Department of the Treasury
Financial Crimes Enforcement Network

Advisory

FIN-2012-A009
Issued: August 16, 2012
Subject: Suspicious Activity Related to Mortgage Loan Fraud

The Financial Crimes Enforcement Network (FinCEN) is issuing this Advisory to highlight activity related to mortgage loan fraud so that financial institutions may better assist law enforcement when filing Suspicious Activity Reports (SARs). 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. Using this additional information, the vigilance of financial institutions, together with law enforcement efforts against illicit mortgage-related activities, will help protect financial institutions and their customers from financial loss, and support the housing markets and the U.S. financial system as a whole.

This Advisory supports the efforts of the Financial Fraud Enforcement Task Force (FFETF),[1] the U.S. Department of the Treasury's broader initiatives to ensure that U.S. financial institutions are not used as conduits for illicit activity, and a FinCEN and U.S. Department of Housing and Urban Development (HUD) OIG mortgage fraud initiative.

Types of Mortgage Loan Fraud Identified by Law Enforcement

The following list identifies types of mortgage loan fraud, which are primarily based upon schemes and scams frequently reported or described in SARs or identified by our law enforcement and regulatory partners. This information is intended to assist financial institutions in identifying when illicit activities occur in connection with mortgage loan transactions.

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.

---

[1] For more information on the FFETF and its current initiatives, please visit http://www.fincen.gov/fraudenftaskforce.html.

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: 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:[2] 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:[3] 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:[4] 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):[5] 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.

[2] For additional information pertaining to schemes of this type, please see the June 2010 Advisory, available at: http://www.fincen.gov/statutes_regs/guidance/pdf/fin-2010-a006.pdf.
[3] For additional information pertaining to foreclosure rescue fraud schemes, please see the April 2009 Advisory, available at: http://www.fincen.gov/statutes_regs/guidance/pdf/fin-2009-a001.pdf.
[4] For additional information and resources from FinCEN and links to other governmental efforts to combat identity theft, please visit FinCEN's website at: http://www.fincen.gov/help4victims.html.
[5] For additional information pertaining to Home Equity Conversion Mortgage (HECM) fraud schemes, please see the April 2010 Advisory, available at: http://www.fincen.gov/statutes_regs/guidance/html/fin-2010-a005.html.

Possible Red Flag Indicators of Mortgage Loan Fraud

The following highlights potential red flag indicators of illicit activity related to mortgage fraud. These only indicate possible signs of fraudulent activity; they do not 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 financial institution 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 transaction or business arrangement 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 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.[6]

Suspicious Activity Reporting

If a financial institution 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.[7] When completing SARs on suspected mortgage loan fraud, financial institutions 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.[8]

---

[6] For additional information pertaining to schemes of this type, please see the June 2010 Advisory, available at: http://www.fincen.gov/statutes_regs/guidance/pdf/fin-2010-a006.pdf.

[7] *See, e.g.,* 31 CFR § 1020.320 and 31 CFR § 1029.320

[8] For additional assistance on key terms related to types of real estate fraud, please see the Suspicious Activity Report (SAR) Advisory Key Terms Guidance, available at: http://www.fincen.gov/news_room/advisory/AdvisoryKeyTerms.html

Financial institutions, when filing a SAR, are also requested, where available, to include in the narrative portion, the Conference of State Bank Supervisors' (CSBS) National Mortgage Licensing System and Registry (NMLS) assigned "NMLS Unique Identifier." As required by Section 1503 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act), a NMLS unique identifier is permanently assigned to each state-licensed or federally registered mortgage loan originator (MLO), as well as each company, branch, and control person that maintains a single account in NMLS. The value of the NMLS Unique Identifier has been 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.

Questions or comments regarding the contents of this advisory or the June 2010 Advisory should be addressed to the FinCEN Regulatory Helpline at 800-949-2732. ***Financial institutions wanting to report suspicious transactions that may relate to terrorist activity should call the Financial Institutions Toll-Free Hotline at (866) 556-3974 (7 days a week, 24 hours a day).*** The purpose of the hotline is to expedite the delivery of this information to law enforcement. Financial institutions should immediately report any imminent threat to local-area law enforcement officials.