

ANTI-MONEY LAUNDERING FOR LENDERS

A webinar for MBA members

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AGENDA

Today we will address:

- Rationale for the new regulations
- Compliance deadline
- Penalties for non-compliance
- AML regulations goals
- AML Program: Four components
- Suspicious Activity Reports (SARs)

THE RATIONALE FOR THE NEW REGULATIONS

- The Financial Crimes Enforcement Network (“FinCEN”) believes that Residential Mortgage Lenders and Originators (“RMLOs (e.g., independent mortgage loan companies and mortgage brokers) “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 while directly assisting consumers with their financial needs and protecting them from the abuses of financial crime.”

Speech by James H. Freis, Jr., FinCen Director, April 23, 2012

COMPLIANCE BEGINS SOON

- August 13, 2012 is the Effective Date
- Lenders must be in compliance and have an AML Program **IN FORCE** as of this date.
- No exceptions based on company size or type of company will be made.

PENALTIES FOR NON-COMPLIANCE

- Failure to comply with the AML requirements is a violation of the regulations and of the Bank Secrecy Act and could lead to criminal penalties and large fines.
- FinCEN has designated the IRS to perform audits to check for compliance – this designee may change in the future.

AML REGULATIONS GOALS

- The Regulations require RMLOs to develop and implement a risk-based AML program reasonably designed to prevent their being used to facilitate money laundering or the financing of terrorist activities.
- This isn't just about catching the bad guys. Mortgage fraud is also an operational risk and FinCEN has said that preventing fraud should be a result of an AML program.

FOUR COMPONENTS TO AML PROGRAM

Each AML program must include:

- Policies, procedures and internal controls based on the company's assessment of the money laundering and terrorist financing risks associated with its products and services.
The policies, procedures and controls must include provisions for complying with integrating the company's agents and brokers into the AML program, and obtaining all relevant customer-related information necessary for an affective AML program.
The policy must be approved by senior management and be in writing.
- Designation of an AML program compliance officer.
- Provisions for ongoing training of staff concerning their responsibilities under the AML program. Training should at least be annual and materials should be distributed as needed.

For example, a mortgage fraud scheme in the RMLO's area should be brought to the company's employees' attention

- Independent testing of the AML program to monitor its structure and efficacy.

INTERNAL CONTROL PLAN

- Must have written Policies and Procedures (usually drafted by law firms or third-party compliance vendors).
- Must be based on RML's assessment of money laundering and terrorist financing risks involved with its products and services.
- Must include a “Know your Customer” Policy – which most lenders already have and all should have.

COMPLIANCE OFFICER

Responsible for:

- effective implementation of the AML program;
- periodic updates of the AML program, and
- education and training for company staff.

TRAINING

- Materials for all employees to review.
- Web-based training and testing may be most economical depending on organizational size.
- Seminars.
- We recommend verifying that employees who should receive training actually participated in training.

INDEPENDENT TESTING

- What is done will depend on organizational size and risk.
- Can be done by internal auditor(s) or by an external law firm or compliance vendor auditor.
- Some firms will have difficulty in performing proper internal audits, but not performing audits would be a huge mistake.

SOME AUDIT EXAMPLES/POINTS

- If the AML program requires that a particular employee or category of employee should be trained once every six months, then the independent testing should determine whether the training occurred and whether the training was adequate.
- The review also should cover all of the anti-money laundering program actions taken by – or defined as part of the responsibility of – the designated compliance officer. For example, the determination of the level of money laundering risks faced by the business, the frequency of Bank Secrecy Act anti-money laundering training for employees, and the adoption of procedures for implementation and oversight of program-related controls and transactional systems.
- All submitted Suspicious Activity Reports and Narratives must be analyzed.
- Audit must be in writing.
- We recommend an annual audit although there is no time requirement in the regulations.

SUSPICIOUS ACTIVITY REPORTS

- Will be Electronically Filed through the BSA E-Filing System (Web Based) starting July 1, 2012. That is what will be online for RMLOs on August 13, 2012. Treasury has a very helpful webcast (<http://treas.yorkcast.com/webcast/Viewer/?peid=a93e7d2b1a07427a93b0cf2e764a57421d>) on the system.
- There currently are five parts to the form, and the key one is Part V (Suspicious Activity Information Explanation/Description).
- Part V requires a careful and relatively detailed description of “known or suspected violation of law or suspicious activity.” How this information is completed is important as it is the tool most likely to be used by FinCEN to deter criminal activity.
- Banks almost always have internal counsel determine (with compliance) whether a SAR should be submitted and what should be said. They also often use an audit committee to make the determination as to whether a SAR should be submitted. We believe it is prudent that an audit committee be formed to determine whether a SAR should be filed and to approve the submission, and that, when questions arise, competent counsel play a role.

SAR FILING DEADLINES

- A SAR must be filed no later than 30 calendar days after the date of the initial detection by the reporting RMLO of the facts that may constitute a basis for the SAR's filing.
- If a suspect is not known at the outset, the RMLO may wait another 30 calendar days to identify a suspect, but the SAR must be filed 60 calendar days after initial detection.
- If an emergency (money laundering or terrorist financing for example), the RMLO should call FinCEN's Financial Institutions Hotline and, if the RMLO believes it is necessary, the appropriate law enforcement agencies. A timely SAR still needs to be filed.

SARS ARE HIGHLY CONFIDENTIAL

- SARs are subject to strict confidentiality requirements under the BSA.
- An RMLO may not disclose a SAR or information that would reveal the existence of a SAR except to parties authorized under the rule, such as FinCEN, federal, state or local law enforcement agencies, and certain federal and state regulatory agencies. Facts, however, can be disclosed, so long as the SAR is not.
- The suspect and persons involved in the transaction can never be notified of the SAR for obvious reasons.
- SARs should not be produced or made known in response to a subpoena; if subpoenaed, the lender must decline to produce any information (including whether a SAR exists) and contact FinCEN which will advise how to handle the matter.

SAFE HARBOR

- RMLOs are provided a safe harbor that provides absolute protection from civil liability for all SARs made to appropriate authorities.
- This safe harbor covers the RMLO and its directors, officers, employees and agents.

RECORD RETENTION

- All SARs (including joint reports made with other institutions) and the original of all supporting documents must be kept for **five years** from the date of the SAR's filing.
- If requested by an appropriate agency (such as FinCEN or the FBI and others), the lender must make the supporting documentation available.

WHAT TYPE OF ACTIVITY MUST BE REPORTED

- Very loose standard other than involving funds (including in the aggregate) of more than \$5,000.
- Must report if the RMLO knows, suspects or has reason to suspect that the transaction (or series of transactions) is for many types of illegal purposes.

REPORTING IS REQUIRED FOR TRANSACTIONS THAT:

- Involve funds derived from illegal activity.
- Are designed to avoid BSA requirements.
- Have no business or apparent lawful purpose or are not for the sort of purpose in which the customer would be expected to engage, and there is no reasonable explanation for the transaction after examining the available facts, including the possible purpose and background of the transaction.
- Involves the use of the RMLO to facilitate criminal activity.
- We will return to these, but think how difficult it is to make some of these determinations. Banks have been making some of these tough calls for years – now lenders will have to spend time doing the same.

REAL WORLD EXAMPLE

- “A former Federal agent was found guilty at trial on various charges related to the purchase of real estate. The former agent allegedly fabricated information provided to financial institutions regarding his position and income. The case began when a Federal analyst was proactively examining SARs in connection with mortgage loan fraud investigations and recognized the subject of a SAR as a current Federal agent.”
- “The SAR narrative indicated that the defendant provided the filer with fraudulent statements concerning income and employment when applying for a mortgage loan. The institution claimed a loss of more than \$200,000. According to subsequent SARs, the defendant claimed to be president of a company, which did not exist. Other SARs on the defendant alleged suspected mortgage fraud, bank fraud, and wire transfer fraud. According to law enforcement officials investigating the case, the defendant’s criminal activity could have gone undetected without the information that was made available in the SARs.”

MORE EXAMPLES

- High Cash Deposit (even though CTR's are not required as they are for banks, but someone walking in with little income or assets and with \$40,000 in cash would be suspicious unless he/she has a VERY GOOD explanation).
- Irregularities in loan documentation.
- Employee theft.
- Money being transferred (or attempted to be transferred) to a country that raises questions, i.e., Nigeria., combined with some sort of deceptive behavior – often a straw buyer issue.
- False ID and other false documentation.
- Falsified requests for verification of assets or deposits (FinCEN reports that this is engaged in by mortgage brokers seeking to qualify customers for a loan)
- Attempted bribe(s).
- Check or wire fraud.

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AML Program Compliance Deadline

August 13, 2012

THANK YOU

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