Lenders Compliance Group

Thursday, August 23, 2012

Mortgage Fraud and SARs

On August 16, 2012, the Financial Crimes Enforcement Network (**FinCEN**) issued an Advisory to highlight activity related to mortgage loan fraud, especially as it pertains to Residential Mortgage Lenders and Originators (**RMLOs**). The issuance serves to further clarify suspicious financial activity that may require filing Suspicious Activity Reports (**SARs**).*

The issuance consolidates certain information from previously issued FinCEN reports, and contains **examples of common fraud schemes and potential "red flags" for activity related to mortgage loan fraud**.

This Advisory, which consolidates certain information from previously issued FinCEN reports, contains examples of common fraud schemes and potential Red Flags for activity related to mortgage loan fraud. Furthermore, the data gathered supports the efforts of the *Financial Fraud Enforcement Task Force* (FFETF), the Treasury's broader initiative to ensure that U.S. financial institutions are not used as conduits for illicit activity, as well as the OIG's mortgage fraud initiatives of FinCEN and the Department of Housing and Urban Development (HUD).

IN THIS ARTICLE

Types of Mortgage Loan Fraud

Based on the Advisory and previous mortgage fraud reports issued by FinCEN, the following list identifies certain types of mortgage loan fraud. These are primarily based upon schemes and scams frequently reported or described in SARs or identified by law enforcement authorities.

Occupancy Fraud

Occurs when borrowers, to obtain favorable loan terms, claim that subject properties will be their primary residences instead of vacation homes or investment properties. It also occurs when subjects apply for loans for properties that others, such as family members, will actually occupy.

Income Fraud

Includes both overstating income to qualify for larger mortgages and understating income to qualify for hardship concessions and modifications.

Appraisal Fraud

Includes both overstating home value to obtain more money from a sale of property or cash-out refinancing, and understating home value in connection with a plan to purchase a property at a discount to market value.

Employment Fraud

Includes misrepresenting whether, where, and for how long borrowers have been employed; whether borrowers are unemployed or collecting unemployment benefits; and whether borrowers are independent contractors or business owners.

Liability Fraud

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Liability Fraud

Occurs when borrowers fail to list significant financial liabilities, such as other mortgages, car loans, or student loans, on mortgage loan applications. Without complete liability information, lenders cannot accurately assess borrowers' ability to repay debts.

Debt Elimination Schemes

Involves the use of fake legal documents and alternative payment methods to argue that existing mortgage obligations are invalid or illegal, or to purport to extinguish mortgage balances. Individuals orchestrating debt elimination schemes typically charge borrowers a fee for these debt elimination "services."

Foreclosure Rescue Scams

Targets financially distressed homeowners with fraudulent offers of services or advice aimed at stopping or delaying the foreclosure process. Some of these scams require homeowners to transfer title - or make monthly mortgage payments - to the purported "rescuer," rather than the real holder of the mortgage. Some foreclosure rescue scams require homeowners to pay fees before receiving "services," and are known as "advance fee" schemes.

Social Security Number (SSN) Fraud and Other Identify Theft

Includes the use of an SSN or other government identification card or number that belongs to someone other than the applicant in a loan application. Identity Theft includes broader use of another's identity or identifiers (beyond an SSN) to obtain a mortgage or perpetrate a "fraud for profit" scheme.

Home Equity Conversion Mortgage (HECM)

Financial institutions need be aware of illegal "reverse mortgage" schemes, which targets seniors who own a home or who are coerced into taking title to a home, for the purpose of stealing or otherwise acquiring some or all of the funds the senior receives from a government HECM program. HECM fraud may involve other frauds, including appraisal fraud (to increase the stated value of the home), investment fraud to acquire the HECM funds from the senior under the guise of future profits for the senior, and identify theft to acquire HECM funds without the knowledge of the senior who owns the property.

Possible Red Flags

The following is a list of potential red flag indicators of illicit activity related to mortgage fraud. These only indicate *possible signs* of fraudulent activity and should not be considered to constitute an exhaustive list of common fraud schemes.

No single red flag will be definitive proof of such activity and many apply to multiple fraud schemes. Instead, it is important to view any red flag(s) in the context of other indicators and facts, such as the specific role of the RMLO within mortgage loan-related transaction(s), as well as the institution's knowledge of any associated fraud schemes. The presence of any of these red flags in a given residential mortgage loan transaction may indicate a need for further due diligence and a decision whether to file a SAR.

- Borrower/buyer submits invalid documents in order to cancel his or her mortgage obligations or to pay off his or her loan balance(s).

- Same notary public and/or other "authorized representative" preparing, signing, and sending packages of nearly identical debt elimination documents for multiple borrowers with outstanding mortgage balances.

- Same notary public and/or other "authorized representative" working with and/or receiving payments from unusually large numbers of borrowers.

- Falsification of certified checks, cashier's checks or "non-cash item checks" drawn against a borrower/buyer's account, rather than from the account of a financial institution.

- Borrower/buyer applies for a loan for a "primary residence " but does not reside in the new primary residence as indicated on the loan application; other individuals occupy the borrower/buyer's new primary residence indicating the property is being used as a secondary residence or income-generating property.

- Borrower/buyer of a younger age purchases his or her "primary residence" in a senior citizen residential development.

- Borrower/buyer requests refinancing for "primary residence" when public and personal documents indicate that the borrower/buyer resides somewhere other than the address on the loan application.

- Language included in a short sale contract indicates the property could be resold

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Interview: Anti-Money Laundering Program for Nonba...
► July (4)
► June (2)
► May (2)
► April (3)
► March (5)
► February (2)
► January (6)
► 2011 (106)
► 2010 (86)
► 2009 (8)

promptly. This possibly illegal "flipping" may occur regardless of whether the Federal Housing Administration (FHA) has re-enacted or waived its arms-length resale regulations to FHA buyers.

- Low appraisal values, non-arms length relationships between short sale buyers and sellers, or previous fraudulent sale attempts in short-sale transactions,.

- Agent of the buyer and/or seller in mortgage transaction is unlicensed.

- Past misrepresentations made by borrower/buyer in attempts to secure funding, property, refinance, and/or shorts sales.

- Improper/incomplete file documentation, including borrower/buyer reluctance to provide more information and/or unfulfilled promises to provide more information.

- Apparent resubmission of rejected loan application with key borrower/buyer details changed or modified from individual borrower to company/corporation. This activity may identify the same person attempting to secure a loan fraudulently through a straw-borrower or non-existent person.

- Borrower/buyer attempts to structure currency deposits/withdrawals, or otherwise to hide or disguise the true value of assets, in order to qualify for loan modification programs intended for those homeowners in financial distress.

- Request from third party affiliates on behalf of distressed homeowners to pay fees in advance of the homeowner receiving mortgage counseling, foreclosure avoidance, a loan modification, or other related services.

- Third party solicitation of distressed homeowners for purported mortgage counseling, foreclosure avoidance, loan modification, or other related services. These third parties may also claim to be associated with legitimate mortgage lenders, the U.S. government, or a U.S. government program.

Suspicious Activity Reporting

If an RMLO knows, suspects, or has reason to suspect that a transaction conducted or attempted by, at, or through the financial institution involves funds derived from illegal activity or an attempt to disguise funds derived from illegal activity, is designed to evade regulations promulgated under the Bank Secrecy Act, or lacks a business or apparent lawful purpose, the financial institution may be required to file a SAR.

When completing SARs on suspected mortgage loan fraud, RMLOs should indicate the type of mortgage loan fraud by entering the appropriate code in the FinCEN SAR and provide a detailed description in the SAR narrative. For activity that does not have a corresponding code, financial institutions should identify "Other" and describe the activity in the narrative.

When an RMLO files a SAR, it should, where available, include its NMLS Unique Identifier. (The the NMLS Unique Identifier is recognized by the Federal Housing Finance Agency (FHFA) and HUD. Both federal agencies require that any loan purchased or securitized by Fannie Mae and Freddie Mac, or submitted for insurance by the FHA, must include the NMLS Unique Identifier for the company and individual MLO that originated the mortgage loan.)

Contacting FinCEN

There are several ways to contact FinCEN. The following list provides useful contact information that my firm has used when providing compliance guidance to our clients. The nature of the inquiry would determine the selection of the contact.

GENERAL INQUIRIES: (703) 905-3591 (Monday thru Friday, 8:30 a.m. - 5:00 p.m., E.T.). For the general public with questions about the Financial Crimes Enforcement Network, its policies and programs.

REGULATORY INQUIRIES: Regulatory Toll-Free Helpline, (800) 949-2732 (Monday thru Friday, 8:00 a.m. - 5:00 p.m., E.T.). For financial institutions with questions relating to Bank Secrecy Act and USA Patriot Act requirements and forms.

SECTION 314 INQUIRIES: (866) 326-8314 (Monday thru Friday, 8:30 a.m. - 5:00 p.m., E.T.)

SECTION 314 PROGRAM OFFICE: sys314a@fincen.gov or (866) 326-8314

LAW ENFORCEMENT INQUIRIES: (703) 905-3591 (Monday thru Friday, 8:30 a.m. -

5:00 p.m., E.T.)

FINANCIAL INSTITUTIONS TOLL-FREE HOTLINE: (866) 556-3974 (7 days a week, 24 hours a day). For financial institutions wanting to report suspicious transactions that may relate to terrorist activity. The purpose of the hotline is to facilitate the advance notice of this information to law enforcement.

Library

Suspicious Activity Related to Mortgage Loan Fraud

August 16, 2012

FIN-2012-A009

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*Jonathan Foxx is the President & Managing Director of Lenders Compliance Group

Labels: FinCEN, Mortgage Fraud Report, Mortgage Loan Fraud, Red Flags Mortgage Fraud, Residential Mortgage Lenders and Originators, RMLO, SAR, Suspicious Activity Reports

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