OMB Number 1506-0061
Suspicious Activity Report Filing Requirements for Residential Mortgage Lenders and Originators

Supporting Statement

1. Circumstances Necessitating Collection of Information

The Bank Secrecy Act (BSA), Titles I and II of Pub. L. 91-508, as amended, codified at 12 U.S.C. 1829, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5330, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring records and reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters. Regulations implementing Title II of the BSA (codified at 31 U.S. C. 5311-5330) appear at 31 CFR Chapter X. The authority of the Secretary to administer the Bank Secrecy Act regulations has been delegated to the Director of the Financial Crimes Enforcement Network (FinCEN).

In 1992, section 5318 of the BSA was amended to add provisions concerning reporting by financial institutions of suspicious transactions. In particular, section 5318(g) grants the Secretary of the Treasury the authority to require the reporting of such transactions by financial institutions subject to the BSA, and contains a provision that prohibits the notification of any person involved in the transaction that a suspicious activity report (SAR) has been filed. Section 5318(g) was added to the BSA by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act, Title XV of the Housing and Community Development Act of 1992, Pub. L. 102-550.

FinCEN, which has been delegated the authority to administer the BSA, has determined that reports of suspicious transactions is necessary to prevent and detect the laundering of money and other funds at residential mortgage lenders and originators (See 31 CFR 1029.320). Additionally, residential mortgage lenders and originators are required to establish and maintain an anti-money laundering program (See 31 CFR 1029.210).

Residential mortgage lenders and originators are required to report suspicious transactions to Treasury. A transaction would require reporting under the rule if the transaction is conducted or attempted by, at, or through the residential mortgage lenders and originators, involves or aggregates funds of at least $5,000 and the residential mortgage lenders and originators suspects, or has reason to suspect that the transaction or the pattern of transactions of which the transaction is a part:

(i) involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal-activity;

(ii) is designed to evade a recordkeeping or reporting requirement of a regulation promulgated under the Bank Secrecy Act;

(iii) serves no business or apparent lawful purpose; or

(iv) involves the use of the business to facilitate criminal activity.

Under 31 CFR 1029.320(c), and 31 CFR 1010.430(d) residential mortgage lenders and originators are required to retain a copy of the any SAR filed and supporting documentation for the filing of the SAR for five years. These documents are necessary for criminal investigations and prosecution.

This rule will specifically add the reporting of mortgage fraud, mortgage loan fraud, and various mortgage fraud scams as a suspicious activity for reporting. This rule provides the reporting institution with specific data items that should be included in any SAR filed to report suspected fraudulent mortgage loan or scam activity.

2. Method of Collection and Use of Data.

Information about suspicious transactions conducted or attempted by, at, through, or otherwise involving residential mortgage lenders and originators will be collected through the filing of these electronic forms in a central location to be determined by FinCEN. FinCEN and law enforcement agencies will use the information on the SAR by residential mortgage lenders and originators for criminal investigation and prosecution purposes.

3. Use of Improved Information Technology to Reduce Burden.

The collection of information will be by a dynamic tool that is computer fillable and may be printed or saved electronically. The tool may also be electronically filed through the BSA E-Filing system. For further details see 75 FR 63545 (October 15, 2010).

4. Efforts to Identify Duplication.

No other similar information exists.

5. Methods to Minimize Burden on Small Businesses or Other Small Entities.

The information collection will not have a significant economic impact on a substantial number of small entities. These companies may build on their existing risk management procedures and prudential business practices to ensure compliance with this rule. Finally, residential mortgage lenders and originators may have an established and limited customer base whose transactions are well known to those residential mortgage lenders and originators.

6. Consequences to the Federal Government of not Collecting the Information.

With the SAR both law enforcement and industry benefit from improved detection of financial crime, analysis of trends, and coordination of investigative efforts. Failure to

collect this information would limit law enforcement's ability to investigate and prosecute money laundering and other financial crimes conducted at or through these businesses.

7. Special Circumstances Requiring Data Collection Inconsistent with Guidelines.

Respondents must report a suspicious transaction within 30 days but not later than 60 days after the transaction, which may result in reporting more frequently than quarterly. Prompt reporting is vital to the detection of money laundering and other financial crime, including the financing of terrorism, mortgage loan fraud or mortgage loan scams.

8. Consultation with Individuals Outside of the Agency on Availability of Data. Frequency of Collection, Clarity of Instructions and Forms, and Data Elements.

This is a new request for approval to add to the SAR specific data regarding mortgage loan fraud and other mortgage scams. FinCEN published a *Federal Register* notice on October 15, 2010, (*See* 75 FR 63545), inviting comment on the proposed data fields within the new BSA database that will support SAR filings by financial institutions required to file such reports under the BSA. Further, FinCEN published a notice of proposed rulemaking (NPRM) in the *Federal Register* to include the AML and SAR reporting and recordkeeping requirements on residential mortgage lenders and originators on December 9, 2010 (*See* 75 FR 76677). FinCEN received 8 comments from various mortgage industry groups, 3 banking trade associations, and 2 federal agencies. Responses to the comments are addressed in the final rule as follows:

The Bank Secrecy Act ("BSA")[1] authorizes the Secretary of the Treasury (the "Secretary") to issue regulations requiring financial institutions to keep records and file reports that the Secretary determines "have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism."[2] In addition, the Secretary is authorized to impose anti-money laundering ("AML") program requirements on financial institutions.[3] The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.[4]

Financial institutions are required to establish AML programs that include, at a minimum: (1) the development of internal policies, procedures, and controls; (2) the designation of a compliance officer; (3) an ongoing employee training program; and (4) an independent audit function to test programs. When prescribing minimum standards for AML programs, FinCEN must "consider the extent to which the requirements imposed under [the AML program requirement] are commensurate with the size, location, and activities of the financial institutions to which such regulations apply."[5] The BSA also requires financial institutions to file suspicious

[1] "Bank Secrecy Act" is the name that has come to be applied to the Currency and Foreign Transactions Reporting Act (Titles I and II of Pub. L. 91-508), its amendments, and the other statutes referring to the subject matter of that Act. These statutes are codified at 12 U.S.C. § 1829b, 12 U.S.C. §§ 1951-1959, and 31 U.S.C. §§ 5311-5314 and 5316-5332, and notes thereto.
[2] 31 U.S.C. § 5311.
[3] 31 U.S.C. § 5318(h).
[4] *See* Treasury Order 180-01 (Sept. 26, 2002).
[5] Pub. L. 107–56 § 352(c), 115 Stat. § 322, *codified at* 31 U.S.C. § 5318 note. Pub. L. 107–56 is the Uniting and

activity reports ("SARs").[1]

The BSA defines the term "financial institution" to include, in part, a loan or finance company.[2] The term "loan or finance company" is not defined in any FinCEN regulation, and there is no legislative history on the term. The term, however, can reasonably be construed to extend to any business entity that makes loans to or finances purchases on behalf of consumers and businesses. Some loan and finance companies extend personal loans and loans secured by real estate mortgages and deeds of trust, including home equity loans. Non-bank residential mortgage lenders and originators ("RMLOs" -- generally known as "mortgage companies" and "mortgage brokers" in the residential mortgage business sector) are a significant subset of the "loan or finance company" category, in terms of the number of businesses and the aggregate volume and value of transactions they facilitate.[3]

In 2002, FinCEN issued a regulation that temporarily exempted loan and finance companies and other categories of BSA-defined financial institutions from the obligation to establish AML programs.[4] The purpose of the exemption was to enable Treasury and FinCEN to study these categories of institutions and to consider the extent to which BSA requirements should be applied to them, taking into account their specific characteristics and money laundering vulnerabilities.[5] As a result, RMLOs did not have to comply with AML or SAR regulations or other BSA reporting and recordkeeping requirements intended to help prevent money laundering and fraud, and support law enforcement efforts. Subsequently, FinCEN analyses and law enforcement investigations identified this exemption as a regulatory gap that can be exploited by criminals, particularly in the conduct of mortgage fraud.

On July 21, 2009, FinCEN issued an Advance Notice of Proposed Rulemaking ("ANPRM")[6] soliciting general comments on whether FinCEN should issue AML and SAR program regulations for RMLOs. Most of the comments received in response to the ANPRM generally supported AML and SAR regulations for RMLOs. On December 9, 2010, FinCEN issued a Notice of Proposed Rulemaking ("NPRM")[7] to solicit comments on specific proposed regulations for RMLOs. The NPRM proposed AML and SAR regulations with standards and requirements that are substantially identical to those in AML and SAR regulations for banks and

---

Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 ("USA PATRIOT Act").

[1] 31 U.S.C. § 5318(g). Section 5318(g) gives the Secretary authority to require financial institutions to file SARs. This section was added to the BSA by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act, Title XV of the Housing and Community Development Act of 1992, Pub. L. 102–550; it was expanded by section 403 of the Money Laundering Suppression Act of 1994, Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, to require designation of a single government recipient for reports of suspicious transactions.

[2] 31 U.S.C. § 5312(a)(2)(P).

[3] Loan and finance companies also supply short- and intermediate-term credit for such purposes as the purchase of equipment, accounts receivable portfolios and motor vehicles, and the financing of inventories. In addition, specialized wholesale loan and finance companies provide liquidity that allows retail loan and finance companies, as well as banks and others, to service end users.

[4] 31 CFR 1010.205 (2011).

[5] *See* 67 FR 21113 (Apr. 29, 2002), *as amended at* 67 FR 67549 (Nov. 6, 2002), *corrected at* 67 FR 68935 (Nov. 14, 2002), *recodified at* 75 FR 65806 (Oct. 26, 2010).

[6] 74 FR 35830 (July 21, 2009). "Anti-Money Laundering Program and Suspicious Activity Report Requirements for Non-Bank Residential Mortgage Lenders and Originators." http://edocket.access.gpo.gov/2009/pdf/E-9-17117.pdf.

[7] 75 FR 76677 (Dec. 9, 2010). "Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Residential Mortgage Lenders and Originators." http://edocket.access.gpo.gov/2010/pdf/2010-30765.pdf.

other financial institutions that offer retail consumer banking services and originate mortgage loans.

Both the ANPRM and the NPRM suggested that the AML program and SAR filing regulations for RMLOs would be issued as the first step in an incremental approach to implementation of regulations for the broad loan or finance company category of financial institutions. Thus, the definition of "loan or finance company" would initially include only RMLOs, but would be structured to permit the addition of other types of loan and finance related businesses and professions in future amendments.

Since 2006, FinCEN has issued numerous studies analyzing SARs reporting suspected mortgage fraud and money laundering that involved both banks and RMLOs, the latter typically brokering or selling purchase money and refinance loans to lending institutions.[1] The reports underscore the potential benefits of AML and SAR regulations for a variety of businesses in the primary and secondary residential mortgage markets, including RMLOs. As noted in the NPRM and emphasized in several related public comments, RMLOs are primary providers of mortgage finance – in most cases dealing directly with the consumer – and are in a unique position to assess and identify money laundering risks and fraud while directly assisting consumers with their financial needs and protecting the sector from the abuses of financial crime. Comments on the ANPRM and NPRM emphasized that the risks of fraud and other financial crimes, including money laundering, are substantial in the RMLO sector and are growing. Some comments stated that the financial crime risks in the sector are "no less significant" than those faced by banks providing mortgage loan services.[2]

Most of the comments on the NPRM generally supported the issuance of AML program and SAR filing regulations for RMLOs. The Final Rule is based on the NPRM and adopts all of the regulatory provisions proposed with a few exceptions, noted below. The AML regulation promulgates the four minimum requirements noted earlier. The SAR regulation requires reporting of suspicious activity, including but not limited to fraudulent attempts to obtain a mortgage or launder money by use of the proceeds of other crimes to purchase residential real estate. The Final Rule does not require RMLOs to comply with any other BSA reporting or recordkeeping regulations, such as currency transaction reports (CTRs).[3] The few large currency transactions expected to be conducted in the sector will continue to be subject to reporting on

---

[1] *See* Mortgage Loan Fraud Update (SARs Jan. 1 – Mar. 31, 2011), June 2011, http://www.fincen.gov/news_room/rp/files/MLF_Update_1st_Qtyl_11_FINAL_508.pdf ; Mortgage Loan Fraud Update (SARs Jan. 1 – Dec. 31, 2010), Mar. 2011, http://www.fincen.gov/news_room/rp/files/MLF_Update_4th_Qtly_10_FINAL_508.pdf ; Mortgage Loan Fraud Update (SARs July 1 – Sept. 30, 2010), Jan. 2011, http://www.fincen.gov/news_room/rp/files/MLF_Update_3rd_Qtly_10_FINAL.pdf ; Mortgage Loan Fraud Update (SARs Apr. 1 – June 30, 2010), Dec. 2010, http://www.fincen.gov/news_room/rp/files/MLF_Update_2nd_Qtly_10_FINAL.pdf ; Mortgage Loan Fraud Update: SAR Filings Jan. 1 - Mar. 31, 2010, http://www.fincen.gov/news_room/rp/files/MLF_Update_1st_Qtly_10_FINAL.pdf. *See also* NPRM, notes 13, 20 and 21.

[2] *See* NPRM, 75 FR at 76679. One government agency comment on the NPRM stated that the "regulatory gap in coverage has hampered efforts to be proactive in detecting and investigating mortgage fraud at non-banks (i.e., unsupervised lenders and originators [RMLOs under this Final Rule]) . . ." The commenter further noted that in 2010, unsupervised lenders and originators comprised fully two-thirds (67 percent) of FHA's approved originating lenders. The commenter also stated that "[o]ne vital weapon in the war on mortgage fraud has been FinCEN's regulations that require banks to establish AML programs and to file SARs."

[3] 31 CFR 1010.310.

FinCEN Form 8300.[1]

FinCEN believes that much of the effort necessary to meet these regulatory obligations, including information gathering, will be accomplished through business operations already undertaken as part of normal transaction negotiation, completion of required Federal forms and disclosures, and due diligence and review of property and collateral. With this Final Rule, FinCEN believes RMLOs will assume a crucial role in government and industry efforts to protect consumers, mortgage finance businesses, and the U.S. financial system from mortgage fraud, money laundering, and other financial crimes.

## II. Notice of Proposed Rulemaking

The comment period on the NPRM ended on February 7, 2011. FinCEN received 15 comment letters from individuals, businesses, and representatives of various groups whose members had an interest in the proposed AML and SAR program requirements. The comments offered a range of views on the appropriate scope of any new regulations, and on various implementation- and compliance-related matters of concern to industry, regulators and law enforcement.

### A. Incremental Implementation of Rules

The NPRM proposed specific AML program and SAR filing requirements for RMLOs as the first step in an incremental approach to implementation of regulations for loan and finance companies. In order to limit the scope of the Final Rule to RMLOs, the NPRM proposed a definition of the term "loan or finance company" that includes business entities or sole proprietorships (not individuals) acting within the bounds of specified definitions for the terms *residential mortgage lender* and *residential mortgage originator*.

Seven comments on the NPRM addressed aspects of the incremental approach FinCEN has chosen, mostly supportive. Many commenters also urged that the Final Rule cover other types of businesses and professions in the primary and secondary residential real estate markets, as well as other types of consumer and commercial loan and finance companies, not just residential mortgage lenders and originators.

Two commenters argued that FinCEN should not delay implementation of BSA requirements for other loan or finance companies. One argued that an uneven playing field would be to the advantage of fraudsters and criminals, who will take advantage of financial industry sectors that have less stringent BSA requirements. The other commenter argued that such an incremental approach misses the opportunity to provide law enforcement with critical information about high-risk real estate transactions and needlessly continues the exemption of U.S. real estate and escrow agents. A number of comments suggested that FinCEN issue final rules for commercial lenders, as well as RMLOs, in connection with this rulemaking.

Comments of this nature were anticipated from industry as well as regulators and law enforcement, due to heightened concern about criminals potentially shifting the focus of their fraud and other illegal financial transactions and money laundering to uncovered businesses and professions. Arguably, the absence of rules for other types of loan or finance companies might be exploited by criminals insofar as they may shift the focus of their criminal enterprises from residential real estate to other consumer and commercial finance businesses. FinCEN reports note that SARs involving commercial real estate, in particular, have increased in recent periods.[2]

---

[1] 31 CFR 1010.330.

[2] *See, e.g.*, Mortgage Loan Fraud Update (SARs Apr. 1 – June 30, 2010), Dec. 2010, page 18.. http://www.fincen.gov/news_room/rp/files/MLF_Update_2nd_Qtly_10_FINAL.pdf.
*See also* Commercial Real Estate Financing Fraud (SARs by Depository Institutions, Jan. 1, 2007 to Dec. 31, 2010) Mar. 2011; Advisory: Activities Potentially Related to Commercial Real Estate Fraud (Mar. 30, 2011); Remarks of

Some comments urged simultaneous – or very prompt – issuance of AML and SAR rules for businesses in a separate, but related, category of BSA-defined financial institution – "persons involved in real estate closings and settlements."[1] FinCEN regulations in this category could include persons as varied as real estate agents and real estate brokers, closing attorneys and agents, title search and title insurance companies, appraisers, escrow companies, and other firms involved in initial purchase money transactions as well as subsequent refinancing in the form of, for example, home equity loans, reverse mortgages, and real estate-secured consumer loans. Three commenters suggested that FinCEN should propose rules for real estate agents and other persons involved in real estate closings and settlements. One commenter advocated for the Final Rule to include two types of businesses that logically belong in the "persons involved . . ." category – real estate agents and escrow companies. The comment emphasized the critical role a few of these companies played in recent high-profile money laundering cases. One comment specifically opposed such a proposal, arguing that in nearly all real estate finance transactions in which real estate agents participate funds are transferred using the services of different businesses that already are required to comply with AML and SAR regulations.

In sum, several comments on the NPRM expressed support for expanding the scope of the Final Rule to cover businesses and professions involved in a broad range of consumer and commercial real estate and non-real estate related finance. Upon consideration of the comments, FinCEN is not inclined at this time to propose a definition of "loan or finance company" that would encompass other types of consumer or commercial finance companies, or real estate agents and other "persons involved in real estate closings and settlements."

FinCEN intends to defer regulations for these other businesses and professions until further research and analysis can be conducted to enhance our understanding of the operations and money laundering vulnerabilities of these businesses. Accordingly, as the NPRM suggested, the definition of "loan or finance company" in the Final Rule has been structured to permit the addition of other types of loan and finance companies in future rulemakings.

B. Final Rule Limited to AML and SAR Regulations Only

The NPRM suggested that FinCEN would not propose any additional BSA regulations for the sector at this time, including CTR requirements.[2] One commenter addressed this issue specifically, supporting FinCEN's view that CTR filing requirements are unnecessary for loan or finance companies. FinCEN agrees, and therefore, the Final Rule does not adopt any CTR requirements or any other BSA regulations.[3]

C. Consideration of Examination Authority

FinCEN sought comment on any particular aspects of the loan or finance company sector that should be considered when making a decision about whether, to whom, and how to delegate examination authority. Under 31 CFR 1010.810(a), "Overall authority for enforcement and compliance, including coordination and direction of procedures and activities of all other agencies exercising delegated authority under this chapter, is delegated [by the Secretary of the Treasury] to the Director, FinCEN." In turn, Federal functional regulators have been delegated

---

James H. Freis, Jr., Director, FinCEN, delivered at the Mortgage Bankers Association National Fraud Issues Conference, Mar. 28, 2011, page 4 (the "Fraud Conference Speech"). http://www.fincen.gov/news_room/speech/pdf/20110328.pdf.

[1] 31 U.S.C. § 5312(a)(2)(U).

[2] *See* note 15, *supra*.

[3] As financial institutions for purposes of 31 U.S.C. 5312(a)(2), loan or finance companies have been, and remain subject to, the special information procedures to deter money laundering and terrorist activity. *See* Subpart E of 31 CFR Part 1010.

authority to examine certain financial institutions they oversee for compliance with FinCEN's regulations. As noted in the NPRM, the Internal Revenue Service ("IRS") has been delegated the authority, under this regulation,[1] to examine for compliance with FinCEN's regulations those financial institutions that are not examined by a Federal functional regulator.

Commenters suggested options for FinCEN to delegate complete or partial examination authority over RMLOs for compliance with the Final Rule. The options noted in the public comments included, in addition to the IRS, state regulatory agencies, the Consumer Financial Protection Bureau, and the Federal banking agencies (particularly with respect to RMLOs affiliated with banks or insured depository institutions and their holding companies). Upon consideration of all the comments, FinCEN will work with other relevant regulatory agencies in the development of consistent compliance examination procedures, and in the future will provide public notice of other agencies that will exercise delegated compliance examination with respect to certain classes of RMLOs

D. SAR Filing System and Form

Three commenters suggested that FinCEN establish a separate SAR filing system and form for the exclusive use of residential mortgage lenders and originators. Another commenter requested that FinCEN continue to accommodate manual paper SAR filings, as many covered entities do not have automated systems.

FinCEN considered requiring RMLOs to use Treasury SAR Form TD F 90-22.47, presently used by banks and other insured depository institutions. The information required for a SAR from an RMLO would be substantially the same as that required of banks and other depository institutions that make mortgage loans and use Form TD F 90-22.47. However, FinCEN is modernizing its SAR filing system and intends to establish a uniform electronic form for use by all financial institutions with a SAR filing obligation.[2] Accordingly, the Final Rule has a delayed compliance date to allow time for industry to implement programs and systems and for FinCEN to implement the new SAR filing system. In addition, FinCEN intends to phase out the manual filing of paper SAR forms.[3] RMLOs will, therefore, be required to use FinCEN's electronic, web-based E-Filing system under development for the filing of the uniform SAR form. This electronic filing system will not require use of commercial automated systems, but will be usable by anyone with access to the internet.[4]

E. Exclusions and Exemptions Considered

The NPRM suggested exceptions or exclusions for: banks and insured depository institutions; persons registered with and functionally regulated or examined by the U. S. Securities and Exchange Commission or the Commodity Futures Trading Commission; individuals employed by covered loan or finance companies and affiliated financial institutions; and individuals who finance the sale of their own property (*i.e.*, seller-financed sales). The NPRM expressed the long-held view that exceptions are appropriate for individuals and entities already subject to AML and SAR regulations to avoid overlapping or duplicative requirements, and that seller-financed transactions do not present the same risks as most transactions conducted at arm's-length.

In response to FinCEN's request for comments on the matter of appropriate exclusions and exceptions, some commenters opposed any additional exemptions or exceptions beyond

[1] 31 CFR 1010.810(b)(8).
[2] 75 FR 63545 (Oct. 15, 2010).
[3] 76 FR 57799 (Sept. 16, 2011).
[4] *Id.*, note 4, referencing information on filing methods posted on FinCEN's web site, http://bsaefiling.fincen.treas.gov/main.html.

those suggested in the NPRM, while others urged FinCEN to consider one or more additional exceptions. One commenter stated that the registration and training requirements mandated by the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 ("SAFE Act")[1] are sufficient to address anti-money laundering and terrorist financing risks encountered by RMLOs. Another commenter argued that small businesses with fewer than five employees should be exempt.

FinCEN does not agree that the registration and training requirements under the SAFE Act are sufficient to address all of the concerns and accomplish all of the goals related to AML and SAR programs. However, FinCEN intends to continue its dialogue with the CSBS to coordinate the identification and examination of mortgage originators subject to the Final Rule. SARs filed pursuant to FinCEN's regulations go into a database that is accessible to regulatory agencies and law enforcement on the Federal, state and local levels. The information in FinCEN's database, and FinCEN's complementary analysis, is crucial to the successful investigation and prosecution of money laundering, fraud, and other financial crimes – a point emphasized in several comments on the NPRM.

FinCEN does not agree that RMLOs with less than a certain arbitrary number of employees or net worth should be excepted from the Final Rule. Such an exception would leave a large gap in coverage of RMLO businesses. Comments on the NPRM confirm that the absence of SAR rules for RMLOs has resulted in a substantial gap in mortgage fraud related SAR reporting. FinCEN believes that a "small business" exclusion or exception for businesses with fewer than five employees, or for businesses that satisfy some other arbitrary size, net worth or similar criteria, would perpetuate the present substantial gap in SAR reporting. The widespread knowledge that all banks and other insured depository institutions have well-established AML and SAR programs likely has deterred some criminals and caused them to consider other options for integrating illicit funds into the financial system. The inclusion of arbitrary, size-related exceptions from the Final Rule may result in unintended consequences that undermine the effectiveness of a comprehensive, risk-based AML and SAR program regime. Such exceptions could, for example, encourage a shift of a substantial portion of mortgage transactions to small lenders and brokers, however "small" is defined.

A similar comment suggested a *de minimis* exception for businesses that lend or broker loans under a relatively low value, or low aggregate volume of transactions within a set time period. For the reasons stated above, we see no compelling reason to except any businesses or transactions based on an arbitrary, *de minimis* dollar amount or volume of transactions.

Commenters both supported and opposed the NPRM's proposed coverage of sole proprietorships. Consistent with the NPRM, the Final Rule explicitly covers sole proprietorships. For the same reasons that support the rejection of an exception for small businesses, the Final Rule does not recognize an exception based on a business's status as a sole proprietorship or other kind of business entity under Federal or state incorporation or tax laws. An exception for sole proprietorships likely would perpetuate, to some degree, the SAR filing gap and risk adverse impacts on the mortgage markets. Thus, the Final Rule does not incorporate any such exceptions for businesses based on their form of organization.

## III. Section-by-Section Analysis

### A. Definition of Loan or Finance Company

Section 1010.100(kkk) defines the key terms used in the Final Rule. The definitions

[1] *See* Title V of Division A of the Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, 122 Stat. 2810 (2008), *codified at* 12 U.S.C. § 5101, *et. seq*.

reflect FinCEN's determination that the term "loan or finance company" should be limited, at this time, to RMLOs, and that AML program and SAR requirements should be applied first to these businesses, and later – as part of a phased approach – applied to other consumer and commercial loan and finance companies. With the exception of the addition of explicit exclusions for government-sponsored enterprises and certain government programs and a slight change to the definition of residential mortgage originator, discussed below, the Final Rule adopts the definitions as proposed.

In the NPRM, "residential mortgage originator" was defined as a person who "takes a residential mortgage loan application and offers or negotiates terms of a residential mortgage loan for compensation or gain." One commenter suggested that the proposed language "takes a residential mortgage loan application" was ambiguous as to who would be subject to the requirements. FinCEN intends the Final Rule to be broad in scope and cover most non-bank residential mortgage originators, with the few exceptions recognized in the Final Rule and described in this notice. FinCEN intends the Final Rule to cover any business that, on behalf of one or more lenders, accepts a completed mortgage loan application, even if the business does not in any manner engage in negotiating the terms of a loan. FinCEN also intends the Final Rules to cover businesses that offer or negotiate specific loan terms on behalf of either a lender or borrower, regardless of whether they also accept a mortgage loan application. Accordingly, the Final Rule modifies the proposed definition of "residential mortgage originator" slightly to include "persons" who *accept* a residential mortgage loan application <u>*or*</u> that offer or negotiate terms of a residential mortgage loan." The change made from the NPRM of replacing the term "take" with "accept" is intended to differentiate the Final Rule from the SAFE Act. The change from "and" to "or" is intended to ensure that persons who either accept an application or offer or negotiate the terms of a loan are covered. In addition, FinCEN intends the Final Rule to apply to residential mortgage originators, regardless of whether they receive compensation or gain for acting in that capacity. Accordingly, the phrase "for compensation or gain" in the proposed definition is removed from the definition in the Final Rule. These changes create greater differences between the definitions in this Final Rule and those used in the SAFE Act and other federal mortgage-related statutes. This was done intentionally to differentiate this Final Rule from those statutes so that the interpretation of this Final Rule is not based on the interpretation of those statutes. FinCEN intends the definitions in the Final Rule and subsequent amendments thereto to be consistent with definitions in the SAFE Act and other federal mortgage-related statutes, only to the extent deemed appropriate to advance FinCEN's mission, strategic goals, and policies. As discussed in the NPRM, the Final Rule does not contemplate coverage of an individual employed by a loan or finance company or financial institution, and provides an exception for individuals financing the sale of their own real estate.[1] For example, individuals employed by a loan or finance company that would be not be subject to the rule include administrative assistants and office clerks who gather documents, review land records and complete forms on behalf of a lender or originator.

One commenter inquired whether the Final Rule (or any aspects thereof) would apply to the housing government sponsored enterprises ("GSEs") and their employees involved in "loss mitigation" activities. FinCEN would like to clarify that no provision of the Final Rule applies to the housing GSEs or any of their employees, regardless of whether they are involved in loss mitigation or any other housing GSE activity or program. FinCEN has revised the proposed

[1] The Final Rule applies to businesses, including sole proprietorships, not individuals. Some individuals covered by the SAFE Act definition of "loan originator," 12 U.S.C. § 5102(3)(A)(ii), would not be covered by the Final Rule.

definition of "loan or finance company" to exclude "any government sponsored enterprise regulated by the Federal Housing Finance Agency." Where fraud is suspected by a housing GSE, there is an established procedure, currently set forth in a Memorandum of Understanding between FinCEN and the Federal Housing Finance Agency ("FHFA") for the GSE to report to the FHFA, which then reports the suspicious activity to FinCEN.[1]

The Final Rule generally is intended to cover initial purchase money loans and traditional refinancing transactions facilitated by RMLOs. Another commenter asked FinCEN to clarify whether the Final Rule would apply to transactions involving funds or programs under the Troubled Asset Relief Program and similar Federal programs,[2] or any similar state housing authority or housing assistance program. These programs are intended to prevent loan default and foreclosure. Most of these programs apply to existing loans in default or at risk of default. While these programs are administered by government agencies that have developed standards, procedures, and qualifications to prevent fraud and abuse, the programs nonetheless are vulnerable to fraud and money laundering – a risk acknowledged by the commenter.

Since 2009 FinCEN has warned financial institutions and consumers about the fraud and money laundering risks associated with foreclosure prevention and loan modification programs,[3] and FinCEN agrees with the commenter's assessment of the risks associated with the programs identified in the comment. Accordingly, FinCEN expects that RMLOs participating in such programs to comply with the Final Rule to the extent any transactions conducted by the RMLO could reasonably be considered to be extending a residential mortgage loan or offering or negotiating the terms of a residential mortgage loan, within the meaning of the definitions of "residential mortgage lender" and "residential mortgage originator" in the Final Rule. The Final Rules, however, do not apply to the Federal or state housing authorities and agencies administering such programs. The proposed definition of "loan or finance company" has been revised to exclude "any Federal or state agency or authority administering mortgage or housing assistance, fraud prevention or foreclosure prevention programs."

The commenter also requested clarification whether the Final Rule would apply to foreclosure prevention actions and counseling services performed by legitimate, non-profit organizations – some of which may receive minimal compensation to assist in the preparation of a mortgage application, or provide short-term loans to facilitate foreclosure prevention actions. Consistent with our views regarding RMLOs that participate in Federal and state foreclosure prevention programs, FinCEN also expects non-profit housing organizations to comply with the Final Rule, to the extent any such organization may reasonably be deemed to be extending a residential mortgage loan (including a short-term mortgage loan), or offering or negotiating the terms of a residential mortgage loan. However, FinCEN would not expect legitimate, non-profit organizations that limit their activities to assisting with the preparation of loan applications or referral of prospective borrowers to qualified lenders, for free or for a fee; that provide short-

[1] In a recently issued NPRM, FinCEN proposed AML and SAR regulations for the housing GSEs that would, in part, replace the existing reporting arrangement with a more direct and efficient reporting procedure. *See* 76 FR 69204 (Nov. 8, 2011). http://www.gpo.gov/fdsys/pkg/FR-2011-11-08/pdf/2011-28820.pdf.

[2] Other Federal programs noted by the commenter include the Making Home Affordable Program, the Home Affordable Modification Program, the Hardest Hit Funds Program and the Federal Housing Administration Refinance Program.

[3] *See* FIN-2010-A005 - Advisory to Financial Institutions on Filing Suspicious Activity Reports Regarding Home Equity Conversion Mortgage Fraud Schemes (Apr. 27, 2011), http://www.fincen.gov/statutes_regs/guidance/html/fin-2010-a005.html ; FIN-2009-A001 - Guidance to Financial Institutions on Filing Suspicious Activity Reports regarding Loan Modification/Foreclosure Rescue Scams (Apr. 6, 2009), http://www.fincen.gov/statutes_regs/guidance/html/fin-2009-a001.html.

term, non-mortgage loans to qualified borrowers or homeowners; or that otherwise *facilitate* the extension of a residential mortgage loan (but do not make the loan or offer or negotiate the terms of the loan), to fall within the scope of the Final Rule.

One commenter requested that FinCEN exclude mortgage servicers from the definition of residential mortgage loan originator. FinCEN generally views loan servicers as businesses that support post-origination principal and interest collection and taxation, and not as a business or activity that "offers or negotiates" the terms of a mortgage loan. FinCEN agrees that the typical activities of mortgage servicing companies do not fall within the definition of residential mortgage originator in this Final Rule. We will not, however, make a blanket exclusion or exception for mortgage servicers. The definition is based on the activity in which an entity is engaged. Thus, as long as a mortgage servicer does not extend residential mortgage loans or offer or negotiate the terms of a residential mortgage loan application, it will not fall under of the definition of residential mortgage loan originator. The commenter also requested that FinCEN exclude servicers working with loan modification programs, such as the Home Affordable Modification Program, or "HAMP," from the definition of residential mortgage loan originator. FinCEN agrees that loan modifications under such programs are not covered by this Final Rule to the extent that the modifications do not involve extending new residential mortgage loans or offering or negotiating the terms of a residential mortgage loan application.

B. Anti-Money Laundering Program

Section 1029.210 requires that each loan or finance company develop and implement an 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. Two commenters argued that RMLOs should not be required to maintain AML programs, but only be required to file SARs. One commenter, a mortgage company, argued that mortgage fraud was the primary issue and not money laundering, so an AML program is unnecessary. The other commenter, a trade association, argued that SAR filings are the primary means of conveying valuable information to law enforcement, as contemplated under the BSA, and that requiring a full AML program imposes unnecessary complexity, paperwork, and regulatory burdens that outweigh the potential benefits to law enforcement. The commenter argued simply that maintaining an AML program would create an unnecessary regulatory burden, and the costs would far outweigh the benefits to law enforcement.

FinCEN believes that a complete AML program is essential to an adequate, efficient SAR filing program. FinCEN refers to the "four pillars" of an AML program for a reason, as each one is critical to holding up the overall structure of the program. Without one, the others will fail.[1] It would be difficult to expect useful SAR reporting without the pillars of an AML program firmly in place. Moreover, it is in the best interest of everyone involved in a mortgage finance transaction to try to prevent the fraud before it occurs. Prevention is a core purpose behind FinCEN's regulatory requirements for AML programs.

FinCEN's regulations are structured to ensure that financial institutions are knowledgeable of risks and vigilant against criminal abuse. With all BSA AML regulations, businesses are required to implement risk-based programs that take into account the unique risks associated with that particular business' products and services, as well as the business' size, market, and other issues. Thus, each AML program would necessarily be different than those of businesses with different product, geographic, and other risks. FinCEN reports and other research underscore that mortgage fraud is one of the most significant operational risks facing

[1] *See* the Fraud Conference Speech, fn. 17.

RMLOs in the ordinary course of business.

Under a risk-based approach to implementation of the Final Rule, FinCEN expects fraud prevention, as well as money laundering prevention, to be key goals underlying the various policies and procedures in an effective AML program for an RMLO. Therefore, the proposed AML regulation is adopted in this Final Rule without change.

C. Reports of Suspicious Transactions

Section 1029.320 contains the rules setting forth the obligation of loan or finance companies to report suspicious transactions that are conducted or attempted by, at, or through a loan or finance company and involve or aggregate at least $5,000 in funds or other assets. It is important to recognize that transactions are reportable under this Final Rule and 31 U.S.C. 5318(g) regardless of whether they involve currency. The $5,000 minimum amount is consistent with existing SAR filing requirements for other financial institutions regulated by FinCEN.

Section 1029.320(a)(2) specifically describes the four categories of transactions that require reporting. A loan or finance company is required to report a transaction if it knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part): (i) involves funds derived from illegal activity or is intended or conducted to hide or disguise funds or assets derived from illegal activity; (ii) is designed, whether through structuring or other means, to evade the requirements of the BSA; (iii) has no business or apparent lawful purpose, and the loan or finance company knows of no reasonable explanation for the transaction after examining the available facts; or (iv) involves the use of the loan or finance company to facilitate criminal activity.[1]

Several comments requested guidance with regard to when a SAR would be required to be filed. A determination as to whether a SAR is required must be based on all the facts and circumstances relating to the transaction and customer of the loan or finance company in question. Different fact patterns will require different judgments. Some examples of red flags are referenced in previous FinCEN reports on mortgage fraud and money laundering in the residential and commercial real estate sectors.[2] However, the means of commerce and the techniques of money laundering and mortgage fraud are continually evolving, and there is no way to provide an exhaustive list of suspicious transactions. FinCEN will continue to pursue a regulatory approach that involves a combination of appropriate regulations, written guidance, support of industry training programs, and maintenance of a government-industry information exchange so that any new AML program and SAR reporting regulations can be implemented in as flexible and cost efficient way as possible, while protecting the sector and the financial system as a whole from fraud, money laundering, and other financial crimes.

Section 1029.320(b) sets forth the filing procedures to be followed by loan or finance companies making reports of suspicious transactions. Within 30 days after a loan or finance company becomes aware of a suspicious transaction, the business must report the transaction by completing a SAR and filing it with FinCEN. Two commenters addressed FinCEN's SAR reporting system. The first commenter suggested that there should be one centralized place for reporting to allow streamlined interaction with regulators. That is, in fact, the case, as all SARs are filed with FinCEN and made available to the appropriate agencies. The second commenter argued that a specific system for residential mortgage lenders needs to be developed that is

[1] The fourth reporting category has been added to the suspicious activity reporting rules promulgated since the passage of the USA PATRIOT Act to make it clear that the requirement to report suspicious activity encompasses the reporting of transactions involving fraud and those in which legally derived funds are used for criminal activity, such as the financing of terrorism.

[2] *See* note 17, *supra*. *See also* NPRM, notes 13 and 20.

separate from the current system for other financial industries. While FinCEN's new uniform filing system, discussed in II.D. above, will require the use of one form by all businesses subject to FinCEN SAR regulations, the uniform form has been designed to be used by a range of filer types, with required data fields for each type of filer reflecting the kinds of activities reported by those specific filer types, including RMLOs.

Section 1029.320(d)(1) reinforces the statutory prohibition against the disclosure by a financial institution of a SAR (regardless of whether the report is required by the Final Rule or is filed voluntarily). Thus, the section requires that a SAR and information that would reveal the existence of that SAR be kept confidential and not be disclosed except as authorized within the rules of construction. The Final Rule includes rules of construction that identify actions an institution may take that are not precluded by the confidentiality provision. These actions include the disclosure of SAR information to FinCEN, or Federal, state, or local law enforcement agencies, or a Federal regulatory authority that examines the loan or finance company for compliance with the BSA, or a state regulatory authority administering a State law that requires the loan or finance company to comply with the BSA or otherwise authorizes the State authority to ensure that the loan or finance company complies with the BSA.[1] This confidentiality provision also does not prohibit the disclosure of the underlying facts, transactions, and documents upon which a SAR is based (provided the existence of the SAR is not disclosed), or the sharing of SAR information within the loan or finance company's corporate organizational structure for purposes consistent with Title II of the BSA as determined by FinCEN in regulation or in guidance.[2]

Section 1029.320(d)(2) incorporates the statutory prohibition against disclosure of a SAR or the fact that a SAR has been filed, other than in fulfillment of official duties consistent with the BSA, by government users of SAR data. The section also clarifies that official duties do not include the disclosure of SAR information in response to a request for non-public information[3] or for use in a private legal proceeding, including a request under 31 CFR 1.11.[4]

Section 1029.320(e) provides protection from liability for making reports of suspicious transactions, and for failures to disclose the fact of such reporting, to the full extent provided by 31 U.S.C. 5318(g)(3). Two commenters requested the same protection from liability for RMLOs as that which exists for other financial institutions. This Final Rule, in section 1029.320(e), provides exactly the same "safe harbor" for RMLOs as is provided for other financial institutions. The provisions in the NPRM are adopted without change.

Section 1029.320(f) notes that compliance with the obligation to report suspicious

---

[1] *See* NPRM, 75 FR at 76683. The language in the rules of construction pertaining to State regulators has been revised in the Final Rule to reflect the terms adopted in FinCEN's SAR confidentiality rulemaking, finalized in December 2010. *See* 75 FR 75593, 75596-97 (December 3, 2010).

[2] On January 20, 2006, FinCEN issued guidance for the banking, securities, and futures industries authorizing the sharing of SAR information with parent companies, head offices, or controlling companies. http://www.fincen.gov/statutes_regs/guidance/pdf/sarsharingguidance01202006.pdf . To date, no such guidance has been issued for the loan or finance industry.

[3] For purposes of this rulemaking, "non-public information" refers to information that is exempt from disclosure under the Freedom of Information Act.

[4] 31 CFR 1.11 is the Department of the Treasury's information disclosure regulation. Generally, these regulations are known as "Touhy regulations," after the Supreme Court's decision in United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951). In that case, the Supreme Court held that an agency employee could not be held in contempt for refusing to disclose agency records or information when following the instructions of his or her supervisor regarding the disclosure. An agency's Touhy regulations are the instructions agency employees must follow when those employees receive requests or demands to testify or otherwise disclose agency records or information.

transactions will be examined by FinCEN or its delegates, and provides that failure to comply with the Final Rule may constitute a violation of the BSA and the BSA regulations. One comment requested that FinCEN clearly define the consequences of failing to file a SAR. Section 1029.320(f) is intended to cover violations of SAR filing requirements, and FinCEN is authorized to impose a range of civil and criminal penalties, the severity of which depends on the specific circumstances.[1]

Section 1029.320(g) provides that the new SAR requirement applies to transactions occurring after an AML program is required, which is [six months from the Final Rule's publication date]. As noted above, the delayed compliance date for SAR filings is also intended to allow time for implementation of the new SAR filing system.

D. Special Information Procedures to Deter Money Laundering and Terrorist Activity

Section 1029.500 states generally that loan or finance companies are subject to the special information procedures to detect money laundering and terrorist activity requirements set forth and cross referenced in sections 1029.520 (cross-referencing to 31 CFR 1010.520) and 1029.540 (cross-referencing to 31 CFR 1010.540). Sections 1010.520 and 101.540 implement sections 314(a) and 314(b) of the USA PATRIOT Act, respectively, and generally apply to any financial institution listed in 31 U.S.C. 5312(a)(2) and any such financial institution that is subject to an AML program requirement, respectively. Because loan or finance companies are specifically enumerated in section 5312(a)(2), and upon the effective date will be subject to the AML program requirement, they will be subject to the section 314 rules on that date. For the sake of clarity, the Final Rule adds subpart E to Part 1029 to confirm that both of the section 314 rules will apply to loan or finance companies on that date.

In the NPRM, FinCEN sought comment on the extent to which AML programs or SAR reporting requirements would require affected businesses to conduct a degree of due diligence, or collect an amount of information, beyond that presently conducted to assess credit worthiness and minimize losses due to fraud. Of the three responses on this issue, two (one from a mortgage company and one from a trade association representing mortgage related businesses) argued that AML program and SAR reporting requirements could be integrated into existing compliance and anti-fraud infrastructure without considerable difficulty. One commenter suggested that such integration could be done efficiently and effectively if accompanied by guidance, training, and feedback from FinCEN. Only one commenter questioned FinCEN's assumptions regarding integration of the proposed rules into existing procedures and systems of affected businesses. The commenter stated that FinCEN had not offered evidence that AML programs could be efficiently and cost-effectively integrated into businesses' existing anti-fraud programs, and that businesses would need to establish new, separate programs to satisfy FinCEN's AML program requirements. Based on the comments that responded positively to FinCEN's assumptions and analysis regarding this issue, and FinCEN's experience over two decades with other businesses that have been required to adopt AML programs – including businesses which all have the same or more extensive requirements than are required by this Final Rule and have gone through this same process of building on existing compliance policies and procedures – FinCEN believes that loan and finance companies will be able to build on their existing compliance policies and procedures and prudential business practices to ensure compliance with this Final Rule with relatively minimal cost and effort. As FinCEN has done with the other industries subject to the requirements of the BSA, FinCEN will actively engage with loan and finance companies,

[1] *See* 31 U.S.C. §§ 5321 and 5322, and 31 CFR 1010.820 and 1010.840.

provide guidance and feedback, and endeavor to make compliance with the regulations as cost effective and efficient as possible for all affected businesses.

A few commenters opposed the NPRM, arguing that the regulations would be too burdensome and costly, particularly for small businesses. One commenter stated that the burden falls on the owner of a small business to be the compliance officer and do training, which takes away from time developing business. The costs and burdens of developing risk management and AML compliance procedures, complying with a range of consumer protection regulations, and generally establishing safe and sound business practices, however, generally are borne by businesses of all sizes, and the exceptions available to small businesses with respect to some specific requirements may minimize – but not entirely eliminate – general compliance costs and burdens. FinCEN believes that the minimal, incremental increase in compliance costs and burdens that may potentially be borne by affected businesses in complying with the Final Rule will not disproportionately burden small businesses; thus, the Final Rule does not establish any blanket exception for any businesses, regardless of size or other criteria or characteristics.

One commenter suggested that loan and finance companies should have AML programs commensurate with their risk profile, as is the case with banks subject to AML and SAR regulations. FinCEN believes that the flexibility incorporated into the Final Rule permits each loan and finance company to tailor its AML program to fit its own size, needs, and operational risks. In this regard, FinCEN believes that expenditures associated with establishing and implementing an AML program will be commensurate with the size and risk profile of a loan or finance company. Based on inherent risks, some businesses may deem it appropriate to implement more comprehensive policies, procedures, and internal controls than others. FinCEN does not intend for each RMLO to have identical policies and procedures for their AML programs. This flexibility to tailor programs to the risk profile of the loan or finance company is exactly what one trade association commenter noted. As with other financial institutions subject to the requirements of the BSA, if a loan or finance company is small or does not engage in high-risk transactions the burden to comply with the Final Rule likely will be negligible. One commenter disagreed with the estimated burden hours listed in the NPRM, for both AML program and SAR filing requirements, but did not provide any specific estimates or data for FinCEN to consider in the alternative. The estimated hours for the establishment of a new AML program and SAR filing requirements are based on FinCEN's experience with other industries newly required to comply with the same or more extensive BSA obligations, and these estimates are the same as those used in other such rulemakings for businesses that, as yet, have had no AML program or SAR filing requirement.

FinCEN understands that commenters are concerned about the potential impact that compliance regulations – BSA-related or otherwise – may have on small firms and solo practitioners. Nonetheless, the Final Rule requires the establishment of a complete AML program. An AML program is essential to an effective SAR reporting program. The AML regulations are risk-based, as are all FinCEN AML regulations. Accordingly, company management has broad discretion to design and implement programs that reflect and respond to the company's unique fraud and money laundering risks. Small businesses will not be expected to invest in elaborate or expensive systems to comply with the Final Rule, nor will they be required to hire consulting firms or outside professionals to assess risks. FinCEN estimates that the impact of the AML program requirement and the assessment of risks associated with it will not be significant for covered loan and finance companies.

*Suspicious Activity Reporting*

The Final Rule requires loan or finance companies to report on transactions of $5,000 or more that they determine to be suspicious. Loan or finance companies have not previously been required to comply with such a regulation. However, as noted above, most loan or finance companies, in order to remain viable, have in place policies and procedures to prevent and detect fraud, insider abuse, and other crimes. Established anti-fraud measures should assist loan or finance companies in reporting suspicious transactions. Many loan or finance companies already voluntarily report suspicious transactions and fraud through entities such as the Loan Modification Scam Prevention Network.[1] Additionally, loan or finance companies, as part of the application process for loans, already gather the information necessary to fill out SAR forms as a usual and customary part of their business. It is likely that the software packages most of these companies already use will, after this regulation, incorporate the ability to automatically fill out all but the narrative field in a SAR based on information already input for the loan application. Therefore, FinCEN estimates that the burden of the SAR filing requirements for loan or finance companies will be low.

*Certification*

The additional burden under the Final Rule is a requirement to maintain an AML program and a SAR filing requirement. As discussed above, FinCEN estimates that the impact from these requirements will not be significant. Accordingly, FinCEN certifies that the Final Rule will not have a significant impact on a substantial number of small entities.

The final rule was published on February 14, 2012, (*See* 77 FR 8148).
Individual comments may be reviewed at:
http://www.fincen.gov/statutes_regs/frn/pdf/CommentsNPRMChart.pdf.

9. Payments or Gifts.

No payments or gifts will be made to respondents.

10. Assurance of Confidentiality of Responses.

Information provided to the government on the SAR form is expressly prohibited from disclosure to any person involved in the transaction under 31 U.S.C. 5318(g) (2), and implementing regulations, and the participating agencies' Privacy Act notice makes clear that the system of records is intended for the official use of law enforcement. Appropriate system security safeguards will be put in place to protect against unauthorized access.

11. Justification of Sensitive Questions.

No sensitive questions were asked.

[1] The Loan Modification Scam Prevention Network includes Fannie Mae, Freddie Mac, the Lawyers' Committee for Civil Rights Under Law (Lawyers' Committee) and NeighborWorks America, among others, with representatives from key governmental agencies, such as the Federal Trade Commission, the Department of Housing and Urban Development, the Department of Justice, the Department of the Treasury, the Federal Bureau of Investigation, and state Attorneys General offices, as well as leading non-profit organizations from across the country. *See* http://www.preventloanscams.org/.

12. Estimated Annual Burden.

Suspicious Activity Reporting for loan and finance companies is codified under 31 CFR 1029.320. This information will be required to be provided pursuant to 31 USC 5312(g) and 31 CFR 1029.320 and will be used by law enforcement agencies in the enforcement of criminal and regulatory laws and to prevent loan and finance companies from engaging in illegal activities. This collection of information is mandatory.

A placeholder with 1 hour of burden is maintained for control number 1506-0061. Reporting and recordkeeping burden is reflected under 1506-0065, BSA-SAR FinCEN Form 111.

*NOTE*: The AML 3 hour recordkeeping burden associated with the loan and finance companies contained in this rule is added to the currently approved information collection under OMB control number 1506-0035.

13. Estimated Annual Cost to respondents.

Not applicable.

14. Estimated Annual Cost to the Federal Government

Not applicable.

15. Reasons for Change in Burden.

This is a new requirement.

16. Plans for Tabulation, Statistical Analysis, and Publication.

Not applicable.

17. Request not to Display Expiration Date of OMB Control Number.

To avoid having to reprint the form to show a new date, we are requesting permission not to display the Office of Management and Budget expiration date on the Suspicious Activity Report by the Securities and Futures Industries form.

18. Exceptions.

Not applicable.