Mortgage Insurance Companies of America

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Executive Vice President

May 29, 2002

Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183

Re: Section 352 AMLP Regulations

Dear Sir or Madam:

This letter, on behalf of the Mortgage Insurance Companies of America ("MICA"), a trade association that represents the interests of private mortgage insurers throughout the United States, is in response to the Interim Final Rule published in the Federal Register (67 Fed. Reg. 21110) on April 29, 2002.

The Interim Final Rule temporarily exempts certain financial institutions, including insurance companies, from the requirement that they establish anti-money laundering programs under the Bank Secrecy Act ("BSA"), 31 U.S.C., 18 U.S.C. § 5318(h)(1). This provision was added to the BSA by Section 352 of the USA PATRIOT Act. For the reasons discussed below, when expected regulations requiring compliance programs for insurance companies are issued, we respectfully request that private mortgage insurance companies be excluded from the definition of insurance and, consequently, not be required to establish and maintain an anti-money laundering programs.

The Rule states that:

> Treasury and FinCEN have not had the opportunity to identify the nature and scope of the money laundering or terrorist financing risks associated with [the exempt] businesses. The extension of the anti-money laundering program requirement to all the remaining financial institutions, most of which have never been subject to federal financial regulation, raises many significant practical and policy issues. An inadequate understanding of the affected

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> industries could result in poorly conceived regulations that impose unreasonable regulatory burdens with little or no corresponding anti-money laundering benefits.

67 Fed. Reg. at 21112.

We commend the Treasury and FinCEN for acknowledging that the businesses of certain financial institutions, do not present the money laundering and terrorism financing risks that the Act is intended to address. In this regard, we believe that private mortgage insurance companies should not be required to establish anti-money laundering programs because there is virtually no risk of money laundering or terrorist financing activities associated with the private mortgage insurance business. Moreover, there is no need to apply anti-money laundering requirements to private mortgage insurers because the customer of a private mortgage insurance company is not the individual borrower, but the lender or investor in the loans, and the mortgage lender is or will be subject to anti-money laundering requirements.

How Private Mortgage Insurance Works

Private mortgage insurance protects lenders and investors in mortgages with greater than an 80 percent loan-to-value ratio against much of the loss if the loans go to default. As a result, it is a significant aid to first-time home buyers and lower income people who are trying to buy a house. These people often do not have the money to make a significant down payment.

If a borrower is looking for a mortgage with less than a twenty percent down payment the lender generally will require that the borrower purchase mortgage insurance. The mortgage insurance can come from one of the seven private insurers licensed to do business in the United States or from one of the two government program - the Federal Housing Administration or the Veterans Administration program. There also are some state programs which insure low-down payment mortgages. MICA only represents the private companies.

With private mortgage insurance, the borrower reimburses the lender for the cost of the insurance, but has no relationship or contact with the private mortgage insurer. If the loan goes into default, the insurance is paid to the lender or the holder of or investor in the loan. In other words, the insured is the bank or mortgage company that initiates the loan and then generally the investor in the loan, not the person who actually pays the premium. In the private sector the majority of mortgage loans are purchased by the two government sponsored enterprises - Fannie Mae and Freddie Mac. Therefore, they are the prime recipients of a mortgage insurer's claims payments.

The lender that originates the loan, not the borrower, determines which of the seven private mortgage insurers to use. These lenders generally have a "master policy" with several private mortgage insurers which sets out the terms and conditions of the insurance. Once the lender collects all the information necessary to underwrite the high-ratio loan and decides to originate it, he sends the underwriting information to the insurer who reviews it and decides whether to insure the loan. In many cases the private mortgage insurer does not even know the name or other identifying information about the borrower. If the private mortgage insurer agrees to insure the loan he issues a certificate of insurance under the master policy. The insurer does not meet the borrower prior to agreeing to insure the loan nor does the insurer deal with the borrower during the life of the insurance policy. The only exception to that is that insurers sometimes will seek permission to work with borrowers if their mortgage payments are in arrears to see if they can be brought current.

If the borrower ultimately defaults on the loan, as noted above, the mortgage insurer pays its claim to the investor in the loan. The amount of the claim includes a set percentage of the original loan amount, unpaid interest and other expenses as delineated in the master policy.

Consequently, the anti-money laundering responsibility for mortgage loans should be with the bank or mortgage company that deals with the borrower and establishes the account relationship with the borrower. Those businesses are, or will be, subject to the compliance program requirement and other anti-money laundering laws and regulations under the Bank Secrecy Act.

Customer Verification

If private mortgage insurance companies are considered insurance companies for purposes of the compliance program requirement, it is our understanding that they also would be subject to customer identification requirements under regulations to be issued within the next few months by Treasury pursuant to section 326 of the USA PATRIOT Act. If private mortgage insurers are included in the definition of insurance companies, it must be explicit that the customer verification requirement applies to the owner of the policy, *i.e.*, the lender, and not to the borrower. The regulatory obligations should rest with the financial institution lender which has contractual relationship with the borrower.

Moreover, if Treasury were to require verification of the identity of the borrower, it would fundamentally change the nature of the way the mortgage insurance industry conducts business and would impose substantial costs out of proportion to any conceivable law enforcement benefit.

Private Mortgage Insurance Should be Excluded From the Future Regulatory Definition of Insurance

As you can see it is hard to imagine how this business could be improperly utilized for money launderers or terrorist financing. The person who is ultimately responsible for the cost of the insurance is not the insured and the insurance policy has no cash value to a borrower. It is only valuable to the institution that invests in the loan if that loan goes to default.

Subjecting private mortgage insurance to regulations requiring them to establish anti-money laundering compliance programs, imposes an onerous regulatory burden that would lead to practical difficulties and increased costs with little or no corresponding law enforcement benefits. The resulting costs would be passed on to the segment of the home owning public least likely able to bear additional costs of home ownership.

The Interim Final Rule also states that Treasury and FinCEN have been examining the money laundering risks associated with insurance products and will issue in the near future a proposed rule governing the establishment of anti-money laundering programs by insurance companies. 67 Fed. Reg. at 21112. Although it is appropriate for certain insurance companies to establish anti-money laundering programs, we believe that it would be illogical to require private mortgage insurers to establish such programs for the reasons discussed above. Moreover, if mortgage insurers are included in the regulatory definition of insurance company, it is imperative that future verification regulations and other requirement specify that the accountholder or customer of the mortgage insurer is the policy holder, not the borrower.

We look forward to reviewing and commenting on the forthcoming proposed rule, and we urge FinCEN to exclude private mortgage insurers from the definition of insurance companies for purposes of the compliance program regulations.

Sincerely yours,

Suzanne Hutchinson