

Anti-Money Laundering Program



Preparation is Protection



By Jonathan Foxx

The Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Department of the Treasury, recently finalized regulations (Final Rule) requiring non-bank Residential Mortgage Lenders and Originators (RMLOs) to establish an Anti-Money Laundering Program (AML Program) and file Suspicious Activity Reports (SARs), as FinCEN requires of other types of financial institutions.¹

FinCEN issued these regulations defining non-bank residential mortgage lenders and originators as loan or finance companies for the purpose of requiring them to establish AML Programs and report suspicious activities under the Bank Secrecy Act (BSA).

The effective compliance date for the Final Rule is Aug. 13, 2012.²

For additional background information, this article may be read in conjunction with my March 2012 article in this publication, entitled "Anti-Money Laundering Debuts for Non-Banks."³

FinCEN may impose civil monetary penalties for non-compliance with its regulations, including a penalty for each suspicious activity reporting violation, so compliance with the SAR regulations should be considered mandatory on the part of responsible management.⁴

BSA authorizes the Treasury to issue regulations requiring financial institutions, including any "loan or finance company" to keep records and file

reports that are deemed to have "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."

In the supplementary information to the Final Rule, the term loan or finance company "can reasonably be construed to extend to any business entity that makes loans to or finances purchases on behalf of consumers and businesses. Some loan and finance companies extend personal loans and loans secured by real estate, mortgages and deeds of trust, including home equity loans."

The following constitutes these categorical definitions recognized by FinCEN:

- **Loan or finance company:** A person engaged in activities that take place wholly or in substantial part within the United States in one or more of the capacities listed below, whether or not on a regular basis or as an organized business concern. This includes but is not limited to maintenance of any agent, agency, branch or office within the United States. The term "loan or finance company" shall include a sole proprietor acting as a loan or finance company, and shall not include: A bank, a person registered with and functionally regulated or examined by the Securities & Exchange Commission (SEC) or the U.S. Commodity Futures Trading Commission (CFTC), any government-sponsored enterprise (GSE) regulated by the Federal Housing

Finance Agency (FHFA), any federal or state agency or authority administering mortgage or housing assistance, fraud prevention or foreclosure prevention programs, or an individual employed by a loan or finance company or financial institution. A loan or finance company is not a financial institution as defined in these regulations.

- **Residential mortgage lender:** The person to whom the debt arising from a residential mortgage loan is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement, or to whom the obligation is initially assigned at or immediately after settlement. The term "residential mortgage lender" shall not include an individual who finances the sale of the individual's own dwelling or real property.
- **Residential mortgage originator:** The person accepting a residential mortgage loan application, or offers or negotiates terms of a residential mortgage loan.
- **Residential mortgage loan:** The loan that is secured by a mortgage, deed of trust or other equivalent consensual security interest on:
 - ◆ A residential structure that contains one to four units, including (if used as a residence) an individual condominium unit, cooperative unit, mobile home or trailer; or
 - ◆ Residential real estate upon which

such a structure is constructed or intended to be constructed.

FinCEN interprets the term "loan or finance company" under the BSA to include any non-bank residential mortgage lenders and originators (i.e., "mortgage companies," mortgage bankers or lenders," and "mortgage brokers") in the residential mortgage business sector.

In this article, I will provide a brief overview of but a few of the many salient features that should be expected in every AML Program. To give you an idea of the size and complexity of a well-constructed AML Program, my firm's AML Program is well over 50 pages—which consists of a policy statement and numerous appendices for applicable procedures. This should give you some idea of the depth and detail needed for properly implementing AML compliance. The absence of or any inaccuracies in required program components may indicate a defective policy and procedures—the very tools needed to assist in detecting and preventing money laundering or other illegal activities conducted through mortgage banking conduits.

A word of caution

Do not take the chance of buying an abbreviated or defective AML Program, in the hope of merely satisfying the "basic" FinCEN requirements. Obtaining a boilerplate document with your company's name on it is regressive, and it is a tactic that

Examiners are now regularly criticizing in adverse findings.

These days, regulators are fully aware of this 'short cut' to compliance. An insufficient AML Program may cause adverse examination findings. Indeed, in some cases, template-driven policy and procedures may cause Examiners to escalate their regulatory review of an RMLO's anti-money laundering implementation.

AML compliance is a specialized area of mortgage compliance, necessitating genuine, practical, hands-on, regulatory compliance and experiential knowledge, and an AML Program must reflect precise policies and procedures that not only implement the SAR regulations but also conform to a company's way of doing business.

Please take note: An AML Program is a policy statement and set of procedures where the purchase price should not be an operative consideration. Caveat Emptor!

What is money laundering?

Money laundering is the criminal practice of filtering "ill-gotten gains" or "dirty" money through a maze or series of transactions, in an effort to "clean" these funds and make them appear to be proceeds from legal transactions. Money laundering does not always involve cash transactions at every stage of the money laundering process. Any transaction conducted through the RMLO has the potential to constitute money laundering.

Although money laundering is a diverse and often complex process, it often involves three independent steps, which at times occur simultaneously:

- **Placement:** The process of placing, through deposits, assets, or other means, unlawful cash proceeds with traditional financial institutions.
- **Layering:** The process of separating the proceeds of criminal activity from their origin through the use of layers of complex financial transactions, such as converting cash into traveler's checks, money orders, wire transfers, letters of credit, stocks, bonds, mortgages, or purchasing valuable assets, such as art or jewelry.
- **Integration:** The process of using an apparently legitimate transaction to disguise the illicit proceeds, allowing the laundered funds to be disbursed back to the criminal. Different types of financial transactions, such as sham loans, or through legitimate residential mortgage loan transactions, may be used to consummate the integration.

Actually, any transaction that could be or appears to be linked to a common scheme may be considered suspicious activity.

Minimum program requirements⁵

The following four initiatives must be

implemented on and after Aug. 13, 2012:

1. Establish a written policy and set of procedures

Each RMLO is required to develop and implement a written anti-money laundering program that is reasonably designed to prevent it from being used to facilitate money laundering or the financing of terrorist activities. The AML Program must be approved by senior management.

Be advised: An RMLO must make its written, anti-money laundering program available to the Financial Crimes Enforcement Network or its designee, upon request.

■ Program parameters

Incorporate policies, procedures, and internal controls based upon the RMLO's assessment of the money laundering risks associated with its products and services. Policies, procedures, and internal controls developed and implemented by a loan or finance company should include provisions for integrating the company's agents and brokers into its AML Program, and it should obtain all relevant customer-related information necessary for an effective AML Program.

2. Designate a BSA Officer who will be responsible for ensuring that:

- (a) The AML Program is implemented effectively, including monitoring the compliance of the company's agents and brokers with their obligations under the program.
- (b) The AML Program is updated, as necessary.
- (c) Appropriate persons are educated and trained in SAR regulation requirements.
- (d) Training is provided or arranged.
- (e) Testing is arranged.

3. **Provide for on-going training** of appropriate persons concerning their responsibilities under the program: An RMLO may satisfy this requirement with respect to its employees, agents, and brokers by directly training such persons or verifying that such persons have received training by a competent third-party with respect to the loan products and services offered.

4. **Arrange for testing** to monitor and maintain an adequate program, including further testing to determine compliance of the company's agents and brokers with their obligations under the AML Program: The scope and frequency of the testing should be commensurate with the risks posed by the company's loan products and services. Such testing may be conducted by an independent third party or by any officer or employee of the company, other than the BSA Officer.⁶

Risk assessment

RMLOs should conduct an assessment of the overall risk for money laundering. To determine such risk, the following

questions are important:

- What are the RMLO's products and services?
- Who are the RMLO's customers?
- What information is understood about the RMLO's customers?
- Which geographic locations and locations of the customers affect the RMLOs risk profile?

Risk profile review

Management should follow all guidance offered by the RMLO's federal regulator and/or the Financial Crimes Enforcement Network (FinCEN) concerning money laundering risks.

A risk assessment should be updated and documented from time to time, but no less than every 18 months. Any changes to a company's risk profile should be reported to management, and internal controls to identify and mitigate risk must be implemented.

Monitoring for suspicious activity

The RMLO's management must institute procedures which are designed to detect money laundering. Management should identify high-risk accounts in the company's loan production or portfolio, by using various methodologies, such as accessing a federal banking agency's list, a GSE exclusionary list, or other lists of prohibited and restricted parties. In particular, management should enable AML due diligence procedures relating to customers who apply for a mortgage loan product.

The AML Program is intended to cover initial purchase money loans and traditional refinancing transactions facilitated or originated by RMLOs. Furthermore, FinCEN expects that RMLOs participating in transactions involving funds or programs under the Troubled Asset Relief Program and similar federal programs, or a state housing authority or housing assistance program, will follow the AML Program and file SARs to the extent that any transactions conducted by the RMLO could reasonably be considered to be extending a residential mortgage loan or offering or negotiating the terms of a residential mortgage loan.⁷

Management and the BSA Officer should create certain reports to monitor for potential suspicious activity transactions. Furthermore, all affected employees ought to receive adequate internal or external training on detecting money laundering and other illegal activities.

I would advise management to require the on-going use of certain search engines and applications pertaining to all residential mortgage loan originations, in order to monitor for filing suspicious activity reports (i.e., such as LexisNexis, Interthinx, OFAC screening through Credit Reporting Agencies, and so forth).

Suspicious activity reporting

If any company employee becomes aware of or suspects criminal activity by either the company's customers or

employees, the employee should promptly report the matter to the BSA Officer. The BSA Officer is then required to investigate the matter further to determine whether to report the suspicious activity to FinCEN. The investigation should be based on an objective consideration of the facts, as submitted by the employee and uncovered in the course of the BSA Officer's review.

Generally, supporting documentation may not need to be immediately filed along with the SAR when it is submitted to FinCEN, but the company should maintain all documentation that supports the facts and circumstances of the SAR review in a special SAR folder, restricted to only specific, need-to-know individuals, and also kept either in hard copy or on computer disk, CD, or on anti-money laundering software.

The RMLO is not obligated to investigate or confirm the underlying crime (i.e., terrorist financing, money laundering, tax evasion, identity theft, and various types of fraud). Investigation is the responsibility of law enforcement.

When evaluating suspicious activity and completing the SAR, the RMLO should endeavor to identify the characteristics of the suspicious activity to the best of its ability. After filing the SAR, all documentation related to such filing must be retained for five years from the date of the filing.

SAR disclosure—prohibition

No director, officer, employee, or agent of an RMLO that reports a suspicious transaction is permitted to notify any person involved in the transaction that the transaction has been reported to FinCEN through filing the SAR. Any person subpoenaed or otherwise requested to disclose a SAR or the information contained in a SAR, except when such disclosure is requested by FinCEN or an appropriate law enforcement or federal banking agency, must decline to produce the SAR or provide any information that would disclose that a SAR has been prepared or filed.⁸

Many RMLOs have had some difficulty understanding this provision. The BSA Officer and any other staff aware of the possibility of a suspicious activity must keep such information confidential. Actual SARs are also to be kept confidential. Any person subpoenaed or otherwise requested to disclose a SAR or the information contained in a SAR should decline to produce the information and seek the advice of legal counsel.

If the company determines it is necessary to report a suspected illegal activity to local law enforcement authorities, or has been told to do so by FinCEN, the BSA Officer should carefully review all known facts. SARs may be filed when there is a reasonable basis for believing that a specific crime has occurred, is occurring, or may occur.

FinCEN and regulators should be

continued on page 24

notified of any subpoena or request to disclose the SAR, as well as the company's response thereto. Furthermore, FinCEN and, if applicable, the company's regulator fully expect that the RMLO's internal controls for SAR filing have substantively minimized the risk of such disclosure. Thus, the RMLO should maintain appropriate means to protect the confidentiality of SARs.

FinCEN guidance does not require an RMLO to share a SAR with a corporate affiliate other than a controlling company or head office. However, in order to manage risk across a company's corporate structure involving corporate affiliates, the company should determine that when a SAR is filed the information underlying a SAR filing may be disclosed, under certain, narrowly defined circumstances, to the BSA Officer of its corporate affiliate.

Safe harbor from liability

Federal law⁹ provides protection from civil liability for all reports of suspicious transactions made to appropriate authorities, including supporting documentation, regardless of whether such reports are filed pursuant to the SAR instructions.

Specifically, the law provides that a financial institution and its directors, officers, employees, and agents that make a disclosure to the appropriate authorities of any possible violation of law or regulation, including a disclosure in connection with the preparation of SARs:¹⁰

"Shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure."¹¹

This safe harbor protection applies to SARs filed within the required reporting risk profile thresholds of the RMLO's AML Program, as well as to SARs filed voluntarily on any suspicious activity below those threshold parameters.

Examination and enforcement

Initially, the Internal Revenue Service (IRS) has the delegated authority to examine for compliance with FinCEN's regulations since RMLOs do not have a federal function regulator.

FinCEN has announced that it will determine whether other state and federal agencies, such as the Consumer Financial Protection Bureau (CFPB) and the federal banking agencies, should also have examination authority.

If FinCEN further delegates examination authority, it has stated its commitment to work with the other relevant regulatory agencies to develop consistent examination procedures.¹²

Training

The BSA Officer must conduct or arrange for annual meetings with all affected employees and other company personnel who handle any aspect of residential mortgage loan transactions, in order to keep them informed of any new changes to FinCEN requirements or any laws and updates that may affect the company's AML Program. It is also the responsibility of the BSA Officer to see that all employees are trained in AML compliance at the time of their initial employment. Additional meetings or other training should be held, as necessary, to address AML news and process concerns that arise in the interim.

Training may be conducted through presentations at a meeting, circulation of memoranda or other written materials, or any other suitable manner of delivery. Training may be internal or external. A copy of all training materials presented or circulated should be retained by the BSA Officer along with a written record of attendance by affected personnel.

At least once per year, the BSA Officer should attend an external training session or conference relating to the Bank Secrecy Act, fraud detection, or money laundering.

Testing

The RMLO may use the services of an independent, external auditor to review its policies, procedures, and processes, and test the overall compliance with statutory and regulatory requirements for monitoring, detecting, and reporting suspicious activities. An internal auditor may conduct the testing, so long as the BSA Officer is not involved in the audit and due diligence process.

The testing itself should include, but need not be limited to, certain aspects of compliance with SAR regulations, especially providing an audit scope that contains the following elements:

- Identification of Unusual Activity
- Transaction (Manual Transaction) Monitoring
- Surveillance (Automated Account) Monitoring
- Managing Alerts
- SAR Decision Making
- SAR Completing and Filing
- Transaction Testing

Required reporting

Every RMLO must file a report with FinCEN of any suspicious transaction relevant to a possible violation of law or regulation. An RMLO may also file with FinCEN a report of any suspicious transaction that it believes is relevant to the

possible violation of any law or regulation, but whose reporting is not required.

A transaction requires reporting if it is conducted or attempted by, at, or through an RMLO if the transaction involves or aggregates funds or other assets of at least \$5,000, and the RMLO knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

1. Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location or control of such funds or assets), as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation.
2. Is designed, whether through structuring¹³ or other means, to evade any SAR filing requirements or any other regulations promulgated under the BSA.
3. Has no business or apparent lawful purpose or is not the sort of activity in which the particular customer would normally be expected to engage, and the RMLO knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.
4. Involves the use of the RMLO to facilitate criminal activity.

More than one RMLO may have an obligation to report the same transaction, and other financial institutions may have separate obligations to report suspicious activity with respect to the same transaction. In those instances, no more than one report is required to be filed by the RMLO and other financial institutions involved in the transaction. However, out of an abundance of caution, the RMLO should file a SAR when it has reached the decision to file a SAR with FinCEN.

Timing for filing SAR Reports

The SAR rules require that a SAR be filed no later than 30 calendar days from the date of the initial detection of facts that may constitute a basis for filing a SAR. If no suspect can be identified, the time period for filing a SAR is extended to 60 days. The time period for filing a SAR starts when the RMLO knows or has reason to suspect that the activity or transactions under review meet one or more of the definitions of suspicious activity.

The phrase "initial detection" should not be interpreted as meaning the moment a transaction is highlighted for review. There are a variety of legitimate transactions that could raise a "red flag" simply because they are inconsistent with normal account activity. The 30-day (or 60-day) period does not begin until an appropriate review is conduct-

ed and a determination is made that the transaction under review is "suspicious" within the meaning of FinCEN's SAR regulations.

In any event, the review should be completed in a reasonable period of time.

What constitutes a "reasonable period of time" will vary according to the facts and circumstances of the particular matter being reviewed and the effectiveness of the SAR monitoring, reporting, and decision-making process. The key factors are that the RMLO has (1) established adequate procedures for reviewing and assessing facts and circumstances identified as potentially suspicious, (2) that those procedures are documented, and (3) followed in accordance with SAR regulations and the company's AML Program.

For situations requiring immediate attention, in addition to filing a timely SAR, the company should immediately notify, by telephone, an "appropriate law enforcement authority" and, as necessary, the company's own primary regulator or state banking department.

For this initial notification, an "appropriate law enforcement authority" would generally be the local office of the IRS Criminal Investigation Division or the Federal Bureau of Investigations. However, notifying law enforcement of a suspicious activity does not relieve an RMLO of its obligation to file a SAR.

For suspicious activity related to terrorist activity, an RMLO may also call FinCEN's Financial Institutions Hotline at the toll-free number (866) 556-3974 (seven days a week, 24 hours a day) to further facilitate the immediate transmittal of relevant information to the appropriate authorities.

The Hotline provides law enforcement and other authorized recipients of SARs information with details of the suspicious activity in an expedited fashion. Using the Hotline is voluntary and is not a substitute for the responsibility to file a SAR in accordance with applicable regulations.

Red flags

The Federal Financial Institutions Examination Council (FFIEC) provides a Bank Secrecy Act/Anti-Money Laundering Examination Manual in which may be found a list of "Red Flags" associated with Money Laundering and Terrorist Financing.¹⁴ This list is not comprehensive and it is updated from time to time. However, many of these Red Flags are not specifically relevant to RMLO transactions.

In addition, the RMLO may utilize the 26 red flags list of identity theft detection compiled by the Federal Trade Commission (FTC), and adopted through interagency guidelines, in the guidelines implementing Section 114 and Section 315 of the Fair and Accurate Credit Transactions Act of 2003 (FACTA).¹⁵

And, as indicated above, various search engines and lists are available to highlight or identify potential incidents of suspicious activity.

Using the FFIEC list, I will provide a brief sampling of the types of red flags that may be involved in RMLO transactions. Keep in mind that this list is by no means all-inclusive, but only illustrative. It offers some insights into where Examiners recognize possible money laundering and terrorist financing schemes.

The mere presence of a red flag is not by itself evidence of criminal activity. Closer scrutiny should help to determine whether the activity is suspicious or one for which there does not appear to be a reasonable business or legal purpose.

■ **Insufficient or suspicious information**

- ❖ A customer uses unusual or suspicious identification documents that cannot be readily verified.
- ❖ A customer provides an individual tax identification number after having previously used a social security number.
- ❖ A customer uses different tax identification numbers with variations of his or her name.
- ❖ A customer's home or business telephone is disconnected.
- ❖ The customer's background differs from that which would be expected on the basis of his or her business or employment activities.
- ❖ A customer makes frequent or large transactions and has no record of past or present business or employment experience that may substantiate and explain the transactions.

■ **Funds and asset transfers**

- ❖ Many funds transfers are sent in large, round dollar amounts, without adequate explanation or verifiable sourcing.
- ❖ Source of funds in asset statements occurs to or from a financial secrecy haven, or to or from a higher-risk geographic location without an apparent business reason, or the activity is inconsistent with the customer's business or employment history.
- ❖ Large, incoming funds transfers are received from a foreign entity, with little or no explicit reason or documentable explanation.
- ❖ Funds transfer activity in asset statements is unexplained, repetitive, or shows unusual patterns.
- ❖ Payments or receipts are evidenced with no apparent links to legitimate contracts, businesses, employment, goods, or services.

Training

As mentioned above, the AML Program training may be conducted on an internal or external basis. Whatever the choice, the training should at least consist of the following topics:

- What is anti-money laundering?
- What are the customary red flags?
- Which government agencies are involved in AML compliance?

- How is suspicious activity reporting implemented?
- What are the typical money laundering typologies?
- How to complete a SAR?
- What is a customer identification program?

In my view, there are certain learning objectives to a viable training format.

These are the goals that my firm seeks to accomplish through our AML training:

- Understanding money laundering and the adverse effects on mortgage professionals.
- Exploring the Bank Secrecy Act, including the general history, objectives, coverage, requirements, and penalties for violations.
- Briefly taking a look at the USA Patriot Act, specifically its coverage in relation to RMLOs.
- Examining the role of government agencies in the prevention of money laundering.
- Reviewing the requirements of an appropriate Anti-Money Laundering Program.
- Outlining the types, detection, and potential presence of suspicious activity.
- Analyzing risk management and information sharing protocol.
- Discussing educational opportunities hosted by FinCEN or offered through other venues.

SAR narrative: "The Five Ws"

If I were to choose the central feature of the SAR, I would select the SAR narrative. Each SAR requires a narrative to be provided by the SAR filer. Over time, my firm has compiled numerous examples of common patterns of suspicious activities from our audit and due diligence reviews. Based on our experience, we believe that there are five interrogative categories to be considered when writing a SAR narrative: Who? what? when? where? and why? The method of operation (or how?) is also very important and should be included in the SAR narrative.

■ **Here are "The Five Ws" to the SAR narrative**

1. Who is conducting the suspicious activity?
2. What instruments or mechanisms are being used to identify the suspicious activity?
3. When did the suspicious activity take place?
4. Where did the suspicious activity take place?
5. Why does the filer think the activity is suspicious?

FinCEN suggests that the RMLO describe briefly its industry or business (i.e., mortgage banker, mortgage broker). Then describe, as fully as possible, why the activity or transaction is unusu-

continued on page 34

al, considering the types of products and services that the mortgage industry or the RMLO offers, and the nature and normally expected, transactional activities of customers.

■ Here is the "how" to the SAR narrative

Always include the "How!" This is an important feature of a SAR narrative.

- ❖ How did the suspicious activity occur?

The narrative section of the SAR should describe the modus operandi or the method of operations of the subject conducting the suspicious activity. In a concise, accurate, and logical manner, the filer should provide a description of how the suspect transaction or pattern of transactions was committed. As completely as possible, the SAR narrative should offer a full picture of the suspicious activity.

To file or not to file

After thorough research and analysis has been completed, findings are typically forwarded to a final "decision-maker." The RMLO's AML Program should already have carefully outlined procedures and processes for referring unusual activity from all business lines to the personnel or department responsible for evaluating suspicious activity. Within those procedures, management must establish a clear and defined escalation process from the point of initial detection to disposition of the investigation.

The decision-maker, usually the BSA Officer, should have the authority to issue the SAR filing decision. When the RMLO uses a committee, there must be a clearly defined process to resolve differences of opinion on SAR filing decisions.

Be sure to document SAR decisions, including the specific reason for filing or not filing a SAR. Thorough documentation provides a record of the SAR decision-making process, including final decisions not to file a SAR. However, due to the variety of systems used to identify, track, and report suspicious activity, as well as the fact that each suspicious activity reporting decision will be based on unique facts and circumstances, no single type of documentation is required when a company decides not to file.

The decision to file a SAR may be viewed as an inherently subjective judgment. During banking examinations the Examiner will focus on whether the company has a comprehensive AML policy and set of procedures, and an effective SAR decision-making process. Examiners may review individual SAR decisions as a means to test the effectiveness of the SAR monitoring, reporting, and decision-making process outlined in the

AML Program.

In those instances where the RMLO has an established SAR decision-making process, whereby AML policies, procedures, and processes reach the conclusion that a SAR should not be filed, the company should not expect to be criticized for the failure to file the SAR, unless the failure is at significant variance with FinCEN's promulgated AML Program guidelines or accompanied by evidence of bad faith.

Contacting FinCEN

There are several ways to contact FinCEN. The following list provides useful contact information, based on the nature of the inquiries.

- General inquiries: (703) 905-3591 (Monday through Friday, 8:30 a.m.-5:00 p.m., ET). 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 through Friday, 8:00 a.m.-5:00 p.m., ET). For financial institutions with questions relating to Bank Secrecy Act and USA Patriot Act requirements and forms.
- Section 314 inquiries: (866) 326-8314 (Monday through Friday, 8:30 a.m.-5:00 p.m., ET)
- Section 314 program office: sys314a@fincen.gov or (866) 326-8314.
- Law enforcement inquiries: (703) 905-3591 (Monday through Friday, 8:30 a.m.-5:00 p.m., ET)
- Financial institutions toll-free hotline: (866) 556-3974 (seven 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.¹⁶

Jonathan Foxx, former chief compliance officer for two of the country's top publicly-traded residential mortgage loan originators, is the president and managing director of Lenders Compliance Group, a mortgage risk management firm devoted to providing regulatory compliance advice and counsel to the mortgage industry. He may be contacted at (516) 442-3456 or by e-mail at jfoxx@lenderscompliancegroup.com.

Footnotes

1—Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Residential Mortgage Lenders and Originators, Department of the Treasury, Financial Crimes Enforcement Network, Final Rule, 31 CFR Parts 1010 and 1029, Federal Register 77/30, February 14, 2012.

2—Ibid.

3—Foxx, Jonathan, "Anti-Money Laundering Debuts for Nonbanks," in *National Mortgage Professional Magazine*, March 2012, Volume 4, Issue 3, pp. 40-43

4—See 31 C.F.R. § 1010.820.

5—Financial Crimes Enforcement Network, 31 CFR Parts 1010 and 1029, Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Residential Mortgage Lenders and Originators.

6—Failure to comply with the Program requirements of this section may constitute a violation of the Bank Secrecy Act.

7—Op. cit. 1.

8—31 CFR 103.18(e); 31 USC 5318(g)(2).

9—31 USC 5318(g)(3).

10—Safe Harbor for Banks From Civil Liability for Suspicious Activity Reporting, FFIEC BSA/AML Examination Manual, 04/29/10.

11—31 USC 5318(g)(3).

12—Op. cit. 1.

13—Structuring, also known as "smurfing," is the practice of executing financial transactions in a specific pattern calculated to avoid the creation of certain records and reports required by law. In practice,

structuring is the breaking up of transactions for the purpose of evading the Bank Secrecy Act reporting and recordkeeping requirements.

14—Appendix F: Money Laundering and Terrorist Financing "Red Flags", FFIEC BSA/AML Examination Manual, 04/29/10. See also the "Guidance for Financial Institutions in Detecting Terrorist Financing" provided by the Financial Action Task Force (FATF) available at www.fatf-gafi.org. The FATF is an intergovernmental body whose purpose is to develop and promote policies, both at the national and international levels, to combat money laundering and terrorist financing.

15—12 CFR, Part 41, Supplement A to Appendix J; Federal Register, 72/217, November 9, 2007. See Appendix J to Part 222 - Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation.

16—Financial institutions should immediately report any imminent threat to local-area law enforcement officials.