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To address the housing crisis, President Obama has announced a series of initiatives in to help American homeowners. The Making Home Affordable programs were designed to keep mortgage rates low and assist homeowners either refinance or modify their loans to more affordable terms, depending on their individual situation. The U.S. Government, lenders, loan servicers, investors and borrowers are sharing in the responsibility to get the economy and the housing market back on track.

Unfortunately, as the United States Government is intensifying its efforts to help American homeowners, those who would seek to prey on the most vulnerable are intensifying their tactics as well, often through purported “mortgage modification” and “foreclosure relief” companies. These predatory scams rob Americans of their savings and potentially their homes.

So where does the Financial Crimes Enforcement Network (FinCEN) fit into the U.S. Government’s efforts to combat these threats? For those of you who may not be familiar with FinCEN and its role within the U.S. Department of the Treasury, our mission is to enhance U.S. national security, deter and detect criminal activity, and safeguard financial systems from abuse by promoting transparency in the U.S. and international financial systems.

FinCEN, best known to the public as a regulator of U.S. financial institutions, administers the Bank Secrecy Act (BSA), which is the principal anti-money laundering and counter-terrorist financing regulatory regime in the United States. The BSA authorizes the Secretary of the Treasury to issue regulations requiring financial institutions to keep certain records and file certain reports,¹ and to implement anti-money laundering programs and compliance procedures to guard against money laundering.² FinCEN strives to fulfill its mission in a way that ensures that financial institutions have appropriate controls in place to protect themselves from those seeking to abuse the financial system.

¹ See 31 U.S.C. §§ 5313 and 5318(g); 31 CFR §§ 103.11 and 103.21

² See 31 U.S.C. § 5318(h)

The BSA plays an important role in increasing the transparency of the U.S. financial system so that, working together with industry, regulatory, and law enforcement partners, we can deter, detect, investigate, and prosecute money laundering, terrorist financing, and other financial crimes.

Two important components of FinCEN's regulations requiring financial institutions to implement anti-money laundering and counter-terrorist financing programs are prevention and deterrence. Regulations requiring banks to implement customer identification programs enable the bank to form a reasonable belief that they know the true identity of their customers, which helps prevent criminal activity and illicit proceeds from entering the financial system in the first place.³ The near certainty of a Currency Transaction Report (CTR) filing for cash transactions over \$10,000, and the mere possibility of a Suspicious Activity Report (SAR) filing, deters criminals and forces them to behave in risky ways that expose them to scrutiny and capture.

FinCEN maintains a large and broadly used database of financial transaction information, collected under the BSA, for Federal, State and local law enforcement – the people who day in and day out investigate and prosecute fraud and other crimes. Recognizing the value of this information, FinCEN is partnering with numerous other Federal agencies to harness the BSA data in proactive efforts to ensure that these programs help homeowners in need of assistance and to make them less susceptible to criminal abuse.

FinCEN is a member of a broad, multi-agency task force announced in March 2009 by the Special Inspector General for the Troubled Asset Relief Program (SIGTARP), in coordination with the Special Inspector General for the Board of Governors of the Federal Reserve System (FRB-OIG).⁴ This task force, which consists of both civil and criminal law enforcement agencies, is working proactively to stay ahead of criminal efforts to exploit the U.S. financial system.

Proactive Efforts

One of the key reasons we all must work to be proactive in our efforts is that there is always a new scam, a new angle, or new opportunities for criminal actors. Mortgage loan fraud and loan modification fraud are prime examples of fraud opportunities in all economic conditions. When times are good, mortgage loan fraud emerges as an issue because there is a lot of money changing hands and it may be easier to get a mortgage with minimal documentation requirements. When times turn bad, fraudsters can use loan modification and foreclosure rescue scams to prey upon innocent homeowners who are doing everything they can just to keep their homes.

On April 6, 2009, Treasury Secretary Geithner announced a new coordinated proactive effort, led by FinCEN, to combat fraudulent loan modification schemes and coordinate ongoing

³ See 31 U.S.C. § 103.21

⁴ See http://www.fincen.gov/news_room/nr/html/20090311.html

efforts across a range of Federal and State agencies to investigate fraud and assist with enforcement and prosecutions.⁵

FinCEN is also marshaling information about possible fraud criminals – drawing upon a variety of data available to law enforcement, regulatory agencies, and the consumer protection community – for the purpose of identifying and proactively referring potential criminal targets to participating law enforcement authorities.

As part of this effort, FinCEN also issued an advisory on April 6, 2009 to alert financial institutions to the risks of emerging schemes related to loan modifications.⁶ The advisory identifies ‘red flags’ that may indicate a loan modification or foreclosure rescue scam and warrant the filing of a SAR by a financial institution. A key request in the advisory is that financial institutions include the term “foreclosure rescue scam” in the narrative sections of all relevant SARs. Including this term will allow law enforcement to more easily search for and identify fraudulent activity when reviewing SAR information, which in turn assists in focusing its investigative resources.

The red flags will assist financial institutions’ awareness of scams victimizing their customers and provide an opportunity to stop predatory loan modification in its tracks. The advisory reminds financial institutions of the requirement to implement appropriate risk-based policies, procedures and processes, including conducting customer due diligence on a risk-assessed basis to prevent fraudulent actors from being able to access the financial system in the first place and to aid in the identification of potentially suspicious transactions.

FinCEN is already seeing the results of these efforts manifested in banks filing SARs in conformity with the guidance issued in April. Utilizing the initiative’s advanced targeting methods, FinCEN has made 30⁷ case referrals, involving over 140 suspects, to law enforcement investigators. FinCEN, at the request of civil and criminal law enforcement, is also contributing to 35 investigations, involving multiple suspects and hundreds of BSA reports.

While these increases in reporting of suspected fraudulent activity could mean that there is an increase in fraud activity, it more clearly reflects an increase in awareness within financial institutions detecting such activity. The results we have been seeing in the months following Secretary Geithner’s announcement of our proactive efforts illustrate how thinking more proactively to identify threats and staying one step ahead of fraudsters can have a tangible impact.

Scams involving advance fee fraud are not new. While we are now seeing this fraud taking place in the housing market, in October 2001, FinCEN first discussed advance fee fraud when it took the form of what has come to be known as a “419” scam, in reference to the section of the Nigerian penal code that addresses this type of activity. Nearly 8 years ago, in an issue of our *SAR Activity Review – Trends, Tips and Issues*, FinCEN reported how the scam typically

⁵ See <http://www.treas.gov/press/releases/tg83.htm>

⁶ See http://www.fincen.gov/statutes_regs/guidance/pdf/fin-2009-a001.pdf

⁷ Number of disseminations, not total number of unique target referrals. Number of unique target referrals is 16.

begins when a person receives an unsolicited communication from someone in a foreign country, often Nigeria or other African nations, who purports to be a current or former official of the foreign government. The solicitation will claim there is an urgent need for the recipient's help to transfer a large amount of money.

These schemes have a common denominator—eventually the target of the scheme will be required to pay up-front advance fees to receive the money or commission.⁸ FinCEN also provided guidelines for financial institutions regarding the reporting of advance fee schemes in its August 2004 issue of the *SAR Activity Review - Trends, Tips and Issues*⁹ and in more recent issues we have highlighted law enforcement success stories where this fraud has been uncovered with the assistance of BSA filings.¹⁰

While the 419 schemes we first reported on many years ago may vary in *approach* from what we are seeing taking place now in the housing crisis, the basis of all fraud is the same: unscrupulous persons are taking advantage of innocent consumers.

Regulatory Approach

As important as it is for law enforcement to be proactive in their investigative efforts, it is just as critical that we think creatively to close loopholes on the regulatory side. As the Administration works broadly to protect American families from abuses in the mortgage market through the creation of a Consumer Financial Protection Agency, FinCEN is stepping up its regulatory efforts as well.

In FinCEN's recently issued mortgage fraud reports, SAR analysis showed non-bank mortgage lenders and originators initiated many of the mortgages that were associated with SAR filings.¹¹ The study also noted that professionals in real estate and financial industries were in some cases reported as subjects on the SARs, which is consistent with findings in a previous FinCEN mortgage loan report that real estate and financial industry insiders were involved with the suspected activity. This analysis was one of the impetuses for the Advance Notice of Proposed Rulemaking FinCEN issued in July to solicit public comment on a wide range of questions pertaining to the possible application of anti-money laundering programs and suspicious activity report regulations to non-bank residential mortgage lenders and originators.¹²

As primary providers of mortgage finance that generally deal directly with consumers, these lenders and originators are in a unique position to assess and identify money laundering risks and possible mortgage fraud, while directly assisting consumers with their financial needs and protecting them from the abuses of financial crime. Broad public input through this ANPRM will aid policymakers seeking to ensure the appropriate regulatory regime for this

⁸ See http://www.fincen.gov/news_room/rp/files/sar_tti_03.pdf#page=29

⁹ See http://www.fincen.gov/news_room/rp/files/sar_tti_07.pdf#page=53

¹⁰ See http://www.fincen.gov/news_room/rp/files/reg_sar_index.html#Advanced%20Fee%20Schemes-419

¹¹ See <http://www.fincen.gov/mortgagefraud.html>

¹² See http://www.fincen.gov/statutes_regs/frn/pdf/ANPRM.pdf

industry sector. These financial professionals are uniquely positioned to contribute to the promotion of safety and integrity in the U.S. mortgage marketplace.

This process of analyzing the data provided by our financial institution partners, identifying trends and possible loopholes, and utilizing this information to guide our regulatory approach is a model that I encourage others to employ.

Conclusion

There is no one regulation, no one law enforcement initiative, no one agency that can alone address the threats facing our global financial system. It is the sum of our collective efforts that is greater than the parts.

The global community has FinCEN's commitment that we will continue to bring our unique authorities to bear on multiple fronts: On the regulatory side, we will work to close loopholes that allow criminals to prey on innocent consumers. With those in the financial community, we will work to ensure they remain vigilant and share information so that industry can continue providing law enforcement with the lead information they need to aggressively root out fraud while promoting legitimate economic activity and growth. And we will also continue to challenge ourselves and our law enforcement partners to think creatively to identify new threats.

This last point is critical. The law enforcement community cannot just be reactive – it must look proactively at risks and learn from the past. These proactive efforts within the U.S. Government – and our collective global efforts - can prevent fraudsters from sapping our critical initiatives to get our global economy solidly back on the course of economic recovery and growth.

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