

TB 4 was rescinded 1/13/95. Incorporated into Compliance Activities 400)

Handbook: Compliance Activities
Subjects: Money Laundering Control Act of 1986
Amendments to Title 18, U.S. Code

Section: 500
TB 4

October 18, 1988

Money Laundering Activity is a Federal Offense

RESCINDED

Summary: Member institutions should be knowledgeable about the Title 18 provisions of the Money Laundering Control Act of 1986, and are encouraged to report suspicious non-cash transaction activity to the IRS or U.S. Customs Service.

For Further Information Contact:

The FHLBank of the District in which you are located; or the Internal Revenue or U.S. Customs Services, either locally or at the toll-free telephone numbers noted in this bulletin.

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The Money Laundering Control Act of 1986 (MLCA) was passed as one portion of the larger Anti-Drug Abuse Act of 1986. The MLCA added two important provisions to Title 18, U.S. Code, Chapter 95, Racketeering: Section 1956 - Laundering of Monetary Instruments, and Section 1957 - Engaging in Monetary Transactions in Property Derived From Specified Unlawful Activity. A copy of the Title 18 amendments is attached.

Recently, this office received correspondence from Gerald L. Hilsher, Deputy Assistant Secretary (Law Enforcement), U.S. Department of Treasury, requesting that thrift institutions be reminded of the importance of their cooperation and compliance with the 1986 statute.

The Treasury Department asks that all financial institutions be vigilant in ensuring that they are not being used by drug money launderers and others seeking to hide ill-gotten profits by use of transactions that do not involve currency. In order to succeed against money launderers and drug traffickers, institutions need to adopt a strong "know your customer" standard. Institution staff

should become familiar with the defined terms of Title 18, sections 1956-57, so that suspect non-cash transactions can be recognized and reported promptly.

The Treasury's request is important for two reasons. First, the obligations imposed by Title 18, sections 1956-57, to avoid or report transactions involving, or suspected of involving, proceeds derived from unlawful activities, are strongly endorsed by the Federal Home Loan Bank Board as being appropriate for all member institutions in their exercise of responsible corporate citizenship. Second, the penalties for participation in activities targeted by sections 1956-57 are potentially severe, giving institutions a clear incentive to supervise the activities of their own employees who may be otherwise reluctant to report transactions that violate these two sections. Knowing collaboration or acquiescence by an institution employee in prohibited transactions places both the employee and the institution in jeopardy of Federal prosecution. Although the MLCA and Title 18 may not explicitly require reporting of suspect transactions, immediate (and documented) reporting is clearly the best defense against subsequent allegations of collusive activity.

Section 1956

Title 18, section 1956, makes it a Federal criminal offense to engage knowingly in any "financial transaction" involving proceeds derived

from specified crimes if the purpose of such transaction is to: (a) further specified unlawful activity; (b) conceal or disguise the source, ownership, location or nature of the proceeds; or (c) avoid state and Federal reporting statutes (e.g., the Bank Secrecy Act).

Section 1956 defines "financial transaction" to include "transactions" involving (a) the movement of funds by wire or other means, or (b) use of one or more "monetary instruments," or (c) use of a financial institution which is engaged in interstate commerce in any way or degree. Virtually all member institutions satisfy the latter qualification. The term "transaction" includes deposits, withdrawals, transfers between accounts, exchanges, and extensions of credit, as well as wire and other transfers. The term "monetary instrument" means coin, currency, checks, money orders and any other instrument in such form that title thereto passes upon delivery. The term "specified unlawful activity" is defined in reference to numerous other Federal statutes.

Section 1957

Title 18, section 1957, criminalizes any actual or attempted "monetary transaction" involving criminally derived property when four factors exist: (a) over \$10,000 is involved; (b) a financial institution is used; (c) the property is derived from one of the specified crimes; and (d) the transaction is conducted with knowledge that the proceeds are criminally

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derived. "Monetary transaction," as that term is used in this section, includes deposit, withdrawal, transfer or exchange of funds or monetary instruments by, through or to a financial institution.

Criminal Activities

It was the specific intent of Congress in enacting the Title 18 provisions of the MLCA to address the laundering of illegal proceeds through wire transfers and other monetary instruments. The specified crimes set forth in the statute include those crimes most commonly associated with organized crime, drug trafficking and financial misconduct. See section 1956(c)(7) for the complete description.

Four examples of possible suspicious wire transactions are:

- Large international funds transfers to or from the accounts of domestic customers in amounts and of a frequency that are not consistent with the nature of the customer's known business activities.
- Receipt of funds in the form of multiple cashier's checks, money orders, traveler's checks, bank checks, or personal checks that are drawn on or issued by U.S. financial institutions and made payable to the same individual or business, in U.S. dollar amounts that are below the \$10,000 Bank Secrecy Act reporting threshold, and which are then wire transferred to a financial institution outside the U.S.
- The deposit of funds into several accounts, which are then aggregated into one account, followed by the wire transfer of the aggregated funds to a destination outside of the U.S. when such action is not consistent

with the known business of the customer.

- Any other unusual international fund transfer request, when the arrangements requested appear to be inconsistent with normal fund transfer practices; e.g., where the customer directs the bank to wire funds to a foreign country and advises the bank to expect same day return of funds from sources different from the beneficiaries initially named (changing the sources of funds).

Institution Responsibilities

Treasury strongly recommends that financial institutions report all suspicious non-cash transactions to their local IRS Criminal Investigation Division or U.S. Customs office, or by calling 1-800-BSA-CTRS (IRS) or 1-800-BE ALERT (Customs). As already stated, this office concurs, and suggests that each institution develop definitive guidelines for its staff concerning handling of suspect transactions. For example, management may prefer that, if institution personnel have positive knowledge that the proceeds offered for a transaction are criminally derived and subject to Title 18, sections 1596-97, the transaction be refused outright. However, in most situations management may deem it more prudent to accept the transaction, gathering information that may later be useful to Federal prosecutors. In either situation, a report should be made immediately to the IRS or Customs Service, and a written record kept of all contacts made with the enforcement authorities.

Information that may be reported without liability under the Right to Financial Privacy Act includes the names of any persons involved in a refused or suspicious transaction; account numbers; home and business addresses; social security numbers; types of accounts; interest paid

on the accounts; location of the branch or office where the transaction occurred or was attempted; a specification of the offense or violation that the financial institution believes was committed, if known; and a description of the activities giving rise to the institution's suspicions. [S. Rep. 99-433, 99th Cong., 2d Sess., pp. 15-16.]

Treasury also requests that institutions use criminal referral forms to report suspicious transfers or other transactions. Institutions are reminded that Insurance Regulation 563.18(d) expressly requires the filing of the standard criminal referral - FHLBB Form 366 - within 14 business days of discovering a known or suspected criminal act, if such act involves, among other activities, money laundering, engaging in monetary transactions known to have been derived from unlawful activities, or structuring a transaction to evade the reporting requirements of the Bank Secrecy Act.

Conclusion

All member institutions are encouraged to incorporate the provisions of Title 18, U.S. Code, sections 1956-57, into their operating policy manuals and into the training provided to each employee in a position to become involved, directly or indirectly, in the practices targeted by this statute. Further, member institutions should avail themselves of the toll-free telephone numbers and other reporting mechanisms established by Treasury, IRS and Customs. Reporting permits those agencies to obtain timely information on suspicious non-cash transfers and other questionable transactions, and protects institutions in the event that collusion by institution staff is later alleged.


— Darrel Dochow, Executive Director

Attachment to Thrift Bulletin 4

Title 18, United States Code Part 1, Chapter 95 - Racketeering

Sec. 1956 Laundering of Monetary Instruments

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity -

(A) with the intent to promote the carrying on of specified unlawful activity; or

(B) knowing that the transaction is designed in whole or in part -

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law, shall be sentenced to a fine of not more than \$500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

(2) Whoever transports or attempts to transport a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States-

(A) with the intent to promote the carrying on of specified unlawful activity; or

(B) knowing that the monetary instrument or funds involved in the transportation represent the proceeds of some form of unlawful activity and knowing that such transportation is designed in whole or in part -

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of \$500,000 or twice the value of the monetary instrument or funds involved in the transportation, whichever is greater, or imprisonment for not more than twenty years, or both.

(b) Whoever conducts or attempts to conduct a transaction described in subsection (a)(1), or a transportation described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of -

(1) the value of the property, funds, or monetary instruments involved in the transaction; or

(2) \$10,000.

(c) As used in this section -

(1) the term "knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State or Federal law, regardless of whether or not such activity is specified in paragraph (7);

(2) the term "conducts" includes initiating, concluding, or participating in initiating, or concluding a transaction;

(3) the term "transaction" includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

(4) the term "financial transaction" means a transaction involving the movement of funds by wire or other means or involving one or more monetary instruments, which in any way or degree affects interstate or foreign commerce, or a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

(5) the term "monetary instruments" means coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery;

(6) the term "financial institution" has the definition given that term in section 5312(a)(2) of title 31, United States Code, and the regulations promulgated thereunder;

(7) the term "specified unlawful activity" means -

(A) any act or activity constituting an offense listed in section 1961(1) of this title except an act which is indictable under the Currency and Foreign Transactions Reporting Act;

(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving the manufacture, importation, sale or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

(C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848); or

Title 18, U.S. C. Part 1, Chapter 95

(D) any offense under section 152 (relating to concealment of assets; false oaths and claims; bribery), section 215 (relating to commissions or gifts for procuring loans), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 511 (relating to securities of States and private entities), section 543 (relating to smuggling goods into the United States), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 875 (relating to interstate communications), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section 1344 (relating to bank fraud), or section 2113 or 2114 (relating to bank and postal robbery and theft) of this title, section 38 of the Arms Export Control Act (22 U.S.C. 2778), section 2 (relating to criminal penalties) of the Export Administration Act of 1979 (50 U.S.C. App. 2401), section 203 (relating to criminal sanctions) of the International Emergency Economic Powers Act (50 U.S.C. 1702), or section 3 (relating to criminal violations) of the Trading with the Enemy Act (50 U.S.C. App.3).

(d) Nothing in this section shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this section.

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate. Such authority of the Secretary of the Treasury shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury and the Attorney General.

(f) There is extraterritorial jurisdiction over the conduct prohibited by this section if -

(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and

(2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding \$10,000.

Sec. 1957 Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity

(a) Whoever, in any of the circumstances set forth in subsection (d), knowingly engages or attempts to engage in a monetary transaction in criminally derived property that is of a value greater than \$10,000 and is derived from specified unlawful activity, shall be punished as provided in subsection (b).

(b) (1) Except as provided in paragraph (2), the punishment for an offense under this section is a fine under title 18, United States Code, or imprisonment for not more than ten years or both.

(2) The court may impose an alternate fine to that imposed under paragraph (1) of not more than twice the amount of the criminally derived property involved in the transaction.

(c) In a prosecution for an offense under this section, the Government is not required to prove the defendant knew that the offense from which the criminally derived property was derived was specified unlawful activity.

(d) The circumstances referred to in subsection (a) are -

(1) that the offense under this section takes place in the United States or in the special maritime and territorial jurisdiction of the United States; or

(2) that the offense under this section takes place outside the United States and such special jurisdiction, but the defendant is a United States person (as defined in section 3077 of this title, but excluding the class described in paragraph (2)(D) of such section).

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate. Such authority of the Secretary of the Treasury shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury and the Attorney General.

(f) As used in this section -

(1) the term "monetary transaction" means the deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument (as defined for the purposes of subchapter II of chapter 53 of title 31) by, through, or to a financial institution (as defined in section 5312 of title 31);

(2) the term "criminally derived property" means any property constituting, or derived from, proceeds obtained from a criminal offense; and

(3) the term "specified unlawful activity" has the meaning given that term in section 1956 of this title.