

2. For the Advanced Notice of Proposed Rule Making (ANPRM) in April 2003 concerning subjecting those involved in the settlement process to an AML program requirement [no SAR requirement was discussed in this ANPRM]:

All “financial institutions,” as defined in the Bank Secrecy Act (BSA),¹ including the two categories “persons involved in real estate closings and settlements” and “loan or finance company,” are required by the BSA to establish anti-money laundering (AML) programs.² In furtherance of this congressional mandate, FinCEN issued the 2003 ANPRM and the 2009 ANPRM pursuant to FinCEN’s broad authority under the BSA to promulgate AML program regulations and various reporting and recordkeeping regulations.³

Since the enactment of the USA Patriot Act in 2001, FinCEN has issued numerous ANPRMs and notices of proposed rulemakings (NPRMs) for AML program implementation, suspicious activity reporting (SAR), and various recordkeeping and reporting requirements, on a “rolling” basis as FinCEN has deemed appropriate to further its mission and protect consumers and the entire financial system from fraud, money laundering, and other financial crimes. In 2003, FinCEN issued the ANPRM regarding AML programs (this ANPRM did not raise the issue of SAR requirements) for persons involved in real estate closings and settlements,⁴ as well as ANPRMs regarding AML programs for dealers in precious metals stones and jewels, businesses engaged in vehicle sales, travel agencies, investment advisers and commodity trading advisors. FinCEN’s strategic goals and changing regulatory priorities influence the timing of specific rulemaking initiatives. Several professional staff members at FinCEN and the Department of the Treasury have been involved in the development and drafting of these and other *Federal Register* issuances.⁵

FinCEN has not made a final decision either to pursue or defer regulations for persons involved in real estate closings and settlements. In the future, FinCEN may determine to issue another ANPRM or NPRM that would propose specific standards and requirements for AML programs, SAR reporting, or other reporting or recordkeeping regulations applicable to persons involved in real estate closings and settlements.

3. For the ANPRM in June 2009, concerning Non-Bank Residential Mortgage Lenders and Originators:

¹ See 31 U.S.C. 5312(a)(2).

² In 2002, FinCEN adopted a regulation that temporarily exempted certain financial institutions, including these two categories, from the requirement to adopt AML programs, pending FinCEN’s further study of the financial institutions specified in the regulation. See 31 CFR 103.170.

³ See 74 FR 35830, 35831 (Jul. 2009) for additional information concerning these ANPRMs.

⁴ The businesses that logically would fall within this category include: real estate settlement attorneys; title search companies; title insurance companies; property appraisers; escrow agents; and real estate agents and brokers. See 68 FR 17569, 17570 (Apr. 2003).

⁵ The Secretary’s authority to administer the BSA and its implementing regulations has been delegated to the Director of FinCEN. (See Treasury Order 180–01 (Sept. 26, 2002).)

In recent years, there has been increasing concern within FinCEN, as well as among law enforcement, regulators, and institutions subject to BSA regulations, regarding the involvement of non-bank lenders and brokers in fraud and money laundering schemes.⁶ FinCEN, however, has for some time debated whether to extend AML and reporting requirements to a wider range of finance companies. To assist in its deliberations, in 2005 FinCEN commissioned a consulting firm, D&B Government Services, to conduct a market analysis of loan and finance companies in the U.S. (D&B Report). The D&B Report highlighted areas that required additional FinCEN research and analysis, including the proper scope and structure of any proposed regulatory obligation. In support of FinCEN's fact-finding, the July 2009 ANPRM solicited public comment on whether FinCEN should promulgate AML, SAR, or other regulations for non-bank mortgage lenders and brokers, as the first step in an incremental approach to implementation of regulations for the broader "loan or finance company" category of financial institutions.

FinCEN currently is developing an NPRM to solicit public comment on AML and SAR regulations for non-bank mortgage lenders and originators. Any NPRM to be published on the matter likely would propose requirements and standards identical or similar to those in existing BSA regulations for other types of financial institutions.

⁶ See response to question number 1.

6. Please identify the types of institutions that are subject to the Bank Secrecy Act reporting requirements and please state to what degree mortgage servicers are subject to the Bank Secrecy Act.

There are hundreds of thousands of financial institutions currently subject to BSA reporting and recordkeeping requirements for which the Financial Crimes Enforcement Network is authorized responsibility. These include:

- Depository institutions, e.g., banks, credit unions and thrifts
- Brokers or dealers in securities and/or futures
- Money services businesses (MSBs) [e.g., money transmitters; issuers, redeemers and sellers of money orders and travelers' checks; check cashers and currency exchangers]
- Casinos and card clubs
- Insurance companies
- Mutual funds
- Individual(s) transporting over \$10,000 in currency or other monetary instruments into/out of the US
- Shippers/Receivers of over \$10,000 in currency or other monetary instruments into/out of the US
- Individuals or entities that receive more than \$10,000 in cash in one or more related transactions in a trade or business
- US persons who have a financial interest in or signature or other authority over a foreign financial account if the aggregate value exceeds \$10,000 at any time during the reporting year

Mortgage servicers presently are not required to comply with FinCEN's AML or SAR regulations. Mortgage servicers and other businesses, regardless of whether they are within the definition of financial institution, are required to file Form 8300 upon receipt of \$10,000 or more in currency.

7. Please identify the types of institutions that are not subject to Bank Secrecy Act reporting requirements and reason(s) for that exemption.

With only a few exceptions,¹ all entities specifically defined as financial institutions in the BSA,² and for which we have issued AML program rules, have suspicious activity and currency transaction reporting obligations (SAR and CTR). FinCEN has not, however, imposed AML program requirements on all statutorily defined financial institutions. In an effort to ensure that it drafts regulations tailored to each industries' unique money-laundering risks, and that each industry type is accurately defined, FinCEN has exercised its authority to defer imposing AML program requirements on a subset of financial institutions.³ Although those financial institutions

¹ Check cashers and dealers in precious stones, precious metals, and jewels do not have SAR or CTR filing obligations, despite having AML program requirements.

² See 31 U.S.C. 5312(a)(2).

³ See 31 CFR 103.170.

do not have SAR or CTR reporting obligations, they are still covered by several BSA reporting requirements, including the obligation to file FBAR, Form 8300, and the CMIR when appropriate.