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Sample

Chapter 4 Statutes and Regulations

The statute underlying this policy is the Bank Secrecy Act (BSA) (31 USC 5311-5332, 12 CFR Part 21). The BSA originally focused on traditional financial institutions and included requirements such as building security, customer identification, currency transaction reporting, anti-money laundering, and Suspicious Activity Reporting. The Bank Secrecy Act originally did not apply to nonbank mortgage lenders.

On February 6, 2012, FinCEN, a bureau of the Department of the Treasury (Treasury), issued a final rule defining nonbank residential mortgage lenders and originators (RMLO) as loan or finance companies for the purpose of requiring them to establish anti-money laundering programs and report suspicious activities under the Bank Secrecy Act. While nonbank RMLOs are now included by definition within the Bank Secrecy Act, not all requirements of the Bank Secrecy Act apply to nonbank RMLOs. The Final Rule defines these requirements and limitations and is explained in further detail within the following subsections of this policy. FinCEN is the delegated administrator of the Bank Secrecy Act.

The Federal Financial Institutions Examination Council (FFIEC) is a formal interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions by the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Consumer Financial Protection Bureau (CFPB), and to make recommendations to promote uniformity in the supervision of financial institutions. In 2006 the State Liaison Committee (SLC) was added to the Council as a voting member. The SLC includes representatives from the Conference of State Bank Supervisors (CSBS), the American Council of State Savings Supervisors (ACSSS), and the National Association of State Credit Union Supervisors (NASCUS). The FFIEC maintains an examination manual for BSA/AML. This manual is available online.

4.1 Penalties – Corporate and Statutory

Both civil and criminal penalties exist for the violation of the Bank Secrecy Act, anti-money laundering, and/or Suspicious Activity Reporting. The information in this policy should not be construed as comprehensive, limiting, or legal advice. It is offered to provide all readers of this policy a sense of the seriousness with which [Sample Client] and its regulators view these policies and the degree to which violations may be penalized.

Violations of AML Policy may have ramifications for [Sample Client] and its employees. Violation of regulations and/or laws may result in civil and/or criminal penalties depending upon the nature of the offense.

Chapter 5 Suspicious Activity Reporting (SAR)

[Sample Client] must establish a program that will enable the identification of activities which may require the filing of a SAR. The compliance officer will decide which suspected activities will be reported, and how they should be reported (i.e., as mortgage fraud or identity theft).

5.1 SAR Decision Making

After a thorough research and analysis is completed, the AML compliance officer will be the final decision maker regarding SAR filing.

The AML compliance officer will document SAR decisions, including the specific reason for filing or not filing a SAR.

5.2 Activities Subject to SAR Filing

SARs should be filed in the event of any of the following situations:

- Criminal violations involving insider abuse in any amount.
- Known or suspected federal criminal violations committed against or through [Sample Client] aggregating \$5,000 or more where a suspect can be identified.
- Known or suspected federal criminal violations aggregating \$25,000 or more committed against or through [Sample Client] regardless of whether a potential suspect can be identified.
- Transactions conducted or attempted by, at, or through [Sample Client] (or an affiliate) and aggregating \$5,000 or more if [Sample Client] knows, suspects, or has reason to suspect that the transaction
 - may involve potential money laundering or other illegal activity (e.g., terrorism financing);
 - is designed to evade any regulations promulgated under the AML or BSA;
 - has no business or apparent lawful purpose or is not the type of transaction in which the particular consumer would normally be expected to engage, and there is no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or
 - involves computer intrusion.