



OCC 2009-12
OCC BULLETIN

Comptroller of the Currency
Administrator of National Banks

Subject: **Bank Secrecy Act/Anti-Money Laundering**

Description: **FinCEN Guidance to Financial Institutions on Filing Suspicious Activity Reports regarding Loan Modification/Foreclosure Rescue Scams**

Date: April 23, 2009

TO: Chief Executive Officers and Compliance Officers of All National Banks, Department and Division Heads, All Examining Personnel, and Other Interested Parties

On April 6, 2009, the Financial Crimes Enforcement Network (FinCEN) issued an advisory that provides financial institutions with guidance in identifying and reporting suspicious activity related to loan modification/foreclosure rescue scams.

The advisory instructs banks to use the term “foreclosure rescue scam” within the SAR narrative when completing a SAR that involves a loan modification/foreclosure rescue scam. In addition, banks are instructed to complete the Suspect/Subject Information section of the SAR with as much information as is available for each party suspected of engaging in the fraudulent activity. Banks should not list the homeowner who is the victim of the scam as a suspect unless there is reason to believe that the homeowner was a knowing participant in the scam. Banks should list all available information in the narrative about the homeowner and his or her property to assist law enforcement in investigating potential crimes.

The advisory also provides a list of “red flags,” which may be indicative of the presence of a foreclosure rescue scam. Financial institutions should consider these red flags in context with other indicators and facts in order to determine if suspicious or unusual activity has occurred.

Finally, the advisory provides financial institutions with references to Web sites that include additional information on foreclosure rescue scams, general mortgage fraud, and homeowner education programs.

/signed/

Ann F. Jaedicke
Deputy Comptroller for Compliance Policy

Attachment: [FinCEN Advisory](#)
[http://www.fincen.gov/statutes_regs/guidance/html/fin-2009-a001.html]



Department of the Treasury Financial Crimes Enforcement Network

Advisory

FIN-2009-A001

Issued: April 6, 2009

**Subject: Guidance 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 highlight loan modification/foreclosure rescue scams so that financial institutions may better assist law enforcement when filing Suspicious Activity Reports. This guidance is consistent with the Department of the Treasury's broader efforts to ensure that U.S. financial institutions are not used as conduits for illicit activity, including loan modification/foreclosure rescue scams.

In the current economic environment, many homeowners are encountering significant difficulty in making their mortgage payments, which has led to an increasing amount of fraud in the form of loan modification/foreclosure "rescue" schemes that take advantage of those homeowners in desperate situations. Under the pretense of helping homeowners modify their mortgage obligations, these schemes result in the loss of money, equity and in many cases the home itself.

Moreover, on February 10th, Treasury Secretary Timothy Geithner outlined Treasury's comprehensive Financial Stability Plan, which includes a Home Affordable Refinance Program and a Home Affordable Modification Program.¹ With the introduction of these new programs, more homeowners facing difficulty meeting the mortgage obligations have the opportunity to modify their mortgages and avoid foreclosure. Unscrupulous persons or companies, however, could attempt to abuse these loan modification and foreclosure prevention programs.

Suspicious Activity Reporting

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 C.F.R. 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. With respect to these circumstances, FinCEN is providing below a list of potential indicators of loan modification/foreclosure rescue scams.

¹ http://www.treas.gov/press/releases/reports/guidelines_summary.pdf

Consistent with the standard for reporting suspicious activity as provided for in 31 C.F.R. Part 103, if a financial institution knows, suspects, or has reason to suspect that a transaction involves funds derived from illegal activity or that activities conducted or attempted by, at, or through the financial institution appear to be indicative of money laundering, terrorist financing, or other violation of law or regulation, the financial institution should then file a Suspicious Activity Report.² As noted in FinCEN's *SAR Narrative Guidance Package*,³ financial institutions must provide complete and sufficient descriptions of known or suspected criminal violations or suspicious activity in the narrative sections of Suspicious Activity Reports.

In order to assist law enforcement in its efforts to target this type of fraudulent activity, we request that, if financial institutions become aware of this type of activity, they include the term "foreclosure rescue scam" in the narrative portions of all relevant Suspicious Activity Reports filed. 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 this fraudulent activity – including information such as individual or company name, address, phone number and any other identifying information.⁴

In many circumstances, the homeowner is a victim of the scam and therefore should not be listed as a suspect unless there is reason to believe the homeowner knowingly participated in the fraudulent activity. When the homeowner is simply a victim of a scam, including all available information in the narrative portion of the Suspicious Activity Report about the homeowner and his or her property will also assist law enforcement in investigating these potential crimes.

Potential Indicators of Loan Modification/Foreclosure Rescue Scams

The following points contain examples of information received from a customer or otherwise that may indicate the presence of a foreclosure rescue scam. Please keep in mind this list of "red flags" identifies only *possible* signs of fraudulent activity and that legitimate companies, which may or may not be affiliated with a Federal program, provide foreclosure assistance. In many instances, legitimate counselors will contact a financial institution on behalf of a homeowner facing foreclosure. Although no one red flag may be definitive, it is important to view the existence of any one red flag in context with other indicators and facts. Additional information on foreclosure rescue scams, and mortgage fraud in general, may be found in the four mortgage fraud related strategic analytical reports produced by FinCEN and available at www.fincen.gov.⁵

² 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 C.F.R. § 103.18(a).

³ http://www.fincen.gov/narrativeguidance_webintro.html.

⁴ If multiple subjects are involved and the financial institution is filing a paper form, the filer should attach an additional copy of the subject information section of the report for each subject.

⁵ [FinCEN Mortgage Loan Fraud Assessment, November 2006](#); [Mortgage Loan Fraud: An Update of Trends based Upon an Analysis of Suspicious Activity Reports, April 2008](#); [Filing Trends in Mortgage Loan Fraud, February 2009](#); [Mortgage Loan Fraud Connections with Other Financial Crime, March 2009](#)

- A homeowner tells the mortgage servicer, perhaps upon receiving an overdue notice, that he/she has been making payments to a party other than the mortgage holder or servicer. The homeowner may have been tricked into signing a quit claim deed for the benefit of the perpetrator of a scam or told to make payments to a third party (in actuality, a con-artist), who will allegedly forward them to the lender.
- A homeowner says that he/she has hired a third party, perhaps advertised as or alleged to be a “foreclosure specialist” or “mortgage specialist,” to help him/her avoid foreclosure or help renegotiate the terms of his/her mortgage with the lender. This may be suspicious if the homeowner indicates that the third party:
 - Charged up-front fees for foreclosure rescue or loan modification services;
 - Accepted up-front payment only by official check, cashier’s check or wire transfer;
 - Used aggressive tactics to seek out the homeowner by telephone, e-mail, mail or in person;
 - Pressured the homeowner to sign paperwork he/she didn’t have an opportunity to read thoroughly or that he/she didn’t understand;
 - Guaranteed to save the home from foreclosure or stop the foreclosure process “no matter what;”
 - Claimed the process will be quick with relatively little information and paperwork required from the homeowner;
 - Offered to buy the house and then rent it back to the homeowner;
 - Falsely claimed to be affiliated with the government. (Perpetrators of scams often use names or symbols that mimic federal and state programs or falsely suggest that they offer legal services or are affiliated with an attorney or law firm); or
 - Instructed the homeowner not to contact the lender, a lawyer or financial counselor.
- A homeowner says he/she paid someone to assist in getting help from the right Federal affordable housing program.
- A homeowner maintains that he/she does not need to pay a mortgage because the loan contract is invalid, or the customer attempts to pay with a bogus sight draft, Federal Reserve Bank/Treasury letter, or check that accesses a “Treasury Direct Account.” Such homeowners may be committing fraud or may have been duped by individuals who claim government-related contracts are illegitimate. Other homeowners may have unsuspectingly paid for illegitimate or bogus pay-off documents.

FinCEN will continue to monitor Suspicious Activity Reports that identify mortgage loan fraud and specifically loan modification/foreclosure rescue scams in order to provide future analysis and ways to mitigate losses to financial institutions and consumers. FinCEN will issue further advisories on this issue as appropriate.

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

Assistance for Consumers

Financial institutions may wish to caution their customers to avoid any business or person that seeks to charge up-front fees for services related to the Administration's new loan modification and refinancing programs. More information about the various plans available to homeowners is available at www.MakingHomeAffordable.gov or by contacting the Homeowner's HOPE Hotline at 1-888-995-HOPE (1-888-995-4673).⁶ If a financial institution becomes aware of a customer's unintentional involvement in a foreclosure rescue scam, the customer may be referred to the Federal Trade Commission website, www.ftc.gov. This site contains a publication designed to educate homeowners on mortgage foreclosure rescue scams and also offers contact information for those who may have already fallen victim to a scam. Financial institutions may also consider referring customers to state or local authorities.

⁶ Through the HOPE NOW Alliance, consumers have access to free foreclosure prevention counseling intermediaries approved by the Department of Housing and Urban Development, qualifying state housing finance agencies, and NeighborWorks® organizations, which is a national nonprofit organization created by Congress to provide financial support, technical assistance, and training for community-based revitalization efforts.