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**Financial Crimes Enforcement Network
("FinCen")
Rules for Non-Bank Residential Mortgage Lenders
and Originators
Presented to
GREFPAC**

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Who is Covered

- **Loan or Finance Company:**
A person engaged in activities that take place wholly or in substantial part within the United States in the capacity of a residential mortgage lender or originator
 - **The term includes a sole proprietor acting as a loan or finance company.**
 - **It does not include an individual employed by a loan or finance company.**

Residential Mortgage Lender or Originator

- **Includes:**
 - (a) the person to whom the debt arising from a residential mortgage loan is initially payable on the face of the evidence of indebtedness (or by agreement) or to whom the obligation is initially assigned at or immediately after settlement; and
 - (b) a person who accepts a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan.

Residential Mortgage Lender or Originator

In Plain English

Applies to

- **Mortgage Lenders**
- **Mortgage Brokers**

Does not apply to

- **Mortgage Loan Originators**

What is Covered -Residential Mortgage Loan

A loan that is secured by a mortgage, deed of trust or other equivalent consensual security interest on:

- (a) a residential structure of 1 to 4 units, including, if used as a residence, an individual condominium unit, cooperative unit, mobile home or trailer; or
- (b) residential real estate upon which such a structure is constructed or intended to be constructed.

Anti-Money Laundering Program (“AML”)

- Each loan or finance company must develop and implement a written anti-money laundering program reasonably designed to prevent the loan or finance company from being used to facilitate money laundering or the financing of terrorist activities.
- The program must be approved by senior management, and a copy of the plan must be made available to FinCEN or its designee upon request.

AML (Cont'd)

- **AML Program must:**

(1) Incorporate policies, procedures, and internal controls based upon the loan or finance company's assessment of the money laundering and terrorist financing risks associated with its products and services.

The Policies, procedures and internal controls must integrate the company's agents and brokers into its anti-money laundering program, and obtain all relevant customer-related information necessary for an effective anti-money laundering program.

AML (Cont'd)

(2) Designate a compliance officer who will be responsible for ensuring that:

- The anti-money laundering program is implemented effectively, including monitoring compliance by the company's agents and brokers with their obligations under the program;**
- The program is updated as necessary; and**
- Appropriate persons are educated and trained in accordance with (3) below.**

AML (Cont'd)

(3) Provide for ongoing training of appropriate persons concerning their responsibilities under the program.

This requirement may be satisfied for employees, agents and brokers by directly training such individuals or verifying that such persons have received training by a competent third party with respect to the products and services offered by the loan or finance company.

AML (Cont'd)

- (4) Provide for independent testing to monitor and maintain an adequate program, including testing to determine compliance of the company's agents and brokers with their obligations under the program.**

The scope and frequency of the testing must be commensurate with the risks posed by the company's products and services. Testing may be conducted by a third party or by any officer or employee of the company, except for the compliance officer designated to implement and monitor the plan.

SAR – How to Report

- **A suspicious transaction is reported by completing a Suspicious Activity Report (“SAR”) and collecting and maintaining supporting documentation.**
- **Every loan or finance company shall file with FinCEN a report of any suspicious transaction relevant to a possible violation of a law or regulation.**
- **A loan or finance company may also file a report with FinCEN of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation for which a report is not required.**

SAR – What to Report

- **A transaction must be reported if it is conducted or attempted by, at, or through a loan or finance company; involves or aggregates funds or other assets of at least \$5,000; and the loan or finance company knows, suspects or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):**

SAR (Cont'd)

- (1) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;**
- (2) Is designed, whether through structure or other means, to evade any requirements of the rules governing loan or finance company or any other regulations promulgated under the Bank Secrecy Act;**

SAR (Cont'd)

- (3) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the loan or finance company knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or**
- (4) Involves use of the loan or finance company to facilitate criminal activity.**

SAR (Cont'd)

- **When more than one loan or finance company has an obligation to report the same transaction, no more than one report is required to be filed by the parties involved in the transaction.**
- **That report must contain all relevant facts (including the name of each financial institution involved), comply with all instructions for joint filings, and each institution must maintain a copy of the report along with any supporting documentation.**

SAR – Time to Report

- **The SAR is filed with FinCEN no later than 30 calendar days after the date of the initial detection by the reporting loan or finance company of facts that may constitute a basis for filing a SAR.**
- **If no suspect is identified on the date of initial detection, a loan or finance company may delay filing a SAR for an additional 30 calendar days to identify a suspect.**

SAR – Time to Report

- However, in no case shall reporting be delayed more than 60 calendar days after the date of initial detection.
- In situations involving violations that require immediate attention (such as suspected terrorist financing or ongoing money laundering schemes), a loan or finance company must immediately notify an appropriate law enforcement authority by telephone in addition to filing a SAR.

SAR – Document Retention

- **A loan or finance company must maintain a copy of any SAR filed by the company or on its behalf and the original (or business record equivalent) of any supporting documentation concerning any SAR it files for five years from the date of filing the SAR.**
- **Supporting documentation must be identified as such and maintained by the loan or finance company.**
- **All supporting documentation shall be made available to FinCEN, any federal, state or local law enforcement agency, or any federal or state regulatory authority that examines the loan or finance company for compliance with the Bank Secrecy Act.**

SAR – Confidentiality

- **A SAR and any information that would reveal the existence of a SAR are confidential and must not be disclosed except in certain circumstances.**
- **For purposes of the confidentiality requirement, a SAR includes any suspicious activity report filed with FinCEN. No loan or finance company, and no director, officer, employee or agent of any loan or finance company shall disclose a SAR or any information that would reveal the existence of a SAR.**
- **Any loan or finance company, or any director, officer, employee or agent that is subpoenaed or otherwise requested to disclose a SAR or information that would reveal the existence of a SAR must decline to produce the SAR or such information, citing 31 CFR § 1029.320 and 31 U.S.C. 5318(g)(2)(A)(i), and must notify FinCEN of any such request and the response thereto.**

SAR – Confidentiality

- **As long as no person involved in any reported suspicious transaction is notified that the transaction has been reported, the confidentiality requirement above does not prohibit:**
 - (1) The disclosure by a loan or finance company, or any director, officer, employee or agent of:**
 - a. A SAR or any information that would reveal the existence of a SAR, to FinCEN or any federal, state or local law enforcement agency, or federal or state regulatory authority that examines for compliance with the Bank Secrecy Act or requires compliance with the Bank Secrecy Act; or**
 - b. The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures to another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR.**
 - or**
 - (2) The sharing of a SAR, or any information that would reveal the existence of a SAR, within the loan or finance company's corporate organizational structure, for purposes as determined by regulation or in guidance.**

SAR – Confidentiality

- **A loan or finance company, and any director, officer, employee or agent that makes a voluntary disclosure of any possible violation or law or regulation to a government agency or makes a disclosure pursuant to the reporting requirements outlined above (including a joint disclosure with another institution) is protected from liability for any such disclosure.**

Special Information Sharing Procedures

- **The final rules also provide that loan or finance companies are subject to the special information sharing procedures to deter money laundering and terrorist activity requirements as set forth in 31 C.F.R. §§ 1010.520 and 1010.540.**
- **These sections outline the obligations of a loan or finance company when requests for information are received from a law enforcement agency or FinCEN, and the requirements for sharing information among financial institutions.**

Effective Dates

- **The final rules are effective April 16, 2012.**
- **Compliance with the new rules is required by August 13, 2012.**
- **Suspicious Activity Report applies to transactions initiated after August 13, 2012.**