	✓		
11	Department of Justice—Asset Forfeiture and Money Laundering Section	✓		
12	U.S. Marshals Service	✓		
13	U.S. Air Force Office of Special Investigations	✓		
14	Defense Criminal Investigative Service	✓		
15	Naval Criminal Investigative Service	✓		
16	Ohio Bureau of Criminal Identification & Investigation		✓	
17	Arizona Department of Public Safety		✓	
18	California Department of Justice		✓	
19	Florida Department of Law Enforcement		✓	
20	Illinois State Police		✓	
21	Texas Department of Public Safety		✓	
22	New Jersey Division of Criminal Justice		✓	
23	Virginia State Police		✓	
24	New York District Attorney		✓	
25	San Francisco High-Intensity Financial Crime Area (HIFCA)			
26	Chicago HIFCA			
27	Los Angeles HIFCA			
28	New York HIFCA			
29	Puerto Rico HIFCA			

Source: GAO.

Appendix II: Comments from the Department of the Treasury

DIRECTOR

DEPARTMENT OF THE TREASURY
FINANCIAL CRIMES ENFORCEMENT NETWORK

November 20, 2009

Ms. Eileen Larence
Director, Homeland Security and Justice
U.S. Government Accountability Office
441 G Street N.W.
Washington, D.C. 20515

Dear Ms. Larence:

Thank you for the opportunity to review and comment on the Government Accountability Office (GAO) draft report entitled, ANTI-MONEY LAUNDERING: *Improved Communication Could Enhance the Support FinCEN Provides to Law Enforcement.* We appreciate GAO's efforts to review the products and services developed by the Financial Crimes Enforcement Network (FinCEN) in support of law enforcement agencies, and are pleased that the report recognizes the value of FinCEN's efforts and the unique expertise it provides related to the analysis of Bank Secrecy Act (BSA) information. FinCEN's ability to provide unique expertise for the analysis of BSA information stems from our relationships with all involved in deterring and detecting financial crimes, which includes not only law enforcement agencies, but also federal and state regulators, financial institutions from seven different industries, and over 100 foreign countries and jurisdictions.

As your report illustrates, FinCEN plays an important role in supporting law enforcement agencies' prosecution of financial crimes. As FinCEN Director, I have personally engaged with the leadership of each of the five major federal law enforcement agencies, and FinCEN analysts and liaisons engage with federal, state, and local law enforcement representatives on a daily basis. Balancing the needs and interests of more than 300 federal, state, and local law enforcement agencies with differing authorities and jurisdictions requires continual assessment and adjustment.

FinCEN concurs with GAO's recommendations to improve communications and support to the law enforcement community. Our internal assessment, referenced in GAO's report, reinforces FinCEN's commitment to better serve law enforcement agencies. We are pleased to report that the realignment of FinCEN's analytic resources is complete. This realignment better positions the bureau to move forward with actions identified in our internal report, along with the recommendations outlined in the GAO report.

We would like to emphasize one important issue with regards to the GAO's recommendations to better inform law enforcement about our products' availability and for accepting their law enforcement sensitive input on proposed regulatory changes. As noted in the GAO report, the information contained within our analytical products oftentimes

www.fincen.gov

Ms. Eileen Larence

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contains sensitive information provided by the requesting agency. In these cases, we observe the "third party rule" on dissemination of information obtained from the requesting agency and, in some cases, this may limit our abilities to share products that are completed in response to a request from one of our customers. With that said, we are committed to constantly looking for ways to better publicize our analytical work and will continue to do so within the framework of our duty to adequately protect the information we are entrusted with. With regards to receiving law enforcement sensitive comments on regulatory proposals and including these comments in a non-public rulemaking docket, this is a concept we are looking into, and will pursue if it is legally and technically possible to do so while still meeting the overriding need to protect this sensitive information.

Again, we appreciate GAO's efforts to review FinCEN's efforts to support law enforcement agencies, and look forward to updating you at a later date on the plans and progress towards the report's recommendations. If you have any questions, please feel free to contact Nicholas Colucci, Associate Director, Analysis and Liaison Division, at 703-905-5175.

Sincerely,

/s/

James H. Freis, Jr.

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

Eileen Larence, (202) 512-8777 or larencee@gao.gov

Acknowledgments

In addition to the contact named above, Kirk Kiester, Assistant Director; Samantha Carter; Miriam Hill; and Hugh Paquette made significant contributions to the work. David Alexander and George Quinn, Jr., assisted with design, methodology, and data analysis. Billy Commons and Jan Montgomery provided legal support. Linda Miller and Sally Williamson provided assistance in report preparation.

Related GAO Products

Bank Secrecy Act: Suspicious Activity Report Use Is Increasing, but FinCEN Needs to Further Develop and Document Its Form Revision Process. GAO-09-226. Washington, D.C.: February 27, 2009.

Bank Secrecy Act: Federal Agencies Should Take Action to Further Improve Coordination and Information-Sharing Efforts. GAO-09-227. Washington, D.C.: February 12, 2009.

Information Security: Further Actions Needed to Address Risks to Bank Secrecy Act Data. GAO-09-195. Washington, D.C.: January 30, 2009.

USA PATRIOT Act: Better Interagency Coordination and Implementing Guidance for Section 311 Could Improve U.S. Anti-Money Laundering Efforts. GAO-08-1058. Washington, D.C.: September 30, 2008.

Bank Secrecy Act: Increased Use of Exemption Provisions Could Reduce Currency Transaction Reporting While Maintaining Usefulness to Law Enforcement Efforts. GAO-08-355. Washington, D.C.: February 21, 2008.

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*USA PATRIOT Act: Additional Guidance Could Improve Implementation of Regulations Related to Customer Identification and Information Sharing Procedures.*GAO-05-412. Washington, D.C.: May 6, 2005.

Standards for Internal Control in the Federal Government. GAO/AIMD-00-21.3.1. Washington, D.C.: November 1, 1999.

*Money Laundering: FinCEN's Law Enforcement Support Role Is Evolving.*GAO/GGD-98-117. Washington, D.C.: June 19, 1998.

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Report to Congressional Requesters

February 2009

BANK SECRECY ACT

Suspicious Activity Report Use Is Increasing, but FinCEN Needs to Further Develop and Document Its Form Revision Process

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GAO-09-226

February 2009

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Highlights

Highlights of GAO-09-226, a report to congressional requesters

BANK SECRECY ACT

Suspicious Activity Report Use Is Increasing, but FinCEN Needs to Further Develop and Document Its Form Revision Process

Why GAO Did This Study

To assist law enforcement agencies in their efforts to combat money laundering, terrorist financing, and other financial crimes, the Bank Secrecy Act (BSA) requires financial institutions to file suspicious activity reports (SAR) to inform the federal government of transactions related to possible violations of law or regulation. Depository institutions have been concerned about the resources required to file SARs and the extent to which SARs are used. GAO was asked to examine (1) factors affecting the number of SARs filed, (2) actions agencies have taken to improve the usefulness of SARs, (3) federal agencies' use of SARs, and (4) the effectiveness of the process used to revise SAR forms. GAO reviewed laws and agency documents; analyzed SAR filings; and interviewed representatives from the Financial Crimes Enforcement Network (FinCEN), law enforcement agencies, bank regulators, and depository institutions.

What GAO Recommends

GAO recommends that the Secretary of the Treasury direct FinCEN to further develop a strategy that fully incorporates certain GAO-identified practices to enhance and sustain collaboration among federal agencies into the forms-change process. The FinCEN Director generally agreed with the recommendation.

To view the full product, including the scope and methodology, click on GAO-09-226. For more information, contact Jack Edwards at (202) 512-8678 or edwardsj@gao.gov.

What GAO Found

In 2000 through 2007, SAR filings by depository institutions increased from about 163,000 to 649,000 per year; representatives from federal regulators, law enforcement, and depository institutions with whom GAO spoke attributed the increase mainly to two factors. First, automated monitoring systems can flag multiple indicators of suspicious activities and identify significantly more unusual activity than manual monitoring. Second, several public enforcement actions against a few depository institutions prompted other institutions to look more closely at client and account activities. Other factors include institutions' greater awareness of and training on BSA requirements after September 11, and more regulator guidance for BSA examinations.

FinCEN and law enforcement agencies have taken actions to improve the quality of SAR filings and educate filers about their usefulness. Since 2000, FinCEN has issued written products with the purpose of making SAR filings more useful to law enforcement. FinCEN and federal law enforcement agency representatives regularly participate in outreach on BSA/anti-money laundering, including events focused on SARs. Law enforcement agency representatives said they also establish relationships with depository institutions to communicate with staff about crafting useful SAR narratives.

FinCEN, law enforcement agencies, and financial regulators use SARs in investigations and financial institution examinations and have taken steps in recent years to make better use of them. FinCEN uses SARs to provide public and nonpublic analytical products to law enforcement agencies and depository institution regulators. Some federal law enforcement agencies have facilitated complex analyses by using SAR data with their own data sets. Federal, state, and local law enforcement agencies collaborate to review and start investigations based on SARs filed in their areas. Regulators use SARs in their examination process to assess compliance and take action against abuse by depository institution insiders.

After revising a SAR form in 2006 that still cannot be used because of information technology limitations, in 2008, FinCEN developed a new process for revising BSA forms, including SARs, that may increase collaboration with some stakeholders, including some law enforcement groups concerned that certain of the 2006 revisions could be detrimental to investigations. However, the limited documentation on the process does not provide details to determine the degree to which the new process will incorporate GAO-identified best practices for enhancing and sustaining federal agency collaboration. For example, it does not specify roles and responsibilities for stakeholders or depict monitoring, evaluating, and reporting mechanisms. By incorporating some of these key collaboration practices and more fully developing and documenting its new process for form revisions, FinCEN could achieve some potential benefits that could come from closer adherence to the practices—such as greater consensus from all stakeholders on proposed SAR form revisions.

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Abbreviations

AML	anti-money laundering
BSA	Bank Secrecy Act
CBRS	Currency and Banking Retrieval System
CMP	civil money penalty
DEA	Drug Enforcement Administration
DOJ	Department of Justice
FBI	Federal Bureau of Investigation
FDIC	Federal Deposit Insurance Corporation
FinCEN	Financial Crimes Enforcement Network
HIFCA	High Intensity Financial Crime Area
IAP	institution-affiliated party
ICE	Immigration and Customs Enforcement
IRS	Internal Revenue Service
IRS-CI	Internal Revenue Service–Criminal Investigation
NCUA	National Credit Union Administration
OCC	Office of the Comptroller of the Currency
OTS	Office of Thrift Supervision
PRA	Paperwork Reduction Act
SAR	suspicious activity report

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United States Government Accountability Office
Washington, DC 20548

February 27, 2009

The Honorable Barney Frank
Chairman
The Honorable Spencer Bachus
Ranking Member
Committee on Financial Services
House of Representatives

The Honorable Stephen F. Lynch
House of Representatives

In part, to assist law enforcement agencies in their efforts to combat money laundering, the financing of terrorist activities, and other financial crimes, the Bank Secrecy Act (BSA) requires financial institutions to inform the federal government of any suspicious transaction related to a possible violation of law or regulation.[1] BSA—which the U.S. Department of the Treasury's (Treasury) Financial Crimes Enforcement Network (FinCEN) administers—and its implementing regulations provide for the filing of suspicious activity reports (SAR) by depository institutions when they detect a known or suspected violation of any law or regulation. Under the regulations administered by FinCEN, a SAR is required when the suspicious activity involves a transaction of at least $5,000 conducted or attempted by, at, or through the institution; involves funds derived from illegal activities; is designed to evade any reporting requirement under federal law or other BSA requirement; has no business or apparent lawful purpose; or the transaction is not the sort in which the customer normally engages and there is no reasonable explanation known for the transaction. Suspicious activity reporting is one component of broader anti-money laundering (AML) programs that depository institutions (banks, thrifts, and credit unions) and other financial institutions implement to comply with BSA. A financial institution's decision to file a SAR may be subjective and is based on its knowledge of the customer and the customer's usual banking activity.

[1]Pub. L. No. 91-508, titles I and II, 84 Stat. 1114 to 1124 (Oct. 26, 1970), as amended, *codified at* 12 U.S.C. §§ 1829b, 1951-1959, and 31 U.S.C. §§ 5311 et seq. Specifically, 31 U.S.C. § 5318(g) provides for the reporting of suspicious activities. FinCEN's SAR regulations may be found at 31 C.F.R. § § 103.15 to 103.21.

Federal banking regulators—the Board of Governors of the Federal Reserve System (Federal Reserve), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA)—and state banking regulators examine depository institutions for compliance with BSA, generally as part of their regularly scheduled safety and soundness examinations.[2] Depository institutions have been required to submit SARs since 1996, longer than any other type of financial institutions, and they file the majority of these reports. FinCEN issued regulations subsequent to passage of the USA PATRIOT Act of 2001 that added SAR filing requirements for securities and futures firms, money services businesses, casinos, and insurance companies, among others.[3]

Depository institutions have expressed concerns in congressional testimony about the resource challenges involved in complying with SAR-related requirements and the extent to which law enforcement agencies use SARs and other reports required under BSA. Federal law enforcement agency officials have testified they review and use SARs proactively—separately and in multiagency teams, which often include state and local agencies—to identify potential money laundering cases and money laundering trends, in addition to using them in ongoing investigations of financing of terrorism and other financial crimes. They contend that SARs can be useful in investigations months or years after they have been filed, as the actions of subjects or co-conspirators are uncovered. Depository institution officials have commented they lack clear guidance on what law enforcement is looking for and finds useful in these reports.

In this context, you requested that we examine a number of issues related to suspicious activity reporting, which is part of a larger body of work we are doing about FinCEN and its administration of BSA. Specifically, this report examines (1) the underlying factors that affected the number of SARs filed by depository institutions from 2000 through 2007, (2) actions

[2]For the purposes of this report, GAO uses "federal banking regulators" to refer collectively to the regulators of depository institutions (banks, thrifts, and federally chartered credit unions).

[3]The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001). The Securities and Exchange Commission, Commodity Futures Trading Commission, and the Internal Revenue Service carry out BSA responsibilities. Also, according to FinCEN, many state regulators have authority pursuant to state law to ensure that financial institutions comply with anti-money laundering laws and regulations.

that federal agencies have taken to improve the usefulness of SARs for law enforcement, (3) ways in which federal agencies use SARs and actions they have taken to make better use of them, and (4) whether the process FinCEN uses to revise SAR forms is effective in assuring that information collected is appropriate for law enforcement needs. As agreed with your office, we focused our work on depository institutions. Related and ongoing GAO efforts will address other BSA-related issues.

To address our objectives, we reviewed relevant laws, regulations, agency documents, and past GAO work. We interviewed representatives from FinCEN, the Federal Reserve, FDIC, OCC, OTS, and NCUA, as well as representatives from federal law enforcement agencies, including the Secret Service, the Internal Revenue Service–Criminal Investigation (IRS-CI), Immigration and Customs Enforcement (ICE), the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), and the Department of Justice (DOJ). We also obtained and analyzed data from FinCEN on depository institutions' SAR filings for calendar years from 2000 through 2007. We assessed the reliability of these data and found them sufficient for the purposes of this report. We interviewed representatives of the five largest depository institutions by number of SAR filings in 2007. We established 3 categories of depository institutions SAR filing numbers in 2007 and interviewed representatives from 15 depository institutions randomly selected from these categories about their experiences with SAR filing. We obtained data about SAR review teams (multiagency teams with federal, state, and local law enforcement representation) and interviewed staff from 13 teams randomly selected from these data. Similarly, we interviewed law enforcement representatives from High Intensity Financial Crime Areas (HIFCA) in Chicago, Illinois; Los Angeles, California; Miami, Florida; and New York, New York.[4] We also obtained information from IRS (which stores and

[4]HIFCAs were conceived in the Money Laundering and Financial Crimes Strategy Act of 1998 as a means of concentrating law enforcement efforts at the federal, state, and local levels in areas of high-intensity money laundering. HIFCAs were first announced in the 1999 National Money Laundering Strategy. Pub. L. No. 105-310, 112 Stat. 2941 (Oct. 30, 1998) *codified at* 31 U.S.C. §§ 5340-5342 and 5351-5355. There are seven areas designated as HIFCAs: Chicago, Illinois; Los Angeles, California; San Francisco, California; Miami, Florida; San Juan, Puerto Rico; the southwest border (Texas and Arizona); and New York and New Jersey. HIFCA designations were designed to allow law enforcement to concentrate resources in areas where money laundering or related financial crimes were occurring at a higher-than-average rate.

maintains BSA data for FinCEN) to determine the frequency with which federal and state law enforcement agencies access SAR data.[5]

We conducted this performance audit in from July 2007 through February 2009 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Appendix I explains our scope and methodology in greater detail.

Results in Brief

From 2000 through 2007, depository institutions filed an increasing number of SARs each year and representatives from federal regulators, law enforcement, and depository institutions with whom we spoke attributed the increase to a number of factors. According to FinCEN data, SAR filings by depository institutions increased from approximately 163,000 in 2000 to more than 649,000 in 2007. Our analysis of SAR and banking data from 2004 through 2007 indicates that the growth rates in SAR filings varied over time among depository institutions of different asset sizes. For example, the greatest increase in SARs filed during this period by the largest depository institutions occurred from 2004 to 2005, and SARs filed by small credit unions nearly doubled from 2005 to 2006. Representatives of federal banking regulators, law enforcement agencies, and depository institutions most frequently attributed the increase to two factors: technological advances in detecting suspicious activity and the effect of public enforcement actions on institutions. According to the representatives, automated transaction monitoring systems can flag multiple indicators of suspicious activity and identify much more unusual activity than could be identified manually. At the largest depository institutions, these systems conduct complex analyses incorporating customer profiles. The representatives also said that issuance of several public enforcement actions in 2004 and 2005 with civil money penalties (CMP) and forfeitures up to $40 million against a few depository institutions prompted many institutions to file more SARs after looking more closely at their clients and their account activities. FinCEN and the

[5]For the purposes of this report, we define "BSA data" as SARs and other forms that include currency transaction reports, reports of international transportation of currency or monetary instruments, and reports of foreign bank and financial accounts. The BSA database is accessible to law enforcement agencies.

federal banking regulators took the actions because of systemic BSA program noncompliance, which sometimes included failures to meet SAR filing requirements. DOJ also has taken action against a limited number of depository institutions that involved fines and penalties of up to $40 million. Depository institution representatives with whom we spoke also cited a third factor that influenced the increase—concerns they would receive criticisms during examinations about decisions not to file SARs. To avoid such criticism, they said their institutions filed SARs even when they thought a SAR may have been unnecessary—a practice sometimes referred to as "defensive SAR filing." However, according to the federal regulators and some law enforcement officials with whom we spoke, there is no means of determining what, if any, portion of the increase in filings could be attributed to defensive filing. Additional factors representatives suggested as contributing to the increase include institutions' greater awareness of BSA requirements after September 2001, more regulator guidance for BSA examinations, and increased BSA-related training at the institutions.

FinCEN and law enforcement agencies have taken multiple actions to improve the quality of SAR filings and educate filers about their usefulness. Since 2000, FinCEN has issued written products with the purpose of making SAR filings more useful to law enforcement. These include (1) a regularly issued publication for all financial institutions that gives tips on topics such as the preparation of SARs and (2) SAR-related guidance for depository institutions and other SAR filers. For example, FinCEN issued guidance on addressing common errors in suspicious activity reporting in 2007 and filing SARs about the proceeds of foreign corruption in early 2008. FinCEN representatives also help educate filers by regularly participating in outreach events on BSA/AML issues, including events focused on SARs. FinCEN chairs the Bank Secrecy Act Advisory Group—a forum for federal agencies and financial industry representatives—to discuss BSA administration, including SAR-related issues. Federal law enforcement agency representatives said actions they have taken to improve SARs' usefulness include conducting outreach events and establishing relationships with depository institutions in their local areas to communicate with staff about crafting useful SAR narratives. Representatives from some multiagency law enforcement teams told us that they subsequently noticed improved SAR narratives from local depository institutions.

FinCEN, law enforcement agencies, and banking regulators use SARs in investigations and depository institution examinations and have taken steps in recent years to make better use of them. FinCEN uses SARs to

provide a number of public and nonpublic analytical products to law enforcement agencies and depository institution regulators. In 2004 and 2005, several federal law enforcement agencies signed memorandums of understanding with FinCEN to receive bulk BSA data, including SARs. They combined these data with information from their law enforcement databases to facilitate more complex and comprehensive analyses. Different types of team structures have been established to better analyze SARs. For example, in 2000 and again in 2003, DOJ issued guidance that encouraged the formation of SAR review teams with federal, state, and local representation. These teams review SARs filed in their area on a monthly basis to determine which would merit additional investigation for a variety of suspected financial crimes. In 2006, DOJ and IRS-CI collaborated on a pilot to create task forces and add federal prosecutors to augment SAR review teams in selected districts. These task forces specifically investigate possible BSA violations that have the potential for seizures or forfeitures. The regulators use SARs in their depository institution examination scoping and also review SARs relating to known or suspected unlawful activities by current and former institution-affiliated parties, including officers, directors, and employees. Although law enforcement agency representatives generally were satisfied with their ability to access BSA data, various agencies and multiagency teams we interviewed said that formatting and other issues related to the data system slowed their downloads and reviews. FinCEN and IRS officials said that, when budgetary resources are available, these and other data management challenges will be addressed as part of FinCEN's technology modernization plan, developed in collaboration with IRS.

FinCEN encountered a number of problems in its most recent revision of the SAR form; although FinCEN has developed a new process for form revisions, the information currently available on the process is limited and does not fully indicate how FinCEN will avoid or address some of the problems previously encountered. FinCEN and the federal banking regulators issued proposed substantive and formatting revisions to the SAR form in 2006. The revisions to the form were finalized but, because of technology limitations with IRS's data management system, the revised form has not been implemented. Law enforcement agency officials we interviewed had mixed views on the proposed revisions to the form. They generally supported most of the proposed revisions, but some felt they had been insufficiently consulted and also expressed concerns that some revisions could affect their work negatively. For example, one change would replace the name and title of a person with personal knowledge about the suspicious activity with a contact office, possibly increasing the time it would take law enforcement investigators to reach a person

knowledgeable about the suspicious activity. However, banking regulators supported this change because of concerns that a SAR with a named contact listed could jeopardize the safety and privacy of that person if it were inappropriately disclosed. FinCEN has developed a new form revision process that it says it will use to revise BSA forms, including SARs. The documentation of the planned process suggests some greater stakeholder involvement at an early stage of the process, but the documentation for the new process that we received does not indicate FinCEN has fully incorporated certain GAO-identified practices that can enhance and sustain collaboration among federal agencies. In a previous report, we identified such practices—for example, that collaborating agencies define a common outcome; agree on their respective roles and responsibilities, including how the collaborative effort will be led; and create the means to collect information on, monitor, evaluate, and report their efforts to enable them to identify areas for improvement.[6] If FinCEN more fully incorporated some of these key collaboration practices FinCEN might achieve some potential benefits from closer adherence to the practices—such as greater consensus from all stakeholders on proposed SAR form revisions.

We are recommending that the Secretary of the Treasury direct the Director of FinCEN to further develop and document its strategy to fully incorporate certain GAO-identified practices to enhance and sustain collaboration among federal agencies into the form change process and distribute that documentation to all stakeholders. In written comments on this report, the FinCEN Director said he generally agreed with our recommendation and that FinCEN recognized the need to work with a diverse range of stakeholders to revise BSA forms.

Background

This section provides general information on how federal agencies carry out BSA responsibilities, what their SAR reporting requirements are, the mechanisms they use to monitor suspicious activity, and law enforcement agencies that use SARs.

[6]GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, GAO-06-15 (Washington, D.C.: Oct. 21, 2005).

FinCEN and Other Federal Agencies Carry Out BSA Responsibilities

The Secretary of the Treasury delegated overall authority for enforcement of, and compliance with, BSA and its implementing regulations to the Director of FinCEN. FinCEN's role is to oversee BSA administration. To fulfill this role, FinCEN develops policy and provides guidance to other agencies, analyzes BSA data for trends and patterns, and pursues enforcement actions when warranted. However, FinCEN also relies on other agencies in implementing the BSA framework. These activities include (1) ensuring compliance with BSA requirements to report suspicious activity and certain financial transactions and taking enforcement actions, when necessary; (2) collecting and storing the reported information; and (3) taking enforcement actions or conducting investigations of criminal financial activity.

FinCEN relies on other agencies to conduct examinations to determine compliance with, BSA and its implementing regulations. The Secretary of the Treasury delegated BSA examination authority for depository institutions to five banking regulators—the Federal Reserve, OCC, OTS, FDIC, and NCUA.[7] The federal regulators examine an institution's policies and procedures for monitoring and detecting suspicious activity as part of their examination programs.[8] Periodic on-site safety and soundness and compliance examinations are conducted to assess an institution's financial condition, policies and procedures, adherence to BSA regulations (for example, filing of SARs and other BSA-related reports), and compliance with other laws and regulations. These examinations generally are conducted every 12 to 18 months at small-to-midsized depository institutions (such as community banks, midsize banks, savings associations, and credit unions) on the basis of the regulator's rating of the institution's risk. At large complex banking organizations and large banks, federal regulators conduct examinations on a continuous basis in cycles of 12 to 18 months. Banking regulators use SARs in their scoping for these examinations.

Depository institutions file SARs and other BSA reports with FinCEN. Under a long-standing cooperative arrangement with FinCEN, IRS's

[7]31 C.F.R. § 103.56(b)(1)-(5). Each examination of an insured depository institution also must include a review of the institution's BSA compliance procedures by the appropriate federal regulator, which has independent examination authority. 12 U.S.C. § 1818(s) and 12 U.S.C. §1786(q)(2).

[8]The Federal Reserve, FDIC, OTS, and NCUA share safety and soundness examination responsibility with state banking departments for state-chartered institutions.

Enterprise Computing Center–Detroit serves as the central point of collection and storage of these data. The center maintains the infrastructure needed to collect the reports, convert paper and magnetic tape submissions to electronic media, and correct errors in submitted forms through correspondence with filers.[9] IRS investigators and other authorized officials access the data system directly through IRS's intranet site in what is known as the Web Currency and Banking Retrieval System (WebCBRS). FinCEN controls non-IRS law enforcement users' access to BSA data in WebCBRS through a portal called Secure Outreach.[10]

Federal regulators and FinCEN can bring formal enforcement actions, including CMPs, against institutions for violations of BSA. For instance, federal regulators and FinCEN may assess a CMP against depository institutions for significant BSA violations, including the failure to file SARs and establish and implement an AML program that conforms to federal regulations as required by BSA. Formal enforcement actions generally are used to address cases involving systemic, repeated noncompliance; failure to respond to supervisory warnings; and other violations. However, most cases of BSA noncompliance are corrected within the examination framework through supervisory actions or letters that document the institution's commitment to take correction action.

Whereas FinCEN and the regulators can take a variety of civil actions against depository and other financial institutions, DOJ may bring criminal actions against individuals and corporations, including depository and other financial institutions, for money laundering offenses and certain BSA violations. The actions may result in criminal fines, imprisonment, and forfeiture actions. Institutions and individuals willfully violating BSA and its implementing regulations, and structuring transactions to evade BSA reporting requirements, are subject to criminal fines, prison, or both.[11] DOJ

[9]For more information on these data management roles and responsibilities, see GAO, *Bank Secrecy Act: FinCEN and IRS Need to Improve and Better Coordinate Compliance and Data Management Efforts*, GAO-07-212 (Washington, D.C.: Dec. 15, 2006). In July 2008, FinCEN announced that current magnetic media filers of BSA reports had to transition to BSA Electronic Filing (E-Filing) no later than December 31, 2008, in an effort to make BSA filing requirements more secure, efficient, and effective.

[10]Non-IRS users access BSA data through FinCEN's Secure Outreach, which functions as a portal through FinCEN's information technology infrastructure to BSA data, which are housed at IRS's Enterprise Computing Center–Detroit. Agencies without direct access may visit FinCEN's offices and access BSA data directly; these users are referred to as "platform users."

[11]31 U.S.C. §§ 5322 and 5324(d).

generally identifies institutions violating BSA regulations through criminal investigations of the institutions' customers. Some corrective actions taken against depository institutions have resulted in guilty pleas and others resulted in deferred prosecution agreements, contingent on the depository institutions' cooperation and implementation of corrective actions. In each case, the depository institution paid a monetary penalty or was required to forfeit assets, or both.

Law enforcement agencies in DOJ and the Department of Homeland Security use SARs in their investigations of money laundering, terrorist financing, and other financial crimes. Entities in DOJ that are involved in efforts to combat money laundering and terrorist financing include FBI; DEA; the Department's Criminal and National Security Divisions; the Bureau of Alcohol, Tobacco, Firearms, and Explosives; the Executive Office for U.S. Attorneys; and U.S. Attorneys' Offices. The Secret Service and ICE; (in the Department of Homeland Security) also investigate cases involving money laundering and terrorist activities. IRS-CI uses BSA information to investigate possible cases of money laundering and terrorist financing activities. Federal and multiagency law enforcement teams, which may include state and local law enforcement representatives, also use SAR data to provide additional information about subjects, such as previously unknown addresses; businesses and personal associations; and banking activity during ongoing investigations.

BSA Requires Depository Institutions to Report Suspicious Activity and the Institutions Implement Policies and Procedures to Facilitate Such Reporting

Among its provisions, the Annunzio-Wylie Anti-Money Laundering Act (Annunzio-Wylie) amended BSA by authorizing Treasury to require financial institutions to report any suspicious transaction relevant to a possible violation of a law.[12] As authorized by Annunzio-Wylie, FinCEN issued a regulation in 1996 requiring banks and other depository institutions to report, using a SAR form, certain suspicious transactions involving possible violations of law or regulation, including money laundering.[13] During the same year, the federal banking regulators issued regulations requiring all depository institutions to report suspected money laundering, as well as other suspicious activities, using the SAR form.

In general, depository institutions are required to file a SAR for suspected insider abuse by an employee; known or suspected violations of law for transactions aggregating $5,000 or more where a suspect can be identified; known or suspected violations of law for transactions aggregating to $25,000 or more regardless of a potential suspect; and potential money laundering or violations of BSA for transactions aggregating to $5,000 or more.[14] The SAR rules require that a SAR be filed no later than 30 calendar

[12]Pub. L. No. 102-550, title XV, § 1517(b), 106 Stat. 3672 (Oct. 28, 1992). Before 1996, depository institutions reported suspicious activity using criminal referral forms that were filed with their respective primary federal financial regulator and with federal law enforcement agencies. See 60 Fed. Reg. 46556, 46557 (Sept. 7, 1995). In 2001, the USA PATRIOT Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (Oct. 26, 2001), expanded SAR reporting requirements to include nondepository institutions such as money services businesses, the securities and futures industries, and insurance companies. FinCEN has developed additional SAR forms to be used solely by money services businesses—68 Fed. Reg. 6613, 6615 (Feb. 10, 2003) and 67 Fed. Reg. 48704 (July 18, 2002)—and also forms for other types of financial institutions. FinCEN has not released a SAR form for insurance companies. During the interim, insurance companies use the form for the securities and futures industries. See FinCEN, *Guidance (Frequently Asked Questions)–Anti-Money Laundering Program and Suspicious Activity Reporting Requirements for Insurance Companies* (May 31, 2006), available at http://www.fincen.gov/financial_institutions/insurance/guidance.html. Recently revised forms to facilitate joint filing by depository institutions, casinos and card clubs, insurance companies, and the securities and futures industries have been postponed until a future date because of data quality initiatives. 72 Fed. Reg. 23891 (May 1, 2007). We discuss this issue in more detail later in this report.

[13]61 Fed. Reg. 4326 (Feb. 5, 1996).

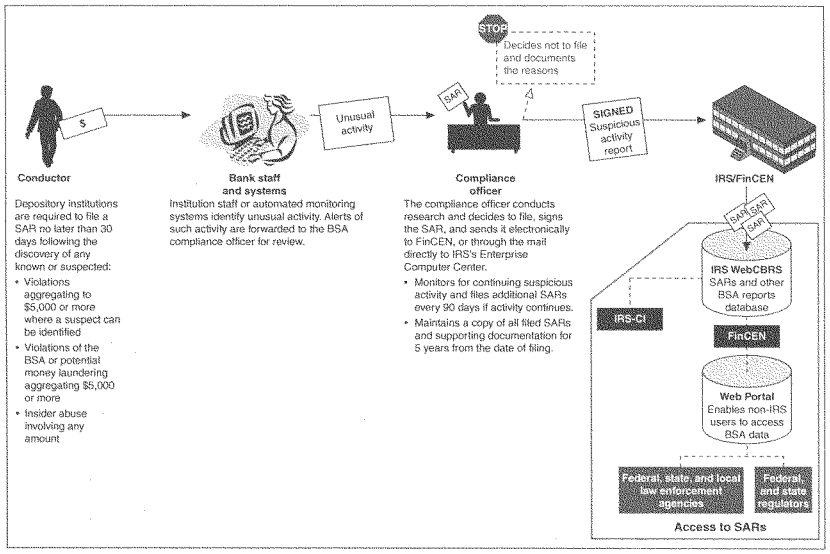
[14]The federal banking regulators have SAR regulations in place for institutions they supervise. These rules were issued in coordination with FinCEN's SAR regulation for depository institutions and set forth similar requirements with regard to reportable activity and dollar thresholds. In addition, the banking regulator regulations provide that suspected criminal activity by an insider must be reported, regardless of the dollar amount involved. See § C.F.R. 21.11 (OCC); 12 C.F.R. §§ 208.62, 211.5(k), 211.24(f) and 225.4(f) (Federal Reserve); 12 C.F.R. § 353.3 (FDIC); 12 C.F.R. § 563.180 (OTS); and 12 C.F.R. § 748.1 (NCUA).

days from the date of the initial detection of the suspicious activity, unless no suspect can be identified. If no suspect can be identified, the filing period is extended to 60 days. In addition, banks should report continuing suspicious activity by filing a report at least every 90 days. Depository institutions can file a SAR through the mail or electronically through FinCEN's BSA E-File program.

Depository institutions implement policies, procedures, and systems to monitor for and identify suspicious activity.[15] In addition to following regulations and guidance related to identifying suspicious activities, depository institutions develop monitoring procedures, which typically encompass identification or referrals by employees who conducted the transaction for the customer, manual systems, automated systems, or any combination thereof. Manual monitoring might consist of staff reviewing reports generated by the institution's management information systems. Large depository institutions that operate in many locations or have a relatively large number of high-risk customers generally use automated account-monitoring systems—computer programs that are developed in-house or purchased from vendors for the purpose of identifying individual transactions, patterns of unusual activity, or deviations from expected activity. In general, these systems capture a wide range of activity, such as deposits, withdrawals, funds transfers, automated clearing house transactions, and automated teller machine transactions directly from the institution's core data processing system. After identification of unusual activity, depository institution staff conduct additional research to determine whether to file a SAR. (The process is summarized in fig. 1, which also depicts SAR data collection, storage, and access.)

[15]Under section 1359 of the Money Laundering Control Act of 1986, Pub. L. No. 99-570, title I, subtitle H, 100 Stat. 3207-18 (Oct. 27, 1986), banking regulators must issue regulations that require insured depository institutions to develop and maintain procedures to ensure and monitor compliance with the reporting and recordkeeping requirements of BSA. 12 U.S.C. § 1818(s)(1).

Figure 1: The Process for Filing and Accessing SARs



Sources: GAO analysis; Art Explosion (images).

The interagency examination manual that the regulators use says that depository institutions are encouraged to document SAR decisions.[16] Additionally, banks must retain copies of SARs including supporting documentation for 5 years from the date of the report.[17] In addition to filing a timely SAR, an institution must notify an appropriate law enforcement authority, such as IRS-CI or FBI, for situations involving violations that require immediate attention.

A Number of Factors Influenced the Large Increase in SARs Filed by Depository Institutions in 2000 through 2007

For calendar years 2000 through 2007, SAR filings almost quadrupled. Although depository institutions accounted for the majority of SAR filings, other institutions increased the number of their filings also. Representatives of depository institutions, federal banking regulators, and law enforcement agencies identified a number of factors that, in their view, collectively contributed to the increase in SAR filings. The most frequently cited were technology (in the form of automated monitoring systems) and the effects of public enforcement actions. Representatives also cited an increased awareness of the risks of terrorist financing and other financial crimes after September 11 and improved knowledge of BSA requirements and issues resulting from regulator and institution guidance and training.

[16]The Federal Financial Institutions Examination Council issued its BSA/AML interagency examination manual in 2005. The council comprises the five federal banking regulators and the Chairperson of a State Liaison Committee, a committee of five representatives of state agencies that supervise financial institutions. It prescribes uniform principles, standards, and report forms for the federal examination of financial institutions and makes recommendations to promote uniformity in the supervision of financial institutions. The council issued revisions to the examination manual in 2006 and 2007 to provide updated guidance to examiners and the banking industry. The development of the examination manual was a collaborative effort of the federal banking regulators and FinCEN to ensure consistency in the application of BSA/AML requirements.

[17]31 C.F.R. § 103.18(d). Supporting documentation refers to all documents or records that assisted a depository institution in making the determination that certain activity required a SAR filing.

Depository Institutions Filed the Majority of SARs from 2000 through 2007, and Filings Varied across Asset Size Categories

FinCEN data show that for calendar years 2000 through 2007, SAR filings by depository institutions increased, from approximately 163,000 in 2000 to more than 649,000 in 2007. In 2007, depository institutions filed approximately 52 percent of all SARs.[18] Depository institutions have been subject to SAR-related requirements for a longer period of time than any other financial services industry and they have filed more SARs every year from 2000 through 2007 than other industries (see table 1).[19] The number of SARs filed by depository institutions also increased faster in some years than in others.

Table 1: Number of SARs Filed by Industry, Calendar Years 2000–2007

Industry	2000	2001	2002	2003	2004	2005	2006	2007
Depository institutions	162,720	203,528	273,823	288,343	381,671	522,655	567,080	649,176
Money services businesses	-	-	5,723	209,512	296,284	383,567	496,400	578,439
Casinos and card clubs	464	1,377	1,827	5,095	5,754	6,072	7,285	9,943
Securities and futures firms	-	-	-	4,267	5,705	6,936	8,129	12,881
Total	**163,184**	**204,905**	**281,373**	**507,217**	**689,414**	**919,230**	**1,078,894**	**1,250,439**

Source: FinCEN.

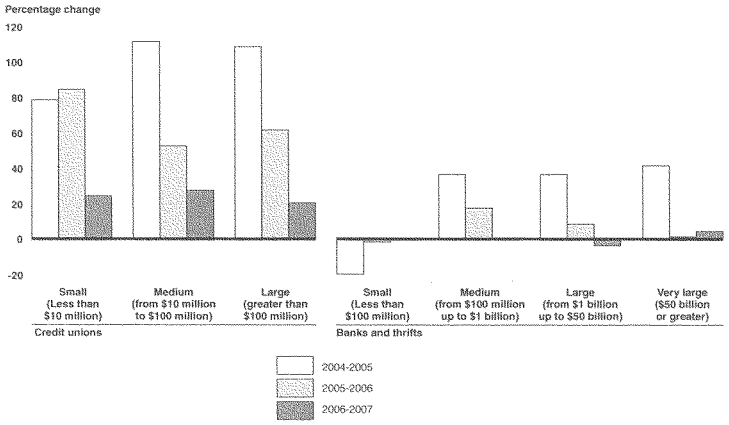
Note: The following are the number of SARs filed from January 1, 2008, through June 30, 2008: depository institutions, 343,974; money services businesses, 250,180; casinos and card clubs, 5,377; securities and futures firms, 7,058.

Our analysis of FinCEN and banking asset data indicated that in 2004 through 2007, the number of SARs filed varied across depository institutions of different asset sizes (see fig. 2) and the variations occurred at different points in time. The largest yearly increase in the number of SARs filed by very large banks and thrifts (those with total assets of $50 billion or more) occurred from 2004 to 2005, whereas the greatest increase in the number of SARs filed by small credit unions (those less than $10 million in total assets) occurred from 2005 to 2006.

[18]Filings by nondepository institutions have increased since 2003, after implementation of the USA PATRIOT Act, which provides for money services businesses and firms in the securities and futures industries to adopt AML compliance programs and adhere to SAR requirements.

[19]Depository institutions have been required to report known or suspected criminal violations since the late 1980s. In 1996, the SAR replaced different criminal referral forms as the standard form to report suspicious activity to FinCEN.

Figure 2: Change in Percentage of SARs Filed by Filing Type, Calendar Years 2004–2007



Source: GAO analysis of FinCEN, Federal Reserve, and NCUA data.

In 2007, the 31 very large banks and thrifts accounted for almost half (about 44 percent) of SARs filed by depository institutions, although such institutions represented less than 0.5 percent of depository institutions (see fig. 3). In addition, banks and thrifts with total assets from $1 billion up to $50 billion filed more than 30 percent of SARs during the same period. Credit unions of all asset sizes filed less than 10 percent of all SARs filed by depository institutions, despite constituting nearly 35 percent of all depository institutions.

Figure 3: SARs Filed by Banks, Thrifts, and Credits Unions by Asset Size, Calendar Year 2007

	Categories of institutions assets	Percent of all SARs filed	Percent of all institutions that filed SARS	Institutions that filed SARS
Banks and thrifts	Very large ($50B or more)	44.2%	0.3%	31
	Large ($1B - <$50B)	32.5	5.9	550
	Mid-sized ($100M - <$1B)	11.1	39.6	3,693
	Small (<$100M)	2.5	19.5	1,823
Credit unions	Large ($100M or more)	7.7	11.8	1,105
	Mid-sized ($10M - <$100M)	1.8	18.5	1,729
	Small (<$10M)	0.2	4.3	399
		100	100	9,330

Source: GAO analysis of FinCEN, Federal Reserve, and NCUA data.

Multiple Factors Contributed to the Increases in Depository Institutions' SAR Filings from 2000 through 2007

Representatives from depository institutions, federal banking regulators, and law enforcement agencies identified a number of factors that, in their view, collectively contributed to the increases in SAR filings by depository institutions from 2000 through 2007. Because of the subjective nature of these factors, the relative influence of individual factors on SAR filing increases cannot be determined. One of the most frequently identified reasons for the increases was the implementation of automated monitoring systems at depository institutions. According to most users of such systems at depository institutions and federal regulator representatives, these systems are capable of identifying significantly more unusual transactions than could be identified manually by institution staff. For example, FinCEN representatives said most institutions have adopted systems that are capable of identifying possible structuring activity—currency transactions carried out in a manner that would avoid the $10,000 threshold that would trigger mandatory currency transaction reporting by depository institutions.[20] Representatives from OCC noted that more sophisticated systems at larger institutions also are capable of

[20]The definition of structuring, as set forth in 31 C.F.R. § 103.11 (gg) states, "a person structures a transaction if that person, acting alone, or in conjunction with, or on behalf of other persons, conducts or attempts to conduct one or more transactions in currency in any amount, at one or more financial institutions, on one or more days, in any manner, for the purpose of evading the [currency transaction report filing requirements]. In any manner includes, but is not limited to, the breaking down of a single sum of currency exceeding $10,000 into smaller sums, including sums at or below $10,000, or the conduct of a transaction, or series of currency transactions, including transactions at or below $10,000. The transaction or transactions need not exceed the $10,000 reporting threshold at any single financial institution on any single day in order to constitute structuring within the meaning of this definition."

incorporating demographic information about the customers and their transaction histories into system alerts of potentially suspicious activity. Depository institution staff use the information in the alerts to assist in their investigations and decide whether to file a SAR.

Representatives from various federal agencies and depository institutions we interviewed said that highly publicized enforcement actions taken by the federal banking regulators and FinCEN, and criminal fines by DOJ against systemic BSA noncompliance—some of which included significant SAR failures—also have contributed to the increases in SAR filings. Specifically, they noted that in 2004 FinCEN and OCC concurrently assessed $25 million in CMPs against Riggs Bank for significant and willful BSA violations. In 2005, DOJ announced that Riggs Bank pled guilty to criminal violations of BSA, involving repeated and systemic SAR-related failures. Similarly, representatives noted the 2004 $40 million forfeiture and deferred prosecution agreement into which DOJ entered with AmSouth Bank for SAR failures, and the concurrent assessment by FinCEN and the Federal Reserve of a $10 million CMP against AmSouth Bank to address significant BSA reporting failures and serious weaknesses in BSA compliance policies and procedures. Many of our depository institution interviewees said that the DOJ action against AmSouth Bank and other actions raised concerns in the banking industry that institutions would be targeted routinely for criminal investigation and prosecution for failure to properly implement BSA requirements, such as the failure to file a SAR. However, in past work, we noted that DOJ pursued investigations against a limited number of depository institutions.[21] DOJ officials said that investigations of depository institutions for criminal violations of BSA generally have not involved negligence in reporting a limited number of suspicious transactions. Furthermore, DOJ officials said that depository institutions that have been cited for "one-off" BSA violations generally would not face law enforcement investigation or charges of criminal violation of BSA if they were otherwise had effective BSA compliance programs.

Most representatives from depository institutions of varying asset sizes we interviewed said that SARs filed to avoid potential criticism during examinations were referred to as "defensive" filings and also contributed

[21]See GAO, *Bank Secrecy Act: Opportunities Exist for FinCEN and the Banking Regulators to Further Strengthen the Framework for Consistent BSA Oversight*, GAO-06-386 (Washington: D.C.: Apr. 28, 2006).

to the increases in SAR filings. Although representatives from most institutions said that filed relatively few SARs that they sometimes filed defensive SARs, representatives from some institutions that filed higher numbers of SARs said their institutions generally did not. We asked Federal Reserve, FDIC, and NCUA officials whether defensive filing was occurring, and they characterized the information as anecdotal. Additionally, officials at FinCEN and OCC said their agencies separately conducted analyses of the practice, and those analyses indicated little evidence of defensive filing. The SAR guidance in the interagency examination manual that regulators use states the decision to file a SAR is inherently subjective and directs examiners to focus on whether the institution has an effective SAR decisionmaking process, rather than on individual SAR filing decisions. According to the manual, in those instances where the institution has an established SAR decisionmaking process; has followed existing policies, procedures, and processes; and has decided not to file a SAR, examiners generally should not criticize the institution for not filing a SAR.[22] The federal banking regulators and FinCEN characterized the issue as less frequently discussed within the banking industry now than earlier in the decade.

Furthermore, officials from the federal banking regulators and FinCEN provided varying perspectives on what could be considered defensive SAR filing. According to Federal Reserve officials, SARs filed as a result of the bank's effort to comply with the 30-day requirement could be considered defensive if, to meet the deadline, depository institutions filed SARs before fully investigating anomalous transactions. According to FinCEN officials, even when the institution is not certain the observed activity is suspicious, an institution's decision to file fulfills the obligation to report the activity. FinCEN officials said they would not consider it to be defensive filing if an institution erred on the side of caution and filed a complete and accurate SAR, even when the institution was not certain that the observed activity was suspicious. Filing the SAR would fulfill the requirement to report.

Federal regulators and depository institution representatives we interviewed generally indicated that the passage of the USA PATRIOT Act in 2001 and issuance of the interagency examination manual likely contributed to increases in SAR filings. According to Federal Reserve officials, the act generally increased awareness among depository

[22]The manual further indicates that the institution should not be criticized unless the failure is significant or accompanied by evidence of bad faith.

institutions of SAR requirements. Representatives from several depository institutions also said that they used the interagency manual to train staff on SAR filing and supporting documentation requirements, and that the manual has helped improve their BSA compliance programs in general. Many depository institution representatives we interviewed said that their SAR filings increased because of their improved BSA compliance programs.

FinCEN and Law Enforcement Agencies Took Multiple Actions to Improve SAR Filings and Educate Filers about Their Usefulness in Investigations

FinCEN and law enforcement agencies have taken several steps to improve SAR filings and educate filers about their usefulness in investigations. FinCEN has issued written products that report trends in SAR data, provide tips on filing SARs and present examples of SAR use in law enforcement investigations. It issued guidance to improve the quality of SARs filed. Additionally, FinCEN representatives regularly participated in conferences and outreach events for BSA/AML issues, including events focused on SARs. FinCEN also chairs a group of federal agency and financial industry representatives that discusses BSA administration, including SAR-related issues. Federal law enforcement representatives said they conduct outreach events and work with depository institutions to improve SAR narratives.

FinCEN Has Issued Written Products and Worked with Other Agencies to Make Financial Institution SARs More Useful

Since 2000, FinCEN regularly has provided tips about SAR preparation in publications for all financial institutions, including depository institutions. In October 2000, FinCEN first published *The SAR Activity Review: Trends, Tips and Issues*, which addresses topics related to suspicious activity reporting, trends and analyses regarding BSA data, law enforcement cases assisted by BSA data, and other issues. FinCEN describes this typically semiannual publication as the product of continuing dialogue and close collaboration among the nation's financial institutions, law enforcement officials, and financial regulators. Its goal is to provide meaningful information about the preparation, use, and value of SARs and other BSA reports filed by financial institutions.[23] Most recently,

[23]Since 2003, FinCEN also has published *The SAR Activity Review: By the Numbers*, a compilation of numerical data gathered from SARs filed by financial institutions. *By the Numbers* generally is published twice a year to cover two filing periods: January 1–June 30 and July 1–December 31, and serves as a companion piece to *The SAR Activity Review: Trends, Tips and Issues*.

the publication addressed issues such as how to determine when the 30-day deadline to report suspicious activity begins. According to FinCEN's annual report for fiscal year 2007, 70 percent of financial institutions that participated in a survey conducted by an external contractor found *The SAR Activity Review* to be "highly useful."

FinCEN also has posted on its Web site a variety of written guidance documents for depository institutions and other SAR filers to assist them in making the filings more useful to law enforcement agencies. For example, in April 2008, FinCEN posted guidance that addressed SAR filings about the proceeds of foreign corruption. In the guidance, FinCEN directed filers, when appropriate, to include the term "foreign corruption" in their narratives to ensure that law enforcement agencies identify these transactions as soon as possible. In 2007, FinCEN issued guidance regarding 10 of the most common SAR filing errors and ways filers could avoid them.[24] Among other issues, the guidance addressed the importance of explaining why the reported transaction was suspicious, and said that not including an explanation would diminish the usefulness of the SAR to law enforcement and other users. More specifically, FinCEN asserted that most inadequate SAR narratives repeated information from other fields on the form and did not sufficiently describe why the transaction was suspicious in light of the nature and expected activity of the customer.

In addition to providing guidance on SAR filing and usefulness, FinCEN representatives regularly participated in outreach events about BSA/AML issues. According to FinCEN, its representatives participated in more than 300 conferences and intergovernmental meetings during fiscal years 2006 through 2008, a number of which focused on SAR-related issues. The Bank Secrecy Act Advisory Group, which FinCEN chairs, and its two SAR-focused subcommittees have served as a forum for industry, regulators, and law enforcement to communicate about how law enforcement uses SARs and other BSA data.[25] The advisory group's subcommittees facilitate

[24]According to FinCEN, FinCEN identified the common errors in SARs through analysis of SARs filed by money services business. However, FinCEN published the guidance to help inform the efforts of all SAR filers and produce more accurate and complete SARs.

[25]Congress directed the Secretary of the Treasury in 1992 to establish the Bank Secrecy Act Advisory Group to actively solicit advice on the administration of BSA. The advisory group comprises high-level representatives from financial institutions, certain federal law enforcement agencies, regulatory authorities (for example, federal banking regulators), and the Department of the Treasury and other interested persons from the private sector. 31 U.S.C. § 5311 note (Advisory Group on Reporting Requirements).

discussion about how record-keeping and reporting requirements can be improved to enhance use and minimize costs to filers. FinCEN officials said they began outreach in 2008 to the largest depository institutions in the country to learn more about how their AML programs function, which they said will enhance their ability to provide industry feedback and ensure that the administration of the BSA regulatory program is based on sound knowledge of industry practices and the challenges of implementing AML programs. FinCEN said it plans to expand this outreach to other industries in 2009.

Law Enforcement Agencies Conduct Outreach Efforts and Build Relationships to Improve the Quality of SAR Narratives and Communication with Institutions

Representatives from federal law enforcement agencies we interviewed said that they conducted outreach events and developed relationships with local depository institutions to improve SAR narratives and alert the institutions to criminal activity the agencies are targeting in investigations. Although representatives of federal and state law enforcement agencies and multiagency teams generally described depository institutions' SAR narratives as adequate, many described efforts aimed at improving the quality of SAR narratives and establishing relationships with the institutions. For example, according to ICE representatives, more than 100 of their investigators serve as points of contact for financial institutions through ICE's Cornerstone program, which is intended to develop working partnerships and information-sharing strategies with private industry to target activities of criminal organizations in the financial system. They said that since 2004, ICE has carried out about 4,000 "contacts" or presentations made to the financial services industry through the program. FBI representatives said that in addition to national outreach efforts, field offices have sponsored conferences at their local banks. DEA representatives said that specific outreach efforts at several institutions—intended to assist institutions in assessing their detection and monitoring protocols and improving their SAR narratives—also allowed them to establish relationships with compliance staff and obtain a working knowledge of institutions' compliance programs.

In addition, representatives from most multiagency law enforcement teams we interviewed said that their teams conducted some type of regional or local outreach that included instruction on drafting SAR narrative statements. Representatives from multiple teams noted that regional conferences in their respective areas sponsored by IRS and U.S. Attorneys Offices provided feedback on writing good narrative statements and discussed examples of well- and poorly written narratives. Representatives from one team said they noticed an improvement in the quality of SAR narratives immediately following the events.

Federal Agencies Use SARs in a Variety of Ways and Have Taken a Number of Actions in Recent Years to Make Better Use of Them

FinCEN, law enforcement agencies, and financial regulators use SARs in investigations and financial institution examinations and have taken steps in recent years to make better use of them. FinCEN uses SARs to provide a number of public and nonpublic analytical products to law enforcement agencies and depository institution regulators. For example, in 2005, FinCEN agreed to provide several federal law enforcement agencies access to bulk BSA data, including SARs. They combined these data with information from their law enforcement databases to facilitate more complex and comprehensive analyses. In 2000 and again 2003, DOJ issued guidance that encouraged the formation of SAR review teams with federal, state, and local representation. In 2006, DOJ and IRS-CI collaborated on a pilot effort to create task forces and add federal prosecutors to augment SAR review teams in selected districts. The regulators use SARs in their depository institution examination scoping and also review SARs regarding known or suspected unlawful activities by current and former institution-affiliated parties (IAP), including officers, directors, and employees. Although law enforcement agency representatives generally were satisfied with WebCBRS, various agencies and multiagency teams we interviewed said that formatting and other issues related to the data system slowed their downloads and reviews. FinCEN and IRS officials said these and other data management challenges will be addressed as part of FinCEN's technology modernization plan, developed in collaboration with IRS.

FinCEN Uses SARs to Provide a Variety of Analytical Products and Support to Federal and State Agencies

FinCEN uses SAR data to provide various types of nonpublic analytical products to federal and state agencies in addition to publicly available reports. Since 2002, FinCEN has combined BSA data with its own data sets to produce reports. In addition to BSA data, FinCEN analysts have access to criminal report information through the National Crime Information Center, law enforcement databases, or FinCEN's law enforcement agency liaisons. FinCEN also maintains a database of its own proactive casework and its support of other agencies' investigations. FinCEN analysts also have access to commercial databases that contain identifying information on individuals and businesses. FinCEN has conducted many nonpublic analyses using SAR data, in response to requests from law enforcement agencies. For example, in 2007, FinCEN provided a federal law enforcement agency with a complex, large-scale BSA data analysis about subjects of interest that were identified in SARs filed by depository institutions and other entities. In another example, FinCEN provided a similar analysis to another law enforcement agency on suspicious currency flows between the United States and foreign governments targeted by law enforcement. In 2007, FinCEN also began providing

banking departments in the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands with nonpublic analyses of SAR data and other selected BSA reports in what are called BSA Data Profiles, which are based on SAR filings throughout the year in their respective state or territory. According to FinCEN's fiscal year 2008 annual report, it added new content to the 2008 data profiles and plans to continue to provide these to the states annually.

FinCEN has issued public analyses using SAR data that identified trends and typologies in the reporting of suspicious activity in key businesses and professions. For example, in 2006 and 2008, FinCEN conducted a self-initiated assessment to identify trends or patterns among SARs about suspected mortgage loan fraud. The SARs on which the 2006 assessment was based reported that suspected mortgage loan fraud in the United States continues to rise, and has risen 35 percent in the past year. The 2006 report stated that SARs included in this assessment reported suspicious activity related to mortgage fraud in all 50 states, the District of Columbia, Puerto Rico, Guam, and American Samoa. Also, in 2008, FinCEN conducted a separate study of suspected money laundering in the residential real estate industry based on SARs.

FinCEN provides other types of support to law enforcement agencies. For example, FinCEN provides a full-time analyst to most HIFCAs to help them more effectively analyze SAR data. Representatives from one HIFCA we interviewed said their FinCEN analyst has done analyses of SARs and other data related to their region. FinCEN also provides training and a database template to law enforcement agencies with access to BSA data to help them download and analyze SARs more effectively. In addition, several law enforcement officials we spoke with told us that they receive FinCEN alerts when more than one user has queried its WebCBRS about the same SAR to help them avoid duplicating investigations.

Law Enforcement Agencies Have Taken a Variety of Actions to Increase Their Use of SARs in Their Investigations

Federal law enforcement agencies have taken actions to more effectively analyze SAR data including obtaining access to bulk downloads of BSA data, which they integrate with their own data sets. Different types of team structures have been established to better analyze SARs. According to DOJ, some districts began SAR review teams in the 1990s. In 2006, DOJ and IRS collaborated on a pilot effort to create task forces to pursue SAR-initiated investigations. Tracking of SAR use by law enforcement agencies varies.

Some Federal Law Enforcement Agencies Have Facilitated Complex Analyses by Using SAR Data with Their Own Data Sets

Federal agencies, separately and in collaboration with other agencies, have taken actions to more effectively analyze SAR data, particularly by better integrating BSA data with other law enforcement data. Beginning in 2004, several federal law enforcement agencies (including FBI, the Secret Service, ICE, and the Organized Crime Drug Enforcement Task Force's Fusion Center) signed memorandums of understanding with FinCEN that allowed them to obtain access to bulk downloads of SARs and other BSA data.[26] The agencies conduct sophisticated and wide-ranging analyses more readily with the bulk downloads than is possible by accessing the BSA database remotely and querying it for specific records. According to these officials, the analyses they conduct using SAR data and their own data sets further their investigations by enabling them to make links they could not make without access to bulk SAR data. For example:

- FBI incorporates SARs into its Investigative Data Warehouse, a database that includes 50 different data sets, which facilitates complex analyses. FBI identifies financial patterns associated with money laundering, bank fraud, and other aberrant financial activities. FBI officials told GAO that FBI uses the results from SAR analyses in cross-program investigations of criminal, terrorist, and intelligence networks. In addition, FBI has developed a new tool that allows users in the field to quickly and easily categorize, prioritize, and analyze suspects named in SARs and other available intelligence.

- Secret Service representatives said their agents use combined data from the bulk downloads and their own repositories with various analytical models to map and track trends in financial crimes. They said the information is being used to model present and future financial crime trends; identify, locate, and link suspects involved in complex criminal cases; and identify financial accounts for asset forfeiture proceedings.

- ICE has combined BSA data, including SARs, with import and export data for selected countries to help identify and detect discrepancies or anomalies in international commerce that might indicate trade-based money laundering.

- The Organized Crime Drug Enforcement Task Force's Fusion Center integrates information from bulk BSA and other law enforcement

[26]Other reports required by the BSA include Currency Transaction Reports, Report of Cash Payments over $10,000 Received in a Trade or Business (IRS Form 8300), Report of International Transportation of Currency or Monetary Instruments, and Report of Foreign Bank and Financial Accounts.

databases and conducts investigative analyses.[27] Center staff can search the databases of several federal entities at one time rather then relying on individual searches. Users indicated they can easily produce comprehensive integrated intelligence products and charts without having to take independent information from various sources for manual compilation.

- IRS integrates SARs and other BSA data that it maintains for FinCEN with other information to advance its own investigative efforts. For example, IRS-CI investigators said the agency's Reveal system integrates BSA, tax, and counterterrorism data and allows them to conduct remote queries to identify financial crimes, including individual and corporate tax frauds, and terrorist activity. Reveal also allows users to sort, group, and export data from multiple information repositories, including combinations of databases, as well as discover and graphically show relationships among entities and patterns in the data. IRS-CI can generate reports from the system that contain names, Social Security numbers, addresses, and other personal information of individuals suspected of financial crimes.

- Multiagency law enforcement teams also incorporate SAR data into their analyses. IRS and DEA agents at one HIFCA combined resources and said they can now conduct investigative analyses of all SARs in the region within DEA's Narcotics and Dangerous Drugs Information System. Representatives from another HIFCA also said they analyze criminal activities and SAR filings in those areas known to be problematic, such as a known drug trafficking area.

DOJ Encouraged the Development of Law Enforcement Teams to Review SARs and Initiate Investigations

In 2000 and 2003, DOJ issued guidance to encourage the use of SAR data by multiple federal and state law enforcement agencies in what are known as SAR review teams. As of February 2008, the over 80 SAR review teams located across the country vary in level of human capital and other resources. Typically, an IRS agent serving as the coordinator downloads the SARs and prioritizes them for review during a team's monthly meetings. Some SAR review teams screen SARs against criteria such as the dollar amount involved in the transaction, number of SARs filed on the same subject, pattern for structuring, criminal history of the subject,

[27]DOJ established the Organized Crime Drug Enforcement Task Force program in 1982 to conduct comprehensive attacks on major drug trafficking and money laundering organizations. The program combines the resources and expertise of multiple agencies: FBI; DEA; Bureau of Alcohol, Tobacco, Firearms, and Explosives; IRS; Customs and Border Protection; U.S. Marshals Service; U.S. Attorneys' Offices; U.S. Postal Inspection Service; and U.S. Coast Guard.

business the subject may be in, and agency interest. The number of SARs downloaded and reviewed varies across geographical areas. For example, some teams may download and review as many as a thousand SARs per month; and others, 50–100. Coordinators generally told us that although some SARs are not discussed at the meetings and some do not result in investigations, someone from the team reviews all SARs that were filed in their area. Although the downloaded SARs may come from several industries (such as money services businesses, or mortgage lenders), a number of the teams we interviewed said the great majority of the SARs they reviewed came from the depository institutions.

Some of the SAR review team representatives we interviewed said they mostly review SARs proactively to generate investigative leads and reactively to support ongoing investigations. According to some DOJ officials, the proactive use of SARs by a team is aimed at initiating a variety of investigations and increasing synergies. Some review team participants also told us a SAR may have more value to law enforcement at a later stage, as more SARs are filed on the same individual. They also said these review groups generally invite representatives from federal law enforcement agencies, financial regulators, U.S. Attorneys' Offices, local prosecutors, and local police departments to discuss recently filed SARs pertinent to their geographic area. Participants also learn which agencies are interested in following up on information provided in the SARs. Some of the investigations that are the result of SAR review team efforts focused on money laundering, tax evasion, drug trafficking, and mortgage fraud. According to DOJ officials, other goals in developing SAR review teams included reducing duplication of investigative efforts across investigative agencies and increasing the efficient use of resources.

DOJ and other agencies also participate in proactive reviews of SARs through the National SAR Review Team. DOJ's Asset Forfeiture and Money Laundering Section created the National SAR Review Team in May 2007. The national team, which this DOJ section leads, was created to pursue cases that fall outside the scope of a local SAR review team. Representatives from federal law enforcement agencies and FinCEN participate on the national team and meet monthly. According to DOJ, the team and all participants make recommendations on which cases to pursue. The national team reviews SARs that report on activities that are complex and/or multijurisdictional in nature, often involving foreign nationals. According to DOJ representatives, the national team asks FinCEN for assistance on a case-by-case basis, and FinCEN has referred multijurisdictional cases to the team.

DOJ and IRS Collaborated on a Pilot Effort to Create Task Forces to Work on SAR-initiated Investigations

In 2006, DOJ and IRS collaborated on a pilot effort to create task forces of full-time investigators and added federal prosecutors to work on SAR-initiated investigations. The Attorney General's Advisory Council identified the districts in which the task forces were to operate. IRS and DOJ also wanted state and local enforcement agencies to be actively involved in this effort because they could present state and local crime perspectives.[28] Some DOJ officials also noted that this multiagency initiative could translate to more synergies and coordination to avoid duplication of efforts. IRS staff in task force districts currently serve on both the task forces and SAR review teams. An IRS representative said that IRS expected that its staff would continue participating in both teams. Further, IRS representatives said the task forces and SAR review teams complemented each other, and maintaining the relationship with SAR review teams was integral to avoiding duplicative investigative efforts.

However, the task forces and SAR review teams differ in key respects. IRS staff generally characterized the task forces as more focused than the SAR review teams. According to IRS staff, the task force model lends itself to investigations of BSA violations that have the potential for seizure or forfeiture under BSA, as well as prosecution. IRS staff further noted these types of investigations generally involve BSA violations for which IRS has investigative responsibility—currency and cash structuring, and certain money laundering offenses. According to an IRS-CI official, task forces are able to dedicate more staff and staff time to cases. For example, Treasury's Executive Office of Asset Forfeiture funds the operating costs for most task force members to work on the task force full time, thereby enabling them to work on more cases and on more complex problems. In contrast, the IRS representative said SAR review team members typically serve on a part-time basis and conduct SAR-related investigations in addition to other responsibilities.

Some Federal and State Agencies and Law Enforcement Teams Track Varying Types of Information about SAR Use

FinCEN, IRS, and federal law enforcement agencies and teams track information about SAR data access and how SAR information has been used in investigations in varying degrees. Through its Gateway program, FinCEN tracks the numbers of WebCBRS users' queries and views of BSA data that are conducted as discrete downloads of individual BSA reports,

[28] According to IRS officials, from six to eight fully established task forces were operating as of October 2008, and from four to six were in the development stage.

including SARs.[29] IRS-CI staff access WebCBRS directly through IRS's intranet. According to IRS staff, IRS provides its users the ability to capture additional details about SAR use through IRS-CI's case management system, which captures certain information related to investigations and tracks the use and value of BSA information in three ways. First, the system identifies all investigations where the source of the investigation is a SAR (or another BSA document). Second, for all nontax investigations, it may identify what types of BSA documents were of use or value to the investigation. Third, the system tracks all investigations developed with the SAR review teams and their general investigation case numbers. IRS-CI representatives said they also use a program that aids in the review and tracking of team decisions about SARs that were reviewed to avoid duplicative investigations.

In general, IRS-CI staff serving on SAR review teams or HIFCAs track which SARs they download for the teams and which agencies are pursuing investigations based on the SARs the team reviewed. Although DOJ does not require SAR review teams to compile statistics about their SAR use, some SAR review team representatives we interviewed said they have plans to track their use of SARs in greater detail. For example, some teams track or have plans to track the number of seizures and indictments associated with the investigations initiated from SARs they have reviewed.

Finally, representatives from some of the state and local enforcement agencies we interviewed said they track the number of SARs they reviewed while others said they did not.

Federal Banking Regulators Use SARs in Their Supervision of Depository Institutions

According to the interagency BSA/AML examination manual the regulators are to assess depository institutions' SAR compliance during examinations. The regulators conduct periodic on-site examinations to assess an institution's financial condition, policies and procedures, and adherence to laws and regulations such as BSA. During examinations, examiners download and review SARs as part of their efforts to assess institutions' (1) suspicious activity monitoring and reporting systems, (2)

[29] According to FinCEN officials, Secure Outreach is a secure portal that provides access to WebCBRS. Secure Outreach users have the ability to use this portal to send each other secure e-mail (including attachments). Reports, current news, and other relevant information also are posted on the Secure Outreach Portal. The Gateway Program is an application that records law enforcement case/subject information and is used to match agencies that potentially are researching the same subjects.

the decisionmaking process for SAR filings, (3) SAR quality, and (4) assess a bank's internal controls. For example, examiners conduct transaction testing on samples of downloaded SARs to determine whether institutions' SAR-related policies, procedures, and processes are adequate and effectively implemented and whether the filed SARs were complete and accurate.[30]

In addition to examining depository institutions for compliance with SAR requirements, the regulators track and review SAR information as part of their enforcement actions against institution-affiliated parties (IAP)—that are known or suspected of being involved in unlawful activities and breaches of trust.[31] The Federal Deposit Insurance Act generally allows the federal bank and thrift regulators to suspend, remove, or prohibit IAPs from participating in the affairs of depository institutions or working in the banking industry if the IAP is charged or convicted with certain crimes involving dishonesty, breach of trust, or money laundering. For example, according to federal banking regulator representatives, their agencies generally track and review information from SARs filed by the depository institutions they supervise that indicate suspected abuse by someone inside the institution. Depository institutions are required to file SARs to report insider abuse including all known or suspected criminal activity committed or attempted against the institution. Officials from the Federal Reserve, OCC, FDIC, and OTS said their respective agencies have

[30]The Federal Financial Institutions Examinations Council's BSA/AML examination manual generally directs examiners to make assessments within the context of a risk assessment, prior examination reports, and a review of institutions' audit findings.

[31]12 U.S.C. § 1813(u) provides that, the term "institution-affiliated party" means

(1) any director, officer, employee, or controlling stockholder (other than a bank holding company) of, or agent for, an insured depository institution;
(2) any other person who has filed or is required to file a change-in-control notice with the appropriate federal banking agency under section 1817(j) of [title 12 of the United States Code];
(3) any shareholder (other than a bank holding company), consultant, joint venture partner, and any other person as determined by the appropriate federal banking agency (by regulation or case-by-case) who participates in the conduct of the affairs of an insured depository institution; and
(4) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in
(A) any violation of any law or regulation;
(B) any breach of fiduciary duty; or
(C) any unsafe or unsound practice,
which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the insured depository institution.

programs in place to track and review SARs about IAPs. They described how information from these SARs is used as part of efforts to take action against IAPs involved in theft, fraud, and other unlawful activity at the depository institutions.[32] For example, OCC has a Fast Track Enforcement Program that implements streamlined enforcement procedures to be used in specific situations in which there is a conviction of, and admission by, or clear evidence that an IAP has committed a criminal act or other significant acts of wrong doing involving a national bank that are actionable under the OCC's enforcement authority. The Federal Credit Union Act provides the same enforcement authority to NCUA. NCUA reviews all SARs filed by credit unions on IAPs to determine whether it is appropriate to pursue administrative action to remove or prohibit the person from working in the banking industry or require restitution.

BSA Database Issues Present Some Challenges for Law Enforcement and Banking Agencies when Downloading and Reviewing SARs

Federal, state, and local agencies have experienced some data management challenges when downloading and reviewing SARs and other BSA reports. Although law enforcement agency representatives noted they were generally satisfied with WebCBRS, representatives from various law enforcement agencies and multiagency law enforcement teams we interviewed expressed some specific concerns related to the formatting and the efficiency of downloading of SARs from the database. For example, representatives from some SAR review teams said the SAR data they download through WebCBRS appear in all capital letters and without other formatting, which makes reviewing SARs more difficult and time consuming. Other SAR review team representatives said that another formatting problem arises when filers organize information about transactions and dates within tables included in their SAR narratives; when downloaded from WebCBRS, the tables appear as lines of unformatted information without columns or headings. An IRS-CI official commented that these formatting issues are particularly challenging for law enforcement teams that review large numbers of SARs. Representatives from some SAR review teams and HIFCAs we interviewed said their teams download and review approximately 1,000 or more SARs each month. Data management staff at IRS and FinCEN identified limitations in the mainframe environment from which WebCBRS evolved as the cause of these formatting concerns and noted that SARs appear this

[32]OCC is the only regulator that has requested SAR bulk download access with FinCEN. Representatives from the other regulators said their agencies opted not to request such access, citing additional security protocols that would need to be implemented, among other issues.

way for all WebCBRS users. An IRS data management representative commented that depository institutions and commercial software companies often prepare formatted tables within SAR narratives as part of their AML software packages. The representative noted that WebCBRS is unable to retain such formatting.

Representatives from the federal banking regulators and a state banking department we interviewed also described limits on the amount of BSA information that can be downloaded in the examination process. Specifically, they said that during examinations of institutions that file more than 20,000 reports within an examination cycle, examiners are unable to download all of the SARs or other BSA reports in a single download session. According to representatives from the federal banking regulators, examiners at each agency must divide their SAR downloads into multiple batches. Data management staff at FinCEN said the purpose of the 20,000 limit is to prevent users with large download requests from diminishing the speed of the system for other users. Although federal banking regulators have taken steps to deal with these challenges, representatives from these agencies still generally characterized the download process as inefficient because of the additional time needed to conduct separate queries. They also noted that download sessions for SARs and other BSA reports, such as currency transaction reports, sometimes expire before completing the data request.

Representatives from FDIC, the Federal Reserve, OTS, and OCC expressed concerns about the quality of data obtained through WebCBRS. FDIC representatives said the inability to download all appropriate SARs in one attempt raises concerns about whether any of the downloads are complete, as well as concerns about the possibility of citing a bank for an apparent violation for failure to file a SAR because that record was not in the information downloaded from WebCBRS. Federal Reserve and OTS representatives cited concerns about the integrity of WebCBRS and whether all SAR and currency transaction report data are properly uploaded. OCC representatives also expressed concerns about the quality of BSA data in WebCBRS. They noted that because of these concerns and data management issues, in 2004, they requested and obtained bulk access to SAR data for the institutions OCC supervises. OCC representatives also said they then spent a significant amount of funds and resources to develop a customized data system to conduct analyses of SARs.

FinCEN and IRS officials said these and other data management challenges will be addressed as part of FinCEN's information technology modernization plan, developed in collaboration with IRS. In response to a

recommendation we made in 2006, FinCEN, in collaboration with IRS, is developing a long-term comprehensive plan for re-engineering BSA data management activities.[33] In fiscal year 2007, FinCEN launched an initiative to maximize BSA data quality and value by more consistently identifying, documenting, prioritizing, and addressing BSA data requirements and quality issues. As part of the initiative, FinCEN established a Data Management Council to provide internal and external data users with a clear means of identifying and communicating data issues, requirements, and business priorities; validating resolution of data issues; and jointly establishing priorities for taking data management actions. The council consists of approximately 35 representatives from FinCEN, financial regulators, law enforcement agencies, and IRS. FinCEN officials also said that FinCEN has an Integrated Product team, consisting of FinCEN staff, which developed a strategy for the information technology modernization plan. FinCEN officials expected implementation of the modernization plan to take from 3 to 5 years. According to FinCEN, the team also developed a list of approximately 300 capabilities that are desired in a new system. FinCEN officials also said that team spent 2007 and 2008 focusing on repairing identified problems with the current system, reformulating processes, and working to make the system as effective as possible. FinCEN officials were reluctant to commit to a timeline, as the work will depend on budget allocations and FinCEN's working relationship with IRS counterparts.

The Process FinCEN Used to Revise the SAR Did Not Result in a Usable Form and Its New Process Provides Few Details on How Past Problems Will Be Overcome

FinCEN worked with other agencies in 2006 to create a new SAR form for depository institutions that was not implemented, and a recently developed document outlining a new form revision process appears to address some—but not all—of the collaboration-related problems encountered in 2006. FinCEN and the federal banking regulators issued proposed substantive and formatting revisions to the SAR form in 2006; however, because of technology limitations, the revised form was not implemented. Law enforcement agency officials we interviewed had mixed views on the proposed revisions to the form. They generally supported most of the proposed revisions, but some felt they had been insufficiently consulted and also expressed concerns to us that some revisions could affect their work negatively. We have identified practices that can help enhance agencies' collaborative efforts such as those needed to revise the

[33]GAO-07-212.

SAR form.[34] FinCEN has identified some steps it intends to use to improve collaboration; however, details on the process are limited. For example, the documentation for the new process that we received does not indicate that FinCEN has incorporated practices for agency collaboration, such as defining a common outcome; agreeing on agency or individual roles and responsibilities; and including a mechanism to monitor, evaluate, and report on how the process worked. Although not all of the practices we identified for collaboration are applicable to the forms revision process, if FinCEN implemented such collaboration practices for SAR form revisions, it may achieve greater consensus from all stakeholders.

FinCEN Postponed Implementation of a Revised SAR for Depository Institutions Due to Technology Limitations

In 2006, FinCEN revised the form that depository institutions use to report suspicious activities, but the revised form still cannot be used because of continuing information technology limitations. In accordance with the Paperwork Reduction Act (PRA) of 1995, FinCEN and the federal banking regulators must periodically renew the SAR form used by depository institutions and seek public comment.[35] Among other things, PRA requires the balancing of two potentially competing purposes: minimizing the paperwork burden on filers and maximizing the utility of the information collected in forms required by the government. To satisfy PRA requirements, FinCEN and other agencies assess the SAR forms approximately every 3 years to determine if revisions should be made.

In February 2006, in advance of the form's expiration, FinCEN and the federal banking regulators issued proposed revisions to and reformatting of the SAR form.[36] An important goal in revising the form was allowing affiliated institutions to jointly file a SAR. FinCEN and the federal banking regulators submitted the proposed revisions to the Office of Management and Budget for approval and published them in the *Federal Register* for public comment. In June 2006, FinCEN and OCC, OTS, FDIC and NCUA advised the public that the agencies had submitted the proposed revisions

[34]GAO-06-15.

[35]Pub. L. No. 104-13, 109 Stat. 163, (May 22, 1995). FinCEN and regulators for other industries also were assessing other SAR forms for potential revisions at the same time as the revision of the SAR form for depository institutions was occurring. Some proposed revisions were aimed at standardizing the forms across industries to enable affiliated institutions to jointly file a SAR. Details of those revisions are not provided in this report because we limited our scope to depository institutions.

[36]71 Fed. Reg. 8640 (Feb. 17, 2006).

to the Office of Management and Budget for approval, summarized the comments received and the disposition of issues raised by respondents, and requested additional comments on the proposed changes.[37] The Federal Reserve issued notice of final approval by the Federal Reserve Board of Governors in a separate *Federal Register* notice on July 5, 2006.[38] In December 2006, FinCEN announced on its Web site that SAR-filing institutions would begin using the revised form on June 30, 2007. However, in May 2007, FinCEN announced in a *Federal Register* notice it would postpone implementation of the revised form.[39] In the May 2007 notice, FinCEN identified the cause of the delay as "recently implemented data quality initiatives."

When we discussed the delay with FinCEN officials, they indicated data management staff had identified problems in implementing a BSA data quality management program, which was part of a larger and recently initiated information technology modernization strategy with IRS. FinCEN and IRS agreed to focus on optimizing the current database environment before introducing any new products or procedures. According to a senior FinCEN official, FinCEN thus delayed implementation of the revised SAR to focus on the overall modernization effort. Rather than undertake another revision of the form in 2009 (3 years from the prior revision), FinCEN plans to renew but make no changes to the form the Office of Management and Budget approved in 2006, and direct filers to continue to use the 2003 form.

Some Law Enforcement Agencies Had Mixed Views on the Proposed Revisions to the SAR Form

Law enforcement agency representatives we interviewed had mixed views on the proposed revisions to the SAR form. Although they generally supported a key proposed revision, some law enforcement agency representatives we interviewed believed certain proposed revisions could be detrimental to their investigations. Representatives from DOJ, FBI, Secret Service, ICE, the New York HIFCA, and some SAR review teams generally expressed support for the change allowing affiliated institutions to jointly file a SAR (that is, two entities belonging to the same financial organization could file a single SAR for a suspicious activity that affected both). However, representatives from IRS-CI and some HIFCAs and SAR

[37] 71 Fed. Reg. 35325 (June 19, 2006).

[38] 71 Fed. Reg. 38651 (July 5, 2006).

[39] 72 Fed. Reg. 23891 (May 1, 2007).

review teams said other revisions could affect their work negatively. One revision causing concern involved replacing the name and title of a person with personal knowledge about the suspicious activity with a contact office. IRS-CI officials, some Assistant U.S. Attorneys, coordinators from other SAR review teams, and HIFCA representatives said the revision might make it more difficult for investigators to reach an individual with personal knowledge of the suspicious activity. However, the Federal Register notice indicated that this action was taken with the approval of the banking agencies and law enforcement as a measure to protect the filer if information from a SAR-Depository Institution was inadvertently disclosed.

Similarly, representatives from some SAR review teams and HIFCAs we interviewed expressed concerns about removing the field that SAR filers currently use to indicate they have contacted a law enforcement agency and instead relying on filers to include this information in the SAR narrative. The Federal Register notice indicates this change was being made to simplify the form. Most SAR review team coordinators and HIFCA representatives we interviewed said they use this information to avoid duplicating or jeopardizing ongoing investigations related to the SAR.

Furthermore, the process used to revise the form may have contributed to these unresolved differences of opinions about what should be changed on the SAR form and the potential effects of the revisions that were made. FinCEN officials said they developed draft revisions from a running list of recommendations and comments related to suspicious activity reporting from law enforcement investigators and other agencies. Representatives from agencies that have liaisons at FinCEN, including DEA, FBI, ICE, IRS-CI, and the Secret Service, noted they were not involved in identifying the issues or concerns that could be addressed through revisions to the SAR form.[40] According to some law enforcement officials, they did not have an opportunity to provide input at all (for example, SAR review teams), other than providing public comments. When we subsequently asked FinCEN officials about these participation concerns, they indicated that federal law enforcement agency liaisons, whose agencies participate on SAR review teams, had not expressed similar concerns to them and then

[40]Other agencies include the Air Force Office of Special Investigations; Army Criminal Investigation Command; U.S. Postal Inspection Services; Bureau of Alcohol, Tobacco, Firearms, and Explosives; Naval Criminal Investigative Service; U.S. Department of Agriculture Office of the Inspector General; U.S. Housing and Urban Development Office of Inspector General; and the Special Inspector General for Iraq Reconstruction.

discussed the process they had used to develop the form and solicit feedback from law enforcement. FinCEN sought and obtained feedback through e-mail from law enforcement agency liaisons stationed at FinCEN. FinCEN officials characterized this feedback to us as not involving any significant objections to the proposed revisions and described it as editorial in nature. FinCEN officials noted they also did not know the extent to which law enforcement agency liaisons sought feedback from staff at the field office level within their respective agencies.

FinCEN Has Developed a New Process for Revising Forms, but Details about the Process Are Limited and Do Not Include Some Important Collaborative Practices and Mechanisms

FinCEN has developed a new process it intends to use in the future when revising SAR and other forms; however, documentation on the process does not include some collaborative practices. In May 2008, FinCEN developed a new form change management process under the auspices of its Data Management Council. FinCEN indicated the goals of the process include improving implementation of revisions to BSA forms by FinCEN, other agencies, and parties, as well as communication among them. FinCEN provided us with a briefing and some documentation on its new process.

FinCEN's briefing and documentation indicate that FinCEN has begun to address some of the previously identified collaboration-related problems. The information we received generally covered issues such as interactions among external and internal stakeholders, and general steps used to develop and propose form changes. For instance, the early stages of the new process include collaboration with IRS data management staff regarding system applications and other data-related issues. This early involvement could help avoid a repeat of the problems related to implementation of the 2006 revision. Similarly, FinCEN officials said they plan to include a representative for SAR review teams on the Data Management Council.

However, neither the briefing nor the documentation provided much detail on some considerations and activities important to such a collaborative effort such as the timeline for completing the various stages in the process; the different roles and responsibilities of the stakeholders in the various stages of the process (for instance, FinCEN has not identified specific council members that would be involved in providing input on proposed changes); or a mechanism to monitor, evaluate, and report on the process. Nor did the documentation reflect collaboration with federal prosecutors. Although FinCEN officials said that they plan to include a representative for SAR review teams on the Data Management Council, the documentation did not indicate collaboration with these teams or other

multiagency law enforcement teams, such as HIFCAs. Our prior report on practices that help enhance collaboration emphasizes the usefulness of these missing elements.[41] For example, we noted that to work effectively across agency lines, agency staff ought to define and articulate the common federal outcome or purpose they are seeking to achieve, consistent with their respective agency goals and missions; define and agree on their respective roles and responsibilities, including how the collaborative effort will be led; and have processes to monitor, evaluate, and report on their efforts to enable them to identify areas for improvement. As noted above, FinCEN was unaware of some law enforcement representatives' concerns about some of the changes to the SAR form in 2006 and bank regulators relied on FinCEN to get law enforcement's input. This situation indicates that stakeholders in the SAR revision process had not agreed the common outcome they wanted to achieve and that communication and collaboration among SAR form stakeholders might not have been adequate.

If FinCEN continues to use the process as it is currently outlined, it may not achieve some potential benefits that could come from closer adherence to practices that can help enhance and sustain collaboration, such as greater consensus from all stakeholders on proposed SAR form revisions, and fuller documentation of the process. The lack of information developed for monitoring and evaluating the process could impede agency management as it seeks to make future improvements to the SAR form and respond to the concerns and needs of both SAR filers and users. The gathering of such information could provide empirical evidence about how well the process worked, what problems occurred, or what issues were identified. Furthermore, more detailed documentation about the process could advance collaborative efforts involving a wide variety of stakeholders by providing all stakeholders with a better understanding of how the process is designed to work, thereby building trust and facilitating communication.

Conclusions

The issues associated with the most recent revisions to the SAR form for depository institutions present challenges for FinCEN. They highlight the difficulties of addressing potentially competing objectives stemming from PRA requirements—that new federal forms be designed not only to maximize their usefulness but also minimize burden on filers—and

[41]GAO-06-15.

engaging a wide variety of stakeholders. SARs are a key information source for federal, state, and local law enforcement agencies, as well as the federal regulators. Because the information they contain is critical for investigations of money laundering, terrorist financing, and other financial crimes, it is important that the SAR form be designed to collect the information that is most useful for law enforcement. Similarly, federal regulators use them during examinations of depository institutions' compliance with BSA. Yet given the potential burden of SAR filings, especially for depository institutions—the most frequent filers—it is important the process used to revise the form be a collaborative effort that helps to ensure all stakeholders' concerns are considered and potential problems identified.

While FinCEN and other agencies worked to create and finalize a new SAR form for depository institutions through the PRA, data management issues suspended the implementation of the 2006 revision. Although law enforcement representatives' views on the revised form were mixed, we found that the process FinCEN used may not have addressed some law enforcement concerns and introduced changes that some law enforcement representatives said could diminish the utility of the form for their investigative purposes. In addition, some law enforcement representatives expressed concerns that they were not involved in the process early. Bank regulators, on the other hand, were satisfied with the proposed changes. Many such problems in multiagency efforts could be mitigated with greater attention to the practices we have outlined for enhancing and sustaining collaboration among federal agencies. Implementation of such practices also may enable law enforcement and regulators to reach greater consensus on proposed changes. However, FinCEN's documentation for implementing the forms change management process does not necessarily include all law enforcement stakeholders, such as federal prosecutors and multiagency law enforcement teams.

Although FinCEN may be able to address some of the issues it encountered in the 2006 revision, FinCEN does not appear to have fully developed a process detailed enough to help ensure such an outcome. It does not provide details on some important considerations (such as the articulation of a common outcome or agreed-upon roles and responsibilities of individuals and agencies at each stage of the process) and omits another critical practice entirely—a mechanism for monitoring, evaluating, and reporting. By better incorporating collaborative practices, such as detailing individual and agency roles and responsibilities and documenting the entire process, FinCEN can further develop a strategy that will improve the SAR form and balance the possibly competing needs

of different stakeholders. And, by incorporating mechanisms to document, monitor, evaluate, and report on the process, key decisionmakers within agencies can obtain valuable information and assessments that could improve both policy and operational effectiveness. Finally, by more fully documenting its process, FinCEN likely will enhance its communications and collaboration with stakeholders.

Recommendation for Executive Action

To better ensure that future revisions to the SAR form result in changes that can be implemented and balance the differing needs of all stakeholders, we recommend that the Secretary of the Treasury direct the Director of FinCEN to further develop and document its strategy to fully incorporate certain GAO-identified practices to help enhance and sustain collaboration among federal agencies into the form change process and distribute that documentation to all stakeholders. Such practices could include defining and articulating the common federal outcome or purpose they are seeking to achieve; defining and agreeing on their respective roles and responsibilities; and having processes to monitor, evaluate, and report on their efforts to enable them to identify areas for improvement.

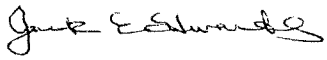
Agency Comments and Our Evaluation

We provided a draft of this report to the heads of the Departments of Homeland Security, Justice, and the Treasury; the Federal Reserve, FDIC, NCUA, OCC, OTS, and IRS. We received written comments from FinCEN, which are summarized below and reprinted in appendix II. DOJ, FinCEN, the Federal Reserve, FDIC, NCUA, OCC, OTS, and IRS provided technical comments, which we incorporated into this report, where appropriate. The Department of Homeland Security had no comments.

Through discussions with FinCEN officials and FinCEN technical comments, FinCEN provided us with additional information showing that it had begun developing a strategy that incorporated certain GAO-identified practices to enhance and sustain collaboration, but that it was not yet complete. As a result, we modified the recommendation language in our draft report to reflect the work that FinCEN already had done. In written comments on this report the FinCEN director said he generally agreed with our recommendation and that FinCEN recognized the need to work with a diverse range of stakeholders to revise BSA forms, including regulatory, law enforcement, and intelligence agencies, as well as financial industries responsible for filing BSA reports.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution of this report until 30 days from the report date. At that time we will send copies to interested congressional parties, Treasury, FinCEN, FDIC, the Federal Reserve, OCC, OTS, NCUA, IRS, DOJ, and the Department of Homeland Security. The report also will be available at no charge on the GAO Web site at http://www.gao.gov.

If you or you staff have questions about this report, please contact me at (202) 512-8678 or edwardsj@gao.gov. GAO staff who made major contributions to this report are listed in appendix III.



Jack E. Edwards
Acting Director, Financial Markets and
Community Investment

Appendix I: Objectives, Scope, and Methodology

This report examines (1) the underlying factors that affected the number of suspicious activity reports (SAR) filed by depository institutions from 2000 through 2007, (2) actions that federal agencies have taken to improve the usefulness of SARs for law enforcement, (3) ways in which federal agencies use SARs and actions they have taken to make better use of them, and (4) whether the process the Financial Crimes Enforcement Network (FinCEN) uses to revise SAR forms is effective in assuring that the information collected is appropriate for law enforcement needs.

As agreed with the requesters' offices, we focused our data gathering and analyses largely on depository institutions and the SARs they file. In some instances, we considered, analyzed, and reported on information from other types of financial institutions. Additionally, our quantitative analyses were limited to 2004 through 2007 to minimize the likelihood that the presented information would be out-of-date.

To examine the increase in depository institutions' SAR filings, we reviewed published findings that FinCEN supplied, as well as obtained and reviewed statistics and related information from the banking regulators. FinCEN also provided us with SAR data for calendar years 2000 through 2007 so we could conduct independent quantitative analyses.[1] We then combined that information with another set of information (such as amount of assets) for specific institutions that we obtained from the Federal Reserve and the National Credit Union Administration. We took multiple steps to assess the reliability of the data. We asked bank regulators' information technology staff to answer a data reliability questionnaire (for example, about data cleaning and maintenance procedures). We found the data to be sufficiently reliable for the purposes of our report.

To address the second part of the first objective, we interviewed many types of stakeholder and obtained agency documents from the interviewees to identify factors that may have contributed to the increase in the number of SARs filed from calendar year 2000 through 2007. Because of the subjective nature of this type of information, we based our findings on the most frequently cited factors. The types of people interviewed are identified in table 2. Representatives from depository institutions constituted another type of interviewee. As part of the process to select the depository institutions, we grouped the depository

[1]The data we requested and obtained from FinCEN were unrelated to SAR narratives.

institutions into four categories, depending on the number of SARs filed in calendar year 2007. We interviewed representatives from all 5 institutions that had the largest number of SAR filings in 2007 as well as representatives from 15 randomly selected institutions. The 15 institutions represented different categories of SAR filings: small (0-5 SARs filed in 2007), medium (6-17), and large (176 or more—excluding the 5 largest).

Table 2: Entities at Which Interviewees Provided Perspectives and Documentary Evidence for the Objectives

	Objective			
Place of employment/assignment for interviewee and source of documentary evidence	**1**	**2**	**3**	**4**
Department of the Treasury				
FinCEN	x	x	x	x
Internal Revenue Service				
Criminal Investigation (a law enforcement unit)	x	x	x	x
Modernization and Information Technology Services	x		x	x
Small Business/Self-Employed Division	x		x	x
Regulators				
Federal banking regulators				
The Board of Governors of the Federal Reserve System	x		x	x
Federal Deposit Insurance Corporation	x		x	x
Office of the Comptroller of the Currency	x		x	x
Office of Thrift Supervision	x		x	x
National Credit Union Administration	x		x	x
State banking agencies[a]	x		x	
Law enforcement				
Federal agencies				
Department of Justice	x	x	x	x
Criminal Division–Asset Forfeiture and Money Laundering Section	x	x	x	x
Federal Bureau of Investigation	x	x	x	x
Executive Office of U.S. Attorneys	x	x	x	
Drug Enforcement Administration	x	x	x	x
Department of Homeland Security				
Immigration and Customs Enforcement	x	x	x	x
U.S. Secret Service	x	x	x	x
Multiagency teams (composed of federal, state, and local law enforcement)				
National SAR Review Team	x	x	x	x
SAR review teams (random sample of 15 teams throughout the United States)[b]	x	x	x	x

Place of employment/assignment for interviewee and source of documentary evidence	Objective			
	1	2	3	4
High Intensity Financial Crime Area (HIFCA)[c]	x	x	x	x
State and local law enforcement officials[d]	x	x	x	x

Source: GAO.

[a]The state banking agencies were located in Arizona, California, Florida, Illinois, Louisiana, Massachusetts, New York, and Texas.

[b]SAR review teams located in Sacramento, California; Tampa, Florida; Atlanta, Georgia, New Orleans, Louisiana; Boston, Massachusetts; St. Paul, Minnesota; St. Louis, Missouri; Las Vegas, Nevada; Charlotte, North Carolina; Philadelphia and Pittsburgh, Pennsylvania; Dallas, Texas; Alexandria and Richmond, Virginia; and Milwaukee, Wisconsin.

[c]The HIFCAs were located in Chicago, Illinois; Los Angeles, California; Miami, Florida, and New York, New York.

[d]The state and local law enforcement officials (not attached to a multiagency team) were located in Connecticut, Florida, Louisiana, Oklahoma, Mississippi, North Carolina, New York, and Texas.

To identify the actions that federal agencies have taken to improve the usefulness of SARs for law enforcement, we interviewed officials from FinCEN, federal law enforcement agencies, and IRS and reviewed agency documents, as indicated for objective 2 in table 2. To examine the ways in which federal agencies use SARs and actions they have taken to make better use of them, we contacted representatives of the various law enforcement groups that are indicated for objective 3 in table 2. For example, federal prosecutors at U.S. Attorneys' Offices as well as federal law enforcement officials involved in the national SAR review team were some of the types of individuals who provided information. Among the issues that we discussed with the law enforcement agencies were how SAR review teams function and the results of their collaborative efforts. We obtained information from IRS about SAR review teams and interviewed representatives from 13 randomly selected teams. We reviewed reports from GAO, FinCEN, and other governmental agencies to glean additional actions. We obtained information from the IRS that indicated the frequency with which law enforcement agencies accessed SAR information and interviewed representatives from 8 randomly selected state and local law enforcement agencies. All five federal regulators and some state banking agencies also provided information on how SARs are used in compliance examinations, and one regulator provided us with a demonstration of how the system is accessed and the display of the information in the system.

To assess whether the process FinCEN uses is effective in assuring that SAR forms are appropriate for law enforcement needs, we conducted legal

analysis related to the Paperwork Reduction Act of 1995 and reviewed relevant Federal Register Notices. We also reviewed comment letters about proposed revisions to the SAR form submitted during the public comment period. We interviewed FinCEN, federal law enforcement, and bank regulatory representatives about the process to revise the form. Finally, we discussed the new forms change management process with FinCEN representatives.

We conducted this performance audit from July 2007 through February 2009 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Comments from the Financial Crimes Enforcement Network

DIRECTOR

DEPARTMENT OF THE TREASURY
FINANCIAL CRIMES ENFORCEMENT NETWORK

February 17, 2009

Mr. Jack Edwards
Acting Director, Financial Markets and Community Investment
U.S. Government Accountability Office
441 G Street N.W.
Washington, D.C. 20515

Dear Mr. Edwards:

Thank you for the opportunity to review and comment on the Government Accountability Office (GAO) draft report entitled, *BANK SECRECY ACT: Suspicious Activity Report Use Is Increasing but FinCEN Needs to Further Develop and Document Its Form Revision Process.* One of Treasury's goals is to promote the nation's security through strengthened financial systems. Suspicious Activity Reports (SARs) filed by financial institutions under the Bank Secrecy Act (BSA) support this goal by increasing transparency of our financial system.

As administrator of the BSA, the Financial Crimes Enforcement Network (FinCEN) is responsible for ensuring effective, efficient, and consistent application of the BSA, which includes the filing of BSA reports such as SARs. We appreciate GAO's recognition that federal agencies, both within and outside of the Treasury Department, and the regulated industry have taken actions to improve SAR filings and usefulness. The increasing requests for SAR access and analysis received from law enforcement and regulators in recent years firmly reinforce the draft report's findings of increasing use and awareness of SAR value across both of these communities.

While revisions of BSA forms occur infrequently and the changes made are often only at the margins, careful thought and consideration goes into the decisions associated with every proposed BSA form revision. FinCEN recognizes the need to work with a diverse range of stakeholders to revise the various BSA forms, including regulatory, law enforcement, and intelligence agencies, as well as the financial industries responsible for filing the BSA reports.

Ensuring that BSA reports yield useful information, while at the same time recognizing limitations of the current information technology infrastructure, often requires compromise among the diverse interests and needs of all stakeholders. The formal processes recently implemented by FinCEN for both BSA data and forms management, as acknowledged in GAO's report, will ensure better understanding among stakeholders of the challenges associated with increasing the usefulness of BSA reports. FinCEN generally agrees with the recommendation to further document and communicate the recently revised forms change process to strengthen collaboration among all stakeholders.

www.fincen.gov

Mr. Jack Edwards

February 17, 2009 Page 2

We appreciate GAO's efforts in reviewing SAR usefulness. If you have any questions, please feel free to contact Diane Wade, Associate Director, Management Programs Division, 703-905-5061.

Sincerely,

/s/

James H. Freis, Jr.

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

Jack E. Edwards (202) 512-8678 or edwardsj@gao.gov

Staff Acknowledgments

In addition to the contact named above, Barbara I. Keller (Assistant Director); Toni Gillich; M'Baye Diagne; Natalie Maddox; John W. Mingus, Jr.; Marc Molino; Carl Ramirez; Linda Rego; and Barbara Roesmann made key contributions to this report.

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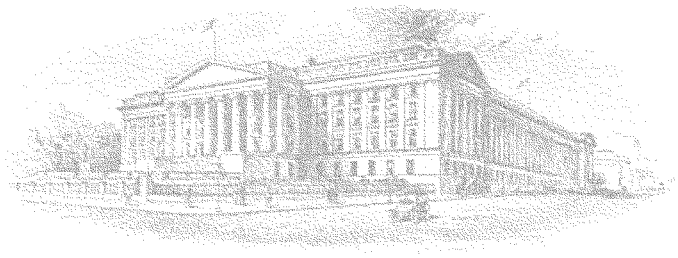
Audit Report



OIG-10-030

SAR Data Quality Requires FinCEN's Continued Attention

January 19, 2010

Office of
Inspector General

Department of the Treasury

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Abbreviations

BSA	Bank Secrecy Act
CTR	Currency Transaction Report
EIN	employer identification number
FinCEN	Financial Crimes Enforcement Network
IRS	Internal Revenue Service
MSB	money services business
OIG	Office of Inspector General
SAR	Suspicious Activity Report
TIN	taxpayer identification number
WebCBRS	Web-based Currency Banking and Retrieval System

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OIG

Audit Report

The Department of the Treasury
Office of Inspector General

January 19, 2010

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

The Financial Crimes Enforcement Network (FinCEN) administers and enforces the Bank Secrecy Act (BSA). One of FinCEN's critical BSA functions is the collection and maintenance of data on suspicious transactions. These data are collected through suspicious activity reports (SAR) filed by financial institutions and maintained by the Internal Revenue Service (IRS). FinCEN, law enforcement agencies, and others use these data to identify trends, develop intelligence information on money laundering and terrorist financing, and apprehend criminals. To be most useful, it is vital that these data be as accurate and complete as possible.

Since 1999, we have issued three audit reports on SAR data quality.[1] These audits found a large percentage of SARs contained missing or inaccurate data. In the most recent audit, in 2005, we reported that SAR filers disregarded SAR form instructions, did not always understand the violations listed on the SAR form, or were concerned with personal liability. Also, an IRS contractor made errors while creating electronic databases from paper SARs. This resulted in SARs with missing or inaccurate data not being identified or corrected before or after the SARs were entered into the database. We concluded that overall system control weaknesses, broad reliance on financial supervisory regulators to ensure financial institutions' compliance with SAR filing requirements, and factors unique to either the type of filer or the filing means contributed to the data quality problems. FinCEN concurred with our findings and recommendations and committed to a corrective action plan, but stressed that undue focus on data

[1] *FinCEN: Heightened Management Attention Needed Over Longstanding SAR Data Quality Problems*, OIG-05-033 (Mar. 23, 2005); FinCEN: *Reliability of Suspicious Activity Reports*, OIG-03-035 (Dec. 18, 2002); *The Financial Crimes Enforcement Network Suspicious Activity Reporting System*, OIG-99-032 (Jan. 25, 1999).

quality could undermine the overall effectiveness of SAR reporting programs by creating distorted incentives.

The objective of this audit was to evaluate the status of SAR data quality. We reviewed the actions FinCEN took in response to our 2005 audit report recommendations, evaluated the current processes for receiving and processing SARs, and analyzed one year's worth of SAR data. Appendix 1 describes our audit objective, scope, and methodology in more detail.

We performed our fieldwork for this audit between January 2007 and March 2008. In August 2008, we provided FinCEN with a draft of this report and held an exit conference with FinCEN officials in September 2008. Issuance of this final report was delayed due to other priority work by our office. That work principally relates to an unprecedented number of reviews of failed financial institutions that we are required to perform under the Federal Deposit Insurance Act, as amended. As a result, the SAR data we analyzed during our fieldwork is now over 3 years old. Furthermore, we acknowledge that FinCEN may have taken actions to improve the SAR data quality since our exit conference. That said, however, we believe it is still relevant to report our findings as they provide a benchmark for measuring changes in SAR data quality going forward. Given the essential supporting value of SAR data to law enforcement investigations, we plan to conduct follow-up audits of this area as appropriate. Furthermore, the recommendations in this report address matters that require continued FinCEN management attention.

Results in Brief

SAR data quality had not significantly improved by 2006. We reviewed data fields[2] critical to law enforcement for 1.1 million SARs filed in fiscal year 2006 by depository institutions, money services businesses (MSB), casinos and card clubs, and securities

[2] A data field is a specific area of an electronic record allocated for a particular category of data, usually one data element, such as a name, address, or date. Critical data fields are fields in the SAR form that have significant value and importance to law enforcement. Critical data fields were identified by combined efforts of law enforcement agencies, regulators, members of the financial industry, and Treasury offices. The critical data fields we examined were common to all SAR forms and determined by FinCEN to be responsive to the needs of law enforcement, regulators, and SAR filers.

and futures firms. We found that 59 percent of these SARs had instances of missing, incomplete, inappropriate, or inconsistent information. (Hereafter, we refer to these types of issues collectively as *data quality problems*.) SARs filed by MSBs (88 percent) had the highest percentage of data quality problems, followed by securities and futures firms (50 percent), casinos and card clubs (49 percent), and depository institutions (34 percent). The largest filers of SARs are depository institutions (about 53 percent of the total filed during fiscal year 2006); in contrast, the number of SAR filings by casinos/card clubs and securities and futures firms amount to only about 1 percent of the total.

The most frequent data quality problems involved the subject's taxpayer identification number (TIN)[3] (44 percent), address field (22 percent), and name (10 percent).[4] These data are critical for law enforcement investigations and intelligence analyses to connect potentially related data from various sources.

We also found thousands of SAR errors that were neither identified nor corrected during SAR processing. These included incorrect recording dates, shifting of data from one field to another which changed the data's meaning, and missing or unassigned document control numbers.

During our exit conference, FinCEN management agreed with the need to correct data errors, but disagreed that missing data requires more attention. Management also pointed out that the SAR form instructs filers to leave fields blank when information is not available. Accordingly, filers are not required to provide information for each of the critical data fields. Management further stated that while law enforcement prefers to have more information than less, incomplete SARs do not invalidate their usefulness to law enforcement. Instead of devoting resources to missing data, FinCEN's approach is focused on fixing data quality problems that occur during processing. FinCEN management noted that it had a number of information technology modernization

[3] IRS uses TINs, which consist of unique nine-digit numeric values, to administer tax laws.
[4] For this field, we counted as omissions the SARs in which the field was blank. We counted as errors those fields in which the filer listed information that was invalid data (such as a misplaced address or a string of meaningless characters). For SARs filed by depository institutions, subject is referred to as a suspect. We will at times refer to suspect in the body of the report. Subject and suspect refer to the same individuals.

projects it would like to pursue, but funding for these initiatives has not been available. Furthermore, FinCEN views improperly filed SARs as a compliance issue for the regulators or examining agencies to address.

We agree that if filers do not have information for a critical field it follows that the field would be left blank. The manner in which many SARs were completed, though, suggests that the filers should have used more due diligence in preparing the forms. Also, we cautioned that it cannot always be presumed that the reason a field is blank is because the filer did not have the information available. For example, for depository institution SAR submissions, filers are supposed to indicate when the subject data are unavailable and left blank. This field, however, was not consistently used by filers to accurately indicate when subject data was or was not available.[5] Furthermore, we did not count missing subject data for any type of SAR where the reported suspicious activity amount was less than $3,000 because, in some cases, filers are not required to record subject information for transactions falling beneath that threshold.

In addition, some of the missing SAR data should have been available to the filer, including the type of suspicious activity, the institution's address, or the location of the suspicious activity. Moreover, we found a disparity among similar institutions in the percentage of SARs with missing or erroneous data. This raises a question of why certain institutions are consistently able to submit a higher percentage of complete and accurate SARs than others.

Recommendations

To further improve SAR data quality, we are recommending that FinCEN: (1) continue and enhance its filer education and outreach programs; (2) identify and refer to the federal regulators those financial institutions with significant and recurring SAR quality problems; (3) coordinate with IRS to evaluate, implement, and improve controls over SAR data; and (4) request IRS to periodically notify FinCEN of SARs containing significant errors or missing critical data fields.

[5] We also noted other instances where the box was checked, but the filer provided some information on the subject.

Management Response

FinCEN noted that the findings in this report are based on SAR data filed in fiscal year 2006 and, since that time, FinCEN has completed efforts to improve the quality and integrity of SAR data. These efforts include enhancing the BSA electronic filing (E-Filing) system and improving the quality of BSA information through regulatory guidance and outreach.

FinCEN concurred with our recommendations and detailed the actions it has taken or planned in response to each recommendation. FinCEN has

- issued specific guidance to enhance filer education, which it views as an ongoing responsibility;
- established an initiative to identify systemic filing errors and in fiscal year 2009 worked with federal regulators to resolve over 100 such matters;
- worked with IRS to resolve matters associated with the recording, processing, accounting for, and loading of SARs.

By February 2010, FinCEN plans to have a SAR validation process in place that identifies all SAR filings with significant errors for its compliance staff to monitor.

Additionally, FinCEN stated that it plans to launch a BSA information technology modernization program in fiscal year 2010. This initiative aims to modernize BSA information management, analysis, and dissemination and, through increased data integrity and analytical tools, provide hundreds of federal, state, and local law enforcement agencies and financial industry regulators better decision-making abilities and increase the value of BSA information.

FinCEN's actions, taken and planned, meet the intent of our recommendations. FinCEN's full response is provided in appendix 3.

Background

BSA Administration

FinCEN's mission is to enhance national security, deter and detect criminal activity, and safeguard financial systems from abuse by promoting transparency in the U.S. and international financial systems.[6] To fulfill its mission, FinCEN needs to ensure, among other things, the competent collection, maintenance, and dissemination of SARs that financial institutions file when they identify a suspected criminal activity, such as money laundering or terrorist financing.[7]

Approximately 18 million BSA reports of various types are filed each year by about 200,000 financial institutions currently subject to BSA reporting and recordkeeping requirements.[8] The vast majority of these reports are currency transaction reports (CTR), which are required (unless they meet certain exemption criteria) for cash transactions exceeding $10,000. SARs are filed when transactions are suspicious in nature because they appear to involve such activity as structuring (using transactions under $10,000 to avoid being the subject of a CTR), bribery, fraud, use of counterfeit instruments, identity theft, terrorist financing, and the like. SARs generate leads that law enforcement agencies use to initiate or help complete money-laundering and terrorist-financing investigations.

BSA Data Repository and Access

IRS, through its Enterprise Computing Center in Detroit, Michigan, serves as the government's central repository for BSA data.[9] IRS

[6] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. No. 107-56, Title III, Subtitle B, Section 361(a)(2), 115 Stat. 272, 329-332, codified in relevant part at 31 U.S.C. § 310(b); Amended December 2004 (Pub. L. No. 108-458), February 2006 (Pub. L. No. 109-170), and March 2006 (Pub. L. No. 109-177).
[7] 31 CFR § app. 103.17–21.
[8] For purposes of this report, the term financial institution refers to depository institutions, such as banks, credit unions, and thrifts; MSBs (which include money transmitters, issuers, redeemers and sellers of money orders and travelers' checks, check cashers, and currency exchangers); casinos and card clubs; and brokers or dealers in securities and futures.
[9] Although the SAR database resides at and is maintained by IRS, FinCEN is statutorily responsible for the data (31 U.S.C. app. § 310, Pub. L. No. 107-56, 115 Stat. 329-330).

maintains the information technology infrastructure and operations needed to collect BSA data; convert paper, magnetic, and electronic BSA filings to standardized electronic records; and, where appropriate, correct errors in the forms submitted by filers.

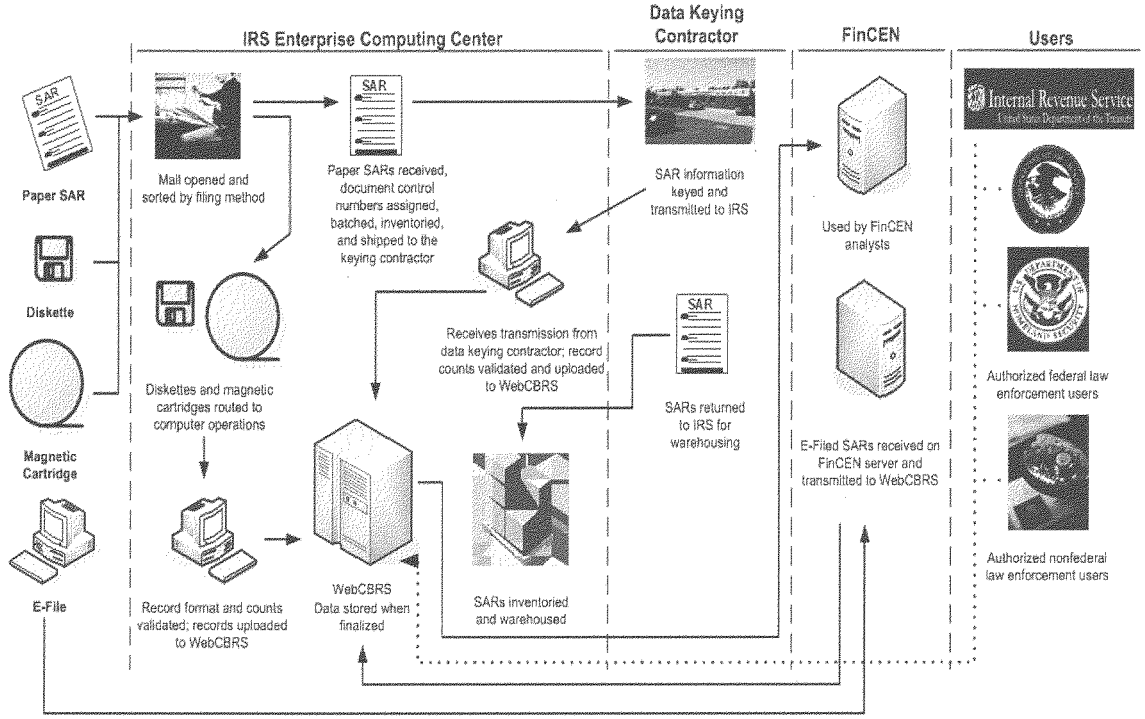
IRS maintains a BSA data storage and retrieval system known as WebCBRS.[10] IRS criminal investigators, as well as federal, state, and local law enforcement organizations, access the BSA data through WebCBRS for investigative and intelligence purposes. Federal regulatory agencies, such as the Federal Reserve, Securities and Exchange Commission, and various federal banking agencies also access BSA data through WebCBRS for compliance and enforcement purposes. Certain law enforcement agencies, such as the Federal Bureau of Investigation and U.S. Secret Service, prefer to periodically obtain downloads of bulk BSA data and perform their own analyses by combining the BSA data with data from other sources.

Various Media Are Used to File SARs With IRS

SARs are filed with IRS by paper, magnetic diskettes or cartridges, or E-Filing.[11] Each SAR is assigned a sequential document control number for tracking purposes. SARs filed by paper are received by IRS in Detroit, forwarded to an outside contractor in North Dakota where the data are key-entered to magnetic format, and then electronically transmitted back to IRS for uploading into the database. Prior to January 1, 2009, SARs filed by magnetic diskettes and cartridges were received at IRS and uploaded directly into the SAR database. SARs filed through E-Filing are accumulated by FinCEN and transmitted to IRS for upload. Figure 1 on the next page depicts the filing process in place during the audit period.

[10] Web-based Currency and Banking Retrieval System (WebCBRS) is IRS's data warehouse and information retrieval system.
[11] As of January 1, 2009, filers are no longer allowed to submit SAR data using magnetic media.

Figure 1: How SARs Are Filed



SAR Form Provides for a Financial Institution to Report Information About the Suspect and the Suspicious Activity

The SAR form includes space for a financial institution to report information about suspicious activity and the suspect in question. Suspect information includes, among other things, name, address, and other identifying information. The form also provides for the institution to include information about the date(s), type, and dollar amount of suspicious activity. The following excerpt from the SAR form for depository institutions shows the types of suspicious activities that should be reported.

Part III Suspicious Activity Information 2

33 Date or date range of suspicious activity
From ___ / ___ / ___ To ___ / ___ / ___

34 Total dollar amount involved in known or suspicious activity
$ .00

35 Summary characterization of suspicious activity:

- a ☐ Bank Secrecy Act/Structuring/ Money Laundering
- b ☐ Bribery/Gratuity
- c ☐ Check Fraud
- d ☐ Check Kiting
- e ☐ Commercial Loan Fraud
- f ☐ Computer Intrusion
- g ☐ Consumer Loan Fraud
- h ☐ Counterfeit Check
- i ☐ Counterfeit Credit/Debit Card
- j ☐ Counterfeit Instrument (other)
- k ☐ Credit Card Fraud
- l ☐ Debit Card Fraud
- m ☐ Defalcation/Embezzlement
- n ☐ False Statement
- o ☐ Misuse of Position or Self Dealing
- p ☐ Mortgage Loan Fraud
- q ☐ Mysterious Disappearance
- r ☐ Wire Transfer Fraud
- t ☐ Terrorist Financing
- u ☐ Identity Theft
- s ☐ Other _____ (type of activity)

36 Amount of loss prior to recovery (if applicable)

37 Dollar amount of recovery (if applicable)

38 Has the suspicious activity had a material impact on or otherwise

In addition, the SAR requires a narrative description of the activity. This section requires the financial institution to provide a detailed explanation or description of the suspicious activity and is needed to help law enforcement better understand what transpired, including what was unusual, irregular, or suspicious about the transaction.

SAR forms vary by the type of institution, such as a depository institution or MSB, but these differences are relatively minor in nature. The SAR form for depository institutions, securities and futures industries and casinos each includes a check-off box to indicate when subject data are not available.

Previously Reported SAR Data Quality Problems and Corrective Actions Taken

In January 1999, we reported on problems concerning SARs with missing information deemed critical by law enforcement. In December 2002, we reported on similar problems with SAR data quality and identified approximately 3,000 duplicate filings in the SAR database. In March 2005, we reported that FinCEN had made little progress in addressing the weaknesses reported in our 2002 audit, and had not established standards for monitoring SAR data quality. Of the SARs sampled as part of the 2005 audit, we reported that 62 percent contained data quality problems in one or more critical SAR data fields. We also reported that the number of duplicates in the SAR database had grown to an estimated 15,000. We concluded that the continued absence of adequate internal controls to detect and prevent problem SARs from entering into the SAR database remained the primary cause of the data quality problems.

FinCEN's approach to enhancing data quality focused on education and outreach combined with a periodic analyses of the reports filed and, when appropriate, remedial action against filers with systemic data quality issues. FinCEN management officials said they took this approach, in lieu of preventing SARs with blank or incomplete fields from being filed, because even imperfect SARs may have information critical to law enforcement.

FinCEN took a number of actions in response to our audit recommendations. FinCEN

- assigned to three assistant directors responsibility and accountability for ensuring the accuracy and timeliness of the SAR data system;
- instituted measurable standards to address the critical data fields that are responsive to the needs of law enforcement, federal regulators, and SAR filers;
- worked with federal banking agencies to draft interagency BSA and anti-money laundering examination procedures;

- established policies and procedures for follow-up on regulatory referrals to federal regulators to determine their supervisory resolution;

- implemented quarterly reports generated by IRS identifying duplicate SAR submissions and counts of SAR submissions with data omitted from critical fields;

- continued with its outreach efforts in several ways (including posting on its Web site in March 2008 frequently asked questions about SARs, publishing *SAR Activity Review, Trends, Tips, and Issues*,[12] issuing filing guidance, hosting a nationwide training conference call for MSBs in collaboration with IRS in March 2008 to provide tips on filing accurate CTRs and SARs, and issuing additional guidance highlighting the instructions for MSBs to file SARs, with instructions for completing a critical field when information is unavailable or inapplicable); and

- established a Data Management Council in July 2007 to provide a forum among internal and external stakeholders, including law enforcement, to discuss, review, and prioritize BSA data issues.

We also recommended that FinCEN reassess how the contractor's 3 percent error rate is measured and that greater consideration be given to the number of SARs with errors rather than just the total number of errors per SAR. We believed this change added perspective to situations in which a few SARs account for a large number of errors as opposed those in which each of a large number of SARs has a few errors. FinCEN decided not to request IRS to change its contractor measurement process.

FinCEN told us that the most cost-effective approach to reducing SAR omissions is to move more filers to electronic filing and to

[12] *SAR Activity Review, Trends, Tips, and Issues* has been published twice a year since October 2000. It reports on SAR-related areas of interest to both government agencies and financial institutions.

revise the SAR forms and instructions. As of January 1, 2009, filers are no longer allowed to submit SAR data using magnetic media.

Furthermore, FinCEN delayed implementation of revised SAR forms for depository institutions, casinos and card clubs, insurance companies, and securities and futures firms.[13] FinCEN has not announced when revised forms will be implemented and said that it will continue to monitor omissions through IRS's quarterly reports until the new SAR forms are available.

In 2005, we also reported that three MSBs were collectively responsible for 77 percent of the problem SARs filed by MSBs. FinCEN issued a civil monetary penalty to Western Union, in part, for SAR deficiencies. Because the second MSB was owned by the same parent company, FinCEN expected any corrective actions taken by Western Union would correct problems at the affiliated company. For the third MSB, the U.S. Postal Service (USPS), FinCEN said it had used outreach to achieve improvements. FinCEN's Office of Compliance conducted further SAR monitoring and outreach with the three MSBs in 2007, when additional errors were detected, and determined that the errors were caused by systemic programming and preparation errors. The three MSBs have since implemented revised procedures and FinCEN said its reviews of the SAR filings for these MSBs in 2008 found no systemic filing problems.

Appendix 2 provides a detailed listing of the 2005 audit's recommendations and FinCEN's corrective actions.

Findings and Recommendations

Finding 1 Data Quality Problems Were Identified in More Than Half of the SARs Filed During Fiscal Year 2006

We found that 59 percent of the SARs filed in fiscal year 2006 had data quality problems (missing, incomplete, inconsistent, or

[13] According to FinCEN, the new forms will be implemented after FinCEN and IRS resolve outstanding issues with the systems processing of SAR data.

inappropriate information) in one or more fields critical to law enforcement. The preponderance of problem SARs were filed by MSBs (approximately 428,000) and depository institutions (192,000). The critical fields most often containing missing or erroneous data related to the subject, including name, address, or identifying information. We believe these SAR data quality problems diminish the usefulness of the data for FinCEN, law enforcement, and other users.[14]

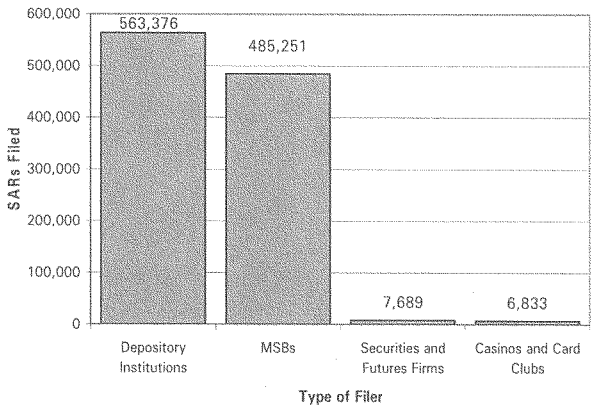
FinCEN management emphasized that data omissions are legitimate when data are not available to the filer, and SAR forms generally instruct the filers to leave fields blank when filers do not have the related information. While data omissions may be legitimate, we found inconsistencies in how depository institution files used a data field indicating this information was not available. We also observed certain blank SAR fields for information that the filing institution should clearly have had available, such as the type of suspicious activity observed, the institution's address, or the address of the suspicious transaction. Furthermore, we observed significant variation in the percentage of SARs with missing data among similar depository institutions, which raises questions about the diligence of certain depository institutions when filing SARs.

Number of SARs Filed by Financial Institutions

Approximately 1.1 million SARs were filed by financial institutions in fiscal year 2006. The vast majority of these SARs, about 99 percent, were filed by depository institutions and MSBs, while casinos and card clubs and securities and futures firms, combined, filed the remaining 1 percent. The number of SARs filed by institution type is shown below in figure 2.

[14] In assessing the quality of the data, we did not count omissions in the six critical subject fields for SARs where the reported suspicious activity amount was less than $3,000.

Figure 2: Number of Fiscal Year 2006 SARs Filed by Institution Type



Note: This figure does not include 2,603 SARs filed by depository institutions received by IRS in September 2006 that were not loaded into WebCBRS until February 2007 and 2 SARs filed by securities and future firms that were received in September 2006 and not transmitted to FinCEN until October 2007.

Source: OIG analysis of fiscal year 2006 SAR data.

SAR Data Quality Problems

In our review of the fiscal year 2006 SAR filings, we examined 17 data fields FinCEN identified as critical for law enforcement.[15] We found that 59 percent of the SARs filed during fiscal year 2006 either had omissions in one or more of the critical fields, or contained incorrect, inconsistent, or inappropriate information.

SARs filed by MSBs were most likely to have data quality problems. About 88 percent of SARs filed by MSBs had problems, a 20 percentage point increase over what we

[15] The 17 critical data fields we examined were common to all SAR forms and determined by FinCEN to be responsive to the needs of law enforcement, federal regulators, and SAR filers. This is more fully defined in footnote 2 above.

reported in 2005. About 34 percent of SARs filed by depository institutions had problems, a 22 percentage point decrease from what we reported in 2005. In addition, we found that approximately half of the SARs filed by casinos and card clubs and the securities and futures firms had data quality problems.[16]

Table 1 shows the number of fiscal year 2006 SARs with data quality problems by institution type.

Table 1: Fiscal Year 2006 SARs With Data Quality Problems By Institution Type

Institution type	Total SARs	Problem SARs	Problem SAR percentage
Depository institutions	563,376	191,622	34%
MSBs	485,251	427,934	88%
Casinos and card clubs	6,833	3,368	49%
Securities and futures firms	7,689	3,822	50%
Total	**1,063,149**	**626,746**	**59%**

Source: OIG analysis of fiscal year 2006 SAR database.

Table 2 shows, by filer group and critical data field, the number and percentage of SARs with data quality problems.

[16] We did not sample SARs filed by casinos/card clubs or securities and futures firms in our 2005 audit. The requirement for casinos/card clubs and securities and futures firms to file SARs became effective in 2002.

Table 2: SARs With Data Quality Problems by Field and Filer Group

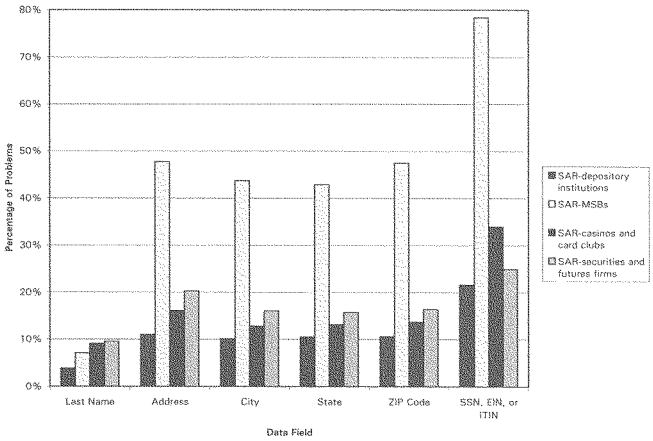
Critical Field	Casinos and card clubs	Depository Institutions	MSBs	Securities and futures firms	Total	Percent
Subject's SSN/EIN/ ITIN[a]	2,405	127,537	333,573	2,176	465,691	44%
Subject's address	1,158	64,716	162,845	1,944	230,663	22%
Subject's city	922	61,582	154,455	1,572	218,531	21%
Subject's state	945	65,933	156,109	1,462	224,449	21%
Subject's ZIP code	984	66,002	158,264	1,526	226,776	21%
Type of activity	85	8,431	152,659	57	161,232	15%
Subject's name	655	32,483	76,053	1,046	110,237	10%
Institution's location/TIN	242	7,410	81,816	667	90,135	8%
Institution's location/address	432	8,106	37,759	57	46,354	4%
Dollar amount	100	24,691	3,683	854	29,328	3%
Contact phone	61	14,550	14,150	19	28,780	3%
Narrative	836	5,650	25,702	306	32,494	3%
Institution' s Location/ZIP code	110	1,572	24,192	42	25,916	2%
Date of activity	63	5,654	7,449	362	13,528	1%
Institution's location/name	62	286	11,779	31	12,158	1%
Institution's location/city	41	420	13,415	33	13,909	1%
Institution's location/state	62	258	13,340	39	13,699	1%

[a] SSN/EIN/ITIN refers to Social Security number, employer identification number, and individual's tax identification number.
Note: SARs often had problems in one or more critical fields.

Source: OIG analysis of fiscal year 2006 SAR data.

Figure 3 shows subject field problems by filer group. As the figure illustrates, MSBs had the highest percentage of problems, reaching close to 80 percent for subject's Social Security number, employer identification number (EIN), or individual's TIN.

Figure 3: Subject Field Data Quality Problems by Filer Group



Source: OIG analysis of fiscal year 2006 SAR data.

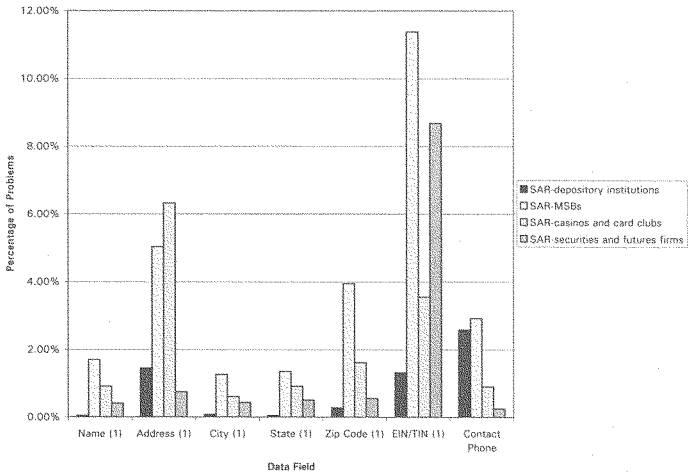
In one SAR field, filers are required to characterize the suspicious activity being reported. In cases where the activity does not correspond to an available code, SAR guidance instructs filers to select "other" and to provide a brief description. We found, however, that the suspicious activity was often characterized incorrectly or not at all. For example, we identified approximately 65,000 SARs (approximately 64,000 MSB SARs and 1,000 depository institution SARs) with "other" selected but either no description or an invalid description of the activity. Invalid descriptions took many forms. For example, we noted suspicious activity described as a string of numbers, the words "not sure," "who knows," "nothing suspicious," or other similar and meaningless information.

A second example included about 68,400 SARs (approximately 68,000 from MSBs and 400 from depository institutions) where an entry was made in the other activity type description field but the "other" activity type code was not selected by the filer. In addition, we found approximately 27,500 SARs (20,500 from MSBs and 7,000 from depository institutions) with no suspicious activity code identified at all.[17]

Figure 4 following shows that MSBs had more problems in providing filer identifying information in almost all categories than the other filers. For example, about 11 percent of SARs filed by MSBs had problems with the transaction location's employer identification number or TIN.

[17] As explained later in this report, the content of the activity type field was affected by data shifting, which may have resulted in SARs with unintended content in this field.

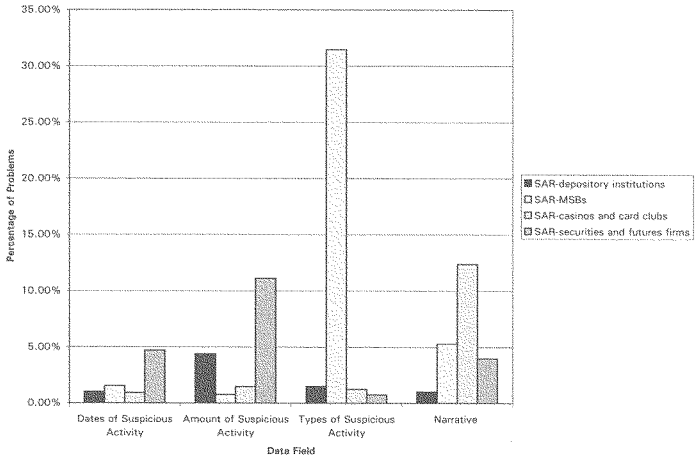
Figure 4: Filer Identifying Information Data Quality Problems by Filer Group



(1) These fields are used to record the location of the suspicious activity on MSB SARs. On all other SARs, these fields are for recording the filer's information.
Source: OIG analysis of fiscal year 2006 SAR data.

Figure 5 following shows that for suspicious activity data fields, the field with the most problems was the type of suspicious activity, involving nearly a third of the SAR forms filed by MSBs. Approximately 12 percent of the SARs filed by casinos and card clubs had deficient narratives, where either (1) the narrative was not provided, was entirely blank or included language that documentation was attached or enclosed, contrary to SAR instructions; or (2) did not meet the standard of an acceptable narrative (defined by FinCEN as being more than 40 characters in length). About 11 percent of SARs filed by securities and futures firms had problems with the dollar amounts field associated with the suspicious activity.

Figure 5: Data Quality Problems for Suspicious Activity Fields by Filer Group



More Than Half of the SARs Submitted by Certain Depository Institutions Had Data Quality Problems

Although depository institutions showed improvement as a whole from our prior audit -- with the percentage of problem SARs dropping from 56 percent to 34 percent -- data quality problems continued to exist for many, including several large banks or thrifts with assets of $30 billion or greater. These banks or thrifts had a higher than average percentage of fields with missing, incomplete, inconsistent, or inappropriate data. Table 3 shows the 25 depository institutions with at least 50 percent of their SARs with problems, listed by total SARs filed. Data quality problems were evident in 68 percent of the SARs they filed, ranging from a low of 51 percent to a high of 100 percent. We believe the range of SAR data quality problems within this group of 25 (but also among all depository

institutions), raises questions about why certain institutions have a far greater percentage of problems than others.

Table 3: Depository Institutions (Top 25) With More Than Half of Their SARs Having Missing, Incomplete, Inconsistent or Inappropriate Data

Depository institution	SARs filed	SARs with problems	% of SARs with problems
A	1,005	1,005	100
B	660	660	100
C	488	467	96
D	473	440	93
E	591	541	92
F	3,033	2,699	89
IndyMac Bank FSB	1,723	1,487	86
G	1,824	1,381	76
H	712	535	75
I	513	386	75
J	3,499	2,600	74
K	661	488	74
L	1,074	757	70
M	605	415	69
N	736	476	65
O	3,213	2,014	63
P	1,982	1,241	63
Q	5,056	3,042	60
R	1,204	727	60
S	763	450	59
T	1,549	875	56
NetBank FSB	875	480	55
U	2,990	1,592	53
V	715	380	53
X	5,238	2,692	51
Total	**41,182**	**27,830**	**68**

Source: OIG analysis of fiscal year 2006 SAR database. Since our audit period, IndyMac Bank FSB and NetBank FSB failed. The names of the active depository institutions in the above table were provided to FinCEN.

FinCEN Said Our Results Overstate SAR Data Quality Problems Because Filers Are Allowed to Omit Information from SARs

Recognizing that filers may not always have complete information available on a suspicious transaction, FinCEN pointed out that there are valid reasons why filers omit

certain information. FinCEN management also expressed their belief that our conclusions about the extent of data quality problems are overstated. FinCEN management stated that SAR form instructions generally make it clear that any field for which information is not available should be left blank. To meet SAR legal requirements, a filer needs only to submit a SAR within 30 days of a suspicious transaction, or 60 days if the filer needs more time to identify the subject. FinCEN is satisfied with entering these SARs into the database.

According to FinCEN management, even a SAR with missing critical data has value to law enforcement. Also, FinCEN expects that MSBs have more SARs with missing data than depository institutions because depository institutions inherently have more data on individuals they do business with than MSBs. MSBs deal with a more transient population and the customer-MSB relationship is usually more short-term than the customer-depository institution relationship.

We agree that SARs, even with missing critical data, can have value to law enforcement. However, we believe more complete and accurate SAR submissions would have additional value, particularly when there are questions about whether the missing data are available to the filer. For example, depository institution filers are supposed to indicate on the submission record when the subject data are unavailable and left blank. However, this box was not checked for 79 percent of SARs with missing critical subject field data (about 105,000 SARs of about 133,000 SARs filed by depository institutions). Of these SARS, 2,975 SARs had no subject information at all, while others contained limited subject data such as a telephone number or a date of birth. We also noted that even when the box was checked (about 28,000 SARs), indicating that the data were not available, the filer for about 1,600 of these SARs had included either some or all of the subject data.

In addition, some SAR data that were missing should clearly have been available to the financial institution, including the

type of suspicious activity noted, the location of the suspicious activity, or the institution's address.

When we discussed these conditions with FinCEN, we were told that a large volume of "corrected" SARs are submitted following original submissions that augment the original SARs, though these SARs are not always identified as corrected.

FinCEN management further stated that SARs may provide the needed information in the narrative section of the forms. FinCEN was concerned that our findings relative to missing data in SAR fields were not adjusted to take narrative information into consideration. While we appreciate this concern, it was not practicable for us to review the narratives for 1.1 million SARs. It should also be noted that providing data in the narrative in lieu of recording the information in a SAR data field is contrary to the instructions for the SAR forms. If, in fact, this practice (putting information in the narrative instead of specific data field) is widespread it would also distort trend analyses of SAR data by FinCEN and other law enforcement agencies.

That said, we also believe that it would be difficult, time-consuming and costly, for law enforcement doing widespread searches of the database for particular field data, to hunt for these data in narratives, on the chance that filers placed important information in the narratives rather than in the correct data fields.

While filers may omit SAR data they do not have, it is not possible to determine by reviewing SARs with missing data whether the filers had the data available or not. We observed certain data omitted that clearly should have been available to the financial institution, such as the type of suspicious activity noted, the institution's address, or the location of the suspicious activity. We also observed that among similar types and size institutions, the percentage of submitted SARs with data quality problems can vary significantly. This raises a question as to why certain institutions consistently

provide SARs with fewer data quality problems than other similar institutions.

Finding 2 Improved System Controls Are Needed

We found thousands of SARs with errors and other data quality problems that were not identified and corrected during SAR processing. These problems included incorrect recording dates, shifting of data from one field to another which changed the data's meaning, and missing or unassigned document control numbers used to account for the SARs.

These control weaknesses affect the quality and in some cases availability of the SAR data to law enforcement. FinCEN management was aware of some, but not all of these processing control issues identified by our audit. During our audit, we also discussed the control weaknesses with IRS officials who stated that they were working to correct the problems related to processing of BSA data.

Questionable Data Entry Dates

According to an agreement between IRS and FinCEN, IRS is to load SAR data into the SAR database within 10 working days. To assess the timeliness of SAR data loading into the SAR database, for each SAR received in fiscal year 2006, we compared the date that the SAR was received with the IRS load date. While the SARs generally appeared to be loaded timely, we often saw data that raised questions about the validity of the entry dates. Examples of issues identified with entry dates included:

- Over 23,600 paper SARs submitted by MSBs that were recorded as having been received by IRS and entered into the database on the same dates. We do not believe that this could be correct because IRS transports paper SARs to another state for data entry and subsequent processing. Thus, for the entry dates to have been accurate, the SARs would have to have been received, shipped out of state, key-entered to

magnetic format, transmitted back to IRS, and entered into the database on the same day they were received—unlikely, in our view.

- Over 2,400 SARs E-Filed by MSBs recorded as having been received at IRS on June 28, 2006, but recorded as having been entered into the database on August 22, 2006—55 days later. The loading of E-Filed SARs into the database normally occurs on or about the same day they are received at IRS. These SARs were included in a transmission file to FinCEN dated June 29, 2006, indicating they were loaded well before the August 22, 2006, date identified by IRS.

IRS officials involved with SAR data processing agreed that there were problems with certain entry dates.

In addition to entry date errors, we also identified SARs that were significantly delayed in being entered into the database.[18] For example, 1,108 SARs filed by depository institutions were recorded as received at IRS on January 18, 2006; however, those SARs were not available in the SAR database until 303 days later. Another 85 SARs that were recorded as received on September 25, 2006, were not available in the SAR database until 129 days later. FinCEN brought to our attention an additional 2,518 SARs with entry delays of up to 133 days.

Errors Resulting From Data Shifting

Data shifting occurs when all or portions of an entry for a data field included in data files used to upload SARs to WebCBRS appear in the positions reserved for other data fields. This condition can occur when electronic files used to enter SAR data in WebCBRS are not properly formatted. The

[18] Transmission files are generated by IRS and transmitted to FinCEN, where they are uploaded to an internal database. We identified transactions for fiscal year 2006 SAR submissions in transmission files generated through January 10, 2007. All SAR data at IRS are included in the FinCEN database. FinCEN uses these data for analytical studies and trend analyses in support of law enforcement. Four law enforcement agencies also obtain bulk SAR data through these files for use in internal data applications.

values in the files are loaded to WebCBRS based on the expected position of the data. In cases where the data is misaligned in the source file, the data once loaded to WebCBRS will appear in incorrect positions on the SAR record and can distort the meaning of the SAR information.

We found that data for 648 SARs from 14 depository institutions that were filed in a magnetic format were shifted and that the repositioned data changed the meaning and validity of some of the information provided. Affected fields included violation start and end dates, violation amounts, the type of suspicious activity, and other activity description fields. For example, we saw data on one SAR that incorrectly identified the reported suspicious activity as possible identify theft, false statement, and wire transfer fraud. The filer was actually reporting an unregistered MSB.

We reviewed a sample of these SARs to determine how the data was stored on the WebCBRS. Our testing confirmed that the data were stored in the incorrect positions on the WebCBRS database. This indicates that the data were received at IRS from the filer in the incorrect format. IRS did not identify these format errors prior to loading the data to WebCBRS.

FinCEN staff stated that the data shifting problem was caused by a faulty software patch transmitted by a software vendor to client banks. FinCEN said all affected financial institutions were required to file corrected SARs and verified that the last of these SARs had been corrected in March 2007. We did not verify this information during our review. Nonetheless, this problem demonstrates that sufficient controls were not in place to prevent SARs with significant data problems from being entered into the database.

Certain Document Control Numbers Could Not be Located in WebCBRS

We identified 377 document control numbers[19] (associated with 299 magnetic and 78 paper filing formats) that we could not find on WebCBRS or in transmission files provided by IRS to FinCEN. Research by the IRS confirmed that the document control numbers for the magnetic filings were never assigned to SAR submissions because IRS failed to reset the numbering sequence during the load process on two dates.

Testing of a sample of the unaccounted for document control numbers for the paper submissions disclosed that many were included in incorrect batch types and were likely re-assigned new document control numbers prior to processing. In five cases tested, IRS was not able to determine the disposition of the unaccounted for numbers. Each case tested required detailed IRS research since no master log of unassigned document control numbers was maintained.

Conclusions

SARs provide critical information on potential money laundering and terrorist financing. However, SARs completed incorrectly or submitted without known critical data diminish the overall quality of the data and, consequently, their usefulness to FinCEN, law enforcement, and others. While some data quality problems are inevitable, our analysis of the 2006 SAR data indicates that these problems continued to occur at an unacceptable rate, and that missing data and omissions should be of concern to FinCEN and law enforcement. We believe continued and enhanced efforts by FinCEN are essential to ensure filers are exercising diligence in obtaining, recording, and submitting all requisite SAR information. The volume of

[19] IRS assigns a document control number to each SAR received. The numbers are sequential and unique for each type of SAR and filing method. The numbers can be used to ensure that all submissions are accounted for and loaded to the database.

data quality problems clearly suggests that additional steps need to be taken to address this issue.

Recommendations

We recommend that the Director of FinCEN do the following:

1. Continue and enhance filer education and outreach programs as necessary to filer groups, as was done for MSBs, specifically stressing the importance of accurate subject, filer, activity, and narrative information, and the importance of correct data formats.

   Management Response

   FinCEN stated that enhancing filer education through guidance and outreach is an ongoing responsibility. FinCEN issues filer guidance documents and routinely publishes filer tips in the *SAR Activity Review: Trends, Tips and Issues* publication. FinCEN has also issued other guidance documents and/or publications aimed specifically at improving SAR filing.

2. Identify financial institutions with significant and recurring SAR quality problems and emphasize to the appropriate federal regulators the need to have financial institution examiners identify during onsite examinations causes for the problems and actions the financial institutions need to take to improve SAR quality.

   Management Response

   FinCEN stated it has a robust initiative to identify systemic filing errors and worked with federal regulators in 2009 to resolve over 100 such matters. Additionally, the BSA/Anti-Money Laundering (BSA/AML) Examination Manual issued by the Federal Financial Institutions Examination Council outlines the required examination procedures specified in the

recommendation and similar language was included in the Department of the Treasury BSA/AML Examination Manual for MSBs.

3. Coordinate with IRS to evaluate, implement, and improve controls over SAR data, including but not limited to

   - procedures to ensure the initial entry date for each SAR is properly retained;
   - controls to ensure that all SAR batches are properly processed accounted for and loaded timely;
   - controls to identify SARs with significant data format issues impacting data quality and prevent these submissions from being loaded; and
   - a control log for all unassigned/unused document control numbers that properly maintains control over all SAR submissions.

Management Response

FinCEN responded to the four areas identified in the recommendation as follows:

- The issue of recording the initial entry dates referenced in the report was attributable to a programming error in a legacy database that was subsequently replaced by a new database. Since the conversion in September 2006, there have been no known issues with capturing the initial entry date.
- In April 2009, IRS updated its programs to ensure that all electronically filed SARs are loaded into the system of record upon receipt. As a result, IRS has eliminated the previous dependency of only loading electronic SARs when paper SARs are available to load. In addition, IRS now monitors a log to validate the success of each load and that the number of records received via E-Filing equals the number loaded into the system of record.

- Magnetic media filings were retired in December 2008, and any findings associated with these filings are no longer applicable.
- In January 2009, FinCEN established a monthly procedure to identify all missing DCNs and submit a corresponding report to IRS for investigation and resolution. FinCEN provided the IRS all missing DCN numbers from January 1, 2008, to the present for analysis and action.

4. To assist in future SAR form revisions and filer education and outreach efforts, request IRS to periodically notify FinCEN of SARs containing significant errors or missing critical data fields.

Management Response

FinCEN stated it currently receives quarterly reports from IRS designed to identify financial institutions with systemic data omission problems and monthly reports for individual SAR forms identifying errors for paper-filed SARs. Also, a SAR validation process is scheduled to be implemented in BSA E-Filing in December 2009. After implementation, FinCEN will develop a new E-Filing report that includes all SAR filings with significant errors for FinCEN compliance staff to monitor. The estimated completion date for this recommendation is February 2010.

OIG Comment

FinCEN's actions, taken and planned, meet the intent of our recommendations.

* * * * * *

We would like to extend our appreciation to FinCEN personnel for the cooperation and courtesies extended to our staff during this review. If you have any questions, please contact me at (617) 223-8640.

/s/
Donald P. Benson
Audit Director

The objective of this audit was to evaluate the status of SAR data quality. To accomplish our objective, we reviewed the actions FinCEN took in response to our 2005 audit report recommendations, evaluated the current processes for receiving and processing SARs, and analyzed one year's worth of SAR data.

To determine the status of corrective actions FinCEN took in response to our 2005 audit, we requested information on the actions taken and supporting documentation from FinCEN.

We visited the Internal Revenue Service's (IRS) Enterprise Computing Center in Detroit, Michigan, to obtain an understanding of SAR processing. We determined the steps associated with SAR processing through interviews with IRS officials, direct observation, and review of applicable documents.

We obtained data included in IRS-generated transmission files from October 1, 2005, through January 10, 2007, consisting of SARs filed by depository institutions, money services businesses, casinos and card clubs, and securities and futures firms. From these data, we identified approximately 1.1 million SARs filed from October 1, 2005, through September 30, 2006. The total number of SARs filed during fiscal year 2006 is shown by institution type in table 4.

Table 4: Fiscal Year 2006 SAR Filings by Group and Method

Group	Paper	Magnetic/ E-Filed	Total SARs
Depository institutions	193,104	370,272	563,376
Money services businesses	134,002	351,249	485,251
Casinos and card clubs	6,464	369	6,833
Securities and futures firms	5,988	1,701	7,689
Total	**339,558**	**723,591**	**1,063,149**

Note: This table does not include 2,603 SARs filed by depository institutions received by IRS in September 2006 that were not loaded into WebCBRS until February 2007 and 2 SARs filed by securities and future firms that were received in September 2006 and not transmitted to FinCEN until October 2007.

Source: OIG analysis of fiscal year 2006 SAR data.

Within the population of fiscal year 2006 SAR filings, we examined 17 data elements common to all SAR types and identified by FinCEN as critical to law enforcement. The 17 data elements were associated with subject, institution, business transaction location,

narrative description, and other data categories. We examined the content of the 17 critical data fields to identify the number of omissions and to assess the validity, usability, and consistency of the data. In assessing omissions, we excluded subject fields associated with SARs having suspicious activity amounts of less than $3,000 because, in some cases, filers are not required to record subject information for transactions falling beneath that threshold. We did not search narratives for the 1.1 million SARs to determine if information was contained in narratives that would compensate for omissions in these data fields.

In assessing the usefulness of the 17 critical data fields, we applied guidelines included within the SAR instructions, state and country code tables identified on FinCEN's Web site, and FinCEN's guidelines to filers with respect to addressing common SAR errors. In assessing the quality of SAR narratives, we used FinCEN's standard of 40 characters or less to define a deficient narrative.

We did not consider a blank taxpayer identification number field as an omission if other data in the SAR indicated that the institution or subject was associated with a foreign address. For the review of ZIP codes, we assessed entries with five and nine numeric character formats for U.S. locations against U.S. Postal Service information. For foreign locations, we accepted any values in these fields, including omissions.

We allowed for omissions, or any value, in the state[20] and tax identification number fields if the subject, filing institution, or MSB transaction location was reported to be outside the United States, Mexico, or Canada. In addition, a proper country code had to be provided in order for us to allow the omission.[21]

We assessed the reliability of the electronic data that FinCEN provided to us by reconciling the data to similar information we obtained from IRS. We did not test the security of IRS's SAR

[20] If a state code was listed, we verified that it did not coincide with a U.S., Mexican, or Canadian state/province published by FinCEN in the *FinCEN Standard State/Country Code*.
[21] In order to allow an omission, the country code had to be published by FinCEN in the *FinCEN Standard State/Country Code*.

database and, therefore, are unable to conclude on the integrity of the data contained therein.

We performed our fieldwork from January 2007 to March 2008. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Recommendations	FinCEN Actions
1. Given the results of our sample, establish a position for a BSA data administrator (i.e., data integrity officer) with specific responsibility for ensuring the accuracy and timeliness of the SAR data system, or assign this responsibility to an existing position. We believe this would enhance both accountability and FinCEN's responsiveness to SAR users, filers, and regulators. We also believe this position would be better situated by reporting directly to FinCEN rather than the IRS.	FinCEN concurred; and assigned responsibility to three existing Assistant Directors. The positions responsible for overseeing operations of these three offices are: Assistant Director, Office of Regulatory Analysis; Assistant Director, Office of Compliance; and Assistant Director, Office of BSA Data Services.
2. Establish measurable standards to address at least two data quality aspects: critical data fields that are responsive to law enforcement needs, and an acceptable level of data quality.	FinCEN instituted measurable standards to address the critical data fields that are responsive to law enforcement, federal regulators and SAR filers' needs. In July 2007, FinCEN issued *Standards and Procedures for Suspicious Activity Report Data Quality Studies* to provide standards, procedures, and guidance for developing and implementing SAR data quality studies. FinCEN surveyed certain representatives of the Bank Secrecy Act (BSA) Advisory Group on SAR critical fields. The majority of respondents agreed that the fields identified by FinCEN were critical.
3. Establish a process to periodically include input from law enforcement case agents for a contemporary investigative perspective.	FinCEN established a policy to periodically obtain input from law enforcement. The process is an annual survey through the BSA Advisory Group. The survey was put on hold pending the release of the revised SAR Forms, expected in 2007. However, the implementation of the revised SAR forms has been put on hold. No implementation date has been announced.
4. Assess the need to identify the specific data fields associated with the 1 5,000 duplicates and advise law enforcement so that they may better gauge the potential impact of duplicates. Duplicate SARs involving certain crimes may be of more importance to certain law enforcement agencies given their differing authorities over certain crimes such as credit card fraud versus mortgage loan fraud.	FinCEN assessed duplicate SARs and determined that the total was less that 2 percent of total filings. FinCEN determined that the impact was minimal.

Recommendations	FinCEN Actions
5. Assess the need and feasibility of identifying, tagging or segregating duplicate SAR filings into a suspense file until a more systematic process can be developed to prevent them from being entered into the system.	FinCEN originally responded that its BSA Direct Retrieval and Sharing system, under development, would be able to identify, tag or segregate duplicate SARs after input to the system. This project was terminated in March 2006. We asked FinCEN for an update of action taken in lieu of this project. FinCEN responded that under IRS's Currency and Banking Retrieval System (CBRS), FinCEN submitted a request to begin receiving duplicate SAR data on a quarterly basis from IRS's Enterprise Computing Center in Detroit. In September 2006, just prior to the conversion to Web CBRS, an updated version of the old CBRS, FinCEN submitted an updated request to allow for the continued receipt of duplicate SAR data under the new system. At the time of our review, IRS had not implemented this request.
6. Advise and solicit the views of law enforcement agencies as to whether the observed timeframes are responsive to their needs. In so doing, FinCEN will be better positioned to assess any needed changes, such as whether filer outreach or supervisory oversight should be focusing on the timely filing of SARs.	FinCEN tried once to solicit input from law enforcement utilizing a survey but received no response. FinCEN does not plan to solicit another response.
7. Assess the need to review timeliness as part of the planned quarterly SAR reviews for indications of potential violations of the regulatory filing timeframes.	In July 2007, FinCEN updated its *Standards and Procedures for Suspicious Activity Report Data Quality Studies* with new annual study data and benchmarks. The updated document includes timeliness as a planned quarterly review item. FinCEN was working to resolve problems with the quarterly reporting of SARs for depository institutions and MSBs caused by its analytical software program, *VisualLinks*.
8. Assess the need to refer any of the identified lengthy filing timeframes (those exceeding 30 or 60 days) to the applicable regulatory agencies to determine whether timely SAR filing is an area warranting detailed examination or enforcement action.	The *Standard Procedures for Suspicious Activity Report Data Quality Studies* includes a section to calculate the average days between the date a SAR is prepared and the IRS input date. FinCEN has not made any referrals to regulatory agencies based on lengthy filing timeframes. FinCEN relies on regulatory examiners to review the timeliness of SAR filing during BSA compliance examinations.

Recommendations	FinCEN Actions
9. Assesses the adequacy and consistency of regulators' examination handbooks covering financial institutions' compliance with the BSA SAR filing requirements. This assessment should include the need to clearly spell out examiners responsibilities, and the examination procedures to determine whether institutions are filing accurate, complete, and timely SARs.	In June 2005, the Federal Financial Institutions Examination Council, representing the collective efforts of the five federal banking agencies in collaboration with FinCEN and the Office of Foreign Assets Control, issued a BSA/AML (Bank Secrecy Act/Anti-Money Laundering) examination manual for use by regulatory examiners. This manual has been update twice, in 2006 and 2007.
10. Ensures that the Office of Compliance establishes policies and procedures for timely routine follow-up on regulatory referrals to federal regulators to determine their supervisory resolution.	FinCEN's *Office of Compliance Procedures for Referring Compliance Matters to Other Agencies or Issuing Compliance Advisories, Ver. 12-07-2006. The Procedures for Referring Compliance Matters* section includes procedures for following up on referrals sent to regulatory agencies. The procedure states that follow up procedures will vary depending on the memorandum of understanding between FinCEN and the regulatory agency, and that outstanding referrals should be discussed with the regulatory agency at regularly scheduled meetings. For significant BSA violations or deficiencies, the regulators are supposed to notify FinCEN "as soon as practicable," but no later than 30 days after the resolution.
11. Assess the need for either enhanced outreach or supervisory enforcement action with the three MSBs accounting for over 77% of the problem MSB SARs in our sample.	FinCEN took regulatory action against one of the three MSBs, issuing a civil money penalty against one based, in part, on SAR deficiencies. Because the second MSB was owned by the same parent company the first, FinCEN expected that any corrective actions taken to improve BSA compliance would be implemented at both. In the case of the third MSB, FinCEN used outreach to try to improve BSA Compliance. While the outreach initially proved successful, a recent review by the Office of Compliance indicates that once again the third MSB was filing problematic SARs, including widespread errors in multiple fields on the forms. In July 2007, a conference call was held with participants from the Office of Compliance, MSB, and IRS. The MSB agreed with all findings, and committed to correct all items in future filings, and to file amended reports correcting past filings by the middle of August 2007.

Recommendations	FinCEN Actions
12. Assess the need to expand the number of data fields subject to keystroke verification to include data fields critical to law enforcement.	FinCEN reviewed the details of the keystroke verification performed by IRS's Enterprise Computing Center. IRS's statistician determined that 100 paper-filed SARs needed to be reviewed to obtain 95 percent confidence in sample results. IRS now reviews 100 SARs each month or 1,200 documents annually, rather than reviewing all BSA documents every 6 months. All SAR fields IRS selects are reviewed, which includes the fields considered critical by law enforcement. FinCEN has concluded that the keying contractor has met all required accuracy standards. FinCEN acknowledged there was a period of time when it did not receive the SAR keying reviews but reported that it had submitted a work request in July 2007 to the IRS Enterprise Computing Center to ensure that going forward, FinCEN receives a quality review report from IRS for every month that one is conducted.
13. Reassess how the contractor's 3% performance standard is to be measured so as to give greater consideration to the number of SARs with errors rather than just the total number of errors. This would provide added perspective to situations where a few SARs account for a large number of errors as opposed to a large number of SARs each with a few errors.	FinCEN concurs with IRS's method for determining the contractor's 3 percent performance standard. The reviews continue to be based only on the number of errors and do not give consideration to the number of SARs filed with errors.
14. Assess whether the scope of the contract could be economically and feasibly expanded to identify SARs with missing and or incomplete data fields. This might provide FinCEN with a means of identifying egregious problem filers in a timelier manner than the quarterly reviews noted in the revised corrective action plan. This would also cover the majority of SARs since most SARS are filed by paper.	IRS's Enterprise Computing Center projected it would cost over $200,000 annually to hire additional staff to correspond with SAR filers on missing information. Given inconclusive results on an IRS pilot of this program, FinCEN concluded that the most cost effective approach would be to move the filers to electronic filing and to revise the SAR forms.

DIRECTOR

DEPARTMENT OF THE TREASURY
FINANCIAL CRIMES ENFORCEMENT NETWORK

November 16, 2009

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL FREEDMAN

FROM: James H. Freis, Jr.

SUBJECT: *Management Response to the Draft Audit Report – SAR Data Quality Remains a Problem*

Thank you for the opportunity to review the Office of Inspector General (OIG) draft report entitled *SAR Data Quality Remains a Problem*. As the administrator of the Bank Secrecy Act (BSA), it is essential that the Financial Crimes Enforcement Network (FinCEN) ensure efficient management of all BSA information, which includes enhancing the quality, integrity, and value of that information. It is important to note that findings for this audit report are based on suspicious activity report (SAR) data filed October 2005 – September 2006 (fiscal year 2006). Since information was gathered for this report, FinCEN has completed many efforts to improve the quality of SAR data, which are outlined in the attached action plan, that impact both the findings and recommendations made in the OIG report.

I want to take this opportunity to update you on additional FinCEN efforts to further improve SAR data quality beyond the recommendations in the audit report. One of FinCEN's strategies for improving the quality and integrity of SAR information is through expanded use of and enhancement to the BSA electronic filing (E-Filing) system. In terms of use, FinCEN increased the percentage of customers submitting BSA forms via E-Filing from 48 percent in FY 2006 to approximately 80 percent in FY 2009. E-Filing improves the timeliness of information by eliminating processing delays associated with mailing and keying of paper forms.

In terms of enhancement to the BSA E-Filing System, FinCEN has implemented multiple changes that contribute to improved SAR quality. First, in June 2009, FinCEN transitioned E-Filers to a new form submission platform. This transition improves form usability and helps financial institutions reduce the number of submission errors on the front end, while reducing inefficiencies for FinCEN, law enforcement, and regulators caused by data quality issues on the back end.

Second, in September 2009, FinCEN implemented SAR acknowledgements in the BSA E-Filing system. This functionality provides BSA E-Filers a Document Control Number (DCN) as an acknowledgement of receipt for all SAR submissions. Finally, in December 2009, FinCEN will implement SAR Validations, which will improve SAR quality by performing data quality checks and validations, and providing error information back to filers.

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Another strategy for improving the quality of BSA information is through regulatory guidance and outreach to industry. Based on internal analysis of BSA information and input received from industry and regulators, FinCEN identifies systemic filing deficiencies for various industries and issues the appropriate guidance to correct those deficiencies. For example, in FY 2008, FinCEN issued SAR guidance for both the Money Services Business (MSB) and Insurance industries.

A final critical effort underway at FinCEN is the BSA IT Modernization program, which will be launched in FY 2010. This initiative aims to modernize BSA information management, analysis, and dissemination to equip and leverage across hundreds of Federal, State and local law enforcement agencies and financial industry regulators, better decision-making abilities and increased value of BSA information through increased data integrity and analytical tools.

FinCEN will continue with the efforts outlined above to continue improvements in SAR quality. Please refer to the attachment for more detail on FinCEN's response to each of the audit recommendations. If you have any questions, please feel free to contact Becky Martin, Assistant Director, Office of Financial Management, on 703-905-3860.

Attachment

Attachment: FinCEN – Planned Corrective Actions

1. **Continue and enhance filer education and outreach programs as necessary to filer groups, as was done for MSBs, specifically stressing the importance of accurate subject, filer, activity, and narrative information, and the importance of correct data formats.**

   Response: Concur. Enhancing filer education through guidance and outreach is an ongoing responsibility. Based on form renewals and trends identified through internal analysis, FinCEN issues filer guidance documents and routinely publishes filer tips in the *SAR Activity Review: Trends, Tips, and Issues* publication. FinCEN issued the following specific guidance documents and/or publications aimed at improving SAR filing since the data was compiled for this report:

   - *SAR Activity Review – Trends, Tips & Issues*, Issue 16 (10/2009)
   - Guidance (Frequently Asked Questions) – Casino Recordkeeping, Reporting and Compliance Program Requirements (9/30/2009)
   - *SAR Activity Review – Trends, Tips & Issues*, Issue 15 (05/2009)
   - *SAR Activity Review – Trends, Tips & Issues*, Issue 14 (10/2008)
   - Advisory (FIN-2009-A001) – Guidance to Financial Institutions on Filing Suspicious Activity Reports regarding Loan Modification/Foreclosure Rescue Scams (04/06/2009)\
   - Guidance on Recognizing Suspicious Activity – Red Flags for Casinos and Card Clubs (08/01/2008)
   - Guidance on Preparation Guidelines for Use of Special Response "XX" in FinCEN Form 109, Suspicious Activity Report by Money Services Business (05/02/2008)
   - *SAR Activity Review – Trends, Tips & Issues*, Issue 13 (05/2008)
   - Guidance to Financial Institutions on Filing Suspicious Activity Reports regarding the Proceeds of Foreign Corruption (04/17/2008)
   - Guidance (Frequently Asked Questions) - Anti-Money Laundering Program and Suspicious Activity Reporting Requirements for Insurance Companies (03/20/2008)
   - Reference- Suggestions for Addressing Common Errors Noted in Suspicious Activity Reporting (10/10/2007)
   - *SAR Activity Review – Trends, Tips & Issues*, Issue 12 (10/2007)
   - Guidance - Suspicious Activity Report Supporting Documentation (06/13/2007)
   - *SAR Activity Review – Trends, Tips & Issues*, Issue 11 (05/2007)

   Status: Closed.

2. **Identify financial institutions with significant and recurring SAR quality problems and emphasize to the appropriate federal regulators the need to have financial institution examiners identify during onsite examinations causes for the problems and actions the financial institutions need to take to improve SAR quality.**

   Response: Concur. FinCEN has a robust initiative to identify systemic filing errors. In FY 2009, FinCEN worked with federal regulators to resolve over 100 such matters. Additionally, the BSA/Anti-Money Laundering Examination Manual issued by the

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Federal Financial Institutions Examination Council (FFIEC) outlines the examination procedures specified in the above recommendation. Specifically, as part of the process of developing conclusions and finalizing an examination, regulators should determine the underlying cause of policy, procedures, or process deficiencies, and identify actions needed to correct outstanding deficiencies or violations.[1] Similar language was included in the Money Services Business (MSB) examination manual[2]. Although FinCEN views this recommendation as part of its ongoing responsibilities, publication of the MSB Examination Manual was used to close-out this recommendation.

Status: Closed.

3. **Coordinate with IRS to evaluate, implement, and improve controls over SAR data, including but not limited to:**
   - **Procedures to ensure the initial entry date for each SAR is properly recorded (paper and E-Filing);**
   - **Controls to ensure that all SAR batches are properly processed, accounted for, and loaded timely (E-Filing);**
   - **Controls to identify SARs with significant data format issues impacting data quality and prevent these submissions from being loaded (magnetic media);**
   - **A control log for all unassigned/unused DCNs that properly maintains control over all SAR submissions (magnetic media and paper).**

Response: Concur. Refer below for responses to the four bullets above.

- **Procedures to ensure the initial entry date for each SAR is properly recorded (paper and E-Filing);**

  The issue of recording the initial entry dates referenced in the OIG audit report was attributable to a programming error in the legacy Integrated Database Management System (IDMS), which was subsequently replaced by a new database platform (DB2). Since the conversion in September 2006, there have been no known issues with capturing the initial entry date. The initial entry dates for SARs collected via paper processing or E-Filing are now being properly recorded.

  Status: Closed.

- **Controls to ensure that all SAR batches are properly processed, accounted for, and loaded timely (E-Filing);**

  In April 2009 per FinCEN's request, IRS updated their programs to ensure that all electronically filed SARs are loaded into the system of record upon receipt. As a result, IRS has eliminated the previous dependency of only loading electronic

[1] FFIEC BSA/AML Examination Manual, pages 41-42.
[2] Department of Treasury, BSA/AML Examination Manual for MSBs, page 104.

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SARs when paper SARs are available to load. In addition, the IRS now monitors a specific log to validate the success of each load and that the number of records received via E-filing equals the number loaded into the system of record.

Status: Closed.

- **Controls to identify SARs with significant data format issues impacting data quality and prevent these submissions from being loaded (magnetic media);**

  Magnetic media filings were retired in December 2008, and any findings associated with these filings are no longer applicable. Further, the SAR Acknowledgement and SAR Validation enhancements to the BSA E-Filing system, as referenced in the cover letter, will identify SARs with significant data format issues.

  Status: Closed.

- **A control log for all unassigned/unused DCNs that properly maintains control over all SAR submissions (magnetic media and paper).**

  In January 2009, FinCEN established a monthly procedure to identify all missing DCNs and submit a corresponding report to IRS for investigation and resolution. All corresponding issues are recorded in FinCEN's Data Quality Database and tracked accordingly. Additionally, FinCEN identified all missing DCN numbers from January 1, 2008 to the present and provided this information to the IRS for analysis and action.

  Status: Closed.

4. **To assist in future SAR form revisions and filer education and outreach efforts, request IRS to periodically notify FinCEN of SARs containing significant errors or missing critical data fields.**

   Response: Concur. FinCEN currently receives quarterly reports from IRS that contain SAR critical field omissions data designed to identify financial institutions with systemic data omissions problems, as well as monthly reports for individual SAR forms identifying errors for paper-filed SARs. A SAR validation process will be implemented in BSA E-Filing in December 2009. After implementation of this new process, FinCEN will develop a new E-Filing report that includes all SAR filings with significant errors for FinCEN compliance staff to monitor.

   Status: Open. Estimated completion date is February 2010.

Appendix 4
Major Contributors to This Report

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