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27 Hummel
November 6, 2003

Financial Crimes Network
United States Department of the Treasury
Attention: Section 352
P.O. Box 39
Vienna, VA 22183-0039

**Re: Real Estate Settlements – Money Laundering
Advance Notice of Proposed Rulemaking**

On behalf of the more than 25,000 members of the Appraisal Institute and American Society of Appraisers, thank you for the opportunity to submit comments on proposed rulemaking by the U.S. Department of the Treasury Financial Crimes Network (FinCEN) pertaining to the money laundering risks posed by “persons involved in real estate closings and settlements.”

In the advance notice of proposed rulemaking, FinCEN lists real estate appraisers as one party in the universe of participants in real estate transactions who potentially could come under the purview of new regulations on money laundering.

On April 29, 2002, and again on November 6, 2002, FinCEN temporarily exempted certain financial institutions, including persons involved in real estate closings and settlements, from the requirement to establish an anti-money laundering program. (Section 352 of the “Patriot Act” of 2001 requires such “financial institutions” to establish anti-money laundering programs that: 1) Develop internal policies, procedures, and controls; 2) Designate a compliance officer; 3) Create an ongoing employee training program; and 4) Establish an independent audit function to test programs.)

The purpose of the temporary exemption, according to the advance notice, was to enable Treasury and FinCEN to study the affected industries and to consider the extent to which anti-money laundering program requirements should be applied to them, taking into account the specific characteristics of the various entities defined as “financial institutions.” In doing so, FinCEN asked four questions relating to how to define “persons involved in real estate closings and settlements,” the money laundering risks posed by such persons, and whether any such persons should be exempted from this requirement. Our comments and suggestions on how real estate appraisers relate to the questions posed by FinCEN are below.

1. What Are the Money Laundering Risks in Real Estate Closings and Settlements?

Money laundering in real estate closings and settlements involves the conversion of one form of asset (illegitimate money) into another form of asset with tangible value (real estate). The potential for real estate appraisers to be involved in money laundering transactions is virtually nonexistent. The

appraisal is a service that is typically performed for a financial institution for a fee. Since the appraisal report itself is not an asset, it cannot help with the conversion of illegal money into real estate. At no time do real estate appraisers assist with the conversion of funds from one form of asset to another. The only party who has the ability to assist in the conversion of these assets is the closing agent or attorney, who receives a check from the buyer to place into escrow. The agent or attorney then pays the seller through a checking account.

2. How Should Persons Involved in Real Estate Closings and Settlements Be Defined?

FinCEN should distinguish between closing agents and attorneys and service providers such as appraisers and home inspectors in any proposed money laundering regulation defining a financial institution in real estate closings and settlements. The closing agent or attorney receives and disburses money and is actively engaged with the parties of the transaction. At the settlement table, all of the closing services are presented to the buyer during the settlement process; however, only the closing agent or attorney is involved in the transfer of funds from one form of asset to another.

In the advance notice, FinCEN also sought comment on which participants in the real estate settlement process are in a position where they can effectively identify and guard against money laundering in such transactions. The Uniform Standards of Professional Appraisal Practice (USPAP), promulgated by the Appraisal Standards Board of the Appraisal Foundation, are recognized throughout the United States as the generally accepted standards of professional appraisal practice. USPAP does not require that an appraiser investigate or identify the source of the purchaser's equity investment and any such requirement would fall outside of the expertise of real estate appraisers and would be duplicative of the requirements placed on lenders.

However, USPAP does prohibit appraisers from entering into criminal activities. The Conduct section of the Ethics Rule of USPAP, which all licensed and certified appraisers in the United States must adhere to, includes the following:

"An appraiser must not engage in criminal conduct." (Lines 259-260)

"An appraiser must not use or communicate a misleading or fraudulent report or knowingly permit an employee or other person to communicate a misleading or fraudulent report." (Lines 268-270.)

Real estate appraisers provide an opinion of value of real property, not people or organizations. Appraisers typically are not privy to the financial situation of the parties to the transaction and therefore cannot effectively identify and guard against money laundering in such transactions.

3. Should Any Persons Involved in Real Estate Closings or Settlements Be Exempted From Coverage Under Section 352?

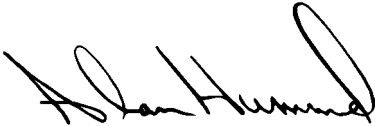
Yes, individuals who receive payment for services rendered where those services are not involved in the transfer of one asset (illegitimate money) to another (real estate) should be exempted from coverage under Section 352 of the Patriot Act. This would include individuals such as real estate appraisers, home inspectors and pest inspectors.

4. How Should the Anti-Money Laundering Program Requirement for Persons Involved in Real Estate Closings and Settlements Be Structured?

Since real estate appraisers are not in a position to assist in the conversion of illegal money to a tangible asset, they should be excluded from this requirement.

Should you have any questions, please contact Don Kelly, Vice President of Public Affairs, Appraisal Institute, at 202-298-5583 or dkelly@appraisalinstitute.org; or Ted Baker, Executive Vice President, American Society of Appraisers, at 703-733-2019 or tbaker@appraisers.org.

Sincerely,



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