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June 10, 2003

Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183-0039
ATTN: Section 352 Real Estate Settlements

Re: Anti-Money Laundering Program Requirements for Persons Involved in Real Estate Closings and Settlements
68 FR 17569 (April 10, 2003)

Dear Sir or Madam:

America's Community Bankers ("ACB")¹ is pleased to comment on the Financial Crimes Enforcement Network's ("FinCEN") advance notice of proposed rulemaking concerning the development of anti-money laundering programs for persons involved in real estate closings and settlements. Section 352(a) of the USA PATRIOT Act of 2001 (the "Patriot Act") amended the Bank Secrecy Act (the "BSA") by requiring "persons involved in real estate settlements and closings" to establish an anti-money laundering program that includes:

- The development of internal policies, procedures, and controls;
- The designation of a compliance officer;
- An ongoing employee training program; and
- An independent audit function to test programs.

ACB Position

ACB believes that the development of an effective reporting system to detect the placement, layering, and integration of illicit funds into the financial system is key to identifying and preventing money laundering and terrorist financing. As money launderers become more aware of the reporting and recordkeeping requirements already

¹ America's Community Bankers represents the nation's community banks. ACB members, whose aggregate assets total more than \$1 trillion, pursue progressive, entrepreneurial and service-oriented strategies in providing financial services to benefit their customers and communities.

imposed on community banks and other traditional financial institutions, attempts will be made to develop new methods of laundering funds. Accordingly, a more thorough system for money laundering prevention must include all types of financial institutions, including persons involved in real estate closings and settlements.

While ACB believes that real estate transactions should be monitored for illicit activity, we do not believe that all persons that contribute to the completion of a real estate transaction should be subject to regulations establishing anti-money laundering program requirements. An effective regulation would limit the rule's application to persons that conduct the settlement process and would exclude attorneys from its application.

In addition, settlement service providers that are operating subsidiaries of an insured depository institution should be subject to the rules and regulations of the federal banking agencies.

ACB continues to be concerned about the cumulative cost that Patriot Act regulations place on community banks. We do not believe that any requirements developed for persons involved in real estate closings and settlements should result in additional burdens on community banks. Similarly, FinCEN should not impose unnecessary, burdensome requirements on settlement service providers. Specifically, we would caution FinCEN not to craft burdensome regulations that have the effect of delaying real estate settlements. Real estate dealings are complex, carefully timed transactions. Imposing unreasonable and unnecessary burdens on settlement service providers may affect the ability of consumers to lock a specific interest rate or close on a specific day.

“Persons Involved in Real Estate Closings and Settlements” Should be Narrowly Defined

Neither the Patriot Act nor the BSA defines the term “persons involved in real estate closings or settlements.” ACB believes that an appropriate rule would apply only to persons that conduct settlement proceedings. Accordingly, settlement companies or title companies conducting the formal settlement process should be required to implement the requisite anti-money laundering programs. In addition, realtors and others performing this service should be covered by the rule.

We believe that persons actually involved in real estate closings are in the best position to identify the purpose and nature of a particular transaction and are best positioned to identify suspicious conduct. Conversely, many categories of persons, including appraisers and inspectors are ancillary to the formal settlement process, have little to no involvement with the flow of funds used to purchase a property, and should not fall within the rule's scope. Requiring individuals that have limited contact with the buyer and the seller and that have little to no information as to how a real estate transaction is financially structured would be a waste of resources and would not effectively carry out the Patriot Act's purpose.

Moreover, we do not believe that the anti-money laundering requirement should apply to attorneys. As a matter of general practice, lawyers conduct due diligence on their clients and are therefore unlikely to be a weak link in the nation's anti-money laundering efforts. In addition, state rules of professional conduct allow a lawyer to disclose confidential client information when the lawyer has reason to know that the client intends to engage in criminal activity. Attorneys are obligated to counsel their clients to abide by the law. If a client refuses to do so, the lawyer is obligated to withdraw from representation.

Furthermore, the legal profession is regulated by self-imposed rules of professional conduct, bar associations, and the state courts. We believe it would be inappropriate to deviate from this oversight system for the purpose of enforcing anti-money laundering regulations.

Banks, Savings Associations, and Their Operating Subsidiaries Should Be Excluded

Banks and savings associations are already subject to a variety of anti-money laundering rules, including suspicious activity reporting, currency transaction reporting, customer identification, and anti-money laundering programs. We believe that these institutions should be specifically exempted from any rule pertaining to settlement service providers and should continue to be examined by the appropriate federal functional regulator for compliance.

Furthermore, settlement service providers that are operating subsidiaries of an insured depository institution should be subject to the rules and regulations of the federal banking agencies. These title insurance companies and settlement companies are monitored by their insured depository parent and should continue to come under the same regulatory umbrella as the parent company. Requiring these subsidiaries to comply with separate regulatory requirements would result in duplicative efforts and wasted resources. On the other hand, those affiliates that are not operating subsidiaries should be required to establish programs that will be enforced by their functional regulator.

Similarly, to the extent that mortgage brokers or other financing entities will be covered under the rules governing loan or finance companies, we do not believe that these entities should be subject to rules governing anti-money laundering programs for settlement service providers.

Real Estate Closings Pose Little Money Laundering Risk

While ACB believes that terrorists and money launderers will look to non-traditional methods of laundering their funds through the financial system, we do not believe that mortgage loans will become a common or a likely instrument of money laundering. While investing in real estate may be one means to "park" ill-gotten money, we do not believe that a money launderer would go through the necessary time, inconvenience, and expense associated with applying for a mortgage and locating a suitable property.

Conclusion

ACB stands ready to work with the Treasury throughout the remainder of the Patriot Act rulemaking process to ensure that regulations are effective without being unduly burdensome. Thank you for the opportunity to comment on this important matter. Should you have any questions, please contact the undersigned at 202-857-3121 or via e-mail at cbahin@acbankers.org, or Krista Shonk at 202-857-3187 or via e-mail at kshonk@acbankers.org.

Sincerely,

A handwritten signature in cursive script that reads "Charlotte M. Bahin".

Charlotte M. Bahin
Senior Vice President
Regulatory Affairs