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

**Re: Notice of Proposed Rulemaking on Anti-Money Laundering Programs for
"Persons Involved in Real Estate Closings and Settlements"**

Ladies and Gentlemen:

GMAC Commercial Mortgage Corporation ("GMACCM") appreciates the opportunity to comment on the Notice of Proposed Rulemaking titled "Anti-Money Laundering Program Requirements for Persons Involved in Real Estate Closings and Settlements" ("Proposal") issued by the Financial Crimes Enforcement Network ("FinCEN") of the Department of Treasury pursuant to Section 352 of the USA Patriot Act.

GMACCM is a leading originator of commercial mortgage loans in the United States. We are a direct lender, a correspondent for life insurance companies and pension funds, a commercial mortgage broker to other capital markets lenders, and one of the leading approved lenders for Fannie Mae, Freddie Mac and FHA/HUD loans. In 2002, GMACCM's total loan originations were nearly \$21 billion. GMACCM, through affiliated companies under its immediate parent GMAC Commercial Holding Corp., provides a single-source for both debt and equity financing to commercial real estate owners on a global basis. GMACCM and GMAC Commercial Holding Corp are wholly-owned, indirect subsidiaries of General Motors Corporation and General Motors Acceptance Corporation.

GMACCM fully supports FinCEN in its aim of preventing money laundering and the financing of terrorist activities. While we agree with the principles underlying the measures required by the Proposal, we would like to express the following concerns:

1. Clear Definition of "Persons Involved in Real Estate Closings and Settlement"

A clear and well-considered definition should be provided to identify those who will have compliance obligations as "persons involved in real estate closings and settlements." FinCEN notes in the Proposal that rulemaking under this broad category "could . . . cover participants other than those who actually conduct the real estate settlement or closing" and may encompass "[a] bank, mortgage broker, or other financing entity."

A clear definition of who is covered under this category is necessary to avoid subjecting parties who qualify under other classifications included in the definition of "financial institution" to multiple and potentially conflicting regulatory schemes. For example, GMACCM is a direct lender and a mortgage broker; in the absence of clarification, GMACCM could face compliance obligations applicable to mortgage brokers under the "persons involved in real estate closing and settlements" regulations in addition to obligations as a direct lender under the "loan and finance companies" regulations.

Should the regulations under the Proposal simply specify that entities covered under other categories of "financial institutions" are not considered "persons involved in real estate closings and settlements," the regulations need to further clarify how a party whose lines of business fit multiple classifications makes the determination which regulations apply. Alternatively, as we suggest below, the Treasury Department should consider adopting regulations for "Mortgage Lenders" (as defined below) concurrently with regulations applicable to "persons involved in real estate closing and settlements" so that the real estate industry is considered as a whole (which has been the aim of Treasury in deferring application of the mandatory compliance date) and uniform regulations apply to the industry that produce the desired information from the sources best capable of doing so, without creating inconsistency, redundancy and uncertainty in the process.

Not providing the clarifications suggested above would result in confusion, duplicative procedures, higher training, implementation and auditing expenses, and inconsistent enforcement.

Likewise, should the regulations under the Proposal not give an explicit definition of covered parties, businesses not intended to be covered by the regulations may unnecessarily incur the costs and burdens of fashioning policies and implementing procedures to comply with the mandate of the Patriot Act.

2. **Consider Rules for "Mortgage Lenders" Concurrently with Rules Applicable to "Persons Involved in Real Estate Closings and Settlements"**

GMACCM suggests that FinCEN consider together (a) the regulations that would be applicable to "loan or finance companies" who are lenders whose primary collateral is real estate based and (b) the regulations that will be applicable to "persons involved in real estate closings and settlements" so that inconsistent and redundant requirements are not created for the real estate industry.

GMACCM also suggests that Treasury separate the category "loan or finance companies" into two groups: (1) lenders whose primary collateral is real estate based ("Mortgage Lenders") and (2) lenders who make unsecured loans or whose primary collateral is personal property.

Mortgage Lenders would include lenders who primarily make loans secured by real estate or by pledges of the equity interests in the entity that owns the real estate.

Considering the potential regulations applicable to Mortgage Lenders together with the Proposal is logical, given Treasury's goal to fashion effective regulations that target the potential money-laundering risks to an industry. This is particularly desirable given that the range of financing opportunities available in the commercial real estate industry includes both traditional mortgage debt and more innovative mezzanine financing and equity placements. For instance, in today's commercial real estate lending market, the owner or purchaser of property may finance a purchase, refinance a mortgage loan or raise additional capital for operations or improvements by any of the following:

- (a) incurring debt secured by a mortgage on the real estate;
- (b) incurring debt secured by the ownership interests of the entity that owns real estate (such that, upon default, the lender can become the owner of the property much like the result if a mortgage loan were foreclosed);
- (c) raising equity (i.e., adding investors in the ownership of the real estate); or
- (d) any combination of the foregoing.

Parties that perform the same financial services should face the same anti-money laundering obligations under the Patriot Act.

3. Regulations Appropriate for the Commercial Real Estate Lending Sector

GMACCM further suggests that the commercial real estate lending sector be examined as a separate subset of the real estate industry. In this regard, Treasury should consider that commercial real estate lending transactions are less attractive to money launderers than other investments because of the substantial due diligence performed by a Mortgage Lender in connection with the underwriting of a commercial mortgage loan, particularly if the loan is to be sold into the secondary market and eventually securitized. Minimum lender due diligence for a commercial loan includes underwriting the credit history and property management experience of the borrower and its key principals, the authority and ability of the borrower and guarantors to perform the transaction, and the condition and financial performance of the real estate. As money launderers are primarily concerned about controlling illicit funds without attracting attention to the underlying activity or the persons involved, commercial real estate transactions would not be an attractive source to disguise illicit funds or integrate illicit funds into the market. Anonymity typically does not exist in commercial real estate lending or equity transactions.

The regulations under the process begun with this Proposal along with those considered for Mortgage Lenders should be narrowly drafted and reflect a careful balancing of the benefits to be obtained against the burden of potentially costly compliance. Standards that increase recordkeeping, settlement costs and other underwriting burdens would lead to delays and potentially stifle mortgage originations as the increased costs imposed on the industry are passed

to the borrowers. To the greatest extent possible, any requirements imposed should conform to current business practices.

Put simply, in the absence of a clear showing that commercial real estate transactions serve as a source for abuse by money launderers, the Treasury Department should proceed with caution in imposing heavy regulatory burdens on Mortgage Lenders and other "persons involved in real estate closings and settlements" who participate in the commercial real estate industry. The commercial real estate market has proven to be a source of stability and strength in the current economic downturn, and such impositions could slow down the market and negatively impact the economy.

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GMACCM appreciates the opportunity to comment on FinCEN's Advance Notice of Proposed Rulemaking and asks that the Treasury Department consider the relatively small risk that commercial real estate transactions pose, as compared to the proposed burdens, when determining the scope of the final regulations. Along with narrowing the scope of the regulations, we ask that the Treasury Department structure the regulatory requirements to mirror current business standards closely, so as to minimize the negative effects on the industry and the economy as a whole.

If GMACCM can be of any further assistance in this regard, please do not hesitate to contact me at the address provided above.

Very truly yours,

To validate signature use the Approvelt
menu to Authenticate, Report & Print.
Approved by: Robin Litwa For Robin L. Litwa, 6/9/2003
16:48:52

Robin L. Litwa