

# 42 Mills

**Via electronic mail to [regcomments@fincen.treas.gov](mailto:regcomments@fincen.treas.gov)**

FinCen  
Department of the Treasury  
Washington, D.C.

ATTN:Section 352 – Real Estate Settlements

Dear Sir or Madam:

Countrywide Home Loans, Inc. (“Countrywide”), on behalf of itself and its affiliates, appreciates this opportunity to comment on the Department of the Treasury’s (“Treasury”) Advance Notice of Proposed Rulemaking (“ANPR”) regarding the application of the USA PATRIOT Act (“the Act”) to “persons involved in real estate closings and settlements.” Countrywide supports Treasury’s goals of combating terrorism, narcotics trafficking and other criminal activities through effective, narrowly tailored regulations.

Countrywide’s affiliate, Landsafe, Inc. (“Landsafe”), will be submitting comments separately. Landsafe companies provide real estate settlement services such as appraisals, credit reports, flood certifications, title searches and, in some cases, closing services. Countrywide fully supports the comments contained in Landsafe’s letter and, for efficiency, will not repeat them here. Additionally, Countrywide participated in the discussions and the drafting of the letter submitted by the Mortgage Bankers’ Association of America (“MBA”). Again, because we agree with most of the issues raised in the MBA letter, we will not re-address those points here.

### **General Comments**

As a general comment, however, Countrywide wishes to emphasize the importance of caution in developing regulations that will place a heavy burden on companies, especially smaller ones, with very little return in terms of curtailing criminal activities. The ANPR describes three stages of money laundering. We believe a close review of these stages in the real estate transaction context demonstrates the unlikelihood that such transactions would be a significant source of money-laundering activity. Treasury describes the first stage as follows:

[T]he initial or placement stage is the stage at which funds from illegal activity, or funds intended to support illegal activity, are first introduced into the financial system. This could occur, for example, in the real estate industry through the payment for real estate with a large cash down payment.

We agree that a reporting requirement should be triggered if a person shows up at a real estate closing with a large amount of cash. This could be accomplished simply by applying the Cash Transaction Report (“CTR”) requirement currently contained in the

Bank Secrecy Act (“BSA”) to closing agents. However, we believe it is unlikely that a money launderer would ever do this as it would be obvious and raise suspicions.

In addition, in a typical residential real estate transaction a mortgage lender has verified the source of funds for the downpayment and usually has verified the borrower’s deposits and that the funds have not just been placed into the account. Typically, we require three months of bank statements to ensure that a relative or friend has not simply lent the money in order to establish the deposits for the transaction.

The ANPR goes on to state:

In the second or layering stage of money laundering, the illicit funds are further disguised and distanced from their illegal source through the use of a series of frequently complex financial transactions. This could occur in the real estate industry when, for instance, multiple pieces of real estate are bought and resold, exchanged, swapped, or syndicated, making it more difficult to trace the true origin of the funds.

There follows a footnote to a case, “*U.S. v. Nattier*, 127 F.3d 655 (8th Cir. 1997) (embezzler engaged in a number of real estate purchases through real estate firm in an attempt to conceal the source of the funds).” However, this case does not state that the embezzlers “disguised and distanced from their illegal source through the use of a series of frequently complex financial transactions.” It appears that they deposited the stolen funds into the bank account of a “legitimate” real estate investment business, which then purchased real property. Moreover, it appears that these were commercial, not residential transactions. However, even if these were residential transactions, these would have appeared to a closing agent as legitimate transactions at settlement and could not have been detected regardless of whether there were safeguards in place under the Act.

In addition, laundering funds through successive residential real estate transactions would be an unlikely avenue for criminals. With each successive transaction, the launderer would be subject to another round of financial scrutiny, making it an increasingly risky method of cleansing the ill-gotten gains.

We question whether a typical money launderer would use a process that involves a much higher level of inquiry than alternative money laundering avenues. For this reason, we urge Treasury to fully assess the impact that overly broad regulations will have on those persons involved in real estate closings and transactions – especially the smaller ones given the paucity of evidence that such transactions are, in fact, being used for laundering purposes.

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

As stated above, Countrywide feels that the risk of such activities in residential real estate closings and settlements is minimal. The ANPR cites three cases as demonstrating the

use of such transactions to launder money. *Nattier* is discussed above and, as stated, the real estate transactions, if residential, would have appeared to the closing agent as a completely legitimate even with extensive safeguards in place. Similarly, in *U.S. v. Leslie*, 103 F.3d 1093 (2d Cir. 1997), the fact that the defendants were real estate brokers was incidental to the laundering scheme, which simply involved the real estate brokers accepting drug money in cash and writing checks to the alleged criminals.

The one case where the real estate transaction was utilized directly for money laundering was in *U.S. v. High*, 117 F.3d 464 (11th Cir. 1997). However, it appears that there were no closing or settlement agents, nor were there any financial institutions as it appears that this case involved cash transactions directly between the defendants and the sellers. In one, the defendants deposited the drug money into their accounts, withdrew 5 cashiers' checks for a total of \$35,000.00 which was paid to the seller, and then the remaining \$45,000.00 was paid over time to the seller in the defendants' offices. In the second transaction, a similar method was used for the downpayment and, again, the payments were made directly in cash to the seller. Therefore, it does not appear that the cases cited indicate a risk in real estate closings or settlements, because there was no formal closing or settlement.

Again, as these cases indicate, Treasury should evaluate the extent to which traditional real estate transactions are being used for money laundering purposes. That said, Countrywide also realizes that as other avenues for these types of activities are cut off, there is an increased risk that money launderers would seek out new ways to launder funds, even if it were at a higher expense. We believe it would be reasonable to apply some of the same requirements detailed in the BSA on the settlement and/or closing agents to file CTRs or Suspicious Activity Reports ("SAR") when appropriate. Thus, if someone attempted to layer funds at a closing, similar to the scheme in the *High* case, a CTR would be an effective means of reporting such a transaction that would not be overly burdensome a small company or sole proprietor.

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

On this issue we agree with the position taken by Landsafe. The only entities that should come under this regulation are those directly involved either with the transfer of funds at closing or with the parties to the transaction. This might be a title officer, an escrow officer, a closing agent or, in some states, an attorney. This might also include a mortgage banker or other financial institution, but such entities should be exempt as described below.

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

The ANPR states that an example of the type of institution subject to such an exemption would be loan and finance companies which are currently the subject of an earlier request

for comments being considered by FinCEN. Countrywide agrees with this exemption applying to mortgage lenders, and would go one step further. A significant source of our loan business comes through mortgage brokers. Such entities are involved with the financial aspects of the transaction from the inception of the application for a loan. In fact, there is often a very grey line between a mortgage lender/banker and a mortgage broker. Mortgage brokers often close the loans in their own name, but with funds from the mortgage lender to which the loans are assigned at the closing table. Therefore, it would be our recommendation that mortgage brokers not be included as a “person involved with a settlement or closing,” but instead be included in those regulations currently being considered for loan and finance companies.

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

##### **a. The viability of such a program with a small company or sole proprietorship.**

We commend Treasury for recognizing the difficulties that many in the industry would have in complying with extensive tracking, recording and documentation requirements along with the requirement of additional systems or software. Countrywide agrees with the position stated in the MBA letter that imposing extensive requirements on these types of entities would be catastrophic for many that could not afford the changes. For those that could, a too-heavy burden would cause the cost of closing a loan to increase. Therefore, we believe that Treasury should attempt to make new requirements as easy to implement as possible. Countrywide would suggest that any such requirements target identified money laundering risks, rely on current software and human resources available to settlement companies, and be accompanied by clear compliance guidelines. Because, as detailed below, there are already requirements in place for closing agents to ascertain the identity of the people involved in the transaction, the only additional actions may be as simple as requiring the use of CTRs and SARs for those persons directly involved with closings involving large amounts of cash.

##### **b. Programs companies currently have in place that would serve the purposes of preventing fraud and other illegal activities.**

Countrywide agrees with MBA’s position that lenders should be able to rely on a settlement or closing agent to perform customer identification as a lender rarely has a representative in attendance at the closing. However, to provide security against fraud or property flipping, a lender or closing agent can verify certain information, such as the following, just prior to closing:

- Does the name of the seller/owner match on all of the critical documents, e.g., Title Commitment/Preliminary Title Report, Appraisal, Purchase Contract and Tax Information/Data Sheet?

- Is the recording date by which the recorded owner obtained title to the property (per the Title Commitment/Preliminary Title Report) less than six months before the scheduled closing date of the loan? (Short time periods between property transactions may be indicative of property flipping or transactions that are not legitimate.)
- Does Schedule B of the Title Commitment/Preliminary Title Report indicate that a Grant/Warranty Deed to the seller/owner still needs to be executed or recorded?
- Does Schedule B of the Title Commitment/Preliminary Title Report show any mortgages or deeds of trust?

These types of questions could assist a closing agent to detect and, possibly, prevent a property-flipping scheme. However, it is important to distinguish this type of issue – where the real estate transaction itself is fraudulent – from a money laundering scheme. In the latter, the real estate transaction is likely to appear legitimate and although these types of questions may reveal such a scheme, it is unlikely to trick a truly savvy launderer.

### **Conclusion**

Countrywide appreciates the opportunity to comment and fully supports Treasury's efforts to fulfill its obligations under the USA PATRIOT Act to promulgate regulations that diminish the ability of terrorists, narcotics dealers and other criminals to launder their ill-gotten gains. We join MBA, Landsafe and others in asking Treasury to seriously evaluate the level of risk involved in real estate transactions and ensure that the final rules do not impose costs disproportionate to the underlying money laundering risks.

Sincerely,

Pete Mills  
Senior Vice President,  
Legislative & Regulatory Affairs