

# Improve the Ability to Investigate and Prosecute Mortgage Fraud

## MBA RECOMMENDS

Congress should appropriate dedicated funding for the efforts of the Federal Bureau of Investigation (FBI), the Department of Justice (DOJ), federal banking regulators and the Department of Housing and Urban Development (HUD) to detect, investigate and prosecute mortgage fraud.

## BACKGROUND

Mortgage fraud perpetrated against residential mortgage bankers has grown exponentially over the past several years with significant consequences to lenders and, depending on how the fraud is perpetrated, to taxpayers, consumers and communities. Mortgage fraud is particularly costly to mortgage lenders due to the fact that, when fraud is discovered, lenders are generally held fully accountable for the costs of such fraud through repurchase requests from investors or other actions.

Mortgage fraud is defined as material misrepresentation — intentionally providing false information to deceive or mislead a lender into extending credit beyond the limits of what would normally be extended if the facts were known. Information or documentation is considered false if there is clear and convincing data that the information or documentation lacks truth or accuracy. Mortgage fraud against lenders differs from predatory lending, which involves unscrupulous lending to an unsophisticated borrower.

Mortgage fraud can be divided into two broad categories: “fraud for property” and “fraud for profit.” Fraud for property occurs, typically, when fraud is committed so that a homebuyer can purchase a house for personal use. Such fraud usually carries a lower financial risk to lenders because the fraud is a one-time occurrence on a loan the buyer intends to repay. Fraud-for-profit schemes, on the other hand, typically involve a person or a group of people that abuse the system for financial gain. These persons are often industry insiders who know how to exploit

the complex residential finance system at the expense of lenders, taxpayers, consumers and communities.

While no authoritative statistics are available on the full extent or the cost of the mortgage fraud problem, MBA’s members continue to report that mortgage fraud is a growing problem that is becoming more expensive. According to the Mortgage Asset Research Institute (MARI), incident reports of mortgage fraud increased 26 percent from 2007 to 2008.

MBA believes that increased enforcement, better communication and further innovation is required in order to adequately protect the industry, as well as consumers, taxpayers and communities, from the costs of mortgage fraud. In addition, MBA strongly encourages lenders to consider any steps necessary to defend themselves from fraudulent schemes, such as integrating the FBI Mortgage Fraud Warning Notice into their loan processes.

MBA recommends that at a minimum Congress appropriate \$6.25 million per year, over a five-year period, of dedicated funding for the FBI’s efforts in tracking down and prosecuting mortgage fraud. The funding would provide for new FBI field investigators, dedicated prosecutors and support for the operations of FBI Interagency Task Forces in the areas with the 15 highest concentrations of mortgage fraud. MBA also encourages Congress to appropriate \$266 million for federal law enforcement agencies to address mortgage fraud provided in the Fraud Enforcement and Recovery Act of 2009 (FERA) signed into law on May 20, 2009.