FinCEN Extends Reporting Rules to Non-Bank Mortgage Lenders, Defers Application to Real Estate Agents

The Financial Crimes Enforcement Network (FinCEN) has finalized new regulations that close what it calls a “regulatory gap” by requiring non-bank residential mortgage lenders and originators to establish anti-money laundering (AML) programs and file suspicious activity reports (SARs), as are already required of other types of financial institutions. FinCEN is a U.S. federal agency that monitors financial transaction data collected under the U.S. Bank Secrecy Act and other federal laws. It analyzes hundreds of thousands of SARS that must be filed by banks, thrifts, money services businesses, credit unions and others. Certain affected entities also are required to establish AML programs that provide internal controls, a compliance officer, employee training programs and independent audits. The new rules extend the applicable requirements to residential mortgage lenders, as defined in the rules, and to residential mortgage originators, which means “a person who accepts a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan.” According to the rule notice, “FinCEN is not inclined at this time to propose a definition...that would encompass... real estate agents and other persons involved in real estate closings and settlements.” However, FinCEN is studying the money laundering vulnerabilities of those businesses for future rulemaking consideration. The final rules will be effective 60 days after publication in the Federal Register and are available at www.FinCEN.gov. The compliance date for the final rules is six months after publication.