

InfoBytes Special Alert:
FinCEN Finalizes New Anti-Money Laundering Rules
for Nonbank Mortgage Lenders and Originators
February 8, 2011

On February 7, the Financial Crimes Enforcement Network (FinCEN) [released a final rule](#) that subjects nonbank residential mortgage lenders and originators to certain anti-money laundering (AML) regulations already applicable to other types of financial institutions. Under the [new regulations](#), nonbank lenders and originators will be required to establish anti-money laundering programs and file suspicious activity reports (SARs). This final rule follows a [proposed rule](#) issued in December 2010. FinCEN noted that this requirement will close a regulatory gap, as well as mitigate some of the money laundering risks and vulnerabilities that have been exploited in the nonbank residential mortgage sector.

The [Bank Secrecy Act \(BSA\)](#) requires FinCEN to promulgate AML rules for "financial institutions," including "loan or finance companies." While the BSA does not define "loan or finance company" and the legislative history is silent, FinCEN believes the term should be construed to extend to nonbanks. Based on that interpretation, the final rule, which is substantially similar to the definition included in the proposed rule, alters the existing regulatory definition of "financial institution" to include nonbank residential mortgage lenders and originators. The final rule is intended to cover initial purchase money loans and traditional refinancing transactions facilitated by nonbank lenders and originators. Mortgage servicers are not categorically excluded from the rule and may be covered if they engage in these types of transactions. Notably, this expanded definition is the first step in an incremental approach through which FinCEN eventually will extend the BSA-required AML regulations to other nonbank consumer and commercial loan finance companies.

Under this final rule, a covered nonbank will be required to develop an AML program that includes (i) internal policies, procedures, and controls; (ii) a designated compliance officer; (iii) ongoing employee training; and (iv) a process for independent audits. A covered firm also will have to file a SAR within thirty days of becoming aware of a transaction that (i) involves funds derived from illegal activity or are conducted to hide funds or assets derived from illegal activity; (ii) is designed to evade BSA requirements, (iii) has no business or apparent lawful purpose; or (iv) involves the use of the company to facilitate criminal activity. The rule does not require covered nonbanks to comply with certain other BSA requirements, including currency transaction reports.

The regulations take effect sixty days after being published in the Federal Register. Covered firms will have 180 days after publication to comply. FinCEN now will turn to finalizing a [similar proposed rule](#) applicable to Fannie Mae, Freddie Mac, and the Federal Home Loan Banks.

If you have questions about the final rule and its implications for your organization, or if you would like help implementing compliance programs to meet the new requirements, please contact a member of our [Anti-Money Laundering & Bank Secrecy Act practice group](#).

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