FinCEN Releases Advisory on Suspicious Activity Reporting for RMLOs

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The Financial Crimes Enforcement Network ("FinCEN") recently released an advisory (FIN-2012-A0009) regarding suspicious activity report ("SAR") requirements for non-bank residential mortgage lenders and originators ("RMLOs"). The advisory is intended to "[consolidate] certain information from previously issued FinCEN reports" and provide "examples of common fraud schemes and potential 'red flags' for activity related to mortgage loan fraud."

Federal law imposes SAR reporting requirements on a financial institution that "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 apparently lawful purpose." Earlier this year, FinCEN extended SAR reporting requirements to RMLOs by including RMLOs within the definition of covered financial institutions.

The advisory identifies numerous types of mortgage loan fraud "which are primarily based upon schemes and scams frequently reported or described in SARs or identified by . . . law enforcement and regulatory partners," with the intent that this information "assist financial institutions in identifying when illicit activities occur in connection with mortgage transactions." The types of fraud identified and described by the advisory are: occupancy fraud, income fraud, appraisal fraud, employment fraud, liability fraud, debt elimination schemes, foreclosure rescue schemes, social security number fraud and other identity theft, and Home Equity Conversion Mortgage (HECM) fraud.

The advisory also lists potential "red flag" indicators of mortgage loan fraud, stating that while "[n]o single red flag will be definitive proof" of fraudulent activity, "it is important to view any red flag(s) in the context of other indicators and facts," and noted that "[t]he presence of any of these red flags . . . may indicate a need for further due diligence and a decision whether to file a SAR." Examples of the potential red flags listed by the advisory include: a borrower submitting invalid documentation in order to cancel mortgage obligations or pay off loan balances, a borrower applying for a loan for a "primary residence" where the borrower does not reside in the new primary address as indicates on the loan application, and a borrower of a younger age purchasing a "primary residence" in a senior citizen residential development.

For a full description of the types of mortgage loan fraud and a full list of the potential red flags, a copy of the advisory is available here.

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