December 13, 2010

Mr. James H. Freis, Jr.
Director
Financial Crimes Enforcement Network (FinCEN)
P.O. Box 39
Vienna, VA 22183

RE: **Bank Secrecy Act Suspicious Activity Report Database Proposed Data Fields (Notice and Request for Comments)**

Dear Director Freis:

The Mortgage Bankers Association[1] (MBA) appreciates the opportunity to comment on the notice and request for comment by the Financial Crimes Enforcement Network (FinCEN) on developing the new Bank Secrecy Act (BSA) Database. MBA supports filing Suspicious Activity Reports (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. The enhancements being made to the data collection system will certainly help FinCEN and federal law enforcement agencies better understand the trends of financial fraud.

The design of the new database will establish the data fields necessary to support the filing and data collection of SARs as FinCEN transitions from a paper-based system to a contemporary electronic platform. MBA proposes changes to requirements in the Notice. MBA also requests guidance on certain fields related to the real estate finance industry. MBA encourages FinCEN to leverage established industry data standards for the exchange of data in completing the SARS.

These recommendations and requests for guidance for addressing suspected mortgage fraud from MBA is even more timely with FinCEN's notice of proposed rulemaking on December 6, 2010, announcing that it will expand the coverage of requiring anti-money laundering programs and filing SARs to add nonbank residential mortgage lenders and originators, not only financial institutions. MBA will be commenting on the December 6

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nations residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

proposal and will provide comments specific to nonbank residential mortgage lenders and originators. The comments in this letter may apply to nonbanks, but were written with only financial institutions in mind.

Clarifications of Proposed Fields

For suspected mortgage fraud, it is often unclear how to fill out certain fields in the SAR form. Specifically, mortgage lenders would benefit from additional selections or guidance in how to respond to the proposed fields in the notice for data points numbered 25, 60, and 61.

Data field 25, *"Subject's role in suspicious activity,"* in Part I, only offers the options of purchaser/sender and payee/receiver. However, the nature of mortgage fraud is often more complicated, and not just limited to the funds transfer process. Mortgage fraud may involve numerous parties to the transaction including, but not limited to, unscrupulous appraisers, mortgage brokers or correspondents, the seller(s), the buyer(s), the real estate agent, the title agent and so forth. Those individuals are often unique to a mortgage transaction, compared to savings account deposits or checking account activities. Some of these options are provided in field 21, though in a different context. MBA would recommend that the new BSA database field be formatted to be able to receive suspected mortgage fraud-specific information.

Similar to field 25, data field 61, "*Financial institution's role in transaction (if applicable)*," in Part III, does not fully or clearly lay out choices for filing information concerning suspected mortgage fraud to many mortgage lenders. Clarifying the choices as seller, payee or both in a mortgage transaction and which is appropriate in a purchase, payoff, refinance, modification or receiving a installment payment would assist lenders in responding appropriately and uniformly.

For data field 60, *"Loss to financial institution,"* in Part III, there is no uniform formula or guidance on how to calculate the amount. For SAR filers this amount is not clearly defined and can be interpreted in a number of ways, including principal balance of the mortgage at time of loss, principal balance minus insurance or guarantees, and principal balance plus legal fees and other costs incurred. FinCEN should consider providing a formula or specific guidance on how to calculate financial loss. Additional guidance and mortgage-related data responses will ensure accuracy and clarity in SAR reporting, making it easier for lenders to file SARs and providing FinCEN with more specific information. Lastly, in the absence of guidance or even including guidance, being able to note whether the loss is "actual" or "estimated" would also provide some assistance to the FinCEN and the filer. This is important as actual losses in suspected mortgage fraud cases may not be known for years. Having the ability to mark the loss as "estimated" will give FinCEN a better sense of the damages as the "actual" loss might be $0.00 at the time of the suspected fraud is discovered.

Under Part IV, data field 78 asks for a Tax Identification Number (TIN). Data field 77 asks for the “filer’s” name. For data field 78 it is unclear whether FinCEN is asking for the TIN of the financial institution and/or the filer. MBA would discourage FinCEN from requesting the filer’s individual TIN as it is not related to the suspected activity being reported.

FinCEN should also carefully consider which fields are required and which are optional based on the type of suspected activitiy, in order to reduce the potential costs of compliance. Mortgage lenders and financial institutions are willing to incur reporting costs in the hope that future losses due to mortgage fraud will be reduced as a result of such reporting. MBA discourages FinCEN from requiring that any fields not already required by FinCEN to be filled out by the financial institution or from making other new reporting standards that may reduce the perceived benefit SARs bring.

Mortgage-Specific Fields

The data fields of the SAR form do not include some key fields that may be easily provided by mortgage lenders. The construction of the BSA database might benefit from the expansion of certain fields related to mortgage fraud. MBA believes that, because of the electronic nature of the new forms, there is an opportunity for FinCEN to include more relevant mortgage fraud fields. However, the introduction of any new fields must be balanced with the understanding that more fields require more manhours, resulting in increased compliance risks.

MBA is pleased that FinCEN is adopting electronic reporting and accepting XML-based reports. MBA encourages FinCEN to incorporate mortgage-related interactive fields. To illustrate, an institution should be able to indicate that they are filing a SAR regarding mortgage fraud and this should narrow the data fields on the SAR to information that is mortgage specific. This will ensure that SARs are filed with the most useful information and has the potential to shorten the time it takes to complete the report.

In expanding the SAR data fields, MBA encourages FinCEN to consider the incorporation of additional data fields. In April of 2009, the Federal Bureau of Investigation (FBI) circulated a bulletin among financial institutions requesting that SARs filers include additional data in the narrative section. This information would be helpful in identifying participants in suspected fraud. Also, if the BSA database allows, providing optional fields to input social security numbers or state licensing or certification numbers, where applicable and available, may also be useful. The following is the list of data fields requested by the FBI for SAR reporting.

1. Contact name and telephone number to obtain loan file;
2. Loan file number and whether or not loan was government backed;
3. Property address;
4. Parcel number;

5. Real estate agent name and address;
6. Appraisal company name and address;
7. Appraiser name;
8. Mortgage broker name and address;
9. Loan officer name and address;
10. Title company name and address;
11. Settlement agent name and address;
12. Settlement attorney name and address;
13. Seller name; and
14. Buyer name.

The FBI recognized the value of clearly identifying the individuals involved in mortgage fraud early in the investigative process. MBA agrees that this information would be beneficial for reporting clarity.

In addition to the FBI's proposed background information data, MBA suggests the adoption of general categories of mortgage fraud schemes to clearly identify the type of fraud suspected. Those schemes include:

1. Misrepresentation of identity (including strawbuying);
2. Misrepresentation of income/assets;
3. Appraisal fraud;
4. Misrepresentation of occupancy;
5. Property flip;
6. Short sale fraud;
7. Reverse mortgage fraud;
8. Foreclosure fraud;
9. Loan modification fraud; and
10. Other.

Adopt Industry Data Standards

FinCEN indicated in the notice and request for comment that the BSA database will accept XML-based dynamic, state-of-the-art space reports. MBA supports the use of XML as the regulatory reporting format to enhance the utility and transparency of data provided to FinCEN and other regulatory agencies.   MBA, principally through its not-for-profit subsidiary the Mortgage Industry Standards Maintenance Organization, Inc. (MISMO®), has been creating and promoting XML standards for over 10 years. XML standards created by MBA / MISMO and are successfully used today in both the residential and commercial real estate finance markets. MBA supports the use of existing industry data standards (such as MISMO) for use in SARs. For data points where no standard has been published, MBA recommends FinCEN work with established industry standards bodies (such as MISMO) to define the non-standardized data in a manner that reflects common industry practice.

MISMO data standards are developed through an open process through various workgroups. Membership in MISMO workgroups is open and voluntary. Participants come from all sections of the residential and commercial real estate industry. Standards developed by the MISMO workgroups are first published for public comment and then published as final recommendations. Adoption of the standards is voluntary. MISMO standards, like most open standards, are made available on a royalty-free basis.

MISMO data standards are based on an XML Schema-based reference model containing over 4,000 data elements. These definitions have been developed and refined over the past 10 years by industry participants from the entire mortgage industry. MISMO data standards are used in loan origination systems; in electronic requests for real estate settlement products and services, including title reports, mortgage insurance, credit reports, flood certifications, and appraisals; in delivering loans to investors, in servicing transfers, and in the relatively new world of electronic mortgages. The reference model is updated and refined with new data elements as industry needs evolve, through MISMO's open protocols.

As FinCEN develops its data reporting requirements, it is in the best interest of FinCEN, other government regulators, the finance industry and the general public that existing standards are leveraged, to limit the impact on affected parties. Whenever possible, we believe FinCEN should leverage and build upon existing data standards.

The creation of new standards that conflict or differ with existing standards will result in confusion and increased costs to industry participants. Multiple, conflicting standards create confusion among employees trying to comply with the standards, resulting in errors in compliance. Errors result in rework and increased expenses to participants. In addition, errors in the data can adversely affect those who will consume the information as well as subject the providers to liability and compliance risk.

Multiple standards will require additional new development and maintenance work for industry participants. The implementation of new data exchange standards will be more costly to participants than a rule that requires the utilization of well accepted industry standards. A need for industry participants to maintain dual systems will lead to increased costs and inefficiencies as well as potential legal problems due to unintended errors.
The use of industry-based standards is already supported by the administration. Significantly, Circular A-119, issued by the Office of Management and Budget on February 10, 1998, "directs agencies to use voluntary consensus standards in lieu of government-unique standards except where inconsistent with law or otherwise impractical. …The policies in this Circular are intended to reduce to a minimum the reliance by agencies on government-unique standards."

Conclusion

Thank you for the opportunity to comment on the proposed data fields for SARs. FinCEN's transition from a paper filing system to a modernized IT environment for electronic reporting will certainly augment the accuracy, scope, and effectiveness of SARs. If you have any questions or need additional information, please contact Andrew Szalay, Associate Director of Public Policy, at (202) 557-2941 or aszalay@mortgagebankers.org.

Sincerely,

John A. Courson

John A. Courson
President and Chief Executive Officer