



**Statement of James H. Freis, Jr., Director
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**Before the United States House of Representatives
Committee on Financial Services
Subcommittee on Oversight and Investigations**

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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 indispensable 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).^{xiii} 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.

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