



## **AML/SAR SUMMARY Sheet – Mortgage Broker and Lenders Anti Money Laundering (AML) Program and Suspicious Activity Reports (SAR)**

### **What Is BSA and AML?**

- The Bank Secrecy Act (BSA) has been around for decades and is designed to flag law enforcement about potentially illegal activity involving money laundering and other criminal or terrorist activity. The information is coordinated by the Financial Crimes Enforcement Network (FinCEN). Loan and finance companies had been exempted since the act went through significant changes in 2002.
- Banks must file currency transaction reports (CTR) for transactions of \$10,000 or more. Mortgage companies and broker do NOT have to do this.
- FinCEN issued a final rule (31 CFR 1029.210) to authorize that loan and finance companies who originate loans must now comply with certain requirements of the BSA. The new requirements became effective April 16, 2012 with mandatory compliance on August 13, 2012. (There are not any loopholes. This rule applies to mortgage brokers and mortgage lenders from conforming to hard money, one person shops to national players. It is everyone originating mortgages.)
  - If a mortgage servicer does not extend residential mortgage loans or offer or negotiate the terms of a residential mortgage loan application, then it will not fall under the definition. Servicers working on HAMP loans for example do not involve extending new residential mortgage loans.
- The final rule requires Residential Mortgage Loan Originator (RMLO) companies to implement the Anti-Money Laundering (AML) and SAR reporting section of BSA. This is the only section of BSA that must be implemented.
- An AML program includes at a minimum:
  - Establishing internal policies, procedures and controls including a process for collecting suspicious activity information, identifying reportable events, and filing suspicious activity reports(SAR)



- Designation of a compliance officer. This will be the person responsible for filing the SAR.
- Establishing ongoing employee training programs. Annual training will be enough for an average shop. The training must cover an explanation of your procedures and red flags.
- Independent audit function to test programs.
- The size of the company is taken into consideration when determining the extent of the plan.

#### **What is a SAR and what is reported?**

- A Suspicious Activity Report is an online form that is filled in by the compliance officer. The SAR includes basic company information, information about the suspects (people) involved and information about the activity or transaction.
- The RMLO must 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. (this is the same amount as for a financial institution)
  - The suspicious activity is the trigger.
  - The application may have been at any stage and never closed.
  - Transactions are reportable regardless of whether they involve currency.
- A transaction must be reported if the RMLO knows or suspects or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):
  - Involved funds derived from illegal activity or is intended or conducted to hide or disguise funds or assets derived from illegal activity.
    - For example: questions arise while requesting documentation for the source of funds to close.
  - Is designed, whether through structuring or other means, to evade the requirements of the BSA.
    - For example: were multiple gift fund transfers made at amounts to avoid the \$10,000 threshold?



- Has no business or apparent lawful purpose, and the loan or finance company knows of no reasonable explanation for the transaction after examining the available facts.
  - For example: a person is currently renting a home, is 89 years old, purchasing multiple rental properties and all the funds are from various gifts.
- Involves the use of the loan or finance company to facilitate criminal activity.

Essentially the red flags that apply to mortgage fraud are all red flags of potentially suspicious activity.

- There must be a process illustrating how information is submitted to the compliance officer when there is a red flag indicating potential fraud. Some companies have created a basic suspicious activity or red flag notification form that is filled in by the staff member and submitted to the compliance officer. The compliance officer makes the decision if activity is a true indication of fraud and if a SAR should be filed. The compliance officer should notate on the form why or why not a SAR was filed. These records must be kept confidential and retained for audit purposes. The employee who reported the incident is not entitled to any information about future actions.
- Staff should feel comfortable to report any activity to the compliance officer. It is not the responsibility of the staff or the compliance officer to determine that the event is a violation of law or if there is enough evidence for a conviction.
- Include the names of every party involved in the transaction. Very often a secondary name in a transaction can be connected in multiple transactions and lead FinCEN investigators to important information.



### How confidential are the SAR filings?

- **SAR reports are highly confidential!!! Do not disclose that a SAR was filed or any content of the SAR!** The compliance officer cannot inform anyone in the company whether a report was filed! The officer may have a support person who helps with the filings but keep the circle extremely tight.
  - For example, the compliance officer only reports the number of SAR reports to the board and does not provide details about the suspects involved. The compliance officer and the company must maintain strict confidentiality to remain in a safe harbor and avoid defamation of character lawsuits.

### What are the timing requirements?

- A SAR must be filed no later than 30 calendar days after the date of the initial detection by the company of the facts that may constitute a basis for filing a SAR.
- If no suspect is identified on the date of the initial detection, the company may delay filing a SAR for an additional 30 days – not to exceed 60 days total.
- Law enforcement must be notified by telephone in situations involving suspected terrorist financing or ongoing money laundering schemes.
- Voluntary telephone reporting of terrorist activity may be reported on the FinCEN Hotline.



## **What are the fines and penalties for noncompliance?**

FinCEN is authorized under section 1029.320(f) to impose a range of civil and criminal penalties as established in the BSA regulation. The severity of those penalties depends on the specific circumstances of the non-compliance.

### *Civil Penalties for Non-Compliance:*

- Failure to comply with recordkeeping requirements: up to \$1,000 per violation.
- Failure to comply with reporting requirements: not to exceed the greater of the amount involved in the transaction (not to exceed \$100,000) or \$25,000.
- \$500 may be imposed for negligent violations; if the RMLO engages in a pattern of negligent violations, this amount can go up to \$50,000.
- Issuance of cease-and-desist order if continued noncompliance.
- Forfeiture of assets.

### *Criminal Penalties for Noncompliance:*

- A person willfully violating the BSA shall be fined not more than \$250,000 or imprisoned for not more than five (5) years, or both.
- A person willfully violating the BSA while violating another law of the United States or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period shall be fined not more than \$500,000, imprisoned for no more than 10 years, or both.
- A separate violation occurs for each day the violation continues and each office, branch, or place of business at which a violation occurs or continues.



**Where to Start:**

- FinCEN has great information on their website:

<https://www.fincen.gov/>

- Certain lenders need to register to use the SAR system:

<https://bsaefiling.fincen.treas.gov/main.html>

- Information for Mortgage Companies and Brokers:

<https://www.fincen.gov/resources/financial-institutions/mortgage-co-broker>

- Register for FinCEN updates:

<https://service.govdelivery.com/accounts/USFINCEN/subscriber/new>

- FAQs:

<https://www.fincen.gov/frequently-asked-questions>

**Reference Information:**

- FFIEC BSA/AML Examination Manual:

<https://bsaaml.ffiec.gov/manual/Introduction/01>