

FinCEN Anti Money Laundering(AML) Program and filing of Suspicious Activity Report (SAR) Filing Requirements for Residential Mortgage Lenders and Originators

Summary:

FinCEN, a bureau of the Department of the Treasury (“Treasury”), is issuing this Final Rule defining non-bank residential mortgage lenders and originators as loan or finance companies for the purpose of requiring them to establish anti-money laundering programs and report suspicious activities under the Bank Secrecy Act.

Financial institutions are required to establish AML programs that include, at a minimum:

- (1) the development of internal policies, procedures, and controls;
- (2) the designation of a compliance officer;
- (3) an ongoing employee training program; and
- (4) an independent audit function to test programs.

Training:

FinCEN does not agree that the registration and training requirements under the SAFE Act are sufficient to address all of the concerns and accomplish all of the goals related to AML and SAR programs. Therefore Loan or Finance Companies are subject to program requirements which include among other things providing ongoing training of appropriate persons concerning their responsibilities under the program.

Loan or Finance Companies are defined as Residential Mortgage Lender and Residential Mortgage Originator.

Residential Mortgage Originator includes “persons” who *accept* a residential mortgage loan application *or* that offer or negotiate terms of a residential mortgage loan.”

FinCEN intends the Final Rule to apply to residential mortgage originators, regardless of whether they receive compensation or gain for acting in that capacity. Accordingly, the phrase “for compensation or gain” was removed. This includes those involved in foreclosure prevention and loan modification programs with the exception of state housing authorities and agencies who administer these programs.

Exempt:

Individuals employed by a loan or finance company that would be not be subject to the rule include administrative assistants and office clerks who gather documents, review land records and complete forms on behalf of a lender or originator.

RMLOs will, therefore, be required to use FinCEN's electronic, web based E-Filing system under development for the filing of the uniform SAR form.

Anti-Money Laundering Program

Section 1029.210 requires that each loan or finance company develop and implement an anti-money laundering program reasonably designed to prevent the loan or finance company from being used to facilitate money laundering or the financing of terrorist activities.

Reports of Suspicious Transactions

Section 1029.320 contains the rules setting forth the obligation of loan or finance companies to report suspicious transactions that are conducted or attempted by, at, or through a loan or finance company and involve or aggregate at least \$5,000 in funds or other assets. It is important to recognize that transactions are reportable under this Final Rule and 31 U.S.C. 5318(g) regardless of whether they involve currency. The \$5,000 minimum amount is consistent with existing SAR filing requirements for other financial institutions regulated by FinCEN.

Section 1029.320(b) sets forth the filing procedures to be followed by loan or finance companies making reports of suspicious transactions. Within 30 days after a loan or finance company becomes aware of a suspicious transaction, the business must report the transaction by completing a SAR and filing it with FinCEN.