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VIA Electronic Mail

Mr. James F. Sloan
Director
Financial Crimes Enforcement Network

e-mail regcomments@fincen.treas.gov

ATTN: Section 352—Real Estate Settlements

ANPR – Anti-Money Laundering Requirements for “Persons involved in Real Estate Closings and Settlements”

Dear Mr. Sloan:

We are pleased to respond on behalf of our member credit unions and the Service Corp Mortgage, an ICUL Service Corporation division, to the Financial Crimes Enforcement Network’s Advance Notice of Proposed Rulemaking regarding the definition of “persons involved in real estate closings and settlements” for purposes of the prevention of money-laundering. The Illinois Credit Union League represents over 500 credit unions in Illinois.

FinCEN requests comment on whether there are money-laundering risks associated with real estate closings and settlements. We believe there is minimal money laundering risk. By the closing date most risks should be eliminated. The application-accepting financial institution requires items such as verification of employment, verification of deposit and verification of the borrowers downpayment and source of downpayment. If the financial institution is suspicious early in the application process, additional questions should be asked of the borrower. Additionally, the financial institution is required by October 1, 2003 to have an identification program in effect, and is currently required to have in place an OFAC verification program to eliminate the risk of money-laundering. The agents used at closing/settlement, have very little personal and financial information of the borrower compared to the financial institution that took the application and underwrote the loan, therefore the risk can be mitigated during the application process.

FinCEN also requests comment on the definition of “persons involved in real estate closings and settlements” for purposes of §5318(h). We believe that the definition could be limited to those persons involved in structuring the transaction. The reasoning behind

this suggestion stems from the fact that agents to the financial institution and borrower, such as attorneys, escrow agents, title company agents, mortgage brokers, etc. are “persons involved in a real estate closing or settlement”, but by the closing date, the borrowers background, i.e. source of downpayment, should have been verified by the financial institution that accepted the application. Therefore, those parties involved only with the closing or providing services such as an appraisal or inspection would not be in a position to detect potential money laundering activity of the borrower.

This certainly isn't to suggest that settlement agents do not have an obligation to prevent and report money laundering, if detected. An internal policy, describing the actions of the agent and the agency in the event of suspected money-laundering is important, but appointing a compliance officer, having annual training and an independent audit function for settlement agents is not feasible. Regardless of the outcome involving this ANPR, the traditional financial institutions are currently subject to Bank Secrecy Act and OFAC requirements, both of which help detect money laundering. For the financial institutions own safety and soundness, an anti-money laundering program is crucial because the borrower is a member/customer, meaning he will use the financial institution repeatedly for products and services, whereas the “agents” are used for a one-time transaction, never seeing the borrower again in all likelihood. Therefore, if the definition of financial institution continues to include “persons involved in real estate closings and settlements,” it should narrow the term to mean any agent who will have an ongoing relationship with the borrower after the closing date.

We appreciate the opportunity to provide our comments on the Advanced Notice of Proposed Rulemaking regarding the potential anti-money laundering requirements affecting “persons involved in real estate closings and settlements.” We will be happy to respond to any questions regarding these comments or otherwise discuss our concerns with agency staff.

Very truly yours,

ILLINOIS CREDIT UNION LEAGUE

By: _____

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Technical Specialist