



**PREPARED REMARKS OF JAMES H. FREIS, JR.
DIRECTOR, FINANCIAL CRIMES ENFORCEMENT NETWORK
U.S. DEPARTMENT OF THE TREASURY**

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Good morning. I am pleased to be joining you again today. When I spoke with you last year, I focused my remarks on what FinCEN was trying to do to address a vulnerability in our Bank Secrecy Act/Anti-Money Laundering (BSA/AML) regime as it relates to mortgage brokers, and how this effort fits into FinCEN's overall initiative to combat mortgage fraud at all levels.¹ And in 2009, I discussed FinCEN's broad efforts working with regulators and law enforcement to fight mortgage fraud, and one of the key things I hoped to do at that time was to raise awareness of the mortgage fraud studies that FinCEN already had been putting out for years, and the data that we continue to publish, to promote market integrity and help banks and other financial institutions protect themselves from fraud.²

In continuing to focus today on mortgage brokers, I want to focus on four key areas: How FinCEN is closing regulatory gaps, partnering with law enforcement, identifying trends, and engaging the industry. And I feel it is important to note at the outset, that our discussion today must be seen in the context of FinCEN's overall efforts to combat a broad range of fraud and financial crimes that impacts our country and all of us Americans. As Attorney General Eric Holder noted in a recent speech:

“[O]ver the last three years, the Justice Department – and a host of our federal, state, and local partners – have come together in an unprecedented national effort to combat and prevent a wide range of financial-fraud crimes. From securities, bank, and investment fraud; to mortgage, consumer, and health-care fraud – we've found that these schemes are as diverse as the imaginations of those who perpetrate them, and as sophisticated as modern technology will permit.”³

¹ See http://www.fincen.gov/news_room/speech/pdf/20110328.pdf.

² See http://www.fincen.gov/news_room/speech/pdf/20090316.pdf.

³ See <http://www.justice.gov/iso/opa/ag/speeches/2012/ag-speech-120223.html>.

I am proud to say that we at FinCEN have partnered with the Justice Department in a broad range of initiatives related to these issues. Specifically, you will hear during this conference some of these initiatives from the agencies and persons with whom FinCEN has worked closely. In fact, for more than 10 years, FinCEN has been analyzing trends and patterns related to mortgage fraud. Back in 2002, FinCEN's analysts published findings that highlighted areas of potential concern in the sales and management of real estate.⁴ As we continued to follow the trends in suspicious activity reporting (SARs) from 2003 into 2004, FinCEN analysts noted a dramatic increase in the number of filings indicating suspected mortgage fraud, leading us to drill down more closely into this area.

For our first detailed study focusing exclusively on mortgage fraud, published in November 2006,⁵ we proceeded to go back to take a closer look at all of the mortgage fraud filings since the inception of the SAR reporting requirements, analyzing 10 years of mortgage fraud reporting data nationwide, and we explained a range of fraudulent schemes in an effort to provide the financial industry with red flag indicators that could help them protect their financial institutions and their customers from being victims of fraud.

FinCEN analysis continues to highlight the increase in SARs reporting mortgage fraud, as well as focusing on frauds in Home Equity Conversion Mortgages,⁶ and the relationship between mortgage fraud and other financial crimes.⁷ FinCEN also has issued Quarterly Reports for the past several years, which provide new information on reporting activities, geographic locations, and other filing trends noted during the quarter.⁸

FinCEN's most recent Quarterly Report of mortgage loan fraud (MLF) suspicious activity reports, which is being published today,⁹ shows financial institutions submitted 92,028 MLF SARs last year, a 31 percent increase over the 70,472 submitted in 2010.¹⁰ The increase can primarily be attributable to mortgage repurchase demands.

At the same time, the report tells a slightly different story if you look at just quarterly reports. Financial institutions submitted 17,050 MLF SARs in the 2011 fourth quarter, a 9 percent decrease in filings over the same period in 2010 when financial institutions filed 18,759 MLF SARs. While too soon to call a trend, the fourth quarter of 2011 was the first time since the fourth quarter of 2010 when filings of MLF SARs had fallen from the previous year. However, in taking a quick look at preliminary data of first quarter 2012 filings, this downward indicator in MLF filings appears to be continuing.

The report also provides clues that there is significant improvement in mortgage lending due diligence since the height of the housing bubble. For example, 40 percent of MLF SAR narratives, where SAR filers provide details of why an activity appears suspicious, indicated the filing institution turned down the subject's loan application, short sale request, or debt

⁴ See http://www.fincen.gov/news_room/rp/files/sar_tti_06.pdf (pages 31-36).

⁵ See http://www.fincen.gov/news_room/rp/reports/pdf/mortgage_fraud112006.pdf.

⁶ See http://www.fincen.gov/news_room/rp/mortgagefraud_suspectedMoneyLaundering_HomeEquity.html.

⁷ See http://www.fincen.gov/news_room/rp/files/mortgage_fraud.pdf.

⁸ See http://www.fincen.gov/news_room/rp/mortgagefraud_suspectedMortgageFraud.html.

⁹ See http://www.fincen.gov/news_room/nr/pdf/20120423.pdf.

¹⁰ See http://www.fincen.gov/news_room/rp/files/MLF_Update_Q4_2011_508.pdf.

elimination attempt because of the suspected fraud reported in the SAR. What this tells us is that those of you or your staff responsible for reviewing the loan applications are not just spotting, but helping to prevent fraud before a scammer can complete the transaction.

FinCEN's Web site also has a page dedicated to capturing the numerous studies and data available to the public¹¹ as well as a page featuring information related to the work of the Financial Fraud Enforcement Task Force (FFETF),¹² which was established by President Obama in November 2009 to hold accountable those who helped bring about the last financial crisis, and to prevent another crisis from happening.¹³ If you are not already signed up to receive automatic e-mail updates on new mortgage fraud related information published on FinCEN's Web site, I encourage you to do so.¹⁴

FinCEN's Regulatory Approach

So, it was against this backdrop of FinCEN's experiences with the analytical studies, as well as our ongoing support to law enforcement, that it became clear a regulatory gap existed where residential mortgage lenders and originators were not subject to SAR reporting and other FinCEN requirements. And to address concern among regulators, law enforcement and Congress over abusive and fraudulent sales and financing practices in both the primary and secondary residential mortgage markets, FinCEN issued an Advance Notice of Proposed Rulemaking (ANPRM) in July 2009 to solicit public comment on a wide range of questions pertaining to the possible application of AML program and SAR regulations to non-bank residential mortgage lenders and originators.¹⁵

And as we always do, when FinCEN first identifies a new category of entities to consider for regulation, we must clearly define the affected entities. And while the content of our rules differs slightly from industry to industry, there are three basic components: 1) requiring financial institutions to be vigilant in order to make it more difficult for criminals to move funds through the financial system; 2) keeping records of transactions available for law enforcement; and 3) reporting to FinCEN certain information, such as suspicious activity, that has a "high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism."¹⁶

Advance Notice of Proposed Rulemaking

The ANPRM, published in July 2009,¹⁷ expressed FinCEN's inclination to develop AML program and SAR regulations for a specific subset of loan and finance companies: non-bank

¹¹ See http://www.fincen.gov/news_room/rp/mortgagefraud.html.

¹² See <http://www.fincen.gov/fraudenttaskforce.html>.

¹³ See <http://www.stopfraud.gov/news/news-11172009-01.html>.

¹⁴ See <https://public.govdelivery.com/accounts/USFINCEN/subscriber/new>.

¹⁵ See http://www.fincen.gov/news_room/nr/pdf/20090715.pdf.

¹⁶ See 31 U.S.C. § 5311.

¹⁷ See <http://www.gpo.gov/fdsys/pkg/FR-2009-07-21/pdf/E9-17117.pdf>.

residential mortgage lenders and originators (RMLOs).¹⁸ The ANPRM suggested that any new rules likely would contain standards and requirements analogous to those currently applicable to Federally regulated depository institutions.¹⁹

The Department of Justice, in commenting on the ANPRM, noted that, “The proposal to require non-bank residential mortgage lenders and originators to file SARs would assist the Department’s ability to uncover large-scale mortgage fraud schemes and would help to deter criminal conduct, as criminals may be less likely to risk providing false information to a lender that has an obligation to report such suspicious conduct.”²⁰ FinCEN also appreciated the comments of the Mortgage Bankers Association in their comment letter, which stated that the MBA “supports filing SARs and the gathering of information related to mortgage fraud to help federal law enforcement agencies investigate and prosecute the perpetrators and to prevent losses to the real estate finance industry.”²¹

Notice of Proposed Rulemaking

After careful review and consideration of comments received in response to the ANPRM, in December 2010, FinCEN took the next step and issued a Notice of Proposed Rulemaking (NPRM)²² that would require RMLOs, like other types of financial institutions, to establish AML programs and file SARs.²³

In both the ANPRM and the NPRM, FinCEN proposed an *incremental* approach to implementation of AML and SAR regulations for the broad category of financial institutions known as “loan and finance companies” that would focus first on those business entities that are engaged in residential mortgage lending or origination and are not currently subject to any AML program or SAR requirement under the BSA. RMLOs (*e.g.*, independent mortgage loan companies and mortgage brokers) are primary providers of mortgage finance—in most cases dealing directly with the consumer—and are in a unique position to assess and identify money laundering risks and fraud while directly assisting consumers with their financial needs and protecting them from the abuses of financial crime.

So, taking a step back, what are we trying to do? FinCEN believes that the new regulations requiring RMLOs to adopt AML programs and report suspicious transactions will augment FinCEN’s initiatives in the mortgage fraud area. Among other benefits, such regulations will complement efforts underway by these businesses to comply with the nationwide licensing system and registry under development since the passage of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (“SAFE Act”).²⁴ As RMLOs implement systems and

¹⁸ *Id.* See also 31 U.S.C. 5312(a)(2)(P). Throughout the 2010 NPRM, the term “residential mortgage originator” was defined to include, among other persons, entities commonly referred to as “brokers” in the residential mortgage sector.

¹⁹ See <http://edocket.access.gpo.gov/2009/pdf/E9-17117.pdf>.

²⁰ See <http://www.regulations.gov/#!documentDetail;D=FINCEN-2009-0003-0008>.

²¹ See <http://www.regulations.gov/#!documentDetail;D=FINCEN-2009-0003-0006>.

²² See <http://edocket.access.gpo.gov/2010/pdf/2010-30765.pdf>.

²³ See http://www.fincen.gov/news_room/nr/pdf/20101206.pdf.

²⁴ See Title V of Division A of the Housing and Economic Recovery Act of 2008, Public Law 110–289, 122 Stat. 2810 (2008), *codified at* 12 U.S.C. 5101, *et seq.*

procedures to comply with the SAFE Act, there will be opportunities for them to review and enhance their education and training programs to ensure that employees are able to identify and deal with fraud, money laundering, and other financial crimes appropriately.

The NPRM was also complementary to ongoing regulatory reform and efforts to guard against activities frequently associated with mortgage fraud, such as false statement, use of straw buyers, fraudulent flipping, and even identity theft. These illegal activities, and others, have been identified in information provided by SARs.

Both the ANPRM and the NPRM suggested that the AML program and SAR filing regulations for RMLOs would be issued as the first step in an incremental approach to implementation of regulations for loan and finance companies. Thus, the definition of “loan or finance company” would initially include only RMLOs, but would be structured to permit the addition of other types of loan and finance related businesses and professions in future amendments.

After the NPRM public comment period closed in February 2011, we began working through the high-level issues raised by the comments that were submitted.²⁵ Some comments questioned whether an AML program rule was needed. To understand our determination to require RMLOs to adopt AML programs, it is important to understand what an AML program is fundamentally designed to do. We refer to the “four pillars” of AML for a reason, as each one is critical to holding up the overall structure of the program. Without one, the others will fail. The pillars of an effective AML program are: (1) the development of internal policies, procedures, and controls; (2) designation of a compliance officer; (3) an ongoing employee training program; and (4) an independent audit function to test programs.²⁶ It would be difficult to expect useful SAR reporting without the pillars of an AML program firmly in place.

With all of FinCEN’s AML regulations, businesses would be required to implement risk-based programs that take into account the unique risks associated with that particular business’ products and services, as well as the business’ size, market, and other issues. Thus, each business’ AML program would necessarily be different than that of other businesses with different product, geographic and other risks. Current research demonstrates that one of the predominant risks of criminal activity is mortgage fraud. Therefore, under a risk-based approach, we would expect this to be one of the areas of concentration in a new AML program.

Law enforcement reaffirms time and again the value of SARs to their investigations of fraud. In a comment letter from the HUD-IG’s office, the former acting Inspector General noted, “One vital weapon in the war on mortgage fraud has been FinCEN’s regulation that requires banks to establish anti-money laundering programs and to file suspicious activity reports. Mortgage fraud SARs, when combined with other data, can provide critical leads for fraud investigations.”²⁷ The NPRM was also highlighted in the first annual report of the FFETF.²⁸

²⁵ See http://www.fincen.gov/statutes_regs/frn/pdf/CommentsNPRMChart.pdf.

²⁶ See 31 U.S.C. § 5318(h).

²⁷ See <http://www.regulations.gov/#!documentDetail;D=FINCEN-2010-0001-0004>.

²⁸ See <http://www.stopfraud.gov/docs/FFETF-Report-LR.pdf> (page 4.10).

FinCEN appreciated the support from the MBA comment letter calling the NPRM a “measured and balanced approach.”²⁹ And with respect to closing the regulatory gap that I mentioned earlier, MBA comment letter also noted that the expansion of the AML program and SAR filing requirements to non-depository independent mortgage lenders and originators will cover an estimated 25 percent of the mortgage loans originated in the United States.

FinCEN’s NPRM for RMLOs only imposed SAR and AML program obligations. It didn’t make RMLOs “financial institutions” under our regulations, so there is no responsibility for Currency Transaction Report (CTR) filing or non-SAR record retention. But just to clarify, even though residential mortgage lenders aren’t financial institutions, they are still subject to the Form 8300 requirement, for the rare transactions when they receive more than \$10,000 in currency.

On the topic of partnering with the States, the MBA noted in their NPRM comment letter that FinCEN should consider working with State banking regulators, based in particular on their familiarity with RMLOs’ obligations to comply with a wide range of state laws and regulations, as well as with the Real Estate Settlement Procedures Act, the Truth in Lending Act, and other federal laws and regulations.³⁰ This approach was echoed by the Conference of State Bank Supervisors, who confirmed in their public comment letter that they will work with FinCEN on facilitating our work with the States.³¹

Final Rule

So, where are we now? On February 7 of this year,³² FinCEN finalized our regulations requiring RMLOs to establish AML programs and file SARs.³³ The Final Rule went into effect exactly one week ago, on April 16, with a compliance deadline of August 13, 2012.

The Final Rule is based on the NPRM and adopts all of the proposed regulatory provisions, with a few exceptions. The AML regulation promulgates the four pillars I just discussed, and the SAR regulation requires reporting of suspicious activity, including but not limited to fraudulent attempts to obtain a mortgage or launder money by use of the proceeds of other crimes to purchase residential real estate. As I noted in my speech here three years ago,³⁴ FinCEN analysis has shown that there is a relationship between mortgage fraud and other financial crime. A FinCEN study in 2009 identified how financial crime runs through different financial industries.³⁵

The Final Rule does not require RMLOs to comply with any other BSA reporting or recordkeeping regulations, such as CTRs.³⁶ As noted in the NPRM, any transactions involving the receipt of over \$10,000 will continue to be subject to reporting on FinCEN Form 8300.³⁷

²⁹ See <http://www.regulations.gov/#!documentDetail;D=FINCEN-2010-0001-0008.1>.

³⁰ See <http://www.regulations.gov/#!documentDetail;D=FINCEN-2010-0001-0008.1>.

³¹ See <http://www.regulations.gov/#!documentDetail;D=FINCEN-2010-0001-0011.1>.

³² See http://www.fincen.gov/news_room/nr/pdf/20120206.pdf.

³³ See <http://www.gpo.gov/fdsys/pkg/FR-2012-02-14/pdf/2012-3074.pdf>.

³⁴ See http://www.fincen.gov/news_room/speech/pdf/20090316.pdf.

³⁵ See http://www.fincen.gov/news_room/rp/files/mortgage_fraud.pdf.

³⁶ See 31 CFR 1010.310 for the currency transaction reporting requirements for “financial institutions” as such term is defined in 31 CFR 1010.100(t).

Furthermore, FinCEN has announced that beginning July 1, 2012, almost all FinCEN reports – including the SARs required by the Final Rule – must be filed electronically, with some exemptions allowed.³⁸ Electronic filing makes sense from every perspective. Both the government and the filer will save time and money. As part of FinCEN's overall modernization of its IT systems, the time has come to move our reporting framework from paper to the electronic age. I strongly encourage you to become familiar with the benefits provided by the BSA E-Filing system and register as soon as possible, rather than waiting until closer to the deadline.³⁹

Incremental Approach

I want to briefly turn back now to the issue of the incremental approach. FinCEN's new regulations do not cover other lending and finance businesses, or businesses such as loan servicers that are related to the sector, but we do have the authority and willingness to seriously consider expanding the scope of the regulations in the future. However, we first need to identify which other businesses we should consider, and conduct an analysis. We then need to address issues in terms of effective implementation, especially where there may not be a Federal regulator, as well as resource limitations, to go forward thoughtfully with any additional expansion.

Because of the potential for criminal abuse in a wide range of financial transactions, some of those that commented on the NPRM and the ANPRM urged *against* an incremental approach and recommended that we go even farther than mortgage lenders and brokers right now. Specifically, a few commenters cautioned that FinCEN should not delay implementation of rules for other consumer and commercial finance companies, and businesses involved in real estate closings and settlements, such as title companies, escrow agents and appraisers.

Arguably, the absence of rules for these other types of businesses might be exploited by criminals insofar as they may shift the focus of their criminal enterprises from residential to other consumer and commercial finance businesses. As noted in the ANPRM and the NPRM, FinCEN is inclined to defer regulations for commercial real estate finance businesses, and other types of finance and settlement related businesses, until further research and analysis can be conducted to enhance our understanding of the number and kinds of businesses in their sector, their business operations, and money laundering vulnerabilities.⁴⁰

³⁷ See 31 CFR 1010.330.

³⁸ See http://www.fincen.gov/news_room/nr/html/20120223.html; and <http://www.fincen.gov/whatsnew/html/20120221.html> (“FinCEN Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business, may also continue to be filed on paper.”).

³⁹ To enroll for electronic filing, see <http://bsaeiling.fincen.treas.gov/main.html>. FinCEN has released a brochure highlighting the benefits of E-Filing, available at: http://www.fincen.gov/whatsnew/pdf/E-File_Brochure.pdf, and an instructional presentation on E-Filing, available at: <http://treas.yorkcast.com/webcast/Viewer/?peid=a93e7d2b1a07427a93b0cf2e764a57421d>.

⁴⁰ See <http://www.regulations.gov/#!documentDetail;D=FINCEN-2010-0001-0004.1>; <http://www.regulations.gov/#!documentDetail;D=FINCEN-2009-0003-0011.1>; and <http://www.regulations.gov/#!documentDetail;D=FINCEN-2009-0003-0008.1>.

FinCEN will continue to study a range of consumer and commercial finance businesses with a view toward determining the extent to which it is appropriate to expand the recently adopted definition of “loan or finance company” in future rulemakings. FinCEN will also consider regulations for settlement related businesses. There are many variables to consider, and we will appreciate your input regarding appropriate priority to give to the businesses and professions to include in future regulatory initiatives.

Implementation

As FinCEN pursues an incremental approach to implementation of regulations for additional businesses, it is important to consider how to most effectively ensure awareness of regulatory requirements and enforce compliance. The degree of effective implementation by industry has a direct impact on the extent to which we achieve the intended law enforcement objectives. Regulations without appropriate guidance to the industry could have negative consequences including a misallocation of resources. This may create a false sense of compliance, or even put “good” actors that try to comply at a disadvantage to those that ignore obligations. These limitations could apply with respect to any newly regulated industry, but could be magnified if resources are stretched too thin. This concept is one that we are mindful of, and was a factor in our decision to pursue an incremental approach.

FinCEN believes that much of the effort necessary to meet these regulatory obligations, including information gathering, will be accomplished through business operations already undertaken as part of normal transaction negotiation, completion of required Federal forms and disclosures, and due diligence and review of property and collateral. As emphasized in the Final Rule, FinCEN believes RMLOs will assume a crucial role in government and industry efforts to protect consumers, mortgage finance businesses, and the U. S. financial system from mortgage fraud, money laundering, and other financial crimes.

Naturally, with the rule now finalized, and with implementation a few months away, questions will turn toward how FinCEN will approach issues surrounding examination. As I noted in my remarks last year as well, the effective regulation of new financial sectors can be difficult when there isn’t a primary Federal regulator; it may be a challenge to examine the newly regulated institutions for BSA compliance.

Included as part of the Fiscal Year 2013 budget proposal, the Administration proposes a legislative amendment to FinCEN’s statutory authorities that would allow for reliance on examinations conducted by a State supervisory agency for categories of institutions not subject to a Federal functional regulator.⁴¹ This would capture most non-bank financial institutions currently subject to IRS examination as delegated by FinCEN by regulation and a Memorandum of Understanding. With respect to RMLOs, we will explore the possibility of working with State regulators. If Congress agrees, FinCEN will be able to pursue a new level of cooperation with States on examination issues, so we will explore that going forward.

⁴¹ See <http://www.treasury.gov/about/budget-performance/Documents/8%20-%20FY%202013%20FinCEN%20CJ.pdf> (pages 4, 8-9, 11-12, 14).

As the MBA noted in its comment letter on the NPRM, “Regardless of whether FinCEN decides that the IRS or state regulators examine for AML program compliance, it is imperative that FinCEN ensure the examination authority is precise and limited in scope to BSA compliance, including filing SARs for suspected mortgage fraud. In addition, FinCEN should ensure the uniformity of enforcement and examination standards. Lenders operating in multiple states should not be subject to inconsistent examination protocols across jurisdictions.”⁴²

In order for expectations to be clear, FinCEN intends to develop and make publicly available an examination manual for the industry, as our resources permit. FinCEN has worked closely with our State and Federal regulatory counterparts on examination manuals, both for banks and credit unions,⁴³ and for money services businesses.⁴⁴ The manuals provide current and consistent guidance on risk-based policies, procedures, and processes for Federal and State examiners, and the guidance on regulatory expectations is a valuable resource for financial institutions as well.

Uniformity of examination is the reason why the exam manuals were created, in order to ensure consistency across different examiners at the Federal and State level. Notwithstanding the delegation of authority and collaboration with other financial supervisors to conduct compliance examinations, FinCEN retains “[o]verall authority for enforcement and compliance, including coordination and direction of procedures and activities of all other agencies exercising delegated authority.” Particularly with respect to enforcement actions merited in cases of noncompliance, FinCEN closely coordinates with other financial supervisors but retains sole discretion for the imposition of civil money penalties for violations.⁴⁵

Government-Sponsored Enterprises (GSEs)

In another development since I last spoke before you, in November of 2011, FinCEN proposed regulations that would require government-sponsored enterprises (GSEs) Fannie Mae, Freddie Mac and the Federal Home Loan Banks to develop anti-money laundering programs and file SARs with FinCEN.⁴⁶ The GSEs currently file fraud reports with their regulator, the Federal Housing Finance Agency (FHFA), which then files SARs with FinCEN when the facts in a particular fraud report warrant a SAR under FinCEN’s reporting standards.

The proposed regulations would require that the GSEs file SARs directly with FinCEN, which will help streamline the reporting process, provide law enforcement with quicker access to data about potential fraud and other financial crimes, and result in the reporting of a wider range of suspected financial crimes.⁴⁷ The FHFA-OIG stated in their comment letter that certain provisions in the proposed rule – namely, requiring the formal appointment of a compliance officer and periodic testing to monitor for compliance – would yield better investigative

⁴² See <http://www.regulations.gov/#!documentDetail;D=FINCEN-2010-0001-0008>.

⁴³ See http://www.ffiec.gov/bsa_aml_infobase/pages_manual/manual_online.htm.

⁴⁴ See http://www.fincen.gov/news_room/rp/files/MSB_Exam_Manual.pdf.

⁴⁵ Overall authority for enforcement and compliance, including coordination and direction of procedures and activities of all other agencies exercising delegated authority under this chapter is delegated to the Director, FinCEN. See 31 CFR §1010.810.

⁴⁶ See http://www.fincen.gov/news_room/nr/html/20111103.html.

⁴⁷ See <http://www.gpo.gov/fdsys/pkg/FR-2011-11-08/pdf/2011-28820.pdf>.

information.⁴⁸ The FFETF's Mortgage Fraud Working Group also voiced its support of the proposed rule, noting that it would streamline the SAR process, "giving law enforcement agencies quicker access to critical information necessary to prevent, investigate, and prosecute mortgage fraud."⁴⁹ FinCEN continues to review the public comments filed after the publication of the proposed rules,⁵⁰ and is coordinating with the FHFA, with a view toward developing appropriate final regulations for the GSEs.

One final note on the regulatory front: Just last month marked the one year anniversary of the effective date upon which our rules and regulations were reorganized within a new Chapter X of Title 31 of the Code of Federal Regulations (CFR).⁵¹ The reorganization streamlines the BSA regulations into general and industry-specific Parts, making the regulatory obligations clearer in their structure, more consistent, and more accessible to affected financial institutions. Chapter X helps all financial institutions identify their obligations under the BSA in a more organized and understandable manner, which in turn improves compliance.⁵²

The mortgage broker rule has now become the newest part of Chapter X when the rule became effective on April 16, 2012.⁵³

Law Enforcement's Response

You will be hearing throughout this conference from FinCEN's partners in the law enforcement community about our ongoing efforts to thwart fraud taking place within the mortgage industry. But let me spend these last few minutes with you today updating you on some of the Federal government's overall work this past year to combat mortgage fraud.

This past June, the FFETF released its first annual report.⁵⁴ And to summarize directly from the report:

"Increased efforts to combat mortgage fraud have seen dramatic enforcement results. In the first year of the Task Force, the number of mortgage fraud defendants charged by U.S. Attorneys' Offices has more than doubled from 526 in fiscal year 2009, to 1,235 in fiscal year 2010. There was a similar increase in the number of mortgage fraud cases charged, going from 267 in fiscal year 2009 to 656 in fiscal year 2010. And the emphasis on firm sentences for mortgage fraud

⁴⁸ See <http://www.regulations.gov/#!documentDetail;D=FINCEN-2011-0004-0004>.

⁴⁹ See <http://www.regulations.gov/#!documentDetail;D=FINCEN-2011-0004-0005>.

⁵⁰ See

<http://www.regulations.gov/#!docketDetail;dct=FR%252BPR%252BN%252BO%252BSR%252BPS;rpp=25;so=ASC;sb=docId;po=0;D=FINCEN-2011-0004>.

⁵¹ See http://www.fincen.gov/news_room/nr/pdf/20110301.pdf.

⁵² See http://www.fincen.gov/statutes_regs/ChapterX/.

⁵³ See 31 CFR Part 1029 for the AML program and SAR filing requirements for loan or finance companies. See 31 CFR 1010.100(III) for the definition of "loan or finance company." See <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=867349931288594d768de985ed13da68&rgn=div5&view=text&node=31:3.1.6.1.13&idno=31>.

⁵⁴ See <http://www.stopfraud.gov/docs/FFETF-Report-LR.pdf>.

followed the same trend for 2010, with a near doubling of the number of defendants sentenced to more than two, three and five years in prison.”⁵⁵

And the Federal Bureau of Investigation’s Financial Crimes Report for 2011 states:

“Through FY 2011, FBI investigations resulted in 1,223 informations and indictments and 1,082 convictions of mortgage fraud criminals. The following notable statistical accomplishments are reflective in FY 2011 for mortgage fraud: \$1.38 billion in restitutions; \$116.3 million in fines; seizures valued at \$15.7 million; and \$7.33 million in forfeitures.”⁵⁶

And the Administration continues to renew its commitment in this area, and has recently launched two new working groups under the FFETF to highlight the importance of fighting consumer fraud, as well as frauds encountered by struggling homeowners. Earlier this year, Attorney General Holder announced the formation of the Consumer Protection Working Group in February,⁵⁷ as well as the Residential Mortgage-Backed Securities Working Group, which was formed in January.⁵⁸

The Residential Mortgage-Backed Securities Working Group, formed at the direction of the President, brings together the Department of Justice, several State attorneys general, and other Federal entities, including FinCEN, to investigate those responsible for misconduct contributing to the financial crisis through the pooling and sale of residential mortgage-backed securities.⁵⁹

The Attorney General spoke in March at the second meeting of the Consumer Protection Working Summit, where members discussed strategies for enhancing civil and criminal enforcement of consumer fraud crimes, and raising public awareness about fraud schemes.⁶⁰ FinCEN is honored to be an active participant in both groups.

Also in February, the Departments of Justice and Housing and Urban Development, other agencies, and 49 State attorneys general came together to achieve a landmark \$25 billion agreement with the nation’s top five mortgage servicers – the largest joint Federal-State settlement on record.⁶¹ As the Attorney General noted in his remarks before the National Association of Attorneys General spring meeting, “this settlement will provide significant assistance to struggling homeowners and communities – and to those who lost their homes due to unfair and improper mortgage practices.”⁶²

On the investigative front, FinCEN has assisted the HUD-OIG on FHA-insured mortgage fraud cases. In February, a group of mortgage fraud conspirators in Georgia were sentenced on

⁵⁵ See <http://www.stopfraud.gov/docs/FFETF-Report-LR.pdf> (page 3.5).

⁵⁶ See <http://www.fbi.gov/stats-services/publications/financial-crimes-report-2010-2011/financial-crimes-report-2010-2011#Mortgage>.

⁵⁷ See <http://www.justice.gov/opa/pr/2012/February/12-ag-200.html>.

⁵⁸ See <http://www.stopfraud.gov/opa/pr/2012/January/12-ag-120.html>.

⁵⁹ See <http://www.justice.gov/ag/residential-mortgage-backed-securities.pdf>.

⁶⁰ See <http://www.stopfraud.gov/iso/opa/ag/speeches/2012/ag-speech-120309.html>.

⁶¹ See <http://www.justice.gov/opa/pr/2012/February/12-ag-186.html>.

⁶² See <http://www.justice.gov/iso/opa/ag/speeches/2012/ag-speech-120306.html>.

multiple charges relating to a reverse mortgage scheme targeting the elderly.⁶³ Their considerable prison terms ranged from 30-151 months. And this past November in Miami, a loan officer and title agent were sentenced to significant prison terms, including a five-year sentence for a title agent, for their role in a \$2.5 million reverse mortgage and loan modification scheme.⁶⁴ These high-impact prison terms demonstrate that mortgage fraud is a crime taken seriously by all those involved – beginning with the financial institutions, and all the way through to FinCEN, the investigative agencies, prosecutors, and the courts.

Law enforcement authorities also used FinCEN records extensively in an investigation that involved a large-scale mortgage fraud scheme that resulted in major financial losses as well as numerous foreclosures. Investigators queried FinCEN data and found multiple relevant SARs. The results helped acquire a search warrant that was obtained due to the accumulation of SARs and interviews held with borrowers. Federal and local authorities arrested more than a dozen individuals linked to mortgage fraud operations that filed fraudulent loan applications with several banks and other lenders, generated millions of dollars in loan fees and real estate commissions, and caused millions of dollars in losses when the homes went into foreclosure because the purchasers were unable to make their monthly payments.

Two separate indictments outlined schemes in which real estate professionals prepared mortgage applications that contained false information about borrowers' income, employment, assets, and intent to occupy the properties. In the first case, investigators estimated that the conspiracy was responsible for banks funding at least \$25 million in mortgages. In the second case, authorities believe that banks funded at least \$10 million based on fraudulent loan applications. FinCEN supported this investigation through its independent work and through its collaborations with the FFETF.⁶⁵

As a participant in the Federal loan modification and foreclosure rescue fraud initiative, FinCEN has supported more than 150 mortgage fraud cases with over 1,200 subjects and has disseminated more than 190 analytical reports since April 2009.

And in addition to supporting investigations of mortgage loan fraud and loan modification fraud, FinCEN provides analytical support for a wide range of other cases pursued by Federal, State, and local law enforcement agencies and other authorities. FinCEN analysts also support U.S. Attorneys' Offices, as well as regional Mortgage Fraud Task Forces by providing *strategic* information on mortgage fraud hotspots within local jurisdictions. FinCEN assists the Executive Office for United States Attorneys in identifying areas in greatest need of additional resources for combating mortgage fraud, by identifying areas with high concentrations of suspected fraud.

Information provided by financial institutions on SARs related to mortgage fraud continues to yield investigative dividends.⁶⁶ For example, a former Federal agent was found guilty at trial on various charges related to the purchase of real estate. The former agent allegedly fabricated information provided to financial institutions regarding his position and income. The case began

⁶³ See <http://www.stopfraud.gov/iso/opa/stopfraud/GAN-1202231.html>.

⁶⁴ See <http://www.justice.gov/usao/fls/PressReleases/111103-02.html>.

⁶⁵ See http://www.fincen.gov/news_room/rp/files/annual_report_fy2011.pdf (page 43).

⁶⁶ See http://www.fincen.gov/news_room/rp/files/annual_report_fy2011.pdf. (pages 36-39).

when a Federal analyst was proactively examining SARs in connection with mortgage loan fraud investigations and recognized the subject of a SAR as a current Federal agent.

The SAR narrative indicated that the defendant provided the filer with fraudulent statements concerning income and employment when applying for a mortgage loan. The institution claimed a loss of more than \$200,000. According to subsequent SARs, the defendant claimed to be president of a company, which did not exist. Other SARs on the defendant alleged suspected mortgage fraud, bank fraud, and wire transfer fraud. According law enforcement officials investigating the case, the defendant's criminal activity could have gone undetected without the information that was made available in the SARs.⁶⁷

In addition, FinCEN collaborated with the HUD-OIG to compare data within the FHA's mortgage database, the Single Family Data Warehouse (SFDW), with MLF SARs filed over a period of several years. FinCEN reviewed loan default claims and home equity conversion mortgage (reverse mortgage) data on borrowers and appraisers of FHA insured loans, identified related MLF SARs, and provided analysis to assist in law enforcement efforts by various Federal and State agencies.

Analytical products were developed for 11 states and 15 metropolitan areas in support of FFETF and other efforts. This demonstrated to law enforcement how the analysis of combined data sets from different agencies could increase the value of the data and allow agencies to quickly detect mortgage fraud and help protect the FHA program from scammers. FinCEN, HUD-OIG and the U.S. Secret Service formed the Suspicious Mortgage Activity Review and Targeting (SMART) Team in 2010 to continue identifying targets in specific metro areas using this strategy.

In addition to collaborating with our law enforcement partners on investigations, FinCEN also works with our counterparts to highlight new fraud schemes. Most recently, the October 2011 edition of FinCEN's *SAR Activity Review – Trends, Tips, and Issues*, featured an article on bankruptcy-related mortgage fraud and mortgage rescue scams.⁶⁸ The article was written by the Executive Office of United States Trustees, in consultation with FinCEN, the FBI, and the HUD-OIG.

Mortgage Fraud Red Flags and Trends – Then and Now

When I first spoke at the MBA's national fraud issues conference over three years ago I quoted one of the past Chairmen of the Mortgage Bankers Association, Kieran P. Quinn, who stated after the release of FinCEN's April 2008 report on trends in mortgage fraud that it is "*the authoritative source for data on fraud perpetrated against mortgage lenders and one which our members rely heavily on to spot trends and stay one step ahead of the fraudsters.*"

Notwithstanding that endorsement from MBA leadership, it was apparent that many participants in the conference had not yet taken advantage of the information made publicly available by FinCEN. I was pleased to see much broader awareness of the expanded FinCEN information when I joined you last year, and I expect you will hear many references to FinCEN information, and SARs in particular, over the course of the coming days.

⁶⁷ See http://www.fincen.gov/news_room/rp/files/annual_report_fy2011.pdf (page 45).

⁶⁸ See http://www.fincen.gov/news_room/rp/files/sar_tti_20.pdf (pages 55-62).

It is particularly important to me to raise awareness of the analytical reports published by FinCEN. As I stated at this conference three years ago, when I also announced the link from our homepage to our studies on mortgage fraud:

One of the reasons we publish some of our analytical products is to give value back to the financial industry. What I mean by that is financial institutions are required by FinCEN's regulations to have robust AML compliance programs in place to prevent criminal abuse of their institutions and to report to FinCEN information that is useful to law enforcement in fighting crime. I recognize that these responsibilities come at a cost to financial institutions that commit significant resources to these efforts.

But our analytical products are designed not only to provide insights into some of the ways we use the data filed under the BSA. They are also designed in part to provide feedback on risks and vulnerabilities to better arm your financial institutions and customers to protect themselves from becoming victims of mortgage fraud. The continuing dialogue between the financial industry and government, through reporting, feedback and discussions like at this conference today, promote our common goal.⁶⁹

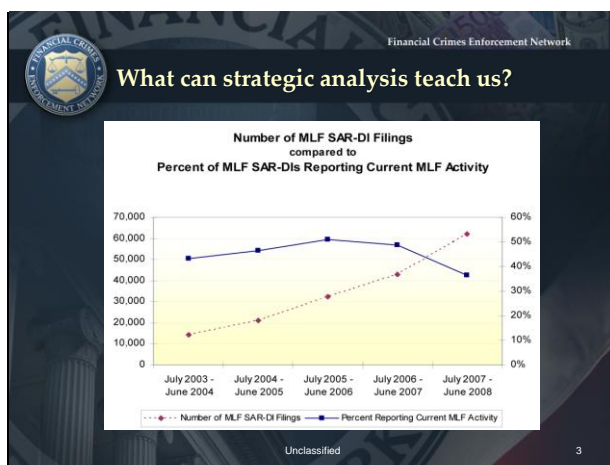
In its February 4, 2011 public comment letter on FinCEN's proposed rulemaking, the MBA encouraged FinCEN to provide examples of red flags and other guidance as to suspicious activity that would merit filing a SAR. The analytical reports made public by FinCEN should be one of your greatest resources in this regard. In our first comprehensive report devoted to mortgage fraud which we published almost six years ago, FinCEN analyzed the prior decade of suspicious activity reporting. That study explained a range of fraudulent schemes in an effort to provide the financial industry with red flag indicators that could help them protect their financial institutions and their customers from being victims of fraud.

In order to illustrate FinCEN's efforts to make information available to you involved in the residential mortgage industry, let me highlight a few examples of the trends and patterns of information that we have seen, among the much more detailed information available on our public Web site. Specifically, I would like to highlight some examples of FinCEN's efforts to make available to you on a timely basis information about how fraudulent activity is changing over time.

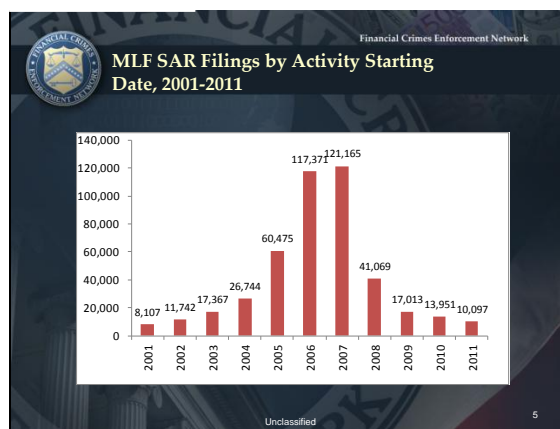
Rather than just reporting on the number of SARs received by FinCEN over the years, this time series reflects our review of the underlying suspicious activity to get a better understanding of when the suspected fraudulent activity took place. When I first spoke before this conference in 2009, I referenced an earlier study showing that while the number of SARs reporting suspected mortgage loan fraud was *rising* quickly, a *decreasing* percentage of those reports was reporting suspected current mortgage fraud activity. Here is a graphical depiction of that earlier shift.⁷⁰

⁶⁹ See http://www.fincen.gov/news_room/speech/pdf/20090316.pdf (pages 5-6).

⁷⁰ See FinCEN Report: "*Mortgage Loan Fraud Connections with Other Financial Crime*," March 2009. http://www.fincen.gov/news_room/rp/files/mortgage_fraud.pdf.



Here is a more current depiction of how the filing versus activity trends have continued in a table appearing in FinCEN’s most recent publication about filing trends through the end of 2011. (Keep in mind that the latter figure can be expected to understate more recent fraudulent activity due to the lag time in identifying and reporting suspected fraud.)⁷¹

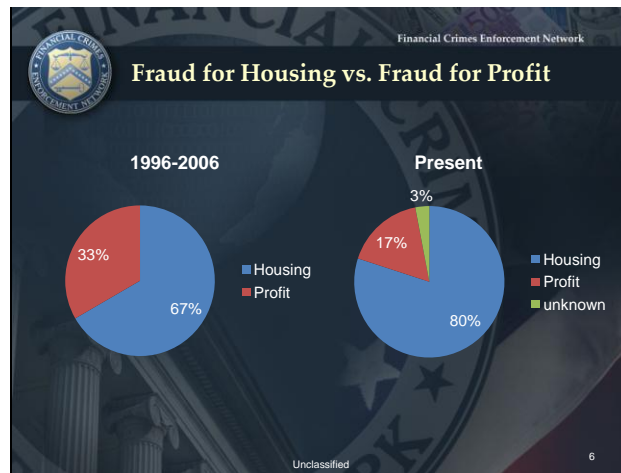


These graphs together clearly illustrate the situation of which there is today greater public awareness – that the rise in housing prices in the past decade together with some industry lending and documentation practices that in retrospect may be viewed as less than prudent, together facilitated an environment in which a significant amount of fraud occurred. On the positive side, we believe that the overall amount of fraud in the residential mortgage markets has declined significantly from the peak of five to six years ago. That notwithstanding, we are equally certain that fraudulent activity has continued. It is for that reason that over the past few years FinCEN has dedicated much of its analytical focus both in support of law enforcement investigations, as well as in the information it can make available to the public, to identifying trends and patterns in more recently reported suspected fraudulent activity.

Here are a few examples to highlight how trends and patterns have changed over time:

⁷¹ See http://www.fincen.gov/news_room/rp/files/MLF_Update_Q4_2011_508.pdf.

- In the decade of suspected mortgage fraud reporting from 1996 through early 2006, FinCEN estimated that approximately 2/3 described *fraud for property* (i.e. homebuyers misrepresenting income or assets to purchase homes for personal use) and 1/3 described *fraud for profit* (i.e. perpetrator intends to abscond with proceeds, with little or no intention to occupy the property; often committed with the complicity of industry insiders).
- In the last quarter of calendar year 2011, FinCEN looked at a sample of SARs detailing more recent activity, and estimated that about 80 percent of the sample described *fraud for housing* while less than one-fifth described *fraud for profit*.⁷²



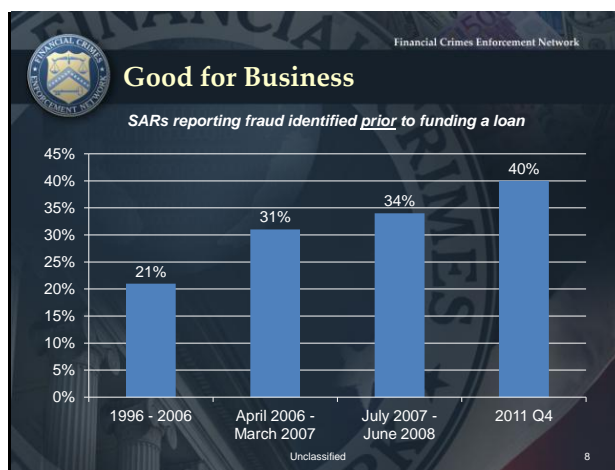
We have reported to you how criminal activity has evolved over time and as the housing markets and economy have changed, from fraud in mortgage origination, to fraud in loan modifications, with respect to reverse mortgages, as uncovered through repurchase demands, and in conjunction with short sales. In addition to parsing the data in a time series, and by type of activity, we can also garner great insights from looking at geographical patterns. When I spoke at this conference last year I announced that FinCEN was making data publicly available on a quarterly basis for almost 600 urban areas and 960 counties. I provided you an example comparing the differing activity trends in Florida versus California.

These examples provide insights into the ways FinCEN looks at this and related information to help law enforcement not only further individual criminal investigations and prosecutions, but to proactively focus limited government resources on the areas of greatest risk and where we can make the greatest difference in detecting and deterring fraudulent behavior.

I encourage you to join many of your counterparts in the mortgage industry to similarly use this range of information made available by FinCEN in detecting and deterring risks of fraud most relevant to your business. It is good for business: Among the positive analytical patterns FinCEN has observed over time are how notwithstanding the increased reporting of suspected mortgage fraud, that there was also a trend of the fraud increasingly being detected prior to funding the mortgage.

⁷² See http://www.fincen.gov/news_room/rp/files/MLF_Update_Q4_2011_508.pdf.

This was observed in the April 2008 study, referenced in the 2009 speech as follows: “A key finding was a 50 percent increase in SARs that reported intercepting the suspected fraud prior to funding a mortgage (an indication of growing vigilance and awareness in the financial community).”⁷³ As the study notes, “Suspected fraud was detected prior to loan disbursements in 31% of the mortgage loan fraud SARs filed between April 1, 2006 and March 31, 2007, compared to 21% during the preceding ten years.”⁷⁴ And this upward trend continued to increase. In a report FinCEN issued in February 2009, and covering from July 2007 – June 2008, the percentage rose to 34 percent.⁷⁵ And in our recent study, 40 percent of MLF SAR narratives, where SAR filers provide details of why an activity appears suspicious, indicated the filing institution turned down the subject’s loan application, short sale request, or debt elimination attempt because of the suspected fraud reported in the SAR.⁷⁶



It is also critical to our combined efforts of government and private industry to restore the health of the residential mortgage markets, including weeding out fraudulent activity. FinCEN’s new obligations on non-bank mortgage lenders and originators going forward will be a significant contribution in this area both in terms of increasing overall vigilance against criminal abuse, and in additional reporting to FinCEN, thereby making more information available to analyze. Personally, I am very pleased to have been able to work on this rule from its conception and development, and now as we move from finalization to implementation.

Conclusion

Thank you for your time today as we continue our dialogue on these important issues. Let me thank in advance those non-bank mortgage lenders and originators now working to implement the new requirements. I hope that my remarks today have helped provide a better understanding of why it is so important.

⁷³ See FinCEN News Release: “*FinCEN Releases Updated Mortgage Fraud Report, More Suspected Fraud Being Intercepted Before Funds Were Disbursed*,” April 3, 2008. http://www.fincen.gov/news_room/nr/pdf/20080403.pdf

⁷⁴ See http://www.fincen.gov/news_room/rp/files/MortgageLoanFraudSARAssessment.pdf (page 3).

⁷⁵ See http://www.fincen.gov/news_room/nr/pdf/20090225a.pdf (pages 18-19).

⁷⁶ See http://www.fincen.gov/news_room/rp/files/MLF_Update_Q4_2011_508.pdf.

Let me also take the opportunity to publicly thank the Mortgage Bankers Association for its offer extended in its public comment letter on the proposed rule of MBA's "assistance to FinCEN in helping to educate residential mortgage lenders and originators, and to provide adequate background and training on AML programs and the requirements of filing SARs." FinCEN's experience with a number of industry associations across financial sectors has shown the value of leveraging the information channels to their membership. This can only further our shared goals of promoting legitimate economic activity while protecting financial systems from criminal abuse.

I look forward to future suspicious activity reporting by non-bank mortgage lenders and originators and the opportunities it will create for FinCEN to share new insights on trends and patterns based on a more comprehensive reporting among the broad range of entities serving the American public.

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