

Anti-Money Laundering, the Bank Secrecy Act, And Mortgage Companies

Consider the following real estate transactions:

- A foreign shell company, the beneficial owner of which is unknown, uses cash to purchase a luxury property.
- An individual or a company hires straw purchasers to buy properties for it and uses fraudulent loan applications to persuade lenders to fund the mortgages.
- An LLC is the purchaser of a residential home.
- A prospective real estate buyer makes an offer that is far more than its market value.

What all of them have in common is their potential to snare mortgage professionals in money laundering schemes. In this course we introduce you to anti-money laundering laws, with emphasis on the Bank Secrecy Act. By the end of this course, you should know what money laundering is and ways to detect it, how money laundering affects real estate transactions and mortgages, and your obligations under the law to combat money laundering.

What is Money Laundering?

Money laundering is the process of making illegally gained proceeds (i.e., "dirty money") appear to be legal (i.e., "clean"). **Money laundering usually involves three steps: placement, layering, and integration.** First, the illegitimate funds are furtively introduced (placed) into the legitimate financial system. Next, the money is moved around (layering) to create confusion, sometimes by wiring or transferring through numerous accounts. Finally, the money is integrated into the financial system through additional transactions until the "dirty money" appears "clean." Money laundering can facilitate crimes such as drug trafficking and terrorism and can adversely impact the global economy.

Placement

This first stage of money laundering is where the source of cash is easily misrepresented or disguised. It involves the movement of dirty money by placing it into circulation locally or abroad through legitimate businesses or transactions. Real estate asset purchases are one example of how dirty money placement happens.

Layering

In this second stage, money launderers make it more difficult to uncover or detect the laundering activity. This is meant to make it difficult for law enforcement agencies to uncover or track the illegal proceeds. In real estate, layering can take the form of monthly mortgage payments, often made through straw purchasers or companies, that are themselves dirty money. Layering also happens when the money launderer re-sells the property and invests the proceeds into buying other real estate.

Integration

The third stage of money laundering involves moving previously laundered money back into the economy through the banking system. This makes the illegitimate money look like normal business earnings. Real estate purchased with dirty money being re-sold to a legitimate purchaser is one example of how integration can occur.

Why Money Laundering is a Problem in Real Estate

Real estate has always been a favorite vehicle for criminals to launder money. It has several attractive features to them:

- Real estate purchase and sale transactions are often simple to enter and uncomplicated to maintain. Money laundering can be as easy as purchasing property with dirty money and then reselling it at the same price to an innocent buyer; it is not even necessary to turn a profit to launder funds. More creative money launderers will spend additional dirty money to renovate property, adding to its resale value as a criminal investment.
- It can be easy to conceal the identity of the actual purchaser – and the source of that person’s money – behind a straw buyer or a shell company.
- In the United States few restrictions exist on purchases of real estate by foreign individuals and companies, making this country inviting for international criminals seeking to hide and launder ill-gotten sums from overseas. According to the Financial Action Task Force, globally about one-third of assets seized in criminal cases consist of real property.¹
- Real property is a high-value asset that allows for laundering large sums of dirty money, and it often appreciates in value. Further, that value is subjective, allowing for purchase prices significantly higher than ostensible market value without necessarily seeming extraordinary. This is particularly true in large cities that have well-to-do neighborhoods, or in other high-end or luxury real estate locations.
- Finally, compared to banks or other financial institutions, historically real estate has been subject to comparatively few anti-money laundering laws and regulations.

In recent years the federal government has strengthened its efforts to combat real estate money laundering, but the problem persists. According to a 2021 study, in a five-year period money launderers moved more than \$2 billion through residential and commercial US real estate.² Therefore, it remains important for mortgage industry professionals to remain vigilant for signs of money laundering activities.

What are Indications of Money Laundering in Mortgages?

Money laundering takes many forms. Methods of placement, layering, and integration are limited only by the imaginations of the money launderers. Still, in real estate transactions criminals often rely on well-known tactics:

Using family members or other individuals as straw purchasers. This form of placement involves recruiting a person with no criminal record to pretend to be the buyer. Usually, this individual will not actually occupy the property or make any mortgage payments.

Using shell companies. This is a variation of the straw purchaser above, but instead of a human being a company is the buyer. Finding the beneficial owner of a shell company can be hard, especially if the shell company is registered in a state or country that does not require the owners to be identified. Overall, four of every five money laundering cases in the United States also involve the use of a shell company to hide the beneficial owner.³

Using fraudulent lenders. Sometimes a purchaser will own the lender that is providing the mortgage loan. The purchaser then uses the loan repayments to itself to launder its dirty money. It can also generate its own fraudulent origination fees and commissions in connection with the bogus loans, thereby allowing for even more laundering opportunities. This is one form of layering activity.⁴

¹ [0051_Fircosoft_Money-Laundering-and-Real-Estate-Why-the-Real-Estate-Sector-Should-Prepare-for-Regulation-Report.pdf \(amazonaws.com\)](#)

² [Acres of Money Laundering: Why U.S. Real Estate is a Kleptocrat's Dream « Global Financial Integrity \(gfintegrity.org\)](#)

³ Id.

⁴ [Proactive Suspicious Activity Report Review Leads to Guilty Pleas in “Cash Back” Mortgage Fraud Scheme | FinCEN.gov](#)

Manipulating property values. A money launderer can have incentive to over-price or underprice the property. Paying more means the opportunity to launder a larger sum of dirty money. Underpricing can be useful when the purchaser buys high-value property but does not want to raise suspicion about itself. The mortgage or real estate contract will show the underpriced amount. The buyer actually pays a higher price to the seller, and the seller pockets the difference in dirty money without reporting it.

Using multiple loan sources to evade bank reporting requirements. Some money launderers will initially launder their dirty money through small deposits in several financial institutions to avoid triggering bank reports of suspicious activity. Then they cobble together from all these institutions the money to use in the real estate purchase.

What is Being Done to Discourage Real Estate Money Laundering?

To make it harder for money launderers generally, in 1970 the federal government enacted the Bank Secrecy Act (BSA).⁵ Since then the government has passed additional anti-money laundering statutes, but the BSA remains the cornerstone of US anti-money laundering laws. For purposes of convenience, in this course we collectively refer to the BSA, its amendments, and related subsequent laws referred to below as the “BSA.” This is the same use convention as in the Federal Register.⁶

What is the Bank Secrecy Act?

The BSA requires financial institutions in the United States to help federal government agencies to detect money laundering activities. Under the BSA financial institutions must keep records of certain cash transactions, including cash purchases of negotiable instruments, cumulative cash transactions of more than \$10,000 in one day. The BSA also directs financial institutions to report activities that suggest a money laundering or tax evasion purpose.

As we will see later, for our purposes it is not necessary to understand how all the BSA works. This is because only part of its requirements apply to mortgage companies and mortgage brokers.

How the BSA Has Evolved Since 1970

Lawmaking is often an adaptive process of enacting new legislation as the limitations of existing laws become apparent or when Congress decides to extend the reach of its authority. Seven anti-money laundering laws have followed the BSA to amend it or to expand federal reach over money laundering activities:⁷

- The Money Laundering Control Act of 1986⁸ established money laundering as a federal crime and provides for criminal and civil forfeitures under the BSA. It also made “structuring” of cash transactions – that is, making multiple transactions to avoid reporting requirements under the BSA – illegal.
- The Anti-Drug Abuse Act of 1988⁹ included real estate closing personnel under the BSA “financial institution” definition.
- The Annunzio-Wylie Anti-Money Laundering Act of 1992¹⁰ made penalties for BSA violations more severe. It also requires wire transfer verification and recordkeeping and began the requirement for financial institutions to file suspicious activity reports (SARs).

⁵ [The Bank Secrecy Act | FinCEN.gov](#)

⁶ [31 CFR 1010.100\(e\)](#)

⁷ [History of Anti-Money Laundering Laws | FinCEN.gov](#)

⁸ [H.R.5077 - 99th Congress \(1985-1986\): Money Laundering Control Act of 1986 | Congress.gov | Library of Congress](#)

⁹ [H.R.5210 - 100th Congress \(1987-1988\): Anti-Drug Abuse Act of 1988 | Congress.gov | Library of Congress](#)

¹⁰ [106 Stat. 3672 - Annunzio-Wylie Anti-Money Laundering Act - Content Details - STATUTE-106-Pg3672 \(govinfo.gov\)](#)

- The Money Laundering Suppression Act of 1994¹¹ applied additional anti-money laundering obligations on banking agencies and money services bureaus.
- The Money Laundering and Financial Crimes Strategy Act of 1998¹² led the Treasury Department to develop a National Money Laundering Strategy and to the creation of task forces to concentrate federal, state, and local law enforcement in places where money laundering is prevalent.
- The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the USA PATRIOT Act)¹³ includes under its Title III another act, the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001. This law applies more stringent anti-money laundering restrictions and penalties for terrorism-related international money laundering. It prevents financial institutions from dealing with foreign shell banks, fosters information sharing between the US government and financial institutions, and most importantly for mortgage lenders and brokers it expands the anti-money laundering program requirement to all financial institutions.
- The Intelligence Reform and Terrorism Prevention Act of 2004¹⁴ amends the BSA to require the Treasury Department in some cases to require financial institutions to report cross-border electronic fund transfers.

How Does the BSA Apply to Mortgage Professionals?

The BSA applies to “financial institutions.” For mortgage professionals, the threshold question is whether they qualify as financial institutions under the law.

What is a Financial Institution?

The BSA includes its own definition of what a financial institution is, broken down into 26 subcategories.¹⁵ The term “mortgage” does not appear in any of them. We could analyze arguments whether mortgage lenders and brokers are “*persons involved in real estate closings and settlements*” or “*loan or finance companies*” under the BSA’s definitions. Fortunately, though, the Financial Crimes Enforcement Network (FinCEN) has already done the work for us and has published its conclusions in the US Federal Register. The short answer is that the BSA applies to non-bank residential mortgage lenders and originators because they are indeed “loan or finance companies” under the law.¹⁶

What is FinCEN?

The BSA authorizes the US Treasury Secretary to issue regulations under the BSA.¹⁷ FinCEN is the bureau of the Treasury Department that implements the BSA by gathering information and writing rules.¹⁸ It also has authority under the law to require financial institutions to implement anti-money laundering programs¹⁹ and to file SARs.²⁰ For mortgage companies and brokers, FinCEN is the “face” of the BSA.

¹¹ [H.R.3235 - 103rd Congress \(1993-1994\): Money Laundering Suppression Act of 1994 | Congress.gov | Library of Congress](#)

¹² [H.R.1756 - 105th Congress \(1997-1998\): Money Laundering and Financial Crimes Strategy Act of 1998 | Congress.gov | Library of Congress](#)

¹³ [PLAW-107publ56.pdf \(congress.gov\)](#)

¹⁴ [S.2845 - 108th Congress \(2003-2004\): Intelligence Reform and Terrorism Prevention Act of 2004 | Congress.gov | Library of Congress](#)

¹⁵ [USCODE-2020-title31-subtitleIV-chap53-subchapII-sec5312.pdf \(govinfo.gov\)](#)

¹⁶ [Federal Register: Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Residential Mortgage Lenders and Originators](#)

¹⁷ [USCODE-2020-title31-subtitleIV-chap53-subchapII-sec5311.pdf \(govinfo.gov\)](#) [31 USC 5311]

¹⁸ [Treasury Order 180-01 \(Sept. 26, 2002\)](#)

¹⁹ [USCODE-2020-title31-subtitleIV-chap53-subchapII-sec5318.pdf \(govinfo.gov\)](#) [31 USC 5318(h)]

²⁰ [USCODE-2020-title31-subtitleIV-chap53-subchapII-sec5318.pdf \(govinfo.gov\)](#) [31 USC 5318(g)]

How Mortgage Professionals Comply with the BSA

The BSA imposes two main requirements on mortgage professionals: a duty to report suspicious activities indicative of money laundering, and the need to have an anti-money laundering program in place.

Suspicious Activity Reports

The purpose of the SAR is to report activity that the mortgage professional knows or suspects is illegal. SARs have been instrumental in investigating terrorist financing and other criminal cases. FinCEN uses information from SARs not only to enforce anti-money laundering and anti-terrorism laws. They also are a source of information about suspicious activity trends and patterns that law enforcement agencies and use to assess their own current and potential policies and procedures.

When Must an SAR be Used?

A non-bank financial institution, which includes a loan or finance company, must send an SAR to FinCEN when it knows or suspects any of the following “red flag” conditions exist:²¹

- The activity is:
 - part of a plan to violate or evade any Federal law or regulation, or any reporting requirement under such a law or regulation, and
 - involves funds derived from illegal activity, or
 - is meant or done to hide or disguise funds or assets that were derived from illegal activity.
- The activity is designed to evade any requirement of the BSA or any of its regulations, including but not limited to structuring transactions.
- The activity:
 - has no business or apparent lawful purpose, or is not the kind of activity that the customer would normally be expected to engage in, and
 - after examining the available facts, background and possible purpose of the transaction, the financial institution knows of no reasonable explanation for it.
- The activity involves the financial institution itself in facilitating criminal activity.

Note: Banks are subject to additional financial SAR reporting triggers, including insider abuse, transactions in which the bank is the victim, and violations amounting to \$25,000 or more even when a suspect cannot be identified. Mortgage companies and mortgage brokers are not “banks” under the BSA, however, so do not be confused if you see these bank-only SAR requirements. The four requirements set out above are the ones you must comply with.

Who Must Send an SAR?

For mortgage companies and mortgage brokers, FinCEN applies BSA “loan or finance company” status to them as “non-bank residential mortgage loan originators (RMLOs).”²² FinCEN’s interest in RMLOs is because, in its own words:

“RMLOs 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 the sector from the abuses of financial crime.”²³

²¹ [FinCEN Suspicious Activity Report \(FinCEN SAR\) Electronic Filing Requirements](#)

²² [Federal Register: Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Residential Mortgage Lenders and Originators](#)

²³ Id.

A residential mortgage loan subject to BSA jurisdiction is one that is for a residential structure of one to four units. It includes individual condominium units, cooperative units, and mobile homes or trailers if they are being used as residences.²⁴

An important qualification to make when applying the BSA to mortgage companies and mortgage brokers is that FinCEN does not require them to comply with all the requirements of the BSA. **Only the SAR and anti-money laundering program requirements of the BSA apply to RMLOs.**²⁵ Thus, for example, mortgage companies and brokers do not need to adhere to other BSA reporting or recordkeeping requirements like currency transaction reports.²⁶ They still must, however, file Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business,²⁷ if a currency transaction of more than \$10,000 occurs.²⁸

When Must an SAR be Sent?

A financial institution must file an SAR no later than 30 calendar days after the date of its initial detection of facts that may constitute a basis for filing an SAR. If no suspect could be identified on the date of detection of the incident requiring the filing, then the financial institution may delay filing the SAR for another 30 calendar days while it continues to attempt to identify a suspect. In no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction.²⁹

Mandatory Law Enforcement Notification

If the circumstances surrounding a suspicious transaction indicate terrorist financing or an ongoing money laundering scheme that requires immediate law enforcement attention, then in addition to submitting an SAR the financial institution must notify an appropriate law enforcement agency.³⁰

Anti-Money Laundering Programs

FinCEN requires banks and non-bank residential lenders to establish a senior management-approved anti-money laundering (AML) program.³¹ The purpose of the AML program is to prevent money launderers from using the company to facilitate money laundering or the financing of terrorist activities.

AML programs are subject to review by FinCEN, which identifies the following minimum AML program requirements:

- It must include policies, procedures, and internal controls. These must be based on the company's own assessment of money laundering and terrorist financing risks that can be associated with its products or services.
- It must include the company's agents and brokers into the program.
- It must obtain all relevant customer-related information necessary to operate an effective anti-money laundering program.

²⁴ Id.

²⁵ Id.

²⁶ Id.

²⁷ [Form 8300 and Reporting Cash Payments of Over \\$10,000 | Internal Revenue Service \(irs.gov\)](#)

²⁸ [FinCEN Suspicious Activity Report \(FinCEN SAR\) Electronic Filing Requirements](#)

²⁹ Id.

³⁰ [Federal Register: Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Residential Mortgage Lenders and Originators](#) [31 CFR 1029.320(a)(4)]

³¹ [Id.](#) [31 CFR 1029.210]

- It must designate a compliance officer. The compliance officer is responsible to implement the AML program, see that appropriate company personnel receive training under it, and update the program as necessary.
- It must provide for ongoing training of company personnel about their responsibilities under the AML program.
- It must provide for independent testing to monitor AML program adequacy and personnel compliance with it. The frequency of this testing must be appropriate to the risks posed by the company's products or services. It is acceptable for an officer or employee of the company to do the independent testing, so long as this is not the same person who is the compliance officer.

Additional Anti-Money Laundering Considerations

Because of the number of statutes and regulations that exist, it can be hard for mortgage professionals to know which ones apply to them and which do not. Three areas can cause confusion about whether mortgage companies should comply with them, and if so what is necessary: the Customer Identification Program (CIP), and customer due diligence requirement to identify beneficial ownership of legal entities, and reporting requirements under the Office of Foreign Asset Control (OFAC).

The Customer Identification Program

The USA PATRIOT Act amended the BSA to require certain US financial institutions to have in place a CIP, which is informally known as a “know your customer” requirement.³² It is arguable about whether CIP requirements under the PATRIOT Act extend to mortgage companies, even though these companies generally qualify as “financial institutions.” This is because the rule that implements the CIP requirement does not include mortgage companies. Companies specifically required to have a CIP are banks, savings associations, credit unions, certain non-federally regulated banks, and broker-dealers in securities.³³

Still, it is good practice for mortgage professionals to verify the identities of their customers even if the BSA does not formally require them to. At the very least it can reduce the risk of fraud against mortgage brokers and companies, a risk that goes beyond money laundering activity. When dealing with legal entity customers, here are some of the indicators of possible fraud or money-laundering activity:

- The company has no written company formation documents.
- If formation documents exist, they are unsigned, incomplete, or have expired.
- The documents are overly generic in their terms or their purposes, such as stating that the company's business is “for any lawful purpose.”
- The documents contain incorrect or contradictory information.

Customer Due Diligence and Beneficial Ownership Information Gathering

FinCEN established the Customer Due Diligence (CDD) Rule in 2018.³⁴ It requires “covered financial institutions” to identify and verify the identity of the natural persons – the beneficial owners – of the legal entities the financial institutions deal with.³⁵ A covered financial institution for CDD purposes is a bank required to have an AML program, a broker or dealer in securities, a futures commission merchant, and a mutual fund.³⁶ Mortgage companies are not covered financial institutions under the regulatory definition. Furthermore, under a proposed FinCEN rule the requirement for reporting beneficial ownership

³² [PLAW-107publ56.pdf \(govinfo.gov\)](#) [Section 326]

³³ [CFR-2010-title31-voll-sec103-121.pdf \(govinfo.gov\)](#) [Sections 121 and 122]

³⁴ [FinCEN Reminds Financial Institutions that the CDD Rule Becomes Effective Today | FinCEN.gov](#)

³⁵ [Federal Register: Customer Due Diligence Requirements for Financial Institutions](#)

³⁶ [31 CFR § 1010.605 - Definitions. | CFR | US Law | LII / Legal Information Institute \(cornell.edu\)](#)

information, the reporting obligation will fall on the legal entity itself and not on the financial institution.³⁷

Like with the CIP above, even though mortgage professionals are not required by the CDD Rule to comply with due diligence-related identity verification, doing so is still a good idea in minimizing fraud risks. It is also helpful in complying with OFAC requirements.

The Office of Foreign Assets Control

OFAC exists within the US Treasury Department.³⁸ Its purpose is to administer and enforce trade and economic sanctions relate to US national security and foreign policy interests. Unlike CIP and CDD requirements, which are limited to covered financial institutions, OFAC regulations apply to all US citizens and legal permanent residents no matter where they are, and to persons and entities in the US.³⁹ Thus, mortgage professionals must comply with OFAC requirements.

Although OFAC compliance training is not directly connected to complying with an AML program requirement, including such training is a logical extension of an AML program and would be consistent with the need of mortgage companies to design their AML training to the risks associated with their products and services. OFAC recommends that companies develop a risk-based sanctions compliance program (SCP) that features elements like those of an AML program: management commitment, risk assessment, internal controls, training, and testing and auditing.⁴⁰

OFAC maintains a Specially Designated Nationals and Blocked Persons (SDN) List.⁴¹ Often consumer reporting bureaus, when running a mortgage applicant's credit report, will check that person's name against the SDN List. Other options exist to check it, too, like compliance and quality assurance software that some mortgage companies use. A good practice is for mortgage loan originators, mortgage brokers, and mortgage lenders to check the names of borrowers, purchasers, sellers, and other account signers against the SDN List, as well as any payers or payees in transactions connected with the mortgage.

The existence of a customer's identity on the SDN list – a “hit” – does not automatically mean that the mortgage cannot be completed. OFAC maintains an online due diligence checklist to help evaluate SDN list hits and to guide individuals on actions to take depending on the results.⁴² Sometimes it is possible that the appearance of a person's name on the SDN list is in error. In other situations, it may be possible to obtain a license from OFAC to allow an otherwise blocked or prohibited transaction to proceed.⁴³

Enforcement of the BSA and Penalties for Noncompliance

The BSA authorizes criminal and civil penalties for violations of its provisions.

Criminal Penalties

Willful violations of the BSA and its regulations can lead to misdemeanor or felony-level criminal penalties against individuals and companies. The Federal statute of limitations for money laundering crimes is five years.⁴⁴

³⁷ [Fact Sheet: Beneficial Ownership Information Reporting Notice of Proposed Rulemaking \(NPRM\) | FinCEN.gov](#)

³⁸ [Office of Foreign Assets Control - Sanctions Programs and Information | U.S. Department of the Treasury](#)

³⁹ Id.

⁴⁰ [A Framework for OFAC Compliance Commitments](#), US Department of the Treasury

⁴¹ [Specially Designated Nationals And Blocked Persons List \(SDN\) Human Readable Lists | U.S. Department of the Treasury](#)

⁴² [When should I call the OFAC Hotline? | U.S. Department of the Treasury](#)

⁴³ [OFAC License Application Page | U.S. Department of the Treasury](#)

⁴⁴ [USCODE-2011-title18-partII-chap213-sec3282.pdf \(govinfo.gov\)](#)

Two federal criminal statutes apply to money laundering. One applies laundering of monetary instruments,⁴⁵ and the other makes punishable engaging in monetary transactions in property derived from specified unlawful activities.⁴⁶ These statutes define specified unlawful activities expressly and by reference to other statutes. More than 200 kinds of specified unlawful activities exist, including ordinary and wire fraud, drug trafficking, racketeering, terrorism, and more.⁴⁷

Criminal law application to money laundering activities usually requires the government to prove that the suspect individual knew that the transaction funds were the proceeds of criminal activity. It is not necessary for the suspect to know the exact nature of the illegal activity. The underlying criminal activity can be any violation of any federal, state, or local law or even foreign laws. US criminal laws against money laundering apply to illegal activities that happen in other countries, if at least part of the related transaction happens in the United States.⁴⁸

Criminal transactions include:⁴⁹

- Transactions meant to further the underlying specified unlawful activity.
- Transactions meant to evade US taxes, or to file a false tax return.
- Transactions done with knowledge that they are meant to conceal or disguise the nature, location, source, ownership, or control of the proceeds of a specified unlawful activity.
- Transactions done to avoid Federal or state transaction reporting requirements.

Knowledge in these transactions does not need to be based on first-hand experience or observation. It can be effectively inferred if an individual, when confronted with money laundering red flag activities like those we have looked at earlier or other signs of criminal activity or intent, failed to take steps to inquire further about them. Federal undercover or “sting” investigations can also uncover such failures to inquire or investigate.

It is also a crime to knowingly engage in a financial transaction through a financial institution when property derived from a specified unlawful activity is involved and the transaction amount is more than \$10,000.⁵⁰ This directly involves mortgage originators, brokers, and lenders.

Who Investigates Money Laundering Activities and Transactions?

The federal government agency that investigates money laundering will depend on the nature of the alleged unlawful activity. The Federal Bureau of Investigation, the Internal Revenue Service, the Drug Enforcement Administration, US Immigration and Customs Enforcement, and the US Postal Inspection Service, and even the Environmental Protection Administration all investigate money laundering crimes.

Who Prosecutes Money Laundering Crimes?

The US Department of Justice prosecutes money laundering crimes, through the Money Laundering and Asset Recovery Section of its Criminal Division (MLARS).⁵¹ MLARS can also partner with U.S. Attorneys’ Offices to support their anti-money laundering prosecutions.⁵²

⁴⁵ [18 U.S.C. 1956 - Laundering of monetary instruments - Content Details - USCODE-2010-title18-partI-chap95-sec1956 \(govinfo.gov\)](#)

⁴⁶ [18 U.S.C. 1957 - Engaging in monetary transactions in property derived from specified unlawful activity - Content Details - USCODE-2010-title18-partI-chap95-sec1957 \(govinfo.gov\)](#)

⁴⁷ [USCODE-2010-title18-partI-chap95-sec1956.pdf \(govinfo.gov\)](#)

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ [USCODE-2010-title18-partI-chap95-sec1957.pdf \(govinfo.gov\)](#)

⁵¹ [Money Laundering and Asset Recovery Section \(MLARS\) | Department of Justice](#)

⁵² Id.

What are Criminal Conviction Penalties for Money Laundering?

Federal criminal penalties for money laundering include fines of up to \$500,000 or double the amount of the property involved, whichever sum is more. This applies to each violation. Property and other assets involved in or traceable to criminal money laundering is also subject to forfeiture.⁵³ Individuals can be sent to prison for up to 20 years, again for each violation.⁵⁴

Federal anti-money laundering criminal laws exist in parallel with and do not supersede state anti-money laundering laws. These state laws may apply additional criminal, civil, or administrative penalties to the same activities subject to federal prosecution.⁵⁵

Civil Penalties

Civil violations of the BSA do not involve criminal intent or behavior but arise from other acts or failure to act. These acts or failures can be negligent or willful. For mortgage companies, problems that can lead to civil penalties often involve failing to file an SAR or other required report, or AML program deficiencies.⁵⁶

Because as with criminal enforcement of anti-money laundering laws multiple Federal agencies and bureaus can have jurisdiction over the underlying money laundering activity. These agencies and bureaus have their own civil remedies statutes. This means that civil penalties for BSA violations can vary. The following are examples of violations and potential fines:

- For financial institutions civil penalties start at \$62,689 for willful violations of reporting requirements but may be as much as \$250,759.⁵⁷
- Negligent violations may amount up to \$1,253.⁵⁸
- A pattern of negligent activity can result in a fine of up to \$97,529.⁵⁹

It is advisable to check the civil penalty amounts stated in statutes and regulations to see if the amounts have not increased under the provisions of the Federal Civil Penalties Inflation Adjustment Act of 1990,⁶⁰ as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. For example, in the original statute the fines for willful violations of reporting requirements read as \$25,000 and \$100,000.⁶¹

Civil forfeiture actions can also be brought against property involved in a money laundering crime. This is true even if no one has been convicted of a money laundering crime.⁶² Another consideration is that a civil forfeiture action requires a lower standard of proof for the government to meet compared to a criminal forfeiture action.

What is FinCEN's Approach to BSA Violations?

As with many Federal government agencies, FinCEN's mission is not simply to punish people when they make mistakes. Depending on circumstances, such as the existence of factors in mitigation, FinCEN has a

⁵³ [18 USC 982: Criminal forfeiture \(house.gov\)](#)

⁵⁴ [USCODE-2010-title18-partI-chap95-sec1956.pdf \(govinfo.gov\)](#)

⁵⁵ Id.

⁵⁶ [Enforcement Actions | FinCEN.gov](#)

⁵⁷ [Federal Register: Financial Crimes Enforcement Network; Inflation Adjustment of Civil Monetary Penalties](#)

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ [USCODE-2020-title28-partVI-chap163-sec2461.pdf \(govinfo.gov\)](#)

⁶¹ [Federal Register: Financial Crimes Enforcement Network; Inflation Adjustment of Civil Monetary Penalties](#)

⁶² [18 USC 981: Civil forfeiture \(house.gov\)](#)

range of options it can take to address an actual or possible violation of the BSA or any related regulation.⁶³ In order of severity, these actions include:

- No Action. FinCEN may close a matter with no additional action. FinCEN may reopen the matter if FinCEN obtains new material information concerning the matter or becomes aware of additional or subsequent violations.
- Warning Letter. FinCEN may issue a warning through a supervisory letter or similar communication.
- Equitable Remedies. FinCEN may seek an injunction or equitable relief to enforce compliance when FinCEN believes an entity or individual has violated, is violating, or will violate the BSA or any BSA regulation or order.
- Settlements. As part of a settlement, FinCEN may require both remedial undertakings and civil money penalties.
- Civil Money Penalties. FinCEN may assess a civil money penalty.
- Criminal Referral. If circumstances warrant, FinCEN may refer a matter to appropriate law enforcement agencies for criminal investigation and/or criminal prosecution.

Conclusion

Money laundering using real estate remains a potential trap for mortgage brokers, originators, and other mortgage professionals. The BSA, as FinCEN administers it, requires mortgage companies to help fight money laundering by reporting suspicious activities and by maintaining risk-based anti-money laundering training programs.

Anti-money laundering laws and regulations have evolved considerably since the BSA's original enactment more than 50 years ago. These changes have already affected mortgage companies in their roles as financial institutions or as loan or finance companies. It is possible that, even though not all BSA reporting and recordkeeping obligations apply to mortgage companies today, more of them may in the future. A good AML program will regularly check with the latest information from FinCEN to monitor for new developments and proposed new rules.

⁶³ [FinCEN Enforcement Statement, 8/18/2020](#)

Quiz

1. Which of the following is not an example of a criminal money laundering transaction under Federal law?
 - a. A transaction meant to evade US taxes
 - b. A transaction meant to profit from “flipping” a property
 - c. A transaction meant to avoid federal or state reporting requirements
 - d. A transaction meant to advance an illegal activity

Answer: B

2. In money laundering, “integration” means:
 - a. Making it more difficult to find laundered funds by transferring them, such as through mortgage payments
 - b. The act of placing dirty money into circulation, such as through a real estate purchase
 - c. Placing laundered money back into the economy through the banking system.
 - d. Coupling a money laundering activity with a money laundering transaction

Answer: C

3. Which answer best describes the relationship between the BSA and subsequent Federal anti-money laundering laws?
 - a. Later laws have added to and amended the BSA
 - b. The BSA was the original law in 1970, but has since been replaced by the USA PATRIOT Act
 - c. All subsequent laws operate independently of the BSA to combat money laundering
 - d. Subsequent laws have served to restrict the reach of the BSA in its reporting and recordkeeping requirements

Answer: A

4. Which Federal government agency prosecutes money laundering crimes?
 - a. The Internal Revenue Service
 - b. The US Treasury Department
 - c. The US Postal Inspection Service
 - d. The US Department of Justice

Answer: D

5. Which of the following is not a requirement for mortgage companies to comply with the BSA?
 - a. Creation and maintenance of an AML program
 - b. Reporting cash payments more than \$10,000 with Form 8300
 - c. Reporting cash payments more than \$10,000 with currency transaction reports
 - d. Using SARs to report suspected money laundering activity

Answer: C

6. Which of the following is true about the Office of Foreign Assets Control?
 - a. It applies to all US citizens and companies, to legal residents, and to persons and companies in the USA.

- b. It is responsible for reviewing and acting on suspicious activity reports.
- c. It only governs money laundering that involves foreign companies and persons
- d. It is the agency responsible for administering the BSA

Answer: A

7. Which of the following is true about criminal and civil penalties for BSA violations?
- a. The US Justice Department prosecutes criminal violations of the BSA, and MLARS has jurisdiction over civil penalties
 - b. Civil and criminal penalties are exclusive of one another.
 - c. The BSA supersedes all state and local anti-money laundering laws
 - d. Civil violations of the BSA may be either willful or negligent

Answer: D

8. Which of the following would not constitute a suspicious activity “red flag” behavior?
- a. The transaction has no apparent business or lawful purpose
 - b. The transaction involves funds from an illegal activity
 - c. Buying more than one residential property at the same time
 - d. Structuring multiple transactions to avoid reporting requirements

Answer: C

9. Which of the following has not been a historical reason for using real property to launder money?
- a. It can be easy to conceal the identity of the actual purchaser with a straw buyer or a shell company
 - b. Real property values tend not to depreciate, reducing the possibility of losing money on the investment
 - c. Compared to putting money into other financial institutions or banks, real property has fewer anti-money laundering laws and regulations
 - d. Real property values are subjective, making it possible to artificially inflate their value to launder more money

Answer: B

10. Which of the following is not true about filing a suspicious activity report?
- a. A financial institution must file an SAR no later than 30 calendar days after initially detecting facts that are a basis to file a report
 - b. Filing an SAR does not preclude the need to report a suspicious transaction to law enforcement
 - c. SAR requirements, like CDD and CIP requirements, do not apply to mortgage companies because FinCEN has exempted them from these
 - d. Actual knowledge of illegal activity is not required to file an SAR

Answer: C