

# **BSA: A Year in Review and Setting the Table for 2007**

**02/06/2007**

Chairman Johnson: Good afternoon everyone, and welcome to our Webinar titled, BSA: A Year in Review and Setting the Table for 2007. I'm Chairman Johnson of the National Credit Union Administration. I'm pleased to be co-hosting this event with Jamal El-Hindi, Associate Director of the Regulatory Policy and Programs Division at the Financial Crimes Enforcement Network, better known as FinCEN throughout the industry. Welcome, Jamal, I'm happy that you could join us.

Jamal El-Hindi: Thank you, Chairman.

Chairman Johnson: I'm sure it's no surprise to you all that the Bank Secrecy Act, while around since the 1970's, has certainly taken on a much more critical role over the past several years in the day-to-day operations of credit unions. At a recent meeting, Jamal and I both agreed it would be a great idea to jointly host a Webinar for the credit union industry to talk a little bit about our roles relating to the BSA.

I think we may be onto something here, because we've had over 2,000 folks representing the credit union and financial industry register for today's event. So, for the next hour or so, we'll discuss our rules regarding the Bank Secrecy Act and give you all a chance to ask us questions.

A member of our own Office of Examination and Insurance will share some common issues relating to Bank Secrecy Act compliance as well as how to prepare for a BSA Compliance

Review. Then, our guests from FinCEN will present some of their initiatives on how data you provide by completing currency transaction report and suspicious activity report forms is utilized.

But before we begin, I'd like to point out that this Webinar is designed to be interactive. You'll notice on your screen that there's a place where you can type in questions as you are watching, and by pressing the Submit button you can send them directly to us during the Webinar. We urge you to do that. It's our hope that your questions will foster additional discussion. So with that, let's get started. Jamal, I'll turn it over to you.

Jamal El-Hindi: Thank you, Chairman Johnson, for that introduction. Thank you also for giving FinCEN an opportunity to describe its role as administrator of the Bank Secrecy Act and to demonstrate the value of the data collected pursuant to the BSA. It's truly impressive that we have about 2,000 people joining us today.

FinCEN's mission in simplest terms is to protect national security and safeguard the financial system from the abuses of financial crime, including terrorist financing, money laundering and other illicit activity.

Using the authorities under the BSA, we strive for an appropriate level of transparency in the U.S. financial system so that these illicit activities can be deterred, detected and prosecuted. We do this essentially in two ways.

First we established anti-money laundering programs rules that require financial institutions to maintain vigilance against abuse. Second, we put forth specific reporting and record-keeping requirements to collect information valuable to the law enforcement community.

Take a look at the slide and front of you depicting FinCEN's role in administering the BSA. I chose a broad number of groups, including financial institutions, regulators and law enforcement agencies affected by the BSA.

FinCEN's success in promoting the aims of the BSA depends on strong working relationships with each of these groups. We do that in part through formal agreements on the regulatory and enforcement front and through outreach and guidance to the private sector.

While no one disputes the merits of protecting the financial system from abuse, we all know that there are costs and benefits associated with the imposition of any kind of requirement, both on the private sector and law enforcement. FinCEN's role is to strike an appropriate balance.

The burdens imposed on the financial system have to be justified in light of the benefits gained. The transparency we strive for also has to be achieved with an eye to protecting the privacy of individuals as well as the equities of the institutions providing financial information.

Over the past year, five years after the enactment of the Patriot Act, FinCEN has heard quite a bit from the financial sector about the growing burdens associated with BSA compliance. We understand that it is among the top complaints within the industry, with respect to regulatory burden and we know that we have to accomplish our mission without overwhelming our partners in the private sector.

Since you and law enforcement are both in the front lines in the fight against misuse of the financial system, we know we can't push for greater transparency without keeping you both on board in our efforts.

Where we think we can do a better job, however, is communicating the benefits of the information collection requirements that we impose. In some way there's an irony here. We push for greater transparency in the financial sector and yet we have not made our own use of the information you provide that transparent.

For our purposes, you need to have a better understanding of the utility of the information that you provide. Later in the program, Nona Tiedge, FinCEN's Assistant Director for Regulatory Analysis, is going to walk you through FinCEN's own use of BSA data and some of the analytical tools at our disposal. She's also prepared to discuss some specific ways in which BSA data has assisted law enforcement.

What's important to note, however, is that not every piece of data has to relate to a

particular law enforcement action to be useful. Much of our analytical work depends on how the data fits together as a whole. FinCEN has recently begun to go public with some of its own analytical work based on BSA information.

This fall we issued studies on mortgage loan fraud, use of shell companies and money laundering, and money laundering in the commercial real estate sector. Each of these was supported by data provided under the BSA by financial institutions, including credit unions.

Our goal is to continue sharing where we can our analysis of the BSA data as a means of demonstrating its general utility in addition to its role in pursuing specific bad actors.

Before I turn the program back to Chairman Johnson, I want to talk briefly about two issues that may be of particular concern to the credit union community; the provision of financial services by and to money service businesses or MSB's and the evolving practice within the credit union industry of shared branching.

FinCEN's regulations require MSB's to establish written anti-money laundering programs and comply with reporting and record-keeping requirements. In addition, certain MSB's are required to register with FinCEN and maintain a list of agents.

As you may be aware, there's been growing concern among FinCEN financial regulators and the MSB community regarding the ability of MSB's to obtain and maintain banking services. MSB's believe that misperceptions of risk have resulted in them being unfairly

labeled as unbankable.

MSB's serve a valuable role in our economy especially for individuals without ready access to the formal banking sector. Thus it's important that MSB's complying with the requirements of the Bank Secrecy Act and applicable state laws maintain access to your services and other financial services.

FinCEN and the federal banking agencies, including the NCUA, have issued interagency guidance to the credit union and banking community on regulatory expectations when providing banking services to domestic MSB's.

One purpose of this guidance was to assert clearly that neither FinCEN nor the federal banking agencies expect credit unions and other banking institutions to serve as de facto regulators of the MSB's.

That said, we continue to address issues surrounding the MSB's, including the need to identify unlicensed and unregistered MSB's, the need to conduct robust BSA compliance examinations, and the need to avoid obstacles to MSB access to your services. In this regard, FinCEN will be working with the IRS, state regulators, and the federal banking agencies to make sure there is a proper focus on preserving crucial relationships between the MSB industry and other components of the financial sector.

With respect to shared branching among credit unions, we are aware that questions are

arising as to where and how requirements under the BSA will fall among the various actor's participating in such practices. FinCEN is currently analyzing and reviewing this business model in light of our regulations and we'll work closely with the NCUA to take appropriate action to address the issue.

Finally, in addition to Nona Tiedge, I'd like to acknowledge a few more of FinCEN's staff who are here to assist with any questions you may have. Anthony Harris, Acting Assistant Director for our Compliance Office is here as is Sandra Sojka, our Compliance Project Officer with the Credit Union Portfolio. We are also joined by Jeff Pratt from our Office of Regulatory Policy and Stephen Brown from our Office of General Counsel. And with that, Chairman, I'll turn it back over to you and your staff.

Chairman Johnson: Thank you, Jamal, for that overview. Welcome to all of FinCEN staff who are present. I'd now like to introduce Matthew Biliouris from our Office of Examination and Insurance. In addition to Matt, off to my right off-camera are Judy Graham from E&I, Meg McPartlin from our Office of General Counsel who will be joining us a little bit later.

Matt, I'd like to turn things over to you so that you could share some thoughts with what our examiners are seeing out there and how credit unions can best prepare themselves for a BSA compliance review.

Matthew Biliouris: Sure. Thank you, Chairman Johnson. Good afternoon. I want to begin by taking a few minutes to outline how the Bank Secrecy Act is addressed under our

examination program. NCUA utilizes a risk focus examination program, meaning examiners develop an examination scope based on the credit unions risk profile. This gives them discretion to focus more attention to areas of higher risk to better utilize resources.

However, even under our risk focus exam program there are a few issues that must be reviewed during every safety and soundness examination and compliance with the bank Secrecy Act is one of them.

Now that doesn't mean our examiners cannot develop a risk-based examination scope as it relates to the Bank Secrecy Act, but BSA compliance is in fact reviewed during every examination. Examiners utilize a BSA questionnaire within our Automated Integrated Regulatory Examination System, or AIREX, to document their review of BSA compliance.

The FFIEC BSA/AML Examination Manual also contains additional information and procedures to assist or supplement their review. New examiners receive BSA training during a required series of developmental programs to prepare them for managing a credit union district.

Additionally, examiners continue to receive supplemental training during periodic classes or special seminars to address emerging examiner issues. And typically each group of district examiners has an individual who is designated to receive specialized training for the Bank Secrecy Act and other compliance issues in addition to normal training for safety and soundness risk areas. We refer to these particular examiners as Consumer Compliance

Subject Matter Examiners or SME's.

This past August, approximately 75 of our consumer compliance SME's received specialized BSA training during our agency's regional conferences. Individuals from FinCEN, OFAC, the IRS, and even small and large credit unions to name a few, each brought their own insight relating to BSA compliance.

Each of our five regional offices also have an analyst designated as a consumer compliance SME who oversees BSA compliance from a regional perspective and helps to facilitate information exchange between the central office here in Alexandria and our field examiners.

NCUA examiners perform BSA compliance reviews under the guidance of a national instruction which outlines procedures for identifying, documenting, and resolving BSA compliance issues. It also contains procedures to collect relevant information which is reported to FinCEN on a monthly and quarterly basis.

This particular slide outlines a significant changes made to the 2006 version of the BSA Manual, which was released in July last year. I'm just going to comment on a few of these.

The layout of the manual was reorganized to include examination procedures with their relevant narrative sections. Additionally, some cosmetic changes were made to the headings of the various sections to make the document more user-friendly.

A new section was added to the manual to address Automated Clearing House Activities and while not typically a higher risk banking activity, the volume of ACH transactions has been increasing and there can be potential for masking inappropriate transactions within legitimate ACH transactions. The new ACH section also addresses the issue of cross-border ACH transactions.

Before we leave this slide to begin a more detailed discussion on the risk assessment section of the manual, I want to highlight as you can see on the screen here an electronic version of the manual as well as the user pays presentation to highlight changes in the manual is available for download on the FFIEC's website at [FFIEC.gov/guides.htm](https://www.ffiec.gov/guides.htm).

The risk assessment concept elicited such a response from examiners in the industry that the drafting group crafted an entirely new section to emphasize the importance of a risk assessment. The first thing I want to clarify regarding a risk assessment is although there is no explicit statutory requirement to perform one, it is considered to be a critical foundation of an effective BSA compliance program.

A well thought out risk assessment can help to assist a credit union in distributing resources more effectively to areas of higher risk as opposed to spending a lot of time further mitigating lower risk issues.

The development of the BSA risk assessment generally involves a two-step process. First,

specific risk categories such as products or services, members, entities and geographic locations unique to the credit union are identified. Regarding the staff, it's important to keep in mind that certain products and services or even members and geographic locations may be more vulnerable to money laundering or terrorist financing abuse.

The second step in developing a risk assessment is to conduct a more detailed analysis of the data identified in Step One, to better assess the risk within these categories. The detailed analysis is important because within any type of product or category of members, there will be account holders that pose varying levels of risk.

Management should also update its risk assessment to identify changes in the credit unions risk profile. For example, when new products or services are introduced, existing products or services change, high-risk members open or close accounts or the credit union expands through mergers. Even in the absence of such changes, it is a sound practice for credit unions to periodically reassess their BSA risk at least every 12 to 18 months.

And lastly, on this topic, the manual contains two appendices, Appendix J and M, to assist credit unions in performing a risk assessment.

Moving on to other developments in 2006, let's recap a change to one of our regulations. Late last year, NCUA finalized a change to our BSA Rule Part 748 relating to suspicious activity reporting. Essentially, the revised rule now requires prompt notification of the credit union's Board of Directors or a designated committee of any suspicious activity report filed

by the credit union.

You may recall we have historically viewed this notification as a matter of best practice, but it was not required until now. So what do we mean by "prompt notification"? Although not specifically defined in the text of the rule itself, the preamble to the final rule addresses this issue. The term "prompt" generally means the Board of Directors should receive notice of the credit union SAR activity at least monthly; for example, at the monthly Board meeting, if there is activity to report, unless the seriousness of activity merits immediate reporting.

This rule change helps to describe in greater detail the requirements for reporting and filing a SAR as well as the confidentiality of reports. It also helps to make our regulation more consistent with the SAR regulations of the other federal banking regulators.

Let's shift gears a bit now and go over some of the things our examiners are seeing regarding BSA compliance program. This slide lists the top five related, BSA related deficiencies identified by our examiners. Before I get into detail here, I want to point out that many credit unions have implemented very successful BSA compliance programs and in a lot of cases even the issues I'll mention in this section are either corrected during the examination or shortly thereafter.

The number one BSA related deficiency report in 2006 was weaknesses in completing or documenting the independent testing process. A couple of points to make here regarding this. The testing can be conducted by credit union staff or outside parties provided they are

independent of the activities being tested. Now our regulation does not specifically outline how often independent testing should be conducted; a sound practice however is to conduct independent testing generally every 12 to 18 months.

The frequency of testing is largely based on the credit unions risk profile. As the risk profile changes, such as by adding varying products or services it may be appropriate to conduct independent testing more frequently or to perform more frequent limited tests of specific areas.

The second leading BSA issue relates to training. We also see a number of credit unions that do not formalize their training process. Training must be provided to relevant staff and should be commensurate with the duties they perform relating to BSA compliance. Ideally, most employees should receive general training on the BSA, even those that are not directly involved in receiving deposits or processing withdrawal requests can play a role in combating illicit use of funds if they receive some training.

I want to further point out that even officials such as Board members and committee members should receive sufficient training in the Bank Secrecy Act to allow them to meet their fiduciary responsibilities as officials of the credit union. In most cases, credit unions are merely not documenting the training efforts, so make sure you maintain records of what types of training occurred, when, and who attended. This will not only help you to satisfy the training requirements but also creates an audit trail to facilitate ongoing efforts such as remedial training programs and can also assist with cross training your employees.

While preparing for today's event, a few participants asked if this Webinar would satisfy the BSA training requirement. This Webinar is part of a joint educational outreach effort designed to provide information and guidance to credit unions about their BSA obligations. Participation can assist credit unions in shaping their own ongoing training efforts as part of their overall BSA compliance program.

A credit union BSA training program should be designed to educate relevant staff not only on general BSA issues but also on the individual credit union's BSA risk profile and how its system of internal controls is designed to mitigate risk. Therefore, participation in this related outreach effort will help you define future training requirements but it alone will not satisfy the training requirement of the BSA.

A credit unions' BSA compliance program must also contain a system of internal controls to assure ongoing compliance. This is a broad category that includes among others, monitoring account activity for suspicious activity, providing for a continuity of program coverage, and updating policies based on regulatory changes.

Within this particular category, most documented deficiencies center around the credit union not sufficiently monitoring for suspicious activity. And moving on, we also see weaknesses involved in the requirement to have a written compliance program approved by the Board of Directors. Deficiencies of this type are often used to describe problems with the underlying required contents of a BSA compliance program.

And finally, the fifth most cited deficiency relates largely to areas or omissions with CTR forms. These typically cover missing data or forms not being filed within the required timeframe. In a few cases, credit unions were using an outdated form to report cash transactions greater than \$10,000.

I want to take this opportunity to reiterate that the CTR exemption process is designed to ease the regulatory burden on credit unions as well as to help prevent unnecessary reporting to law enforcement of routine types of large transactions. The BSA manual contains a detailed discussion on the CTR exemption process beginning on page 80.

Now this next slide outlines some items for you to consider in preparing for BSA compliance review. The first piece of advice I can offer you relates to documentation. As you make strategic decisions regarding BSA compliance, make sure they are documented somewhere to support the action taken or even not taken for that matter.

Another key tip to keep in mind is to ensure issues identified during any internal or external review are appropriately prioritized and followed up on to ensure prompt and appropriate action takes place. It's good to see credit unions that use something as simple as an Excel spreadsheet to prioritize issues and track resolution by documenting any interim action as well as the date of final resolution.

It's also important for credit union staff involved in BSA compliance to look at it as a cycle,

rather than a static event. As risk mitigation procedures are addressed or completed, they should be periodically reassessed or evaluated to ensure there are no gaps in your compliance program.

Additionally, as new products or services are added, changes or regulations or guidance come about or even as you make changes to day to day processes make sure written policies and procedures reflect these changes. I also want to encourage you all to continue fostering open communication with examiners relating to BSA compliance.

I think our agency has made significant strides over the last several years to provide more flexible regulations which allow alternate ways to effectively manage risk. So whether it's a unique approach you've taken regarding, for example, your customer identification program, suspicious activity monitoring, or independent testing, for example, educate your examiner on your particular process to help them get an appropriate comfort level of how risk is mitigated.

And lastly, on this topic, I would encourage you to sign up for relevant e-mail alerts or subscription services that are available from many sources including NCUA and FinCEN to provide quick notification of new and emerging BSA related issues.

Let me close my presentation by highlighting just a few initiatives we have planned for 2007. A drafting group consisting of FinCEN and members of the federal banking agencies are currently holding meetings to discuss necessary changes to the BSA Manual for 2007.

In June of this year, a new SAR form will be ready for use by credit unions. Additionally NCUA staff will continue to participate on interagency working groups to ensure consistent guidance is provided to the industry related to emerging risks. We are also preparing for a specialized conference for our consumer compliance SME's and this training will leverage off the training they had this past summer during our regional conferences.

And finally, the BSA portion of our website is currently being revised to make it more user-friendly to find relevant guidance, laws, examination procedures, and other resources. This concludes my portion of the presentation. I want to thank you for your time and with that, Chairman Johnson, I'll turn it back over to you.

Chairman Johnson: Thank you, Matt. Jamal, I'd like to turn it back over to you and the folks from FinCEN now so that we can see how this data is actually being used, if that would be possible.

Jamal El-Hindi: Thank you. As I mentioned in my opening remarks, it is important for people to understand just how the data is used, not just at the compliance level with an institution, but at all levels. With that, let me introduce Nona, who will go through her presentation.

Nona Tiedge: Thank you. It's a pleasure to talk with you today. As Jamal mentioned earlier, I'm the Assistant Director for FinCEN's Office of Regulatory Analysis, an office comprised of

24 intelligence research analysts. The mission in my office is to provide analytical support to FinCEN and to other federal and state regulatory agencies.

Today I would like to try to correct the misperception that the BSA form submitted by you and others in the financial industry go into a government black hole and are rarely used. I will describe to you how law enforcement generally and FinCEN specifically uses the Bank Secrecy Act data to fulfill its mission.

All BSA data is housed in a system called the Currency and Banking Retrieval System. This system provides the data base from which FinCEN, law-enforcement and regulators draw its data and it serves as a repository for all BSA forms that are submitted. All federal and many state and local law enforcement agencies along with regulatory authorities have direct access to the BSA data housed in this system.

Of the 235 participating agencies, 195 are in the law-enforcement community. In 2006 alone, agency's queried the names of almost 68,000 subjects of almost 24,000 cases through the system and used records to initiate or support investigations.

IRS's criminal investigation has direct access to the BSA records, but FinCEN also provides timely bulk downloads of BSA data to certain federal law enforcement agencies to use as appropriate to their mission. And, as you may know, many of these federal law enforcement agencies have their own SAR review teams located throughout United States who continually examine new reports filed within their respective areas.

At FinCEN, we conduct four general categories of analysis using the BSA data. The first category is Reactive Analysis. This involves FinCEN receiving the name of an individual, business or other entity from a domestic law enforcement agency, a member of the intelligence community or a foreign financial intelligence unit.

We query the BSA data to identify filings related to that entity and provide our findings back to the requestor. Or, as part of the memorandum of understanding agreements between FinCEN and certain regulatory authorities, we may research the BSA data filed by or on a financial institution under scrutiny for noncompliance with the Bank Secrecy Act, the USA PATRIOT Act, or anti-money laundering program requirements.

Another category is Proactive Analysis. We use the BSA data to identify potential targets. Rather than search for a known entity, analysts search for specific type of activity such as terrorist financing that may be contained in the database, analyze SARS reporting such activity through which we identify subject names. We then search other BSA record such as CTR's, CMIR's and FBAR's, to determine the types and volumes of financial activities of the subjects. We provide reports to the appropriate law enforcement agencies of our findings for their further action.

The third category is Strategic Analysis. Our analysts come to BSA data to identify trends and patterns in reporting or vulnerabilities to institutions, products or services in order to help us inform a guidance, develop a regulatory policy and publishing reports, such as the

SAR Activity Review advisories, bulletins and some stand-alone products.

And lastly, is Statistical Analysis in which we may review the entire BSA database to determine overall filing volumes, historical filing trends, and provide assessments based on geographic locations. A resulting product of this type of analysis is our "By the Numbers" report produced biannually.

It is important to note that depending on the type of research, we may query the records and analyze one form type, multiple forms, one document, or thousands of BSA documents. In other words, our analysis may touch on a few, many, or all of the various BSA records.

FinCEN provides our analysts with sophisticated analytical tools. For example, an analyst can query any field on any one of the more than 2.7 million depository institutions SARS dating from 1996 to as recently as the 25<sup>th</sup> of January.

FinCEN's analytical tools allow analysts to display the BSA records visually. For example, after querying for a particular topic, let's say mortgage loan fraud, since this is a fast growing crime in our country, we are able to quickly identify all the SARS from the BSA database where filers mark the characterization of suspicious activity, Field 35 on the SAR form, as Option P or mortgage loan fraud.

By selecting a specific SAR or maybe hundreds of SARS, the analyst has the ability to

instantly access critical SAR information such as subjects, accounts, and dates of activity as well as the SAR narrative.

Just a quick reminder to those of you who prepare SAR forms, please be sure to completely and accurately prepare the forms following the forms instructions. The information you provide, especially in the SAR narrative, is extremely important to law enforcement and to FinCEN analysts.

We often conduct our analytical studies by querying the narrative for key search terms. A well-prepared form with a narrative thoroughly describing the suspicious activity will certainly help us in our studies and will provide beneficial information to law enforcement.

You can find guidance on preparing a complete and sufficient SAR narrative on the FinCEN website in the Press Room/Reports link. Taking a more proactive approach to a crime such as mortgage loan fraud, the analyst can query specific SARS through the database to look for potential targets for law enforcement.

In this example, initial queries of the database yielded individuals and account numbers associated with SARS reporting mortgage loan fraud while subsequent queries revealed phone numbers, addresses, and critical identifying information.

As you can see from this example, queries of the database have helped the analysts not only connect the dots for law enforcement, but also have identified an additional SAR

potentially resulting in the discovery of new lead information.

We have the capability to represent the BSA data in a variety of ways. This is one. A thermal map showing suspicious activities based on SARs reported by federally insured credit unions for 2006 within one state. The map shows hotspots of filings. The legend in the lower left corner indicates hotter activity where there are more than 50 SARs filed in a particular zip code. The zip code used was the branch's zip code, in other words, where the activity actually took place, and not the filer's zip code.

This type of information is helpful to law enforcement and regulators in not only identify areas of suspicious activity, but it can be used for resource allocations. We can also identify reporting trends and anomalies that may occur. This example illustrates the types of suspicious activities reported on federally insured credit unions' filings of SARs.

Hopefully, you're all familiar with FinCEN's sister publications "The SAR Activity Review Trends, Tips & Issues" and "By the Numbers". If not, these publications are available on FinCEN's website, [www.fincen.gov](http://www.fincen.gov).

"The SAR Activity Review Trends, Tips & Issues" provides information about the preparation, use and utility of SARs. This publication is the product of continuing dialogue and very close collaboration among the nation's financial institutions, law enforcement officials and regulatory agencies. The information shared in the Trends section of "Tips, Trends & Issues" and sometimes in the Guidance section results directly from analysis of

the BSA data.

"By the Numbers" is a compilation of numerical data gathered from SARs filed by all institutions with mandatory suspicious activity filing requirements and is widely used by the financial industry. For 2007, we are launching a new initiative involving BSA information specifically related to state filings.

Currently, "By the Numbers" has four sections; one for each SAR form type. Within each section are exhibits. It is our plan to make "By the Numbers" interactive by providing a link from each state in exhibit three to other visual representations of the data like charts, graphs and thermal maps.

We hope to have this new format available in the next issue which will contain filing data through the end of 2006. We expect to release this issue in the spring. Previous issues of "By the Numbers" can be found on the FinCEN website under Press Room/Reports link.

In fact, FinCEN's website provides a wealth of information. You can find our mission, guidance, interpretive rulings, industry regulations, and hot off the press topics. The web site also has a section for frequently asked questions.

Two other important services available from FinCEN are the regulatory toll-free help line and the financial institutions toll-free hot line. The help line is staffed during regular business hours to answer your question specifically relating to BSA and USA PATRIOT Act

requirements and forms.

The hotline is available 24/7 for institutions wanting to report suspicious transactions that may relate to terrorist activity. The purpose for the hot line is to facilitate the immediate transmittal of this information to law enforcement. We encourage you to utilize these resource numbers.

Before I close, I thought I would share with you some of the BSA filing trends within federally insured credit unions. Please keep in mind that certain slides represent preliminary data through December 31, 2006. The full numbers are not all yet available since some SAR reports are still coming in for activities discovered at the end of the year.

As you see here, we have a significant increase in the volume of SAR filings as a whole over the last 10 years. Specifically, for federally insured credit unions, we see the greatest increases in the number of SAR filings beginning in 2004 and continuing through 2006. The percentage increases are significantly higher when compared with the whole depository institution filing population. Currency transaction report filings by federally insured credit unions for the past five years also show a steady increase.

And finally, the number of designation person filings by federally insured credit unions is also increasing with nearly 2,300 filings in 2006 compared with only a little less than 600 in 2004.

With that, I would just like to say, again, thanks to those of you participating in this Webinar and to the NCUA for enabling FinCEN to share how BSA data is used. I'll turn it back to you, Chairman Johnson.

Chairman Johnson: Thank you, Nona. We really appreciate the information that you've been able to share with us. I am curious, however, would you be able to perhaps share a little inside information on how some of this data collection perhaps has actually helped solve or contributed to a criminal investigation?

Nona Tiedge: Certainly, I'll be happy to. I did bring some notes on a couple of criminal cases in which the BSA data played a critical role. I'll be glad to share some of these details, but please remember that due to the SAR nondisclosure prohibition this will be a much sanitized description of these cases.

In the first case, federal law enforcement agents through multiple SARs filed by multiple financial institutions discovered one subject who in less than a year swindled hundreds of individuals out of millions of dollars in an apparent Ponzi scheme. This subject established a company then held seminars where he solicited potential investors by guaranteeing that he could double their investment.

Amazingly, several hundred individuals, small businesses and churches took him at his word and invested large sums of money. But in reality, the con man used the investors' money to purchase big-ticket items for he and his company employees and engaged in

pretty lavish lifestyles. For a while, this con man must have thought he was a pretty capable salesman.

However, several financial institutions including one credit union began filing SARs in the early stages of the fraud and one institution provided valuable assistance in the subsequent investigation. The subject, after accepting investors' money, early on began depositing multiple cashier's checks for several thousand dollars each into his personal account and then immediately began making a number of suspicious structured cash withdrawals. He also began opening accounts at other financial institutions, including a credit union.

Subsequently, that credit union filed several SARs after the subject deposited counterfeit checks and money orders along with certified checks from multiple issuers, which were payable to him individually, rather than to his company. One institution detected and reported suspicious check card transactions at known gambling centers. And another institution filed a SAR after it became aware of the subjects business activities.

The prosecutor in this case noted that the BSA information and the diligence of the reporting institutions played a critical role in the investigation and helped stop the fraud within a few months, possibly saving losses of millions of dollars to hundreds of potential investors. The defendant recently plead guilty to two federal charges including money laundering and faces a lengthy prison term, along with fines in the multi-millions of dollars.

In another case, a single SAR triggered investigation into activities of several companies

owned by two individuals. The owners began structuring cash deposits to the company's business account which led to the filing of a SAR. During the investigation, it was determined that the companies failed to file Form 8300 for sales of over \$10,000 made at the businesses as required by the BSA.

Additionally, other financial institutions filed several SARs and more than 20 CTRs on the company owners. And in fact, one of the owners was also the subject of an 8300, a casino CTR, and two CMIRs for cash entering our country. These defendants pled guilty to evading the BSA reporting requirements.

These were both fairly fast moving cases, but as you know, most law enforcement cases take months or even years to investigate and to prosecute. During the course of these investigations, SARs describing suspicious activities, CTRs reporting cash movements, CMIRs indicating cash flows into and out of the country and other BSA records can really, really assist in developing information for the investigator and can lead to a successful prosecution.

Chairman Johnson: Wow! Thank you. So, it does appear that not all the data does go into the black hole of government.

Nona Tiedge: No, Ma'am.

Chairman Johnson: That's great.

Jamal El-Hindi: One thing about that other case, the second case, it does show the relationship between SARs and CTRs. I think there's a perception out there sometimes that SARs because they have a narrative may have more weight. The two forms and the other forms all in conjunction as Nona was describing really are what we're using in terms of using the whole database.

Chairman Johnson: Okay. Very good. Thank you. Well, I know we've thrown a lot of information at you so far. Our panel has presented some of the main BSA compliance issues that we've seen over the last year or so and we've also outline some of the BSA related initiatives that we'll be working on together this coming year.

I'd like to spend the rest of our time now this afternoon addressing some of the questions that you may have. Off to my right are Sandra Sojka from FinCEN and Judy Graham from our own office of E&I who've been diligently preparing your questions as you've been submitting them. I know from the fervor of activity over there we do have a number of questions and so we'll get right to it.

We hope to direct the questions to the appropriate person on the panel, but I would encourage all of the panel members to feel free and jump into if at sometime you like to add something to the discussion. So, with that Judy, do you have our first question?

Judy Graham: Yes, I do, Chairman Johnson. And just to let you know, we have hit a hot topic. We have well over 180 questions in our box right now.

Chairman Johnson: Wonderful.

Judy Graham: The first question will go to NCUA and this question is, "When submitting SAR information to the Board of Directors at the monthly Board meeting, should we give the member name complete details including the copy of the SAR or just a summary of the reports/suspected findings?" And also, "Would the examiners expect to see something written in the Board minutes regarding this notification?"

Matthew Biliouris: I'll go ahead and take a crack at that. This issue kind of hits on the concept the other side of flexible regulations in that the new revised SAR regulation is sort of silent as to what information needs to be provided to the Board of Directors. It just has to be provided promptly. Judy kind of hit on some of the things people are thinking about in doing this and some of those are certainly good ideas to do that.

Essentially a credit union needs to make the determination of providing enough information to allow the officials to discharge their responsibilities, their fiduciary responsibilities for the credit union. Certainly, name, description of the narrative of what took place, any kind of action that the credit union needs to do.

In fact some of this notification in the past has prompted further training efforts or remedial

training efforts to kind of focus on areas where there may be some gaps in the credit union's BSA compliance program. That's where I would start with that.

Meg McPartlin: And of course, if the SAR suspect is a Board member or a committee member do not notify that person, but they are required to notify the other Board members and committee people.

Chairman Johnson: Next question.

Judy Graham: The next question is for FinCEN. This question is. "What are FinCEN's views on the Congressional interest in broadening the CTR exemption or changing the threshold levels?"

Jamal El-Hindi: I'll take that. This really gets to the heart of some of what we're talking about in terms of the value of BSA data and there is legislation on the Hill as there has been in the past with respect to the CTR program.

We are very much interested in making sure we come to a right result in this context and believe that more information is necessary to make sure that we properly understand the burdens associated with a CTR filing and the benefit. The balance of that has probably changed over the years. We're very much in support of the GAO's responsibility right now to study this issue.

That said, we have always been interested in promoting use, the proper use of exemptions and we will be doing what we can to make sure that the rules with respect to the exemptions are clear and that it's easy to use those exemptions.

Chairman Johnson: Okay. Thank you. Next question.

Judy Graham: Okay. The next question is also for FinCEN. "Can you provide us with a better definition of exactly what MSB or Money Services Business is?"

Anthony Harris: Better definition. I guess I'll take a crack at that. The term Money Service Business as we define it in regulation includes certain providers of financial service. I guess that heat is on to try and tick off all of them. We have check cashers, we have issue sellers or redeemers of traveler's checks, money orders exactly, and of course money transmitters and certain issuers or providers as to the value and, of course, the U.S. Postal Service is also defined to the extent that they engage in those money Service type transactions.

That's defined by regulation. The regulatory site for that is 31CFR103.11. It contains all the definitions under the Bank Secrecy Act.

Jamal El-Hindi: I'll just throw in. What we have heard in terms of some the comments that we received with respect to an advance notice and proposed rulemaking is that there are various different types of MSB's out there. Different MSB's depending on their activity, present different levels of risk. All of that needs to be taken into consideration when a

financial institution including a credit union is assessing its activities.

Chairman Johnson: Okay. Thank you. Next question, Judy.

Judy Graham: Okay, the next question goes to NCUA. The question is, "With regard to BSA training for credit union staff, how often do you recommend that that be provided?"

Matthew Biliouris: I'll go ahead and take a crack at that. I would say, obviously in my presentation I talked a little bit about the need to have that training commensurate with the services they do. It's going to depend largely on what the people do.

Ideally there could be some sort of orientation program for new employees to go through as they go through their training at the credit union to indoctrinate them into the concept of the BSA. And then as you get into more detail and actually looking at the compliance issues we want to shape that training to be much more defined and also probably take place more often, too.

I would say that would be based on the risk assessment the overall risk of there being gaps in the training and may be altered up based on what they learned from prior training engagements also.

Chairman Johnson: What about smaller credit unions?

Matthew Biliouris: Well, that brings up an interesting topic, because obviously, everyone here has a clear understanding that there's a strict liability focus with the Bank Secrecy Act and every credit union has to comply with it. That being said, we have developed regulations that are flexible. They allow credit unions to perform sort of a risk-based approach to this.

For small credit unions out there, while certainly a lot of this can look over whelming on the initial brush of it, try to stay focused on the smaller task of looking at your customer due diligence, your customer identification programs.

For small credit unions that may only have one branch, a lot of the officials there, a lot of the staff there know most of the people. It may be easy to have an understanding of where some of the risk may be. That will help a credit union as they start getting into things like doing a risk assessment.

I would also recommend that credit unions, small credit unions or any credit union for that matter, look to either leagues, trade associations, even us. We have an Office of Small Credit Union Initiatives that often will provide BSA training and some of the workshops that they do or to just partner with other credit unions in your area to see what kind of training is being done and what new emerging issues are being addressed.

Anthony Harris: Let me just add, I agree with everything that Matt, you just said about the frequency of training, but also as important as frequency is content. I think a lot of credit

unions will find that not every employee in the credit union is going to need the exact same type of training. Specific people depending on specific roles they play are going to need to be getting that type of information that's specific to their job duties.

Chairman Johnson: Okay. Next one.

Judy Graham: The next question is for FinCEN. "Should a subpoena be required before turning SAR information over to an agent and should a copy of the SAR be included?"

Anthony Harris: Let's break that down. The first question, "Should a subpoena be required?" Generally speaking, our suspicious activity reporting regulations state that when an institution files a suspicious activity report they should also maintain and pretty much segregate for the purpose of finding and supporting documentation and if that SAR is being followed up on by an appropriate law enforcement agent, the institution is allowed to through the course of that reporting to provide that supporting documentation to the agent.

I don't think that a subpoena is necessarily required to provide the supporting documentation for the SAR filing to an appropriate law enforcement requestor. Was there a second part of that question?

Judy Graham: I've lost it. I'm really not sure.

Anthony Harris: We'll say no, then.

Judy Graham: Should the SAR be included?

Anthony Harris: Well, I don't think it necessarily hurts. If somebody's asking for it, the law enforcement agent has probably already seen it. We make suspicious activity reporting available to all law enforcement as Nona said. It probably is a good idea to just keep a record of all the information provided so that you have a listing of that.

Meg McPartlin: Tony, I always counsel the credit unions that call in to keep some kind of documentation, even if its law-enforcement.

Anthony Harris: Certainly. That's a good idea in general.

Chairman Johnson: Okay.

Judy Graham: the next question is for NCUA and this is regarding independent testing. And the question is, "Can this be included in the annual supervisory audit performed by an outside source?"

Matthew Biliouris: I'm not aware of anything that would preclude it from being included. Obviously, those two activities seem kind of much of a challenge to do those two things at a same time. If they can meet the elements of what's required in independent testing, follow the scope that they set up to do that, there's nothing that we would say that they couldn't

include it with their overall annual audit.

Chairman Johnson: Okay.

Judy Graham: The next question is for FinCEN. This is in regard to the 314a list. This particular person wanted to know if it was necessary to check nonmember transactions or nonmember names for the list.

Anthony Harris: Certain nonmember transactions are ones that should be checked if they're required to be kept by law. Let me speak a little more generally. FinCEN has issued general instructions and also a frequently asked questions document to institutions that are participating in the 314 information sharing program.

For those institutions that use the web-based secure information sharing system, which I believe is the vast majority of institutions, that information is available through that system. If you're still getting the list through fax, you can obtain a copy of the instructions on the FAQ by calling FinCEN's helpline and Nona provided the number. It's also available on our website.

Getting into the specific question as to what nonmember transactions are required to be checked. Those institutions that are required by law to be kept or those transactions that are required by law to be kept; for example, sales for currency, monetary instruments between \$3,000 and \$10,000. You're required to keep those by regulations. Those are

required to be checked, generally speaking, with the 314 process.

Additionally, funds transfer records is the other example. Funds transfer is about \$3,000. A record is required to be kept of those. Those need to be checked as well. The one question that comes up very frequently with regard to funds transferred is, "What parts of the transaction do I have to check?" That's one where there are lots of different parties involved in the federal funds transfer process.

To put it simply, you have to check the part of the transaction that your institution executes. So if you originate a wire on behalf of a member or nonmember, you have to check those that you originate as the originator's institution, or if you receive it for the benefit of a member or nonmember. You have to check those that you receive.

Chairman Johnson: Okay. Next question.

Judy Graham: The next question is for NCUA. This question is, "Are there any guidelines or can you provide some assistance for help in rating the risk levels for separate accounts?"

Matthew Biliouris: In my discussion on the risk assessment we kind of hit on some of the things that need to be done from the start with this. We talk about a two phase approach. The first phase is to kind of look through the different categories of products and services offered, the membership base, the geographic locations and try to identify some of the issues in there that the credit union would have to deal with and then the second phase is

going through that and doing a more detailed analysis.

I think that other credit unions in the area may be able to help some credit unions as far as identifying some of the risks they see based on their product mix and so forth. Obviously, it's going to be unique to each credit union. From that you do a more detailed analysis to look further into that.

One example I like to use in talking about this concept is looking at the issue of funds transfers. Initially, there may seem to be a higher risk associated with the concept of funds transfers through that first phase in identifying that as a product and service, and then through a more detailed analysis the credit union may realize they only do three or four transactions every six months or even a year which would significantly lower the risk factors associated with that.

I would say there's all sorts of information available through either trades, the leagues, other credit unions that would kind of help. I would go with a credit union that's done this before and see what they've used to do that.

Chairman Johnson: Next question.

Judy Graham: The next question is for FinCEN. "When we discover illegal activity and submit a SAR to FinCEN, how do credit unions follow up and with what agency to ensure that those criminals are prosecuted?"

Anthony Harris: That's a good question. There are a couple of components. Generally speaking, once the credit union files the suspicious activity report they've done their minimum duty as far as reporting that to the government.

What we do is suggest that in instances where you believe that whatever is happening is of a very significant nature, something is ongoing, it's a significant money laundering or terrorist financing scheme. We ask you that in addition to filing the SAR, you also contact law enforcement directly to bring that attention.

Nona also highlighted one of our key resources in her presentation and that's our financial institutions hotline where in addition to filing a SAR, which always has to be done just to get it into the system for law enforcement, you can also call that hotline and we can expedite that information and put it in front of law enforcement quickly, in those cases where you think you may be dealing with potential terrorist financing situations.

Chairman Johnson: Okay. We only have a few minutes left; let's try to get at least another question or two in.

Judy Graham: Okay. I'll direct this question back to FinCEN and this question is regarding the 314a list. "Should these lists that we check be destroyed?"

Anthony Harris: Basically, we don't require action one way or another. What we do, and

again, I'll refer you back to the frequently asked question document that I cited because it does touch on questions and record-keeping. As far as record-keeping, the regulation itself doesn't specify steps in the regulation. What we do is we state that you need to keep information to kind of demonstrate your compliance.

What was suggested in our FAQ would be evidence that you received it. Each request has a tracking number the steps taken, who did it, when they received it, when they did it, certain information about that. With regard to the list themselves, we don't require them to be kept. We also don't require them to be destroyed. If it's something that your institution chooses to keep as part of its record-keeping and demonstration of compliance what we do say is we ask you to maintain the confidentiality of that information because it is highly sensitive.

Chairman Johnson: Let's try to work in at least one more.

Judy Graham: We have another question for FinCEN. This one is. "Do we have the ability at this time to files SAR's electronically?"

Anthony Harris: We certainly do. We make the BSA e-filing system available. In fact, if you go to our website, [fincen.gov](http://fincen.gov), there's an e-filing link that you can click on the right on the main page on the left. In fact, we highly encourage people to utilize the system. The feedback we get is generally very positive.

It has benefits for us selfishly because we get it faster and we get it to law enforcement faster, but also has benefits for the institutions. Once they get it up and running, we've heard very good things about it. It's free of charge. It does not cost any money. The only cost is time up front just to set it up. We do understand the people that use it find it as a highly valuable service.

Chairman Johnson: Okay, very good. Well, I'm afraid we've run out of time. I would like to thank our guests from FinCEN for partnering with us to present this Webinar today and for sharing your thoughts and your expertise with all of us.

I know that we have several questions that we were not able to get to this afternoon, so this is what we'll do. We'll look through the remaining questions and make sure that the major topics brought up by our audience today are addressed in some manner so that we can post those with the Webinar in the near future.

You may recall that the time you registered that on the registration page it mentioned a BSA Webinar mailbox for which you to send questions. That mailbox will remain open for a few more months so that if you have any follow-up questions from today's presentation, feel free to send a message off to that mailbox.

Jamal El-Hindi: And Chairman Johnson, what we've done in other contexts when we received an awful lot of questions through a forum like this is take them and funnel them to our help line, so that if you include your contact information when you submit the question

or maybe even resubmit the question, we will do what we can for appropriate questions to direct them to our help line and you may get a call straight from the help line desk.

Chairman Johnson: That's great. So, one way or another they're going to hear from us. I'd also like to remind you all that we'll be posting a link to today's Webinar along with a transcript of the audio portion of the presentation on our website. Again its [www.ncua.gov](http://www.ncua.gov) and that should be up in approximately two to three weeks.

The Webinar will be available for free on the web site for those who weren't able to attend the live session this afternoon or for those of you that would like to review it again.

I hope that you've enjoyed the Webinar this afternoon I want to thank you for participating. I look forward to using this type of a cost-effective form of media to speak with you all again soon. Again, thanks for joining us.