Department of the Treasury
Financial Crimes Enforcement Network

Advisory

FIN-2010-A006
Issued: **June 17, 2010**
Subject: **Updated Advisory to Financial Institutions on Filing Suspicious Activity Reports Regarding Loan Modification/Foreclosure Rescue Scams**

The Financial Crimes Enforcement Network (FinCEN) is issuing this advisory to supplement the guidance in its advisory of April 6, 2009, regarding loan modification and foreclosure rescue scams (April 2009 Advisory).[1] Continuing fraudulent activity in the housing market and recent adjustments and promotions related to the Home Affordable Modification Program (HAMP) and other Federal programs[2] is the impetus for issuing this advisory. With increased consumer activity in these programs, incidents of modification and foreclosure "rescue" schemes also could increase. Information contained in this advisory is intended to inform and assist financial institutions when filing Suspicious Activity Reports (SARs) regarding such activities. Additional information on foreclosure rescue schemes and mortgage fraud in general may be found on the Mortgage Fraud Section[3] of FinCEN's website.

SARs continue to be one of the most valuable sources of data for law enforcement and regulatory agencies in their investigation and prosecution of crimes involving loan modification and foreclosure rescue schemes and other residential mortgage-related crimes. This advisory contains updated examples of common fraud schemes and potential "red flags" for fraudulent activity related to loan modification and foreclosure rescue schemes. It also reminds financial institutions to use key words when completing SARs to assist law enforcement in its efforts to target this type of fraudulent activity.[4] Using this additional information, the vigilance of financial institutions together with law enforcement efforts against illicit mortgage-related activities will make an important

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[1] http://www.fincen.gov/statutes_regs/guidance/html/fin-2009-a001.html

[2] These programs include the Federal Housing Administration (FHA) programs in addition to the Home Affordable Foreclosure Alternatives Program (HAFA) designed to establish standard practices that would ease the use of short sales. The HAMP program modifications will expand flexibility for mortgage servicers and originators to assist more unemployed homeowners and to help more people who owe more on their mortgage than their home is worth because their local markets saw large declines in home values.

[3] http://www.fincen.gov/mortgagefraud.html

[4] On April 27, 2010, FinCEN issued Advisory FIN-2010-A005 providing guidance to financial institutions filing SARs on potentially fraudulent activities associated with the FHA's and Department of Housing and Urban Development's (HUD) Home Equity Conversion Mortgage (HECM) program. FinCEN requested that filers who suspected possible illicit HECM activity assist law enforcement by including the term "HECM" in the narrative section of the SAR filing along with all pertinent information for each suspected party.

contribution to the minimization of illicit financial schemes.[5]

Potential Indicators of Foreclosure Rescue Scams and Advance Fee Schemes

Early SARs indicating loan modification and foreclosure rescue schemes identified subjects purporting to be loan modification or foreclosure rescue specialists, who targeted financially distressed homeowners with promises of assistance, but whose actions resulted in the homeowners' loss of ownership in or title to their property. In a typical advance fee arrangement, the perpetrators contact financially distressed homeowners with promises to negotiate a loan modification to prevent foreclosure. The perpetrators insist upon payment of an advance fee, sometimes totaling thousands of dollars. They frequently caution the homeowner from discussing the arrangement, particularly with the lender, to avoid jeopardizing the negotiations. The perpetrators never contact the lender to modify the loan, and the homeowner's loan continues to foreclosure.

Financial institutions should be alert to indicators of suspicious activity where customers may be either unwitting victims or willing collaborators with the scheme's primary subject. The activities of financial institutions may intersect with these loan modification/foreclosure rescue scams in two ways. First, persons or entities perpetrating loan modification/foreclosure rescue scams may seek the services of financial institutions for the purpose of receiving, depositing or moving funds relating to the scams. With respect to these circumstances, consistent with anti-money laundering obligations pursuant to 31 CFR Part 103, financial institutions are reminded of the requirement to implement appropriate risk-based policies, procedures, and processes, including conducting customer due diligence on a risk-assessed basis to avoid misuse and aid in the identification of potentially suspicious transactions. Second, financial institutions may become aware of such scams through their interactions with customers who have become victims.

The following list of "red flags" identifies only *possible* signs of fraudulent activity and any one red flag should be viewed in context with other indicators and facts. The presence of any of these red flags in a given transaction or business arrangement may underscore the need for further due diligence and possibly the need to file a SAR.

[5] Additionally, on October 14, 2009, FinCEN issued Advisory FIN-2009-A006 providing guidance to financial institutions filing SARs on activities potentially related to the Federal Government's Troubled Asset Relief Program (TARP). FinCEN requested that filers who suspected possible illicit activity involving TARP programs assist law enforcement by including the term "SIGTARP" in the narrative portion of the SAR, along with all pertinent information for each suspected party. As explained in Advisory FIN-2009-A006, the Special Inspector General for the TARP (SIGTARP) identified seven TARP-related programs, including the HAMP mentioned above, which financial institutions may recognize in the normal course of doing business.

Red Flags Identified by FinCEN's State Regulatory Partners

- Because the majority of states have criminalized charging an advance fee from a consumer for mortgage loan modification services in certain instances, many fraud schemes may attempt to characterize the up-front "fee" in other ways, such as:
  - File review fee;
  - Forensic review fee;
  - Forensic audit fee;
  - Attorney fee;
  - Fraud detection fee; and
  - Membership fee (perhaps purporting to become a member of the "assisting" entity).

- Some fraudulent loan modification schemes involve perpetrators that refer to themselves as "associations" or "counseling agencies" or claim to be non-profit entities because of a general consumer preference to work with these types of entities and the expectation of legitimacy.

- A number of perpetrators use a notary public as an agent to deliver documents and obtain the fee in cash, cashier's check, or personal check.

- Advance fee schemes in many cases also involve debt elimination, credit card debt, or refinance schemes.[6]

- Illicit actors appear to be using websites, mailings, TV/radio commercials, and roadside signs advertising free help, assistance for foreclosures, loan modifications, short sales, forensic audits, and credit/debt relief services.

Recent Red Flags Identified Through SAR Reporting

Jointly with this advisory, FinCEN issued a June 2010 Mortgage Loan Fraud Report[7] that reviewed and analyzed a sample dataset of over 3,500 relevant SARs filed between January 1, 2004, and December 31, 2009. The most prevalent activities relating to loan

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[6] An example of a debt elimination scheme is *The Redemptionist Theory debt elimination* scheme, in which the homeowner is informed that his or her mortgage or other debt can be renounced based on the spurious argument that the Federal Government assumes responsibility as the owner of individual citizens' properties. A perpetrator provides the homeowner with numerous complex forms, as well as with legal declarations to send to the lender. Another example, *The Freeman in Nature* scheme, is based on the legally incorrect argument that the loan was illegally made and that the borrower therefore has no obligation to repay it. This argument relies on an incorrect interpretation of the Uniform Commercial Code or Federal law, and jeopardizes a lender's loan security by filing fraudulent lien releases among county land records.

[7] Mortgage Loan Fraud – Loan Modification and Foreclosure Rescue Scams, Evolving Trends and Patterns in Bank Secrecy Act Reporting, http://www.fincen.gov/news_room/rp/files/MLFLoanMODForeclosure.pdf.

modification and foreclosure rescue schemes described in SARs filed since April 2009 – the date of the initial Advisory regarding foreclosure rescue scams – are listed below by industry sector.

Based on SAR analysis, perpetrators have been resourceful in abusing all types of financial institutions to further their criminal activity. Reporting of mortgage loan fraud activity by financial institutions other than depository institutions may indicate that the financial industry as a whole has benefited from the April 2009 Advisory.

Depository Institution SARs

- Straw borrowers are often used to hide the identities of the perpetrators;
- Perpetrators defraud homeowners into turning over ownership of their property and subsequently rent it back to the victim;
- Equity lines of credit or false quit claim deeds are used for "equity skimming" or outright property theft; and,
- Advance fee schemes are often tied to debt elimination schemes.

Money Services Businesses SARs

- Multiple, structured, or sequential money orders sent to or received by a loan modification or foreclosure rescue business for the purpose of avoiding foreclosure;
- Perpetrators telling financial institution filers that the structuring of multiple money orders was required by the recipients;
- Perpetrators using links on their websites to direct incoming payments through the money services business;
- Perpetrators who falsely claimed they were listed on official/public lists of government-approved credit counselors or HUD-approved housing counseling agencies;[8]
- The use of "foreclosure rescue" within the trade name of entities claiming to provide foreclosure rescue services; and,
- Efforts to "stop payment" by foreclosure rescue scheme victims who paid advance fees, but received no service. This was seen in SARs filed by a major payment provider reporting merchant fraud activities, which specifically identified multiple charge-backs of credits posted to the accounts of the customer's merchants.[9]

[8] For more information on HUD-approved housing counselors, see http://portal.hud.gov/portal/page/portal/HUD/i_want_to/talk_to_a_housing_counselor.

[9] Charge-backs, stop payment orders, and returned or insufficient funds for credit deposits to filers' customer accounts were also reported in SAR-DI filings by depository institutions.

Securities and Futures Industries SARs

- Investment and securities firms submitted SARs implicating their customers after learning they had been indicted or prosecuted for foreclosure rescue scheme activities. Although submitted after the investigations had begun, these SARs are useful for law enforcement in their efforts to expand investigations.

Suspicious Activity Reporting Suggestions Regarding Loan Modification/ Foreclosure Rescue Scams

FinCEN's April 2009 Advisory resulted in a significant increase in SAR filings related to loan modification and foreclosure rescue schemes. However, filers continue to use a variety of descriptive terms for loan modification and foreclosure rescue schemes instead of the requested term "foreclosure rescue scam." This advisory reminds filers that including the term "foreclosure rescue scam" enables law enforcement to search for and identify fraudulent activity more easily when reviewing SAR information, which assists in focusing investigative resources.

We further request that the Suspect/Subject Information Section of the Suspicious Activity Report include all information available for each party suspected of engaging in suspected fraudulent activity – including information such as individual or company name, address, phone number, and any other identifying information.[10] When the homeowner is believed to be simply a victim, the SAR filer should include all available information in the narrative portion of the SAR about the homeowner and his or her property to better assist law enforcement in investigating and prosecuting these potential crimes. The homeowner should not be listed as a suspect unless there is reason to believe the homeowner knowingly participated in the fraudulent activity.

FinCEN continues to monitor SARs that identify mortgage loan fraud and loan modification and foreclosure rescue schemes. Further advisories and reports will be issued as appropriate, to provide institutions with timely and useful guidance and information.

Financial institutions that have questions or comments regarding the contents of this Advisory should contact FinCEN's Regulatory Helpline at 800-949-2732.

[10] Financial institutions shall file with FinCEN to the extent and in the manner required a report of any suspicious transaction relevant to a possible violation of law or regulation. A financial institution may also file with FinCEN a Suspicious Activity Report with respect to any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by FinCEN regulations. *See, e.g.*, 31 CFR § 103.18(a).