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Money Laundering: An Abridged Overview of 18 U.S.C. § 1956 and Related Federal Criminal Law

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Summary

This report provides an overview of the elements of federal criminal money laundering statutes and the sanctions imposed for their violation. The most prominent is 18 U.S.C. § 1956. Section 1956 outlaws four kinds of money laundering—promotional, concealment, structuring, and tax evasion laundering of the proceeds generated by designated federal, state, and foreign underlying crimes (predicate offenses)—committed or attempted under one or more of three jurisdictional conditions (i.e., laundering involving certain financial transactions, laundering involving international transfers, and stings). Its companion, 18 U.S.C. § 1957, prohibits depositing or spending more than $10,000 of the proceeds from a predicate offense. Section 1956 violations are punishable by imprisonment for not more than 20 years. Section 1957 carries a maximum penalty of imprisonment for 10 years. Property involved in either case is subject to confiscation. Misconduct that implicates either offense may implicate other federal criminal statutes as well. Federal racketeer influenced and corrupt organization (RICO) provisions outlaw acquiring or conducting the affairs of an enterprise (whose activities affect interstate or foreign commerce) through the patterned commission of a series of underlying federal or state crimes. RICO violations are also 20-year felonies. The Section 1956 predicate offense list automatically includes every RICO predicate offense, including each "federal crime of terrorism." A second related statute, the Travel Act (18 U.S.C. § 1952), punishes interstate or foreign travel, or the use of interstate or foreign facilities, conducted with the intent to distribute the proceeds of a more modest list of predicate offenses or to promote or carry on such offenses when an overt act is committed in furtherance of that intent. Such misconduct is punishable by imprisonment for not more than five years. Other federal statutes proscribe, with varying sanctions, bulk cash smuggling, layering bank deposits to avoid reporting requirements, failure to comply with federal anti-money laundering provisions, or conducting an unlawful money transmission business.

Section 1956's ban on attempted international transportation of tainted proceeds for the purpose of concealing their ownership, source, nature, or ultimate location is limited to instances where concealment is a purpose rather than an attribute of the transportation (simple smuggling is not proscribed as such), as the Supreme Court explained in *Cuellar v. United States v. Cuellar*, 553 U.S. 550 (2008). In a second case, the Court held that the "proceeds" of a predicate offense often referred to the profits rather than the gross receipts realized from the offense. *United States v. Santos*, 553 U.S. 507 (2008). Congress responded by defining "proceeds" for money laundering purposes as the property obtained or retained as a consequence of a predicate offense, including gross receipts. P.L. 111-21, 123 Stat. 1618 (2009) (S. 386) (111th Cong.).

This report is an abridged version of a longer report, CRS Report RL33315, *Money Laundering: An Overview of 18 U.S.C. § 1956 and Related Federal Criminal Law*, without the footnotes, full citations, or appendixes found in the longer version. Related CRS Reports include CRS Report R44776, *Anti-Money Laundering: An Overview for Congress*, by (name redacted) and (name red acted), and CRS Legal Sidebar WSLG1127, *Anti-Terrorist/Anti-Money Laundering Information-Sharing by Financial Institutions Under FinCEN's Regulations*, by (name redacted) (available upon request).

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Introduction

Money laundering is commonly understood as the process of cleansing the taint from the proceeds of crime. In federal criminal law, however, it is more. In the principal federal criminal money laundering statutes, 18 U.S.C. §§ 1956 and 1957, and to varying degrees in several other federal criminal statutes, money laundering involves the flow of resources to and from several hundred other federal, state, and foreign crimes.

18 U.S.C. § 1956

Section 1956 outlaws four kinds of laundering—promotional, concealment, structuring, and tax evasion—committed or attempted under one or more of three jurisdictional conditions (i.e., laundering involving certain financial transactions, laundering involving international transfers, and stings). More precisely, Section 1956(a)(1) outlaws financial transactions involving the proceeds of other certain crimes—predicate offenses referred to as "specified unlawful activities" (sometimes known as SUA)—committed or attempted (1) with the intent to promote further predicate offenses; (2) with the intent to evade taxation; (3) knowing the transaction is designed to conceal laundering of the proceeds; or (4) knowing the transaction is designed to avoid anti-laundering reporting requirements.

Section 1956(a)(2) outlaws the international transportation or transmission (or attempted transportation or transmission) of funds (1) with the intent to promote a predicate offense; (2) knowing that the purpose is to conceal laundering of the funds and knowing that the funds are the proceeds of a predicate offense; or (3) knowing that the purpose is to avoid reporting requirements and knowing that the funds are the proceeds of a predicate offense.

Section 1956(a)(3) covers undercover investigations ("stings"). It outlaws financial transactions (or attempted transactions) that the defendant believes involve the proceeds of a predicate offense and that are intended to (1) promote a predicate offense, (2) conceal the source or ownership of the proceeds, or (3) avoid reporting requirements.

The majority of Section 1956's crimes are related in one way or another to the commission or purported commission of at least one of a list of predicate offenses ("specified unlawful activities"). And so it is the financial transaction promotional offense. The proscribed transaction must involve the proceeds of a predicate offense and be designed to promote a predicate offense. The predicate offenses come in three varieties: state crimes, foreign crimes, and federal crimes. The list of state crimes is relatively short and consists of any state crime that is a RICO predicate offense, that is, "any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under state law and punishable by imprisonment for more than one year." The list of foreign crimes recognized as Section 1956 predicate offenses is more extensive than the list of state crimes, and covers among other things extraditable offenses, although crimes under the laws of other countries qualify as predicate offenses only if the financial transaction occurs in this country in whole or in part. The list of federal predicate offenses is considerably longer if for no other reason than that the some qualifying offenses are specifically named and others qualify by cross-reference to the voluminous RICO predicate offense list. The crimes listed by name as predicates include offenses such as interstate kidnapping, theft of funds from federally supported programs, and bank robbery. RICO predicates also name bribery, mail fraud, and wire fraud as predicates. Moreover, the RICO predicate offense list encompasses by cross-reference the federal crimes of terrorism cataloged in 18 U.S.C. § 2333b(g)(5)(B).

Each of the 10 criminal proscriptions found in Section 1956 outlaws both the completed offense and the attempt to commit it. Section 1956(h) outlaws conspiracy to violate any of these proscriptions."

Consequences: Prison terms, fines, restitution, confiscation, and civil penalties may follow as a consequence of conviction of a money laundering offense. Any violation of Section 1956 is punishable by imprisonment for not more than 20 years. Defendants sentenced to a term of imprisonment may also be subject to a term of supervised release of up to three years to be served upon their release from prison. Violators of any provisions of Section 1956 are subject to a civil penalty of no more than the greater of $10,000 or the value of the property involved in the offense.

Section 1956 provides a vehicle for civil or criminal confiscation in two very distinct ways. First, the "proceeds" of any Section 1956 predicate offense (and any property traceable to such proceeds) are subject to confiscation without the necessity of any actual violation of Section 1956. Second, property "involved" in a Section 1956 money laundering offense (or property traceable to such involved property) may be confiscated.

18 U.S.C. § 1957

Unless there is some element of promotion, concealment, or evasion, Section 1956 does not make simply spending or depositing tainted money a separate crime. Section 1957 does. It outlaws otherwise innocent transactions contaminated by the origin of the property involved in the transaction. Using most of the same definitions as Section 1956, the elements of Section 1957 cover anyone who:

1. A. in the United States,
   B. in the special maritime or territorial jurisdiction of the United States,

or

   C. outside the United States if the defendant is an American,
2. knowingly
3. A. engages or
   B. attempts to engage in
4. a monetary transaction
5. A. in or affecting U.S. interstate or foreign commerce, or
   B. committed by a U.S. national outside the United States.
6. in criminally derived property that
   A. is of a greater value than $10,000 and
   B. is derived from specified unlawful activity.

Section 1957 also proscribes attempts to violate its provisions. Section 1956(h) outlaws conspiracy to violate Section 1957. Violation of Section 1957 and conspiracy to violate Section 1957 are each punishable by imprisonment for not more than 10 years. Violation of Section 1957 and conspiracy to violate Section 1957 are each punishable by a fine of not more than the greater of $250,000 ($500,000 for an organization) or twice the amount involved in the transaction. Violators of Section 1957 are also subject to a civil penalty of no more than the greater of $10,000 or the value of the property involved in the offense. Any property involved in a violation of Section 1957 or traceable to property involved in a violation of Section 1957 is subject to confiscation under either civil or criminal procedures, and the applicable law is essentially the same as in the case of Section 1956.

18 U.S.C. § 1952: Travel Act

Sections 1956 and 1957 punish transactions involving promoting, concealing, spending, and depositing tainted funds. The Travel Act punishes interstate or foreign travel (or use of the facilities of interstate or foreign commerce) conducted with the intent to (1) distribute the proceeds of a more modest list of predicate offenses ("unlawful activity"), or (2) to promote or carry on such offenses when there is an overt act in furtherance of that intent, or (3) to commit some violent act in their furtherance. The first two variants bear some resemblance to the concealment and promotion offenses of Section 1956 and somewhat more remotely to the deposit/spending proscriptions of Section 1957. Attempting to violate the Travel Act is not a federal offense. It is a crime to conspire to do so, however, or to aid and abet another to do so.

Consequences: The money laundering-like distribution and facilitation offenses of the Travel Act are punishable by imprisonment for not more than five years. Offenders are subject to a fine of the greater of not more than $250,000 ($500,000 for organizations) or twice the gain or loss associated with the offense. If imprisoned, offenders may also be subject to a term of supervised release of up to three years to be served upon their release from prison. Property associated with a violation of Section 1952 is not subject to confiscation solely by virtue of that fact, although the property may be confiscated by operation of the laws governing Section 1952 predicate offenses or by operation of RICO or the Section 1956 money laundering provisions.

31 U.S.C. § 5322: Reporting Requirements

Section 5322 penalizes willful violation of several monetary transaction reporting requirements found primarily in Subtitle 53-II of title 31 of the United States Code. The section's coverage extends to violations of:

-31 U.S.C. § 5313 – financial institution reports of cash transactions involving $10,000 or more (31 C.F.R. §103.22);

-31 U.S.C. § 5314 – reports by persons in the U.S. of foreign financial agency transactions (31 C.F.R. §103.24);

-31 U.S.C. § 5316 – reports by any person taking $10,000 in cash out of the U.S. or bringing it in;

-31 U.S.C. § 5318 – suspicious transaction reports by financial institutions;

-31 U.S.C. § 5318A – special measures record keeping and reports by financial institutions relating to foreign counter-money laundering concerns;

-31 U.S.C. § 5325 – reports by financial institutions issuing cashier's checks in amounts of $3000 or more (31 C.F.R. §103.29);

-31 U.S.C. § 5326 – cash transaction reports by financial institutions and/or various trades or businesses pursuant to Treasury Department geographical orders (31 C.F.R. §103.26);

-31 U.S.C. § 5331 – reports of trades and businesses other than financial institutions of cash transactions involving $10,000 or more (31 C.F.R. §103.30);

-12 U.S.C. § 1829b – record keeping requirements of federally insured depository institutions; and

-12 U.S.C. § 1953 – record keeping by uninsured banks or similar institutions.

Simple violations of Section 5322 are punishable by imprisonment for not more than five years, a fine of not more than $250,000, or both. Violations committed during the commission of another

federal crime or as part of a pattern of illegal activity involving more than $100,000 over the course of a year are punishable by imprisonment for not more than 10 years; a fine of not more than $500,000 (not more than $1 million for a special measures violation or a violation involving a breach of due diligence with respect to private banking for foreign customers or foreign shell banks); or both.

31 U.S.C. § 5324: Anti-Structuring

Structuring is organizing financial transactions or reports relating to financial transactions so as to evade reporting requirements, for example, by dividing a $12,000 bank deposit into three separate $4,000 deposits in order to evade the $10,000 reporting requirement. Section 5324 condemns three categories of structuring: one is devoted to transactions involving banks, credit unions, car dealerships, jewelers, casinos, and the other similar entities classified as financial institutions; another to cash transactions of $10,000 or more involving nonfinancial institutions; and a third to bringing $10,000 or more in cash into the country or taking it out of the country. Violations are punishable by imprisonment for not more than five years (not more than 10 years if committed in conjunction with another federal offense or if committed as part of a pattern of activity involving $100,000 or more) and a fine of not more than $250,000 (not more than $500,000 for organizations), with the fine maximum doubled if the offense is committed in conjunction with another federal crime or as part of a pattern of activity involving $100,000. The government may confiscate property involved in a structuring violation.

31 U.S.C. § 5332: Bulk Cash Smuggling

After the Supreme Court held in *United States v. Bajakajian* that the excessive fines clause of the Eighth Amendment precluded confiscation of $300,000 of unreported, but otherwise untainted, cash, Congress enacted the bulk cash smuggling provisions of 31 U.S.C. § 5332. The section outlaws carrying or attempting to transport more than $10,000 in unreported, "concealed" cash across a U.S. border with the intent to evade 31 U.S.C. § 5316 reporting requirements. The section has been used to prosecute those who attempted to bring unreported cash into the United States, as well as those who attempted to smuggle cash out of the country. The fact that the money was neither derived from criminal activity nor intended for criminal purposes may be relevant for Eighth Amendment purposes, but it is no defense to the underlying offense. The proscribed methods of concealment seem to envelope any method short of public display. The offense carries a prison term of not more than five years, but also calls for confiscation of the cash and related property in lieu of a fine. The section was apparently enacted to overcome the consequences of *Bajakajian*.

18 U.S.C. § 1960: Money Transmitters

Section 1960 outlaws conducting or owning an unlicensed money transmitting business. "Money transmitting" is defined broadly by way of a nonexclusive list of examples, such as checks and wire transfers, and includes virtual currency such as Bitcoin. The term "business" restricts the offense to an enterprise conducted for profit and one engaged in more than a single qualifying transmission.

The section recognizes three categories of transmitting business. One consists of any transmission business operating in a state that requires it to be licensed and criminalizes the failure to do so. The second category consists of any transmitting business operating in a manner that fails to

comply with Department of the Treasury regulations governing such enterprises. The third category consists of any licensed business that transmits money known to be derived from, or intended to finance, criminal activity even if the transmitter is duly licensed. Section 1960 offenses are punishable by imprisonment for not more than five years and/or a fine of not more than $250,000 (not more than $500,000 for organizations). Property "involved in" violation of the section is subject to civil and criminal forfeiture.

Racketeer Influenced and Corrupt Organizations (RICO)

As noted earlier, all RICO predicate offenses are by definition money laundering predicate offenses under Sections 1956 and 1957. The crimes that suggest the possibility of a RICO offense also suggest the possibility of money laundering. In some money laundering cases, although there is no separate RICO violation, prosecution is possible by virtue of the RICO shared predicate offense list. In a number of other cases, either money laundering is one of several predicate offenses of a larger RICO enterprise or the RICO enterprise is devoted primarily to money laundering.

RICO makes it a federal crime for any person to:

1. conduct or participate, directly or indirectly, in the conduct of
2. the affairs of an enterprise
3. engaged in or the activities of which affect, interstate or foreign commerce
4. A. through the collection of an unlawful debt, or
   B. through a pattern of racketeering activity (predicate offenses).

Section 1962(d) outlaws conspiracy to violate any of Section 1962's substantive prohibitions; in the case of conspiracy to violate Section 1962(c), it outlaws any agreement of two or more to conduct the affairs of an enterprise through a pattern of RICO predicate offenses. The RICO conspiracy offense has no overt act requirement; the crime is complete upon the agreement to commit a RICO violation.

RICO violations are punishable by imprisonment for not more than 20 years (not more than life imprisonment if any of the applicable predicate offenses carries a life sentence). Offenders also face fines of up to $250,000 (up to $500,000 for organizations) as well as the confiscation of any property associated with the offense.

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