

Lenders Compliance Group

Monday, November 5, 2012

FinCEN: SAR Narrative, PowerPoint, and Mortgage Loan Fraud

On September 18, 2012 FinCEN held an Informational Webinar regarding the new FinCEN Suspicious Activity Report (SAR).

The corresponding, full PowerPoint presentation of the recorded version of this Webinar is available [HERE](#).

For those interested in actually viewing the Webinar, [HERE](#) is the link to the FinCEN webpage.

Recently, FinCEN issued two important reports (available in our [Library](#)):

- [SAR Activity Review - Trends, Tips & Issues \(Issue 22\)](#)
- [Mortgage Loan Fraud Update - Suspicious Activity Report Filings in 2nd Quarter 2012](#)

The first report offers significant insight and guidance in monitoring suspicious activity, and the second report provides important insights regarding SAR filings related to mortgage loan fraud. For years we have worked with our bank clients on auditing their SAR filings and AML compliance, and I can vouch for the practical advantages of reading these on-going FinCEN reports to enhance your risk management responsibilities.

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SAR Narrative: "5 W's and the How"

In the recent SAR Activity Review, sections are provided that outline the basic aspects toward filing a SAR. In particular, the section on writing an effective SAR Narrative is important to consider.

FinCEN rightly states that the narrative "is a critical part of the SAR because it is where the filer can summarize and provide a more detailed description of the activity being reported." For that reason, it is essential that the narrative be clear, complete and thorough.

This section of the FinCEN report offers the "**5 W's**" that I have written about extensively as a way to develop the SAR narrative. (See, for instance, my magazine article, [Anti-Money Laundering Program - Preparation is Protection](#), August 2012.)

Our clients have learned how to use this narrative method. The FinCEN report does not mention the "**How**" narrative that I have advocated - and which I will discuss below. In my view, the [Anti-Money Laundering Program](#) should have an appendix devoted exclusively to the SAR Narrative procedures, especially outlining the "**5 W's and the How**" method of writing it.

The narrative must be clear, complete and thorough and the method I advocate is an effective means toward accomplishing these goals.

FinCEN's outline is rather brief, so I will provide a much more extensive set of action steps for you to follow.

The following are the "**5 W's**" method provided by FinCEN, after which I will add some remarks about narrating the "**How**".

Who is conducting the suspicious activity?

While one section of the SAR form calls for specific suspect information, the narrative should be used to further describe the suspect or suspects, including occupation, position or title within the business, and the nature of the suspect's business(es). If more than one individual or business is involved in the suspicious activity, identify all suspects and any known relationships amongst them in the Narrative Section.

While detailed suspect information may not always be available (i.e., in situations involving non-account holders), such information should be included to the maximum extent possible. Addresses for suspects are important: filing institutions should note not only the suspect's primary street addresses, but also, other known addresses, including any post office box

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numbers and apartment numbers when applicable. Any identification numbers associated with the suspect(s) other than those provided earlier are also beneficial, such as passport, alien registration, and driver's license numbers.

What instruments or mechanisms are being used to facilitate the suspect transaction(s)?

An illustrative list of instruments or mechanisms that may be used in suspicious activity includes, but is not limited to, wire transfers, letters of credit and other trade instruments, correspondent accounts, casinos, structuring, shell companies, bonds/notes, stocks, mutual funds, insurance policies, travelers checks, bank drafts, money orders, credit/debit cards, stored value cards, and/or digital currency business services. Specific suspect identifying information is provided in the relevant Suspicious Activity Report for RMLO filings.

In addition, a number of different methods may be employed for initiating the negotiation of funds such as the Internet, phone access, mail, night deposit box, remote dial-up, couriers, or others. In summarizing the flow of funds, always include the source of the funds (origination) that lead to the application for, or recipient use of, the funds (as beneficiary).

In documenting the movement of funds, identify all account numbers at the financial institution affected by the suspicious activity and when possible, provide any account numbers held at other institutions and the names/locations of the other financial institutions, including MSBs and foreign institutions involved in the reported activity.

When did the suspicious activity take place?

If the activity takes place over a period of time, indicate the date when the suspicious activity was first noticed and describe the duration of the activity. Filers will often provide a tabular presentation of the suspicious account activities (transactions in and out).

While this information is useful and should be retained, do not insert objects, tables, or pre-formatted spreadsheets when filing a SAR.

These items may not convert properly when keyed in or merged into the SAR System. Also, in order to better track the flow of funds, individual dates and amounts of transactions should be included in the narrative rather than just the aggregated amount.

Where did the suspicious activity take place?

Use the Narrative Section to indicate that multiple offices of a single financial institution were involved in the suspicious activity and provide the addresses of those locations. Specify if the suspected activity or transaction(s) involve a foreign jurisdiction. If so, provide the name of the foreign jurisdiction, financial institution, address and any account numbers involved in, or affiliated with the suspected activity or transaction(s).

Why does the filer think the activity is suspicious?

FinCEN suggests that the financial institution first describe briefly its industry or business - depository institution, casino, mortgage broker, mortgage banker, securities broker, insurance, real estate, investment services, money remitter, check casher, and so forth. Then describe, as fully as possible, why the activity or transaction is unusual for the customer: consider the types of products and services offered by the industry, and the nature and normally expected activities of similar customers.

And the "How" - Always Include!

How did the suspicious activity occur?

Use the Narrative Section to describe the "modus operandi" or the method of operation of the subject conducting the suspicious activity. In a concise, accurate and logical manner, describe how the suspect transaction or pattern of transactions was committed.

Provide as completely as possible a full picture of the suspicious activity involved. For example, if what appears to be structuring of currency deposits is matched with outgoing wire transfers from the accounts, the SAR narrative should include information about both the structuring and outbound transfers (including dates, destinations, amounts, accounts, frequency, and beneficiaries of the funds transfers).

Mortgage Loan Fraud - Statistics and Charts

The new update - it is Issue 22 - to FinCEN's prior Mortgage Loan Fraud (MLF) report looks at SAR filings from April through June 2012 (2012-Q2). It provides new information on reporting activities, geographic locations, and other filing trends in 2012-Q2. We have been tracking these reports from their inception.

Let's take a closer look at some statistics and charts of SAR filings to better understand the impact on MLF activity.

Overall Filings

In 2012-Q2, filers submitted 17,476 Mortgage Loan Fraud SARs (MLF SARs), which is a 41 percent decrease over the same period in 2011. The total number of all SARs filed in 2012-Q2 increased by 9 percent. Eight percent of all SARs filed in 2012-Q2 indicated MLF as an activity characterization, down from 15 percent in the year ago Q2.

	2012 Q2	2011 Q2	% Change
MLF SARs	17,476	29,558	-41%
All SARs	220,854	203,468	9%
MLF SARs as a proportion of all SARs	8%	15%	-46%

Mortgage Loan Fraud SAR Filings
Relative to All SAR Filings

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- ▶ 2009 (8)

Time Elapsed from Activity Date to Reporting Date

For both periods, more than 80 percent of MLF SARs involved suspicious activity amounts under \$500,000. Filers disclosed loss amounts in only 14 percent of 2012-Q2 MLF SARs, up from 11 percent in 2011 Q2; most reported amounts were under \$500,000.

Consistent with previous years, a relatively small number of MLF SARs (42 filings) included recovered amounts in 2012-Q2.

Time Lapsed	2012 Q2	2011 Q2
0 - 90 days	12%	6%
90 - 180 days	4%	3%
180 days - 1 year	3%	2%
1 - 2 years	2%	2%
2 - 3 years	1%	3%
3 - 4 years	4%	21%
4 - 5 years	17%	38%
> 5 years	56%	25%

During both 2012 and 2011 Q2,
a majority of reported activities
actually began during or before 2008.

Top 20 States and Territories

Based on per capita rankings, California and Nevada remained the top ranked states, as they were in Q1 2012 and as California was in CY 2011. Florida's 3rd place ranking was consistent with its showings between 2nd and 5th in the 2011 quarterly reports.

Arizona and Colorado rounded out the top five per capita rankings.

Colorado jumped into 5th from rankings in the 13th through 23rd range during 2011. Arizona, which had ranked 11th in 2011 Q1, maintained the 4th ranking it established during 2012 Q1.

State	2012 Q2 Rank by volume	2012 Q2 State Rank per capita	State	2012 Q2 Rank by volume	2012 Q2 State Rank per capita
CA	1	1	UT	21	11
NV	16	2	NJ	8	12
FL	2	3	DC	40	13
AZ	7	4	WA	12	14
CO	14	5	DE	38	15
MD	10	6	MI	9	16
NM	25	7	ID	32	17
NY	3	8	HI	35	18
IL	4	9	SC	23	19
GA	6	10	NC	13	20

California and Florida remained the highest ranked states
based on the number of mortgage loan fraud subjects,
followed by New York, Illinois, and Texas.

Foreclosure Rescue Scams on the Rise

When filing a SAR, I would encourage you to identify foreclosure rescue scams, inasmuch as FinCEN has encouraged SAR filers to use one common term, "foreclosure rescue scam," in the narrative portion of the SAR form. By using this specific term, FinCEN's advisories and reports have facilitated the identification and isolation of pertinent SARs by FinCEN analysts and agencies with access to FinCEN's database of SARs and other FinCEN filings.

SARs that included these key search terms also assisted with the identification of SARs on loan modification and advance fee scams, two other types of suspicious activity addressed in FinCEN's analytical reports and guidance. FinCEN has determined that the terms "loan modification scam" and "advance fee scam" are keywords with immaterial with respect to MLF filings using either the term "loan modification scam" or "advance fee scam" both before and after issuance of the FinCEN advisories and reports.

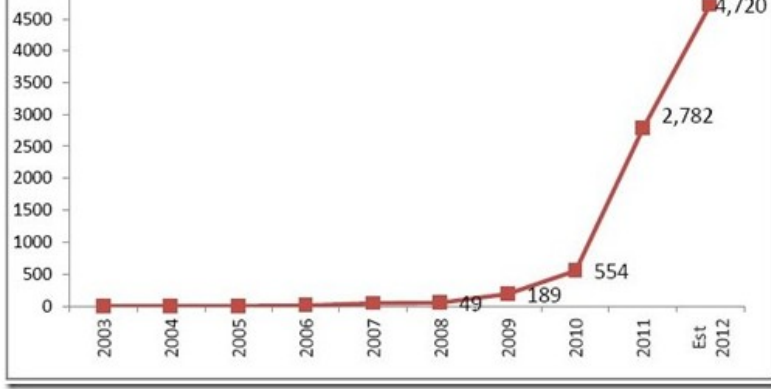
Foreclosure rescue scams target homeowners facing foreclosure with services or advice to purportedly stop or delay the foreclosure process. Some of these scams require homeowners to transfer title or make monthly mortgage payments to the purported "rescuer."

Some foreclosure rescue scams require homeowners to pay fees before receiving services, which are known as "advance fee" schemes.

Foreclosure rescue scam SAR filings continue to be tracked closely by Federal and state law enforcement and regulatory agencies, as these SARs provide insight into crime trends, as well as leads for the initiation and support of investigations and enforcement efforts.

Foreclosure rescue and similar schemes were a key focus of recent mortgage fraud summits held by the Financial Fraud Enforcement Task Force (FFETF) in which FinCEN actively participated.

According to FinCEN, during 2012-Q2, FinCEN received 1,325 MLF SARs containing the term "foreclosure rescue" in the narrative part of the form, or eight percent of the total 17,476 MLF SAR reports it received during the quarter. Foreclosure rescue SAR filings continued to grow in the first half of 2012, even as the total number of MLF SARs declined. FinCEN has stated that "if the current pace of foreclosure rescue SAR reporting continues through 2012 Q3 and Q4, the total for 2012 will far exceed the total for 2011."



Number of MLF SAR Narratives
Foreclosure Rescue Scams
2003-2012 Projected

Note: the chart indicates each year containing the term "foreclosure rescue" in the narrative. Thus, the 4,720 SARs filed in 2012 is an estimate based on the 2,360 SARs received in the first half of 2012.

A number of factors may be influencing this upward SAR filing trend.

Reports, bulletins, and guidance by the Departments of Treasury, Justice, and Housing and Urban Development have likely increased awareness of the scams. A number of well-publicized government investigations and enforcement actions underscored the importance of preventing and reporting these scams.

FinCEN believes that another factor driving the increase in foreclosure rescue related SARs may be the real estate market itself.

Given some recent trends in the residential housing markets (i.e., underwater mortgages, lower turnover of existing homes, and less new home construction) there may simply be more opportunity for fraudsters to develop schemes related to existing mortgages in distress, as opposed to schemes related to new loan origination.

California: Highest 2012-Q2 Foreclosure Rescue SARs

Comparing the statistics of 2012-Q2 foreclosure rescue SARs to all MLF SARs received during 2012 Q2 on two variables where FinCEN observed clear differences, geography and suspicious activity amount, in terms of geography, foreclosure rescue SAR subjects were disproportionately concentrated in California.

While 12 percent of the U.S. population resides in California, and the geographic analysis indicates California was the number one state per capita for mortgage fraud again in 2012 Q2, the foreclosure rescue figures stood out even against this backdrop.



Percentage of 2012 Q2 MLF SAR Subjects Located in California

The chart shows that 49 percent of the 2012-Q2 subjects in foreclosure rescue SARs resided in California, while 37 percent of all 2012-Q2 MLF SAR subjects had a California address. This is consistent with FinCEN's past research on debt elimination scams, a type of foreclosure rescue scam, in which a disproportionate number of the subjects were also located in California. (Debt elimination schemes involve the use or purported use of bogus documents and payment methods to invalidate mortgage obligations or pay off mortgage balances. Individuals orchestrating debt elimination schemes typically charge borrowers fees for debt elimination services.)

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SAR Activity Review -
Trends, Tips & Issues (Issue 22) (10/10/12)

Mortgage Loan Fraud Update -
Suspicious Activity Report Filings in 2nd Quarter 2012 (10/9/12)

FinCEN Suspicious Activity Report and Filing Instructions -
PowerPoint Presentation (9/18/12)



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