AML For Mortgage Brokers

Price
$59

Welcome to Anti-Money Laundering (AML) Training for non-bank Residential Mortgage Lenders and Originators.

To complete this training simply follow these instructions:

1. Read all the way through the text on this page.
2. At the very end of the page, there will be a blue button labeled “Sworn Declaration”. Click on the button.
3. Fill out the form carefully. Your certificate will be sent to the email you put in.
4. Click the button that says “Submit”.
5. If you are with either Americash or United Fidelity Funding Corp, click the button that matches. Otherwise click the button labeled “Click here to pay by credit card”.
6. Select the course that you completed from the list by clicking “Add to cart”.
7. Once the item has been added, a popup will show at near the top right, click the button that says “Checkout”.
8. Click the button that says “Checkout”.
9. Fill out your information and credit card information for processing.
10. Once payment has been received, we will send your certificate to the email you put in the form.

Dear Mortgage Brokers, Lenders and Originators,

To fulfill the government’s requirements for AML Compliance Training for non-bank RMLOs, our On-Going training consists of these two separate elements:

- This basic course covers the regulators’ Anti-Money Laundering (AML) laws for Residential Mortgage Lenders and Originators (RMLOs).
- On-going training; we also provide a stream of periodic updates throughout the year. They include the Financial Crimes Enforcement Network’s notices, changes, new and revised rules and directives. These are examples of the importance of on-going training.

We have made this training as user friendly as possible. Thousands of people have taken our AML courses over the past several years. They have given us feedback on how to make them easy-to-take, understand and remember. We emphasize information needed to stay well in compliance and out of trouble.

Course questions? Call The Walsh Agency, (410) 207-0134, 24/7.
Regulation questions? Call FinCEN, 1-(800) 949-2732 or visit www.FinCEN.gov

By taking this course you are doing your part to help prevent money laundering, which was an important element of the hi-jackers’ plans which led to the terrorist attacks of September 11th, 2001. By complying with the government’s Mortgage/AML rules and regulations, you are fulfilling an important role in complying with the U.S.A. Patriotic Act.

This Act amended the Bank Secrecy Act (BSA), which was adopted in response to those September 11th attacks.

“IRS NOTICE: THE INTERNAL REVENUE SERVICE HAS BEEN DELGATED THE AUTHORITY, UNDER THIS REGULATION, TO EXAMINE FOR COMPLIANCE WITH FinCEN’S REGULATIONS THOSE FUNCTIONAL INSTITUTIONS THAT ARE NOT EXAMINED BY A FEDERAL FUNCTIONAL REGULATOR.”

The Financial Crimes Enforcement Network (“FinCEN”) is issuing this Ruling to clarify the requirements under FinCEN’s regulations for loan and finance companies that are subsidiaries of financial institutions subject to the same regulations applicable to the parent financial institution and examinations of a Federal functional regulator for compliance with the anti-money laundering and counter-terrorist financing obligations under the laws generally known as the Bank Secrecy Act (“BSA”).[1] FinCEN hereby determines that a loan or finance company that: 1) is a subsidiary 2 of a financial institution subject to these regulations, including at least anti-money laundering program (“AML”) and suspicious activity reporting (“SAR”) requirements; 2) is required to comply with the AML and SAR regulations applicable to the parent financial institution; and 3) is subject to examination by the Federal functional regulator of the parent financial institution, is deemed to comply with FinCEN’s regulations at 31 CFR 1029. On February 14, 2012, FinCEN issued a final rule titled “Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Residential Mortgage Lenders and Originators” (“Final Rule”), which defined non-bank residential mortgage lenders and originators as loan or finance companies for the purpose of requiring them to establish AML and SAR programs and comply with other requirements under FinCEN’s regulations.3 Non-bank residential mortgage lenders and originators must comply with the Final Rule beginning August 13, 2012.4

For purposes of this Ruling, the term “financial institution” shall have the meaning set forth in 31 CFR 1010.100(t). The term “Federal functional regulator” is defined at 31 CFR 1010.100(r). Unless otherwise noted, the other terms in this Ruling shall have the meaning of the term set forth in 31 CFR 1010.100 (2011). 2 A loan of finance company is a “subsidiary” of a financial institution if the company is controlled by the parent financial institution. See, e.g., 12 CFR 5.34 regarding Operating Subsidiaries of National Banks. 3 77 FR 8148 (Feb. 14, 2012), http://www.gpo.gov/fdsys/pkg/FR-2012-02-14/pdf/2012-3074.pdf, codified at 31 CFR §§ 1010.100, 1029.210 and 1029.320. The Final Rule was preceded by an Advance Notice of Proposed Rulemaking and a Notice of Proposed Rulemaking in 2009 and 2010, respectively. See 74 FR 35830 (July 21, 2009), “Anti-Money Laundering Program and Suspicious Activity Report Requirements for Non-Bank Residential Mortgage Lenders and Originators” http://edocket.access.gpo.gov/2009/pdf/E-9-17117.pdf; 75 FR 76677 (Dec. 9, 2010), “Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Residential Mortgage Lenders and Originators” http://edocket.access.gpo.gov/2010/pdf/2010-30765.pdf. 4 31 CFR 1029.210(d). 5 For example, a loan or finance company may be subject to the AML and SAR regulations, and related examinations of: (1) the Office of the Comptroller of the Currency (“OCC”), if the company is an operating subsidiary of a National Association or a savings and loan association (12 CFR 21.11 and 21.21; 12 CFR 563.177 and 563.180); (2) the Board of Governors of the Federal Reserve System (“FRB”), if the company is a subsidiary of an FRB member state bank (12 CFR 208.62 and 208.63(b)). 6 See, e.g., Federal Financial Institutions Examination Council, Bank Secrecy Act / Anti-Money Laundering Examination Manual (2010), pages 67 and 160-165, regarding filing SARs on transactions involving affiliates of banks, and consideration of affiliates’ business activities and risks when developing AML programs and other BSA related compliance programs. 7 See, e.g., 31 CFR § 1020.210, regarding AML programs of financial institutions subject to the AML rules of a Federal functional regulator.

Certain regulations issued 5 – and policies adopted 6 – by Federal functional regulators require certain subsidiaries of a financial institution to comply with the regulations that apply to that financial institution. Requiring a loan or finance company subsidiary of such a financial institution to comply with the Final Rule, as well as the parallel regulations of a Federal functional regulator, could be needlessly burdensome and duplicative, particularly if the financial institution were subject to examinations by both FinCEN and the Federal functional regulator. For example, if a loan or finance company that is an operating subsidiary of a national bank was required to comply with FinCEN’s regulations for loan and finance companies, as well as the parallel regulations of the OCC, the financial institution and the loan or finance company would be subject to redundant, overlapping regulations and examinations — a result that is contrary to FinCEN’s implementation approach with the Final Rule, as well as policies reflected in other FinCEN regulations .7 Accordingly, this Ruling confirms that when a subsidiary loan or finance company is obligated to comply with the AML and SAR regulations that are applicable to its parent financial institution and is subject to examination by the parent financial institution’s Federal functional regulator, the loan or finance company is deemed to comply with FinCEN’s regulations at 31 CFR 1029. This Ruling is provided pursuant to the authority set forth at 31 CFR 1010.710. Financial institutions with questions about this Ruling or other matters related to compliance with the BSA and FinCEN’s implementing regulations may contact FinCEN’s Regulatory Helpline at (800) 949-2732.

We cover institutional AML programs are based on the “five pillars”:

- Internal policies, procedures and controls
- Designation of an AML officer
- Employee training
- Independent testing
- Customer due diligence (CDD).

FinCEN, Financial Crimes Enforcement Network

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Section I: Course Outline:

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Provider:

The Walsh Agency Inc., a Connecticut Corporation, was established in 1970. We have conducted sales training classes, Ethics Training and Anti-Money Laundering compliance training courses for thousands of financial professionals. The Walsh Agency, Inc. is proud to be one of the earliest members (2004) of the Association of Certified Anti-Money Laundering Specialists (ACAMS).

Instructor:

John Walsh has been conducting training programs for more than thirty-five years. He is a Certified Anti-Money Laundering Specialist (CAMS). The objective of this compliance course is to teach you the RMLO/AML rules and regulations to help prevent money laundering and terrorist financing. John has written several books, manuals and courses including: **An Anti-Money Laundering (AML) Compliance Training Guide for Money Services Businesses, AML Compliance Training for Securities and Futures Professionals, Ethics Compliance Training for Insurance Professionals. Ethics Training for Automotive Finance Professionals and Master Brokers.** He is the founder of the Institute for Ethical Behavior. His daughter Kathleen Walsh Counts has been working with the company for over 30 years, and helped create the AML Training courses. She became President of the Walsh Agency in April of 2013. Kathleen has her Series 6, 7, 31 and SIE designation. She has passed multiple certification examinations and has participated in numerous industry-sponsored regulatory compliance and AML training programs. Kathleen has completed Risk Fundamentals, Certified AML training, operational Risk and Compliance as well as continuing education requirements on an annual basis.

Description:

The Walsh Agency designed this new, streamlined AML course to help keep RMLOs well in compliance and out of trouble. Our research to develop this training program included our in-person interviews with AML regulators in Chicago and Washington, D.C. and discussions with AML experts with the Financial Crimes Enforcement Network (FinCEN) and the Internal Revenue Service. We have included the relevant RMLO/AML material published in The Federal Register as well as the RMLO/AML rules and regulations found on FinCENs' website. We have attended AML seminars conducted by the Internal Revenue Service and FinCEN. We've incorporated the guidance from these sources into this course. **In order for you to comply with the on-going aspect of the training requirement, we provide you with important training (changes, updates, revisions, reminders) during the year via email.**

Sword Declaration (SD) Worksheet:

This is the form you'll fill out at the end of the course. Please fill in the information requested. Your email address is particularly important. We use it to provide you with required on-going training via periodic updates during the year. You may email your Sworn Declaration Worksheet to us…or use fax or snail mail.

Be sure to keep a copy of your Sworn Declaration Worksheet and your Certificate of Compliance in your files, as required, for your firm, for your records, for any IRS audit and for a periodic review, which for most firms is once a year.

Certification and your Professional AML Certificate:

Upon receiving your completed Sworn Declaration Worksheet and payment, we certify you and send you a copy of your AML Certificate within three business days.

Your certificate is dated to serve as a reminder when to renew your annual AML training. The Certificate, not your Sworn Declaration, is proof to your company and the auditors from the IRS that you completed this course successfully. To replace a lost certificate, click the 'Lost Certificate' link on the last page, print, complete and send it to us.

Note: As required by the Bank Secrecy Act (BSA), The Walsh Agency, Inc. retains all records for a period of five years. We maintain redundant records in three separate locations.

Section II: Statutory and Regulatory Background:

"RMLOs are primary providers of mortgage finance, in most cases dealing **directly with the consumer, and are in a unique position to access and identify money laundering risks and fraud while directly assisting consumers with their financial needs and protecting the sector from the abuses of financial crime." FinCEN**

Statutory:

- In 2010, prison sentences for mortgage fraud convictions ranged from 2 to 5 years.
- According to the Financial Crimes Enforcement Network (FinCEN): "In fiscal year 2011, FBI investigations resulted in 1,223 indictments of mortgage fraud criminals and 1,082 convictions. These resulted in $1.38 billion in restitution, $116 million in fines, $15.7 million in seizures and $7.33 million in forfeitures."
- Last November, in Miami, a loan officer and title agent were sentenced to significant prison terms (five years for the title agent). They were found guilty for their part in a $2.5 million reverse mortgage and loan modification scheme.
- In February 2012, elderly prospects in Georgia were cheated in a reverse mortgage fraud scheme. The defendants' prison sentences ranged from three to twelve years!
- As of August 13, 2012, the Financial Crimes Enforcement Network (FinCEN) required non-bank Residential Mortgage Lenders and Originators (RMLO) to establish anti-money laundering (AML) programs and file suspicious activity reports (SARS).
- A recent analysis of SARS (with detailed explanations) filed by Mortgage companies found that 40% included sufficient cause for the subject applications to be denied.
- The Financial Crimes Enforcement Network (FinCEN) has enlisted **the Internal Revenue Service (IRS)** to help implement and audit the Anti-Money Laundering Compliance Rules and Regulations.

Non-bank RMLOs are:

1. Required to develop, enforce and monitor a written Anti-Money Laundering Program.
2. Required to file Suspicious Activity Reports (SARS).

Common Compliance Errors:

- Failure to have a written AML compliance program.
- Failure to appoint a Compliance Officer.
- Failure to conduct on-going training.
- Failure to implement an AML compliance program.
- Failure to file Suspicious Activity Reports (SARS).
- Failure to make and maintain SARS records.
- Failure to review (audit) the AML compliance program.

"As FinCEN has done with the other industries subject to the requirements of the Bank Secrecy Act, FinCEN will actively engage with loan and finance companies, provide guidance and feedback, and endeavor to make compliance with the regulations as cost effective and efficient as possible for all affected businesses."

REMINDER: As of April 1, 2013, financial institutions must use the new FinCEN reports, which are available only electronically through the BSA E-Filing System. FinCEN is no longer accepting legacy reports. For more information, click here.

The BSA defines the term "financial institution" to include, in part, a loan or finance company. The term, however, can reasonably be construed to extend to any business entity that makes loans to or finances purchases on behalf of consumers and businesses. Non-bank residential mortgage lenders and originators, generally known as "mortgage companies" and "mortgage brokers" in the residential mortgage business sector, are a significant subset of the "loan or finance company" category.

FinCEN is issuing AML program and SAR filing regulations for residential mortgage lenders and originators as the first step in an incremental approach to implementation of regulations for the broad loan or finance company category of financial institutions. Thus, the definition of "loan or finance company" initially includes only these businesses, but is structured to permit the addition of other types of loan and finance related businesses and professions in future amendments.

Since 2006, FinCEN has issued numerous studies analyzing SARs reporting suspected mortgage fraud and money laundering that involved both banks and residential mortgage lenders and originators. The reports underscore the potential benefits of AML and SAR regulations for a variety of businesses in the primary and secondary residential mortgage markets. Residential mortgage lenders and originators are primary providers of mortgage finance – in most cases dealing directly with the consumer – and are in a unique position to assess and identify money laundering risks and fraud. Though not included in the definition of loan and finance companies, FinCEN has also proposed AML and SAR reporting rules for housing GSEs.

Section III: RMLO Defined:

Non-bank, Residential Mortgage Brokers, Lenders and Originators

An RMLO is a person or entity who accepts a mortgage loan application and offers or negotiates or accepts terms of a residential mortgage loan regardless of whether they receive compensation or gain for acting in that capacity.

FinCEN's rules cover any business that, on behalf of one or more lenders, accepts a complete mortgage loan application, even if the business does not in any manner engage in negotiating the terms of a loan.

FinCEN's rules also cover businesses that offer or negotiate specific loan terms on behalf of either a lender or borrower, regardless of whether they also accept a mortgage loan application. Accordingly a residential mortgage originator includes persons who accept a residential mortgage loan application or that offer or negotiate terms of a residential loan.

FinCEN's rules provide an exception for individuals financing the sale of their own real estate and do not include certain individuals employed by a loan or financial institution. For example, such individuals not subject to the rules include administrative assistants and office clerks who gather documents, review land records and complete forms on behalf of a lender or originator.

The rules are intended to cover initial purchase money loans and traditional refinancing transactions facilitated by RMLOs.

The rules explicitly cover sole proprietorships and do not incorporate any exceptions for businesses based on their form of organization.

Section IV: Money Laundering Defined:

Money laundering is the act of moving illegally obtained assets through the financial system to disguise their origin and make them appear legitimate. Money Laundering occurs in three stages.

- **Placement**:
  - May involve RMLOs by the presentation of forged documents, laundered money, structuring or straw buyers. It also can consist of introducing illegally derived assets into such businesses as brokerage firms, jewelers, casinos, race tracks or by buying high value goods or services, for example: precious metals (gold), automobiles or insurance. Money laundering is most vulnerable to detection and seizure at this stage.
- **Layering:**
  - This phase is the movement of funds in an effort to further disguise the audit trail and ownership of funds. In this stage, assets that have been 'placed' are liquidated and transferred to other vehicles such as real estate, money orders, Traveler's checks, brokerage accounts and additional bank accounts (deposits from re-sale of high value goods). This makes it more difficult to trace the money back to its original source.
- **Integration:**
  - To further obscure their source, the assets are again converted to give the appearance of legitimacy.

An important factor connecting the three stages of this 'process' is the 'paper trail' generated by financial transactions. Criminals try to avoid leaving this 'paper trail' by avoiding reporting and record keeping requirements and by the use of false documents and misrepresentations. **This is also where you can be a valuable deterrent to money laundering by diligently following the rules and regulations covered in this course. You are a 'gate keeper.'**

Section V: Required components of an RMLO/AML Program:

Regulation 1029.210 Anti-Money Laundering programs for loan and finance companies.

In order to guard against money laundering and terrorist financing, an RMLO shall establish an anti-money laundering program **in writing** which is to include:

1. **AML Policies, Procedures and Controls.**
2. **Designation of an AML compliance officer.**
3. **On-going training.**
4. **Audit to test the program.**
5. **Customer due diligence**.

AML Policies, Procedures and Controls:

Each loan or finance company shall develop and implement a 'risk-based' written anti-money laundering program that is reasonably designed to prevent the loan or finance company from being used to facilitate money laundering or the financing of terrorist activities.

Senior management must approve the program. A loan or finance company shall make a copy of its anti-money laundering program available to the Financial Crimes
Enforcement Network or its designed upon request.

The program shall incorporate policies, procedures and internal controls based upon the loan or finance company's assessment of the money laundering and terrorist financing risks associated with its products and services.

Policies, procedures and internal controls developed and implemented by a loan or finance company under this section shall include provisions for complying with the applicable requirements of the United States Code pertaining to integrating the company's employees, agents and brokers into its anti-money laundering program and obtaining all relevant customer-related information necessary for an effective anti-money laundering program.

Designation of an AML compliance officer:

Responsibilities shall include but not necessarily be limited to:

1. The anti-money laundering program is implemented effectively, including monitoring compliance by the company's employees, agents and brokers with their obligations under the program.
2. The anti-money laundering program is updated as necessary. *
3. Appropriate persons are educated and trained in accordance with the minimum requirements. *

Here is a convenient checklist:

- Keeping current with Federal RMLO/AML laws.*
- Documenting and keeping records of required training and education. *
- Making sure the AML Program is reviewed periodically to test the Program.

Note: the person(s) conducting the 'review' may not be the Compliance Officer.

- Receiving reports of suspicious activity (SARS).
- Gathering appropriate information to evaluate and investigate SARs;
- Ensuring Suspicious Activity Reports (SARs) are filed and determine if they should be reported to the authorities;
- Correcting and report in writing any deficiencies found in the firm's 'review';
- Verifying all required information is recorded, maintained and retained for five years in accordance with AML rules and regulations (*for training);
- Co-operating with legal entities on all appropriate AML matters.

*The Walsh Agency assists the Compliance Officer with these responsibilities.

On-going Training:

An RMLO/AML education and training shall include at a minimum: Provide for on-going training of appropriate persons concerning their responsibilities under the program. A loan or finance company may satisfy this requirement with respect to its employees, agents and brokers by directly training such persons or verifying that such persons have received training by a competent third party with respect to the products and services offered by the loan or finance company. The training regulation shall include:

- Ensure employees, agents and brokers take on-going AML training.
- Inform employees, agents and brokers of AML duties and how to perform them.
- Ensure all employees, agents, and brokers are promptly trained on any AML changes.
- Teach above how to identify red flags and suspicious activity of money laundering.
- Educate on what to do once the risk is identified (SARS).
- Establish the firm's record making and retention policy for SARS.
- Maintain records of all AML trainings, including updates and revisions, the trainer.
- Dates, frequency, signed participants' attestations and a copy of the training material

Audit to test the program:

An RMLO is required to provide for a review to test the adequacy of its anti-money laundering program and confirm it is being followed.
This requirement provides for testing to determine compliance of the company's employees, agents and brokers with their obligations under the program. The scope and frequency of testing shall be commensurate with the risks posed by the company's products or services. Such testing may be conducted by an outside party with experience with this type of review or by any officer or employee of the loan or finance company, other than the compliance officer. The Internal Revenue Service may also conduct this review.
In any circumstance, the review function should test the AML Plan and SARS to ensure that personnel understand and are complying with the anti-money laundering policies, procedures and controls and that they meet all the necessary requirements.
The results of any review should be documented and reported to the AML Compliance Officer, the firm's senior management or an internal review committee or department.
Follow up should take place to ensure how deficiencies, if any, in the firm's anti-money laundering program are addressed and corrected. The confirmation of the correction of any deficiencies is to be in writing.

Compliance: Compliance of an RMLO's AML Program shall be examined by FinCEN or its delegates (such as the internal Revenue Service – IRS), under the terms of the Bank Secrecy Act (BSA). Failure to comply with the requirements of this section may constitute a violation of the Bank Secrecy Act.
Compliance date: A non-bank RMLO must have developed and implemented an anti-money laundering program by August 13, 2012.

Required components of an RMLO/AML Program Summary:

- You are required to fully comply with RMLO/AML laws and regulations regarding money laundering.
- Create and comply with an appropriate AML program.
- File Suspicious Activity Reports (SARS).
- You are not to be used to facilitate money laundering or the funding of terrorist or criminal activities.
- All appropriate employees, agents and brokers have a responsibility to follow the firm's written anti-money laundering policies, procedures and controls and to abide by all
- applicable RMLO/AML laws and regulations.
- Your firm's AML policy statement may also discuss the consequences for not following the AML rules. Penalties for non-compliance can include fines up to $100,000, jail
- sentences of up to ten years and loss of business license.
- Risk assessment must be an integral part of the RMLO's AML Program.

Customer due diligence:

One of the proposals is to amend the existing Bank Secrecy Act regulations to require covered financial institutions to identify the natural persons who own, control, and profit from legal entity customers serviced by covered financial institutions. This new "beneficial ownership" requirement, coupled with the proposed enhancements to its anti-money laundering (AML) rule, is intended to help FinCEN track down the individuals behind anonymous companies that use the U.S. financial sector to launder illicit gains from illegal activity.

Four Key Elements of Customer Due Diligence:

The proposed beneficial ownership requirement is one of four key elements identified by FinCEN as comprising the minimum standard of customer due diligence to be conducted under a covered financial institution's AML program:

1. Identifying and verifying the identity of customers;
2. Identifying and verifying the identity of beneficial owners of legal entity customers (i.e., the natural persons who own or control legal entities);
3. Understanding the nature and purpose of customer relationships; and
4. Conducting ongoing monitoring to maintain and update customer information and to identify and report suspicious transactions.

FinCEN's proposed regulations would amend FinCEN's existing rules so that each of these four elements is explicitly referenced in a corresponding requirement within FinCEN's AML program rules. FinCEN notes that the first element is already satisfied by existing customer identification program (CIP) requirements. Accordingly, the rule changes proposed by FinCEN, which are described in greater detail below, relate to the other three elements.

Identifying and Verifying Beneficial Owners of Legal Entity Customers (Element 2) Beneficial Owners:

- FinCEN proposes a two-prong definition of "beneficial owner" for the purposes of identifying the natural persons who own or control legal entities.
- Under the ownership prong of the proposed rule, each individual who owns 25% or more of the equity interests in the covered financial institution's legal entity customer is a beneficial owner.
- Under the control prong, an individual with significant responsibility to control, manage, or direct a legal entity customer, such as an executive officer, senior manager, or any other individual who performs similar functions, must be identified as a beneficial owner.
- Up to four individuals can be identified under the ownership prong and at least one individual must be identified under the control prong.3 The same individual may be identified as a beneficial owner under both prongs.
- FinCEN acknowledges that identifying which individuals own, directly or indirectly, 25% or more of the equity interests of a legal entity customer may not be easy, noting that the process may require several intermediate analytical steps (e.g., piercing the corporate veil, perhaps at multiple levels) before a natural person can be identified. FinCEN does not expect covered financial institutions to undergo complicated and exhaustive analysis to confirm with legal certainty that an individual is in fact the beneficial owner. Instead, a covered financial institution would be able to rely generally on the representations provided by their customers concerning the status of such individuals (as provided in the standard certification form described below). However, a covered financial institution will need to implement risk-based procedures that comply with CIP requirements to verify the identity of customers who are natural persons. In addition, a covered financial institution must include procedures for responding to circumstances in which it cannot form a reasonable belief that it knows the true identity of the beneficial owner, as required under current CIP rules.

Legal Entity Customers. The proposed definition of "legal entity customers" includes corporations, limited liability companies, partnerships and other business entities (whether domestic or foreign) that open a new account4 with a covered financial institution after the implementation date of these proposed regulations. The definition does not include trusts, other than those created through a state filing (e.g., statutory business trusts). FinCEN has proposed to exempt from the beneficial ownership requirement all entities that are currently exempt from complying with CIP requirements. These include entities whose beneficial ownership is generally available from other credible resources, such as publicly traded companies, majority-owned domestic subsidiaries of publicly traded companies, registered investment companies, registered investment advisers, exchanges and clearing agencies, other SEC-registered entities, commodity pool operators, commodity trading advisors, retail foreign exchange dealers, registered swap dealers, major swap participants, public accounting firms, and certain charities and non-profits.

Intermediated Account Relationships. FinCEN notes in its proposal that a covered financial institution would not be required to identify the beneficial owners of an intermediary's own underlying clients if the covered financial institution has no CIP obligation under existing guidance with respect to those underlying clients. Covered financial institutions would only need to identify the beneficial owners of the intermediary (i.e., the direct customer). For example, when a broker-dealer establishes an omnibus account for an investment adviser that, in turn, establishes sub-accounts for its clients, the broker-dealer would need to identify the beneficial owners of the investment adviser, but not the sub-account holders or their beneficial owners. FinCEN noted, however, that consistent with the other elements of customer due diligence, a covered financial institution's AML program should contain risk-based policies, procedures and controls for assessing the money laundering risk posed by underlying clients of a financial intermediary, as well as monitoring and mitigating that risk and reporting suspicious activity.5

Standard Certification Form. FinCEN included a standard certification form in Appendix A to the proposed regulations that would standardize the collection of beneficial ownership information and permit reliance on the information provided. Under the proposed regulations, covered financial institutions would be required to obtain the information on the form from legal entity customers at the time a new account is opened. Legal entity customers would be required to certify that the information provided on the form is true and accurate to the best of their knowledge. Although covered financial institutions would not be required to update or refresh this information periodically, FinCEN noted that covered financial institutions should keep customer due diligence information, including beneficial ownership information, as current as possible and that it should be updated as appropriate if risks are identified (e.g., if a customer is identified as having engaged in suspicious activity or triggering a red flag).

Reliance on Other Financial Information. In response to comments, FinCEN has proposed extending the CIP reliance provisions to the beneficial ownership requirement. In general, a covered financial institution may rely upon the CIP conducted by another financial institution with respect to a shared customer if: (i) such reliance is reasonable; (ii) the other financial institution is subject to an AML program rule and is regulated by a federal functional regulator; and (iii) the other financial institution enters into a contract and provides annual certifications regarding its AML program and CIP requirements. The proposed rule would permit the same reliance with respect to the beneficial ownership requirement if the same three conditions are met.

Amendments to AML Program Requirements (Elements 3 and 4). With respect to the third and fourth elements of customer due diligence, FinCEN proposes amending its AML program rules to require explicitly that covered financial institutions (i) understand the nature and purpose of customer relationships for the purpose of developing a customer risk profile and (ii) conduct ongoing monitoring to maintain and update customer information and to identify and report suspicious transactions. Understanding the Nature and Purpose of Customer Relationships. In response to industry concerns, FinCEN notes that this third element does not require modifications to existing practices or customer onboarding procedures aimed at gaining a better understanding of customer activity that might be considered suspicious. Further, FinCEN does not expect covered financial institutions to collect any information from its customers that it does not already collect. FinCEN states that the amendment to the AML program rule that incorporates this element is intended solely to clarify existing expectations that covered financial institutions understand customer relationships for the purpose of identifying suspicious transactions and developing customer risk profiles.

Ongoing Monitoring. FinCEN notes that it does not expect this fourth element to require any change to a covered financial institution's current suspicious activity reporting procedures or AML program. The amendment to the AML program rule that incorporates this element is intended solely to codify these supervisory and regulatory expectations as explicit requirements within FinCEN's AML program and to make clear that the minimum standards of customer due diligence include ongoing monitoring of all transactions by, at, or through the covered financial institution. As with the beneficial ownership requirement, the fourth element does not impose a categorical requirement that a covered financial institution periodically update or refresh customer information obtained during the opening process. Rather, when in the course of monitoring, a covered financial institution becomes aware of information relevant to assessing the risk posed by a customer, the covered financial institution is expected to update the customer's relevant information as part of its monitoring obligation.

Rule Timing and Effective Date. Although FinCEN does not believe incorporating the third and fourth elements into a covered financial institution's AML program will require any additional activities or operations beyond updating written policies and procedures, FinCEN recognizes that covered financial institutions will need to modify their existing customer onboarding processes to incorporate the beneficial ownership requirement. As a result, FinCEN has proposed an effective date of one year from the date the final rule is issued. Written comments in response to the proposed regulations must be received by FinCEN on or before October 3, 2014.

Section VI: Suspicious Activity Reports (SARS):

General:

- Every loan or finance company shall file with FinCEN, to the extent and the manner required, a report of any suspicious transaction relevant to a possible violation of law or regulation. A loan or finance company may also file with FinCEN a report of any suspicious transaction that it believes to be relevant to the possible violation of any law or regulation, but whose reporting is not required by this regulation.
- A transaction requires reporting if it is conducted or attempted by or through a loan or finance company, it involves or aggregates funds or other assets of at least $5,000, and the loan or finance company knows, suspects or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):
  - Involves funds derived from an illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation.
  - Is designed, whether through structuring or other means, to evade any requirements of this or any other regulations under the Bank Secrecy Act.
  - Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the loan or finance company knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.
  - Involves the use of the loan or finance company to facilitate criminal activity.
  - More than one loan or finance company may have an obligation to report the same transaction under this law, and other financial institutions may have separate obligations to report suspicious activity with respect to the same transaction pursuant to other provisions of this regulation.

In those instances, no more than one report is required to be filed by the loan or finance company(s) and other financial institution(s) involved in the transaction, provided the report filed contains all the relevant facts, including the name of each financial institution involved in the transaction, the report complies with all instructions applicable to joint filings and each institution maintains a copy of the report filed along with supporting documentation.

Filing and notification procedures:

1. . What to file. A suspicious transaction shall be reported by completing a Suspicious Activity Report (SAR) and collecting and maintaining supporting documentation as required by this regulation.
2. Where to file. The SAR should be filed with FinCEN in accordance with the instructions on the SAR.
3. When to file. A SAR shall be filed no later than 30 calendar days after the date of the initial detection by the reporting loan or finance company of facts that may constitute a basis for filing a SAR under this regulation. If no suspect is identified on the date of such initial detection, a loan or finance company may delay filing a SAR for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection.
4. Mandatory notification to law enforcement. In situations involving violations that require immediate attention, such as suspected terrorist financing or on-going money laundering schemes, a loan or finance company shall immediately notify by telephone an appropriate law enforcement authority in addition to filing a timely SAR.
5. Voluntary notification to FinCEN. Any loan or finance company wishing to voluntarily report suspicious transactions that may relate to terrorist activity may call the FinCEN's Financial Institutions' Hotline at 1-800-556-3974 in addition to filing a timely SAR.

Confidentiality of SARS:

An SAR and any information that would reveal the existence of an SAR are confidential and are not to be disclosed except as authorized here in. An SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation.

Prohibition on disclosures by loan or finance companies:

General Rule. No loan or finance company, or and no director, officer, employee or agent or broker of any loan or finance company, shall disclose an SAR or any information that would reveal the existence of an SAR. Any loan or finance company and any director, officer, employee or agent of any loan or finance company that is subpoenaed or otherwise requested to disclose an SAR or any information that would reveal the existence of an SAR shall decline to produce the SAR or such information, citing this regulation and notify FinCEN of any such request and response thereto.

- Rules of construction. Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, the following shall not be construed as prohibiting: the disclosure by a loan or finance company, or any director, officer, employee or agent of a loan or finance company of:
  - An SAR, or any information that would reveal the existence of an SAR, to FinCEN or any Federal, State or local law enforcement agency, any Federal regulatory authority that examines the loan or finance company for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the loan or finance company to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the loan or finance company complies with the Bank Secrecy Act; or
- The underlying facts, transactions and documents upon which an SAR is based, including, but not limited to, disclosures to another financial institution, or any director, officer, employee or agent of a financial institution, for the preparation of a joint SAR that would reveal the existence of an SAR, within the loan or finance company's corporate organizational structure for purposes consistent the Bank Secrecy Act.
- The sharing by a loan or finance company, or any director, officer, employee or agent of the loan or finance company, of an SAR, or any information that would reveal the existence of an SAR, within the loan or finance company's corporate organizational structure for purposes consistent with the Bank Secrecy Act as determined by regulation or guidance.
- Prohibition on disclosures by government authorities A Federal. State, local, territorial or tribal government authority, or any director, officer, employee or agent of any of the foregoing, shall not disclose an SAR or any information that would reveal the existence of an SAR, except as necessary to fulfill official duties consistent with the Bank Secrecy Act. For purposes of this section, official duties shall not include the disclosure of an SAR or any information that would reveal the existence of an SAR.

Summary:

A Suspicious Activity Report (SAR) is a form you fill out and submit when you believe or have reason to believe a customer has or has attempted to break or bend an AML rule or regulation such as those covered in this course.
Many of the rules and regulations in this section are derived from various publications, seminars and webinars of the Financial Crimes Enforcement Network (FinCEN) and the Internal Revenue Service.

Suspicious Activity related to Mortgage:

Loan Fraud: The following list identifies types of mortgage loan fraud, which are primarily based upon schemes and scams frequently reported or described in SARs or identified by law enforcement and regulators. This information is intended to assist RMLOs in identifying when illicit activities occur in connection with mortgage loan transaction

Occupancy Fraud: Occurs when borrowers, to obtain favorable loan terms, claim that subject properties will be their primary residences instead of vacation homes or investment properties. It also occurs when subjects apply for loans for properties that others, such as family members, will actually occupy.

Income fraud: Includes both overstating income to qualify for larger mortgages and understating income to qualify for hardship concessions and modifications.
Appraisal fraud: Includes both overstating home value to obtain more money from a sale of property or cash-out refinancing, and understating home value in connection with a plan to purchase a property at a discount to market value.

Employment fraud: Includes misrepresenting whether, where, and for how long borrowers have been employed; whether borrowers are unemployed or collecting unemployment benefits; and whether borrowers are independent contractors or business owners.

Liability fraud: Occurs when borrowers fail to list significant financial liabilities, such as other mortgages, car loans, or student loans, on mortgage loan applications. Without complete liability information, lenders cannot accurately assess borrowers' ability to repay debts.

Debt elimination schemes: Involves the use of fake legal documents and alternative payment methods to argue that existing mortgage obligations are invalid or illegal, or to purport to extinguish mortgage balances. Individuals orchestrating debt elimination schemes typically charge borrowers a fee for these debt elimination "services."

Foreclosure rescue scams: Targets financially distressed homeowners with fraudulent offers of services or advice aimed at stopping or delaying the foreclosure process. Some of these scams require homeowners to transfer title – or make monthly mortgage payments – to the purported "rescuer," rather than the real holder of the mortgage. Some foreclosure rescue scams require homeowners to pay fees before receiving "services," and are known as "advance fee" schemes.

Social Security Number (SSN) Fraud and other Identify Theft: Includes the use of an SSN or other government identification card or number that belongs to someone other than the applicant in a loan application. Identity Theft includes broader use of another's identity or identifiers (beyond an SSN) to obtain a mortgage or perpetrate a "fraud for profit" scheme.

Home Equity Conversion Mortgage (HECM): Financial institutions need be aware of illegal "reverse mortgage" schemes, which targets seniors who own a home or who are coerced into taking title to a home, for the purpose of stealing or otherwise acquiring some or all of the funds the senior receives from a government HECM program. HECM fraud may involve other frauds, including appraisal fraud (to increase the stated value of the home), investment fraud to acquire the HECM funds from the senior under the guise of future profits for the senior, and identify theft to acquire HECM funds without the knowledge of the senior who owns the property.

Source: Financial Crimes Enforcement Network (FinCEN)

Suspicious activity is to be reported when:

1. You know, suspect or have reason to suspect a transaction:
   - Involves funds derived from an illegal activity
   - Is designated to evade Bank Secrecy Act requirements
   - Serves no business or apparent lawful purpose
   - Involves use of an RMLO to facilitate criminal activity
2. Transaction thresholds have exceeded $5,000.

An RMLO must report any suspicious transaction if it involves $5,000 or more. Report Suspicious Activity on Form 109. Collect supporting documentation. Retain this documentation for a minimum of five years. An SAR must be filed within 30 days of detection of suspicious activity. A thirty-day maximum extension may be taken for cause.

Structuring:

One common way money launderers avoid reporting and record keeping requirements is by 'structuring' transactions, or by attempting to coerce or bribe employees not to file proper reports or complete required records or by establishing apparently legitimate 'front' businesses to open accounts or establish preferred customer relationships. Structuring occurs when one or more persons break a large transaction into two or more transactions to avoid a reporting threshold. **Structuring is a federal crime.**

Narrative:

In a suspicious activity report there is a section called 'Narrative'. In clear, crisp handwriting (please print or type if you prefer) write a Narrative of the suspicious activity. It may help to ask yourself the questions: Who, What, When, Where, Why and How when writing the Narrative.

- Describe what was unusual, irregular or suspicious.
- Describe the conduct that raised suspicion.
- Was the transaction attempted or completed?
- Who benefited from the transaction and why?
- What explanation was given by the customer?
- Describe the subject: such as, but not limited to, gender, approximate height, weight, age, clothing, unusual mannerisms.

Never, never tell a customer an SAR has been filed about them. You may only tell those entities who are legally entitled to know about the SAR. It is against the law to tell anyone else including friends and family.

Safe Harbor:

1. The SARs rules also provide RMLOs and their officers and directors, employees, agents and brokers with a statutory safe harbor against private civil claims brought by customers or others for any disclosures contained in an SAR or for failure to disclose that a report has been filed, providing the regulatory requirements are met. This safe harbor applies equally to filings made on a voluntary basis.
2. "Limitation on liability. A loan or finance company, and any director, officer, employee or agent of any loan or finance company, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to FinCEN or any other authority, including a disclosure made jointly with another institution shall be protected from liability from any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by the law." (As published in the Federal Register, February 14, 2012, page 8159)

Section VII: Red Flags:

The following highlights potential red flag indicators of illicit activity related to mortgage fraud. These only indicate possible signs of fraudulent activity; they do not constitute an exhaustive list of common fraud schemes. No single red flag will be definitive proof of such activity and many apply to multiple fraud schemes. Instead, it is important to view any red flag(s) in the context of other indicators and facts, such as the specific role of the financial institution within mortgage loan-related transaction(s), as well as the institution's knowledge of any associated fraud schemes. The presence of any of these red flags in a given transaction or business arrangement may indicate a need for further due diligence and a decision whether to file a SAR.

- Borrower/buyer submits invalid documents in order to cancel his or her mortgage obligations or to pay off his or her loan balance(s).
- Same notary public and/or other "authorized representative" preparing, signing, and sending packages of nearly identical debt elimination documents for multiple borrowers with outstanding mortgage balances.
- Same notary public and/or other "authorized representative" working with and/or receiving payments from unusually large numbers of borrowers.
- Falsification of certified checks, cashier's checks or "non-cash item checks" drawn against a borrower/buyer's account, rather than from the account of a financial institution.
- Borrower/buyer applies for a loan for a "primary residence" but does not reside in the new primary residence as indicated on the loan application; other individuals occupy the borrower/buyer's new primary residence indicating the property is being used as a secondary residence or income-generating property.
- Borrower/buyer of a younger age purchases his or her "primary residence" in a senior citizen residential development.
- Borrower/buyer requests refinancing for "primary residence" when public and personal documents indicate that the borrower/buyer resides somewhere other than the address on the loan application.
- Language included in a short sale contract indicates the property could be resold promptly. This possibly illegal "flipping" may occur regardless of whether the Federal Housing Administration (FHA) has re-enacted or waived its arms-length resale regulations to FHA buyers.
- Low appraisal values, non-arm's length relationships between short sale buyers and sellers, or previous fraudulent sale attempts in short-sale transactions.
- Agent of the buyer and/or seller in mortgage transaction is unlicensed.
- Past misrepresentations made by borrower/buyer in attempts to secure funding, property, refinance, and/or shorts sales.
- Improper/incomplete file documentation, including borrower/buyer reluctance to provide more information and/or unfulfilled promises to provide more information.
- Apparent resubmission of rejected loan application with key borrower/buyer details changed or modified from individual borrower to company/corporation. This activity may identify the same person attempting to secure a loan fraudulently through a straw-borrower or non-existent person.
- Borrower/buyer attempts to structure currency deposits/withdrawals, or otherwise to hide or disguise the true value of assets, in order to qualify for loan modification programs intended for those homeowners in financial distress.
- Request from third party affiliates on behalf of distressed homeowners to pay fees in advance of the homeowner receiving mortgage counseling, foreclosure avoidance, a loan modification, or other related services.
- Third party solicitation of distressed homeowners for purported mortgage counseling, foreclosure avoidance, loan modification, or other related services. These third parties may also claim to be associated with legitimate mortgage lenders, the U.S. government, or a U.S. government program.

Source: Financial Crimes Enforcement Network (FinCEN)

Customer Red Flags:

- Appears nervous for no good reason.
- Avoids eye contact.
- Asks about reporting rules.
- Asks that rules be 'bent'.
- Questionable source of funds.
- 'Forgot' driver's license claim, lost due to drunk driving, had wallet (purse) stolen.
- Driver's license is outdated or picture is smudged beyond recognition.
- Address on driver's license is different from one on RMLO form.
- Comes in just before closing and asks for 'paper work' to be skipped.
- Is impatient and tries to hurry you.
- Offer a cash bonus (bribe) for you to skip required information.
- Pretends to be sick or very tired and just 'wants to get the application over with.'
- Provides incomplete or suspicious information.
- Transaction seems inconsistent or illogical with normal loan application practices.
- Abnormal or irregular way of doing business.
- Claims application is for a friend and does not have the required information.
- Funds inconsistent with applicant's apparent financial or economic situation.
- Suspicion of straw buyer.
- Suspicion of structuring.
- Funds from an unusual or suspicious source.
- Fraudulent documentation suspected.

Employee Red Flags:

- Never or almost never takes a vacation.
- Does not want you to see or be aware of transactions with suspicious customer (s).
- Behavior changes to secretive with certain customer (s).
- Acts guilty.
- Does not want you see forms filled out by suspicious customer (s).
- Whispers with certain customers.
- Asks certain customers to come back later.
- Lives beyond means. Employee accepting bribes for 'overlooking' RMLO/AML rules?
- Your 'sixth sense' tells you something is not quite right.

If you suspect something is wrong, consult your supervisor. In a recent study, forty percent of MLF SAR narratives, where SAR filers provide details of why an activity appears suspicious, indicated the filing institution turned down the suspect's loan application, short sale request, or debt elimination attempt because of the suspected fraud reported in the SAR.

Section VIII: Reporting and record-keeping requirements:

The final rules for RMOLs requires loan or finance companies to maintain AML programs and file reports on suspicious transactions. By requiring this, FinCEN is addressing vulnerabilities in the U.S. financial system and is leveling the playing field between bank and non-bank lenders.

FinCEN does not foresee a significant impact on the regulated industry from these requirements. Loan or finance companies, as a usual and customary part of their business for each transaction, conduct a significant amount of due diligence on both the property securing the loan and the borrower.

This process of due diligence involves the types of inquiry and collecting the types of information that would be expected in any program to prevent money laundering and fraud and to detect and report suspicious transactions.

Section IX: Bank Secrecy Act electronic filing requirement:

The SAR rules require that a SAR be electronically filed through the BSA E-Filing System no later than 30 calendar days from the date of the initial detection of facts that may constitute a basis for filing a SAR. If no suspect can be identified, the time period for filing a SAR is extended to 60 days. Organizations may need to review transaction or account activity for a customer to determine whether to file a SAR. The need for a review of customer activity or transactions does not necessarily indicate a need to file a SAR. The time period for filing a SAR starts when the organization, during its review or because of other factors, knows or has reason to suspect that the activity or transactions under review meet one or more of the definitions of suspicious activity.

As of March 2015, Version 1.4 FinCEN reports had to be electronically filed (E-filed). FinCEN no longer accepted most paper filings and has allowed extensions and exemptions only in certain hardship situations such verifiable proof the filer had no access to the internet. **Updates to Attachment C – Electronic Filing Instructions**

General Instructions (7. Addresses):

Removed "Note: The ISO 3166-1 country list contains entries for all U.S. territories, including the United States Minor Outlying Islands. Do not use these U.S. territory entries, which may match the U.S. Postal Service abbreviations required in state fields, in any country field."

This change was made as the discrete (online) reports were updated to include the following entries in Country fields:

American Samoa, (AS) Guam, (GU) Marshall Islands (the), (MH) Micronesia (the Federated States of), (FM) Northern Mariana Islands (the), (MP) Palau, (PW) Puerto Rico, (PR) Virgin Islands (U.S.), (VI)

These values can now be used in Country fields to adhere to the ISO 3166-1 standard.

Updates to Item 9 in General Instructions

Changed last sentence in instruction
From:

- Such numbers include alien registration, CRD, CUSIP®, driver's license, state identification, EIN, IARD, ITIN, passport, RSSD, SEC ID, and SSN.

To:

- Such numbers include account numbers, alien registration numbers, CRD, CUSIP®, driver's license numbers, state identifications, EINs, IARDs ITINs, passport numbers, RSSDs, SEC IDs, and SSNs.

Updates to Item 24 in General Instructions
Added the following sentence:

- Enter account numbers without formatting or special characters such as spaces, hyphens, or periods.

Addition of a new Attachment E – Batch File Layout Examples

- This new section provides additional instruction on the layout of the batch files along with examples.

Purpose

The purpose of this document is to provide the requirements and conditions for electronically filing the FinCEN Suspicious Activity Report (FinCEN SAR). Electronic filing of this report will be through the BSA E-Filing System operated by the Financial Crimes Enforcement Network (FinCEN). For more information on the BSA E-Filing System and to register, please go to http://bsaefiling.fincen.treas.gov. This document should be used in conjunction with the "General Specifications for Electronic Filing of Bank Secrecy Act (BSA) Reports" (General Specifications) available at http://www.fincen.gov/forms/files/e-filing_GENspecs.pdf. It is recommended that you refer to the General Specifications first, and then the specific information contained in this document. If the General Specifications conflict with any specific requirement found in this document, the specific requirement should be followed. Additional instructions concerning the data to be entered in the electronic file are found in Attachment C – Electronic Filing Instructions.

Electronic Filing

The BSA E-Filing System Batch File Testing Procedures are detailed in a separate document that can be accessed on the BSA E-Filing System web site at http://bsaefiling.fincen.treas.gov under Quick Links. For purposes of this document, the filer is the organization responsible for filing the FinCEN SAR and the transmitter is the organization responsible for preparing the electronic files. The filer and transmitter may be the same or different organizations. Filers are required to retain a copy of the FinCEN SAR data and all original supporting documentation or business record equivalent for five years from the date of the suspicious activity report. All supporting documentation must be made available to appropriate authorities upon request.

The BSA E-Filing enrollment processes involves the designation by your filing organization of a Supervisory User (SU) will serve as the initial and primarily responsible user of the BSA E-Filing system for your organization. This person can both invite additional users from your organization to become BSA E-Filing users and assign them appropriate privileges within the system.

To obtain a user ID, the SU must fill out and submit the Supervisory Use Application Form. Once FinCEN has verified the identity/designation of the SU, he/she will receive a user ID to access the E-Filing system approximately 48 hours after submission of the form.

Institutions need only apply for a system account by going to the BSA E-Filing home page: http://bsaefiling.fincen.treas.gov/. Or they may call the BSA E-Filing help desk at: 866-346-9478 (option 1), or by submitting an enrollment request via email at: BSAEFilingHelp@fincen.gov

For more information about E-Filing, its uses, and the process to enroll, visit FinCEN's "Take a Tour" feature on the BSA E-Lining home page: http://bsaefiling.fincen.treas.gov/

If you have further questions about the system, please call or email the BSA E-Filing System Help Desk at 866-346-9478, Monday through Friday, 8 a.m to 6 p.m. eastern time.

Giving AML Information to Federal Law Enforcement Agencies and Other Financial Institutions

FinCEN Requests Under USA PATRIOT Act Section 314(a)

We will respond to a Financial Crimes Enforcement Network (FinCEN) request concerning accounts and transactions by immediately searching our records to determine whether we maintain or have maintained any account for, or have engaged in any transaction with, each individual, entity or organization named in the 314(a) Request as outlined in the Frequently Asked Questions (FAQ) located on FinCEN's secure Web site. We understand that we have 14 days (unless otherwise specified by FinCEN) from the transmission date of the request to respond to a request. Upon receiving an information request, we will designate one person to be the point of contact regarding the request and to receive similar requests in the future. Unless otherwise stated in FinCEN's request we are required to search current accounts, accounts maintained by a named suspec during the preceding 12 months, and transactions conducted by, on behalf of, or with a named subject during the preceding six months. If we find a match will report it to FinCEN by completing FinCEN's subject information form. E-Filing is mandatory effective July 1, 2012. Electronic filing instructions can be found in Attachment C of the "FinCEN SAR Electronic Filing Requirements" document. This document can be found under "User Quick Links" of the BSA E-Filing System homepage (http://bsaefiling.fincen.treas.gov/main.html) or on the "Forms" page of the FinCEN Web site (https://www.fincen.gov/forms/bsa_forms/).

Additionally, instructions are embedded within the discrete filing version of the FinCEN CTR and are revealed when scrolling over the relevant fields with your computer "mouse."

We will not disclose the fact that FinCEN has requested or obtained information from us, except to the extent necessary to comply with the information request. Will maintain procedures to protect the security and confidentiality of the request from FinCEN, such as those established to satisfy the requirements of section 501 of the Gramm Leach Bliley Act.

We will direct any questions we have about the request to the requesting federal law enforcement agency as designated in the 314(a) request.

Unless otherwise stated in the information request, we will not be required to treat the information request as continuing in nature, and we will not be required to treat the request as a list for purpose of the customer identification and verification requirements. We will not use the informatior provided to FinCEN for any purpose other than 1. To report to FinCEN as required under section 314 of the Patriot Act; 2. To determine whether to establish or maintain an account, or to engage in a transaction; or 3. To assist the firm in complying with any requirement of section 314 of the Patriot Act.

Although we are not required to, in cases where we have filed a SAR that may require immediate attention by the SEC, we may contact the SEC via the SEC SAR Alert Message Line at (202) 551-SARS (7277) to alert the SEC about the filing. We understand that calling the SEC SAR Alert Message Line does not alleviate our obligations to file a SAR or notify an appropriate law enforcement authority.

Recent FinCEN Updates:

The Anti-Money Laundering Act of 2020 (AMLA 2020) became law on Jan. 1, 2020. AMLA 2020 is the most consequential anti-money laundering legislation passed by Congress in decades. Among its many provisions, AMLA 2020 provides for 1) expanded whistle-blower rewards and protections, 2) the establishment of a beneficial ownership registration database that will be implemented by the Financial Crimes Enforcement Network (FinCEN), and 3) new Bank Secrecy Act (BSA) violations and enhanced BSA penalties for repeat and egregious violators.

Whistleblower Rewards and Protections:

The BSA has long authorized payments to whistleblowers who provide original information leading to government collection of fines, civil penalties or forfeitures relating to BSA violations. 31 U.S.C. § 5323. Likely, as a result of its modest terms – a payment capped at $150,000 that the U.S. Department of the Treasury had the discretion and not an obligation to award – Section 5323 has not had much impact on money laundering enforcement. AMLA 2020 seeks to change that by 1) narrowing the government's discretion to pay an award, 2) increasing the potential amount of whistleblower awards and 3) providing protections specific to money laundering whistleblowers, all in a manner largely modeled after the Dodd-Frank Wall Street Reform and Consumer Protection Act's (DFA) whistleblower provisions.

First, the BSA previously stated that the Secretary of Treasury "may" pay a reward to those who provide original information leading to a government recovery. Section 6314 of AMLA 2020 amended Section 5323 of Title 31 to state that the Secretary "shall" pay an award to those who provide original information leading to successful enforcement of various money laundering laws. 1 In a manner consistent with the DFA, certain expected classes of individuals, such as regulatory and law enforcement officials and those who participated in the wrongdoing, are prohibited from receiving an award. Second, AMLA 2020 eliminated the $150,000 award cap, replacing it with a payment ceiling of 30 percent of the government's collection, if the monetary sanctions imposed exceed $1 million. 2 Factors to be taken into consideration by the government when deciding the amount of the award – such as the significance of the information, the degree of assistance provided and the programmatic interest of Treasury in deterring violations – mirror those provided in the DFA. AMLA 2020 does not contain a reward "floor," unlike many other whistleblower laws. Treasury therefore retains the discretion to make nominal payments, and there is no right to appeal the amount awarded. 3 Additionally, the "monetary sanctions" figure on which the reward will be based excludes forfeiture, restitution and victim compensation payments 4 Removing forfeitures from the payment equation may significantly limit whistleblower awards because large forfeiture judgments are frequently sought by the government when resolving BSA/AML enforcement actions.

AMLA 2020 also repealed the BSA's previous whistleblower protection provision (31 USC § 5328), replacing it with a new subsection (g) (Protection of Whistleblowers) to 31 U.S.C. § 5323. The new whistleblower protection provision prohibits employers from engaging in retaliatory acts such as discharging, demoting, threatening or harassing employees who provide information relating to money laundering and BSA violations to the Attorney General, Secretary of Treasury, regulators and others. 5 Unlike the DFA, those who report suspected wrongdoing to their employer, rather than the government (i.e., internal whistleblowers), are also afforded protection by Section 5323(g). Significantly, though, subsection (g)(6) exempts employers who are Federal Deposit Insurance Corporation- (FDIC) and Federal Credit Union Act- (FCUA) insured institutions from these new protection provisions. 6 Thus, employees of most banks and credit unions must continue to rely on existing whistleblower protection statutes, such as those provided by the Federal Deposit Insurance Act 7 and the Federal Credit Union Act 8 when seeking redress from suspected retaliation.

Beneficial Ownership Registration for Business Entities:

Law enforcement has long felt that the lack of a national beneficial ownership registry for business entities facilitated criminals' use of shell companies to hold assets and conduct financial transactions. This was viewed as a significant loophole that weakened U.S. efforts to combat money laundering and terrorism financing. 9 The patchwork of state-based rules also complicated financial institutions' efforts to satisfy regulators' customer due diligence obligations with regard to such entities. AMLA 2020 seeks to close these gaps by establishing a uniform federal beneficial ownership registry that will be administered by FinCEN. 10

In general, the new law applies to "reporting companies," generally defined as corporations, limited liability companies or similar entities, including foreign entities registered to do business in the United States. 11 Because the new law is focused on shell companies, many broad categories of businesses – such as companies registered with the U.S. Securities and Exchange Commission (SEC), FDIC-insured financial institutions, and certain businesses with a U.S. presence that have filed taxes – are exempted from the registration requirement. 12 Those required to register mus disclose their beneficial owners, generally defined as those who directly or indirectly "exercise substantial control" over the entity or who own or control more than 25 percent of the ownership interest of such entities. 13 The new law directs FinCEN to promulgate implementing regulations within one year of enactment of AMLA 2020; 14 reporting companies already in existence at the time of the effectiveness of these regulations will have two years to comply. 15 Entities formed after effectiveness of the regulations must comply upon formation, and changes in beneficial ownership information must be submitted by reporting companies to FinCEN. 16

Beneficial ownership information generally cannot be disclosed by FinCEN except to law enforcement and regulators, and to financial institutions for purposes of customer due diligence requirements if authorized by the reporting company. 17 Willful failure to file beneficial ownership information can result in civil liability of $500 per day that the violation continues, as well as a fine and imprisonment of not more than two years. 18 Those who knowingly make an unauthorized disclosure or use of beneficial ownership information obtained from FinCEN are subject to the same civil liability, as well as a fine and imprisonment of not more than five years. 19

AMLA 2020 makes clear that it will not immediately reduce Customer Due Diligence (CDD) requirements for financial institutions. The legislation provides that nothing in the new law may be construed "to authorize Treasury to repeal the requirement that financial institutions identify and verify beneficial owners of legal entities." 20 However, the new law does direct Treasury to revise the CDD rule within one year of promulgating implementing regulations, in order to reduce burdens on financial institutions and legal entity customers that are unnecessary or duplicative in the light of the new registration requirements. 21 If Treasury adopts procedures that ease financial institutions' access to FinCEN's beneficial owner database for purposes of conducting CDD, the burden on financial institutions to conduct legal entity CDD could be significantly lightened.

New and Increased BSA Penalties

AMLA 2020 added two new criminal BSA violations to Title 31 for intentionally deceiving or withholding information from financial institutions. 22 New Section 5335 makes it a crime to misrepresent a material fact to a financial institution concerning the ownership of assets involved in a monetary transaction if the person or entity who owns the asset is a senior foreign political figure (or an immediate family member or close associate of one), and the value of the assets involved is at least $1 million. Section 5335 also makes it a crime to knowingly misrepresent a material fact to a financial institution about the source of funds in a monetary transaction that involves an entity found by Treasury to be a primary money laundering concern. A violation (or conspiracy to violate) either law is punishable by up to 10 years' imprisonment and a fine of up to $1 million Forfeiture of funds involved in the crime may also be imposed.

AMLA 2020 also includes increased civil penalties for repeat and egregious BSA violators. For example, a new subsection (f) to 31 USC § 5321 (Additional Damages for Repeat Offenders) provides that, in addition to the otherwise applicable penalties, repeat BSA offenders may be required to pay an additional civil penalty of three times the profit made (or loss avoided, whichever is greater) as a result of such conduct, or two times the otherwise applicable maximum penalty. 24 The new law also adds a subsection (g) to section 5321, prohibiting those who commit an "egregious" violation of the BSA from serving on the board of directors of a United States financial institution during the 10-year period after their conviction or entry of judgment. An "egregious" criminal conviction is one punishable by one year or more in prison, while an "egregious" civil violation is one committed willfully that facilitated money laundering or the financing of terrorism. 25

Those criminally convicted of a BSA violation may also be subject to increased penalties. Pursuant to a newly added subsection (e) under 31 USC § 5322, those convicted of violating the BSA may be fined in an amount equal to the profit gained by such person as a result of the offense, in addition to any other applicable fine. 26 Additionally, those who commit a BSA offense while at that time a partner, director, officer or employee of a financial institution may be ordered to repay any bonus paid to the individual during the calendar year (or following year) in which the violation occurred.

Expanded Authority to Subpoena Foreign Banks

AMLA 2020 also expands the government's subpoena power via-a-vis foreign bank accounts. Whereas previously, DOJ or Treasury could issue subpoenas to any foreign bank maintaining a "correspondent account" in the U.S. for "records related to such correspondent account[s]," the government is now authorized to request records relating to correspondent accounts "or any account at the foreign bank" that is the subject of a BSA/anti-money laundering investigation, a civil forfeiture action, or any federal criminal investigation. 27

The revised § 5318(k) also requires foreign banks to authenticate the requested records, making it easier for prosecutors to use the records at trial. If the bank fails to comply with the subpoena requirements of new § 5318(k), the government may assess civil penalties of up to $50,000 per day and seek an order from the U.S. district court compelling the foreign bank to appear and produce records or be held in contempt. 28

The implications of these new provisions are potentially significant. The changes are meant to allow federal investigators to more easily obtain foreign bank records and not have to rely principally on the mutual legal assistance treaty (MLAT) process or other international agreements. And although the law is aimed at combatting money laundering, its broad scope (permitting subpoenas in connection with "any investigation of a violation of a criminal law of the United States") means that it may, and likely will, be used to target other serious criminal conduct, including high-profile white collar crimes (e.g., tax evasion, FCPA violations), as well as international drug trafficking and national security violations.

AMLA 2020 includes a host of additional measures, such as 1) amending the BSA to state – consistent with the position taken by regulators for several years – that those who exchange or transmit value that substitutes for currency (e.g., cryptocurrency) are subject to BSA registration and compliance requirements; 2) directing Treasury to lead a review of whether dollar thresholds for CTR and SAR filing should be adjusted, and 3) amending the definition of "financial institution" to include those engaged in the business of dealing antiquities.

The Financial Crimes Enforcement Network ("FinCEN") recently complied with two important deadlines under the Anti-Money Laundering Act ("AML Act") — issuing national priorities for AML and countering the financing of terrorism ("CFT"), and issuing an assessment on potential "no-action" letters. This development prompted us to consider everything else that FinCEN and other agencies have to do under the AML Act by January 1, 2022. The requirements affect a very broad swath of issues and industries. Certain agencies will be pushed to their capacity to comply meaningfully. The latter half of 2021 will involve a flurry of activity under the AML Act, which in turn will produce another flurry of activity.

Specifically, the AML Act requires various components of the U.S. government to issue proposed and final regulations, and to conduct studies and reports for consideration by Congress, by January 1, 2022. Generally, the Secretary of the Treasury – often, acting through the Financial Crime Enforcement Network – is the agency tasked with these duties. But these duties also can extend to the Federal functional regulators, the Attorney General, the Government Accountability Office, the Office of Management and Budget, and certain national security agencies – sometimes in consultation with relevant State financial regulators.

Given all of the upcoming deadlines, we thought that a high-level compendium would be useful. Accordingly, the key outcomes which the AML Act requires to be completed between December 27, 2021 and January 1, 2022, without reference to the responsible agencies, are set forth below

The Act imposes other deadlines as well, but we focus here "only" on those coming to fruition by January 1 of next year. Of course, in order for any final regulations to be issued by the deadlines, proposed regulations must be issued earlier in 2021.

- Regulations regarding the Corporate Transparency Act ("CTA") and related beneficial ownership ("BO") reporting
- Regulations regarding the implementation of national AML/CFT priorities
- Regulations regarding AML/CFT requirements for the antiquities trade
- Appointments of BSA Information Security Officers at FinCEN, the Internal Revenue Service, and each Federal functional regulator
- Appointments of BSA Innovation Officers at FinCEN and each Federal functional regulator
- Study on money laundering and the art trade
- Rules regarding Suspicious Activity Report ("SAR") pilot program for sharing information
- Reports on SAR and Currency Transaction Report ("CTR") effectiveness and potential streamlining of current filing requirements
- Reports on general effectiveness of BSA regulations and guidance, and on usefulness of data from financial institution reporting under the BSA
- Report on the activities of the FinCEN Exchange, a voluntary public-private information sharing partnership among law enforcement agencies, national security agencies,
- financial institutions, and FinCEN
- Report on the objectives and activities of the FinCEN Office of Domestic Liaison
- Report on how payment systems, including the use of virtual currency, are used to facilitate human trafficking and drug trafficking
- Report on deferred and non-prosecution agreements entered into by Department of Justice regarding potential violations of the BSA
- Report on impact of financial technology on financial crimes compliance
- Report on trade-based money laundering
- Reports on de-risking by financial institutions
- Report on human trafficking
- Report on money laundering tied to China
- Report on money laundering tied to Russia
- Report on efforts of authoritarian regimes to exploit the U.S. financial system
- Report on policy considerations for disposition of assets recovered under the Kleptocracy Asset Recovery Rewards Act

Notes

1 AMLA 2020, § 6314(a) (adding 31 USC § 5323(b)(1)).
2 Id. (adding 31 USC § 5323(c) (1) (B)).
3 Id. (adding 31 USC § 5323(f) (2) (A)).
4 AMLA 2020, § 6314(a) (adding 31 USC § 5323(a) (2) ("monetary sanctions" definition).
5 Supra, n. 1.
6 Id. (adding 31 USC § 5323(g) (6)).
7 12 U.S.C. § 1831j.
8 12 U.S.C. § 1790b.
9 See previous Holland & Knight alert, "Treasury Releases 2020 National Strategy for Combating Terrorist and Other Illicit Financing," Feb. 19, 2020.
10 AMLA 2020, § 6403(a) (adding 31 USC § 5336).
11 Id. (adding 31 USC § 5336(a) (11) (A)).
12 Id. (adding 31 USC § 5336(a) (11) (B)).
13 Id. (adding 31 USC § 5336(a) (3)).
14 Id. (adding 31 USC § 5336(b) (5)).
15 Id. (adding 31 USC § 5336(b) (1) (B)).
16 Id. (adding 31 USC § 5336(b) (1) (C) and (D)).
17 Id. (adding 31 USC § 5336(c) (2)).
18 Id. (adding 31 USC § 5336(h) (3) (A)).
19 Id. (adding 31 USC § 5336(h) (3) (B)).
20 AMLA 2020, § 6403(d) (2) (B).
21 AMLA 2020, § 6403(d) (1).
22 AMLA 2020, § 6313 (adding section 5335 to Title 31).
23 "Biden Expected to Put the World's Kleptocrats on Notice," Foreign Policy, Dec. 3, 2020.
24 AMLA 2020, § 6309.
25 AMLA 2020, § 6310.
26 AMLA 2020, § 6312 (adding subsection (e) to 31 USC § 5322).
27 AMLA 2020, § 6308 (replacing paragraph (3) to 31 USC § 5318(k)).
28 Id.

Section X: Bibliography:

Everything in this AML Compliance Training Course RMLOs is based on facts provided by the government regulators. Our course material comes from our interviews with the rule makers and enforcers and the following sources:

1. FinCEN's Final Rule for Residential Mortgage Lenders and Originators
2. The IRS's Q. and A. report on AML Compliance Programs
3. National Commissions on Terrorist Attacks upon the United States
4. Terrorist Financing – Wikipedia
5. FinCEN and IRS AML Seminars and Webinars
6. FinCEN's Reporting Suspicious Activity booklet
7. Terrorist Financing Staff Monograph
8. Office of Foreign Assets Control (OFAC)
9. Financial Action Task Force on Money Laundering (FATF)
10. The U.S.A. Patriot Act
11. The Department of the Treasury: SAR Confidentiality
12. Federal Register: SARs and other reports and statements
13. Effective AML Programs to Comply with the Bank Secrecy Act, a presentation by Kevin McCarthy, IRS acting director, Fraud/BSA
14. On-going monitoring of FinCEN and IRS websites for new rules and regulations and changes in the RMLO/AML laws. We notify our clients of this information as soon as we get it. This fulfills the 'on-going' aspect of FinCEN's training requirement.

Congratulations, you have completed your annual on-going training session for RMOLs.

Dear Reader,
Please consider for a moment, the importance of this course to help prevent money laundering and terrorist financing.

Just think of the serious consequences to yourself, your job and your company, if even one of your customers was found guilty of using you and your company for money laundering and terrorist financing.

It is critical you take this AML compliance training seriously.

As you can see, Mortgage fraud is a serious problem in this country. Your help is badly needed to help control it. Please consider this hypothetical situation for a moment: a mortgage prospect arouses your suspicions. It is better for you to initiate a Suspicious Activity Report (SAR) and find your concerns were unfounded or is it better not to file a report and inadvertently facilitate money laundering?

You may never know if your vigilance prevents any money laundering, but take comfort knowing you are doing your part to help with your country's fight against financial fraud and terrorism.

Click the link below to Continue To Sworn Declaration and fill out the form. When we receive it, we'll register and record your certification and send you a copy of your AML Certificate.
Your certificate **(not your Sworn Declaration)** is your proof you have successfully completed this course. **Please print carefully. We need the correct spelling of your name and other data for our records. Please include your email address so we may provide you with periodic RMLO AML training as required by the regulators.**

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