



CRS Report for Congress

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

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Summary

Money laundering is a federal crime, most often prosecuted today under 18 U.S.C. 1956. Money laundering is commonly understood as the process of cleansing the taint from the proceeds of crime. In federal criminal law, it is more. In varying degrees under federal law, money laundering involves the flow of resources to and from several hundred other federal, state and foreign crimes. It consists of: (1) engaging in a financial transaction involving the proceeds of certain crimes in order to conceal the nature, source, or ownership of proceeds they produced; (2) transporting funds generated by certain criminal activities internationally in order to promote further criminal activities, or to conceal nature, source, or ownership of the criminal proceeds, or to evade reporting requirements; (3) engaging in a financial transaction involving the proceeds of certain crimes in order to promote further offenses; (4) engaging in a financial transaction involving criminal proceeds in order to evade taxes on the income produced by the illicit activity; (5) structuring financial transactions in order to evade reporting requirements; (6) spending more than \$10,000 of the proceeds of certain criminal activities; (7) traveling in interstate or foreign commerce in order to distribute the proceeds of certain criminal activities; (8) transmitting the proceeds of criminal activity in the course of a money transmitting business; (9) smuggling unreported cash across a U.S. border, or (10) failing to comply with the Treasury Department's anti-money laundering provisions. The Supreme Court has recently indicated that the proscription in section 1956 against attempted international transportation of tainted proceeds to conceal their source, ownership, nature or ultimate location does not reach simple attempted cash smuggling without some proof of a specific concealment purpose for the smuggling. It indicated in a second case that references to the tainted "proceeds," which are the focus of section 1956, sometimes refer to the profits of a predicate offense and sometimes to its gross receipts. This is an abridged version of CRS Report RL33315, *Money Laundering: An Overview of 18 U.S.C. 1956 and Related Federal Criminal Law*, by Charles Doyle and Todd Garvey, without the footnotes, appendices, or most citations to authority found in the longer report.

18 U.S.C. 1956: Section 1956 outlaws four kinds of laundering — promotional, concealment, smurfing, and tax evasion — committed or attempted under one or more of three jurisdictional conditions — 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” — 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 launder the proceeds, or (4) knowing the transaction is designed to avoid anti-laundering reporting requirements. Section 1956(a)(2) outlaws the interstate or 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) is a sting section. 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) launder the proceeds, or (3) avoid reporting requirements.

All but two of the ten section 1956 crimes are related in one or another to the commission or purported commission of at least one of a list of predicate offenses, “specified unlawful activities.” 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, kidnaping, 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 very much the same — violations of the laws of another country involving murder, kidnaping, bribery, drug trafficking and the like — but it only applies in cases involving a financial transaction occurring in whole or in part in this country. The list of federal predicate offenses is considerably longer if for no other reason than it is specific rather than generic.

Each of the ten 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, civil penalties, and confiscation 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. Violations of section 1956(a)(1) and (a)(2), the financial institution and interstate or foreign transmission offenses, are punishable by a fine of no more than the greater of \$500,000 or twice the value of the property involved in the offense. Sting violations are punishable by a fine of not more than the greater of \$250,000 (\$500,000 for an organization) or twice of amount involved in the offense. 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. Forfeiture is the confiscation of property to the government as a consequence of

the property's proximity to some form of criminal activity. The proceeds of a confiscation are generally shared among the law enforcement agencies that participate in the investigation and prosecution of the forfeiture. Section 1956 provides a vehicle for 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. The Eighth Amendment prohibits excessive fines. Fines are excessive if they are grossly disproportionate to the gravity of the offender's misconduct. While the excessive fines clause may impose limits upon the permissible extent of the confiscation for failure to comply with anti-money laundering reporting statutes, forfeitures under section 1956 are not ordinarily considered excessive because of the gravity of the offense and its predicate offenses.

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 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 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. [in or affecting U.S. interstate or foreign commerce]
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. Violations of section 1957 and conspiracy to violate section 1957 are each punishable by imprisonment for not more than 10 years and/or 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 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.

Travel Act: The money laundering provisions of sections 1956, 1957 punish transactions involving promotion, concealment, evasion, spending and depositing. The Travel Act, 18 U.S.C. 1952, punishes interstate or foreign travel (or use of the facilities of interstate or foreign commerce) 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 there is an overt act in furtherance of that intent. The Travel Act is a section 1956 and 1957 predicate offense (specified unlawful activity); section 1956 and 1957 are Travel Act predicate offenses (unlawful activity); and although the money laundering predicate offense list is more extensive, several of the Travel Act predicate offenses are also money laundering predicates. The Travel Act essentially condemns three crimes each with an interstate element: the distribution of the proceeds of a predicate offense, the promotion

of a predicate offense, or the commission of a violent crime in aid of a predicate offense. 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. The violent crime component of the Travel Act is only coincidentally related to money laundering and consequently will be mentioned only in passing.

The courts often abbreviate their statement of the elements to encompass only whichever of the three versions is at issue:

Distribution — The essential elements of a violation under section 1952(a) are: “(1) travel in interstate or foreign commerce; (2) with the specific intent to distribute the proceeds of an unlawful activity; and (3) knowing and willful commission of an act in furtherance of that intent.”

Facilitation — “The government must prove (1) interstate travel or use of an interstate facility; (2) with the intent to . . . promote . . . an unlawful activity and (3) followed by performance or attempted performance of acts in furtherance of the unlawful activity.”

Violence: “To prove a violation of the Travel Act, the government was required to establish that Ajaj: (1) used a facility of interstate or foreign commerce; (2) with intent to commit any unlawful activity (including arson. . .); and (3) thereafter performed an additional act to further the unlawful activity.

The distribution and facilitation offenses of the Travel Act, 18 U.S.C. 1952(a)(1) and 18 U.S.C. 1952(a)(3), are punishable by imprisonment for not more than five years; the crime-of-violence-in-furtherance offense is punishable by imprisonment for not more than 20 years. Offenders of any of the three offenses 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. 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 1952 predicate offense.

31 U.S.C. 5322 - Reporting Requirements: Section 5322 penalizes willful violation of several monetary transaction reporting requirements found in Subtitle 53-II of title 31 of the United States Code and elsewhere. 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 bring it in;
- 31 U.S.C. 5318 - suspicious transaction reports by financial institutions;
- 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;
- 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 (31 U.S.C. 5318A) or a violation involving a breach of due diligence with respect to private banking for foreign customers or foreign shell banks (31 U.S.C. 5318(i), (j)); or both. Section 5322 is a Travel Act predicate offense and RICO predicate offense, but not a section 1956 or 1957 money laundering predicate offense. Property associated with violations of two of the sections within its coverage is subject to confiscation. Under section 5317(c) property becomes forfeitable when it is involved in, or traceable to, a violation of 31 U.S.C. 5313 (reports relating to cash transactions involving \$10,000 or more) or of 31 U.S.C. 5316 (reports relating to taking \$10,000 or more out of the U.S. or to bring it into the U.S.).

31 U.S.C. 5324 - Anti-Structuring: Section 5324 condemns causing the failure to file a required report, causing the submission of a false report, structuring transactions to evade a reporting requirement, or attempting to do so. 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.

31 U.S.C. 5332 - Bulk Cash Smuggling: Section 5332 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 proscribed methods of concealment seems 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.

18 U.S.C. 1960 - Money Transmitters: Section 1960 prohibits unlicensed money transmitting businesses and defines such businesses as (A) those that are required by state law to be licensed and are not; (B) those that fail to comply with federal regulatory provisions; and (C) those that transmit money they know is derived from, and intended to finance, criminal activity. Offenders face imprisonment for not more than five years and/or a fine of not more than \$250,000 (not more than \$500,000 for organizations).

Racketeer Influenced and Corrupt Organizations (RICO) - 18 U.S.C. 1961 - 1964): All the racketeering predicate offenses listed in 18 U.S.C. 1961(1) are by definition money laundering predicate offenses under sections 1956 and 1957. 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).

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. They may also be liable to their victims for triple damages, and subject to the equitable remedies, at least the behest of the government.

The Supreme Court has recently held that the proscription in section 1956 against attempted international transportation of tainted proceeds for the purpose of concealing the ownership, source, nature of 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), *United States v. Cuellar*, 128 S.Ct. 1994 (2008). In a second case, the Court indicated that for purposes of section 1956 the “proceeds” of a predicate offense refers to gross receipts rather than profits realized from the offense, unless the nature of the predicate offense and the penalty it carries renders such a result “perverse,” *United States v. Santos*, 128 S.Ct. 2020 (2008).