

American Society of Tax Problem Solvers (ASTPS)

FINCEN, The Bank Secrecy Act, and How to Defend a Form 8300 Audit

Presenter:

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Financial Crimes Enforcement Network (FINCEN)

What is FINCEN?

FinCEN is a government bureau that maintains a network whose goal is to prevent and punish criminals and criminal networks that participate in money laundering and other financial crimes. FinCEN, is administered by the U.S. Department of the Treasury, operates domestically and internationally, and it consists of three major players—law-enforcement agencies, the regulatory community, and the financial-services community.

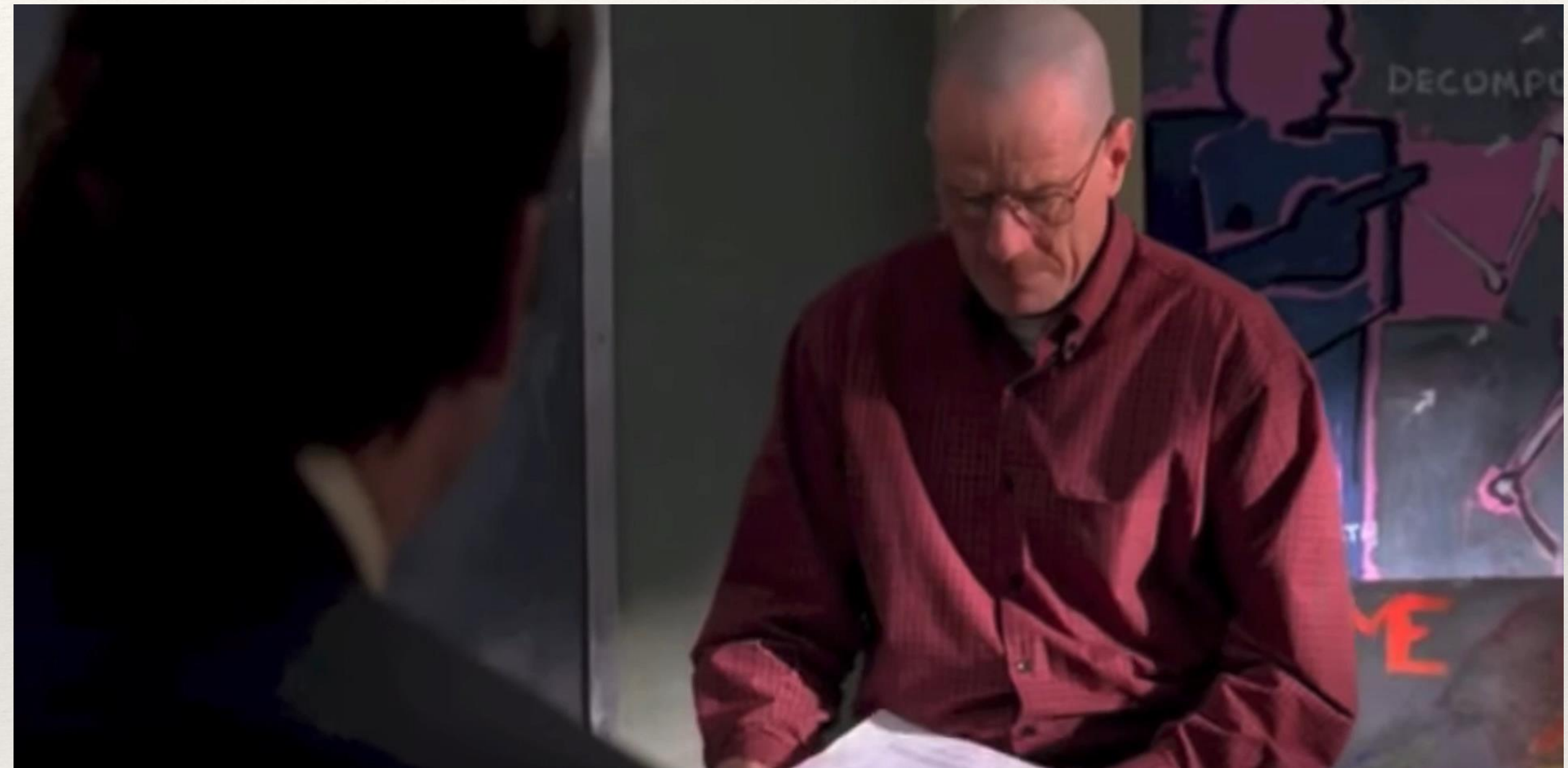


What is Money Laundering?

Money laundering refers to a financial transaction scheme that aims to conceal the identity, source, and destination of illicitly-obtained money. The money laundering process can be broken down into three stages. First, the illegal activity that garners the money places it in the launderer's hands (placement). Second, the launderer passes the money through a complex scheme of transactions to obscure who initially received the money from the criminal enterprise (layering). Third, the scheme returns the money to the launderer in an obscure and indirect way (integration). Tax Evasion and false accounting practices constitute common types of money laundering.

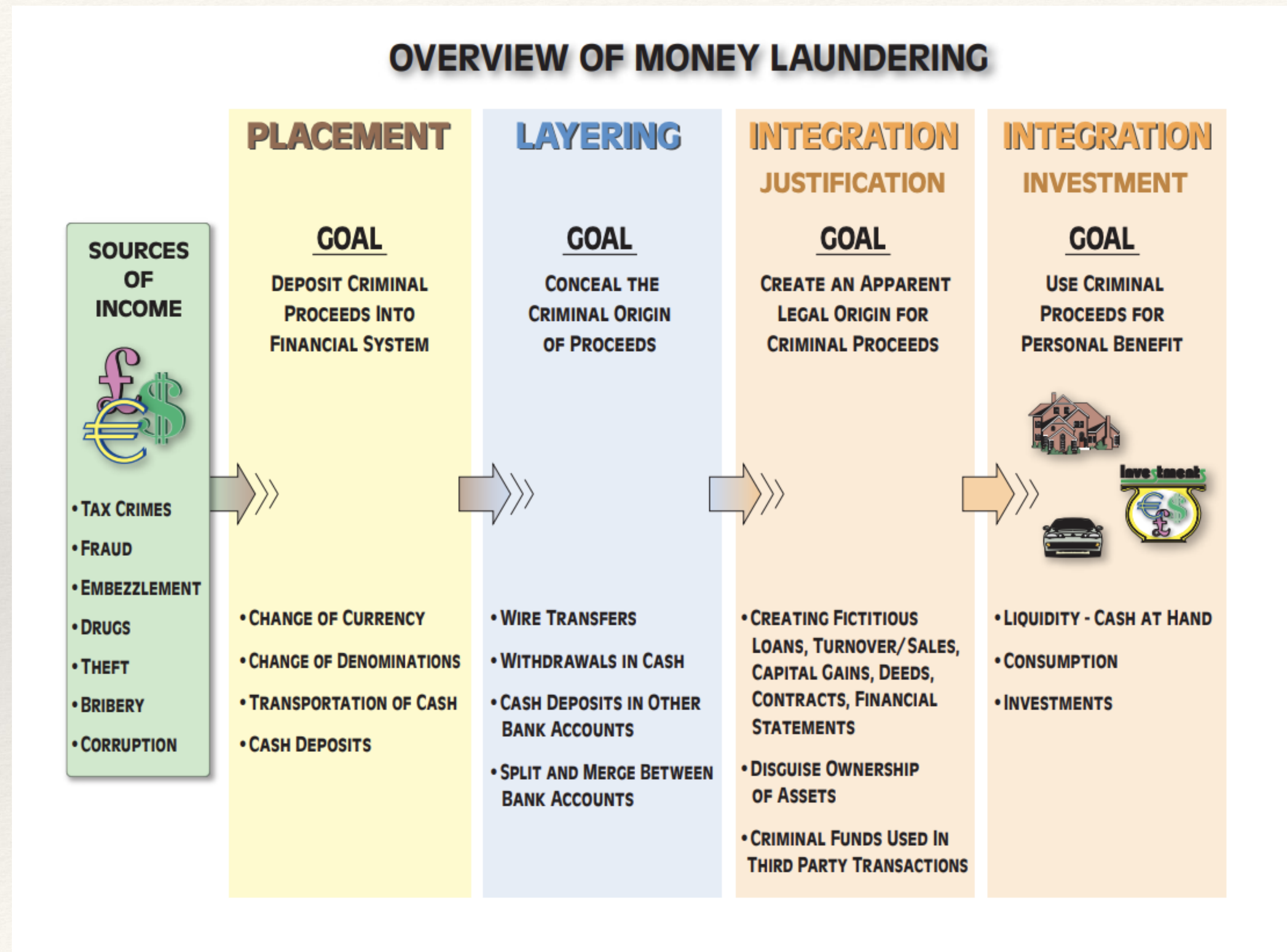
[Legal Definition of Money Laundering and Resources](#)

See also 18. U.S.C. 1956



<https://www.youtube.com/watch?v=ChNpq9QbMRY>

Money Laundering Stages



Bank Secrecy Act and History of Anti-Money Laundering Statutes

- **The Bank Secrecy Act of 1970 (BSA), also known as the Currency and Foreign Transactions Reporting Act**
 - Established requirements for recordkeeping and reporting by private individuals, banks and other financial institutions
 - Designed to help identify the source, volume, and movement of currency and other monetary instruments transported or transmitted into or out of the United States or deposited in financial institutions
 - Required banks to (1) report cash transactions over \$10,000 using the Currency Transaction Report; (2) properly identify persons conducting transactions; and (3) maintain a paper trail by keeping appropriate records of financial transactions
- Money Laundering Control Act (1986)
- Anti-Drug Abuse Act of 1988
- Annunzio-Wylie Anti-Money Laundering Act of 1992
- Money Laundering Suppression Act (1994)
- Money Laundering and Financial Crimes Strategy Act (1998)
- United and Strengthening America by Providing Appropriate Tools to Intercept and Obstruct Terrorism Act of 2001 (USA Patriot Act)
- Intelligence Reform and Terrorism Prevention Act of 2004

Form 8300

The law requires that trades and businesses report cash payments of more than \$10,000 to the federal government by filing IRS/FinCEN [Form 8300, Report of Cash Payments Over \\$10,000 Received in a Trade or Business PDF](#). Transactions that require Form 8300 include, but are not limited to:

- Escrow arrangement contributions
- Pre-existing debt payments
- Negotiable instrument purchases
- Reimbursement of expenses
- Making or repaying a loan
- Sale of goods or services
- Sale of real property
- Sale of intangible property
- Rental of real or personal property
- Exchange of cash for other cash
- Custodial trust contributions

The information contained in the form assists law enforcement in its anti-money laundering efforts. When businesses comply with the reporting laws they provide authorities with an audit trail to investigate possible tax evasion, drug dealing, terrorist financing and other criminal activities.

Type of Payments to Report

The Trades and businesses must report cash payments received if all of the following criteria are met:

1. The amount of cash is more than \$10,000
2. The business receives the cash as:
 1. One lump sum of more than \$10,000, or
 2. Installment payments that cause the total cash received within one year of the initial payment to total more than \$10,000, or
 3. Previously unreported payments that cause the total cash received within a 12-month period to total more than \$10,000
3. The establishment receives the cash in the ordinary course of a trade or business
4. The same agent or buyer provides the cash
5. The business receives the cash in a single transaction or in related transactions

What is cash?

Cash includes the coins and currency of the United States and a foreign country. Cash may also include cashier's checks, bank drafts, traveler's checks, and money orders with a face value of \$10,000 or less, if the business receives the instrument in:

- A designated reporting transaction (as defined below), or
- Any transaction in which the business knows the customer is trying to avoid reporting of the transaction on Form 8300.

Example: Tom Greenwood purchases a used car from XYZ Auto Dealership for a total of \$12,000. He pays with a cashier's check having a face value of \$12,000. The cashier's check is not treated as cash because its face value is more than \$10,000. The business does not need to file Form 8300.

A designated reporting transaction is the retail sale of any of the following:

- A consumer durable such as an automobile, boat, or property other than land or buildings that:
 - Is suitable for personal use
 - Can reasonably be expected to last at least one year under ordinary use
 - Has sales price of more than \$10,000
 - Can be seen or touched (tangible property)
- A collectible such as a work of art, rug, antique, metal, gem, stamp or coin.
- Travel or entertainment, if the total sales price of all items sold for the same trip or entertainment event in one transaction or related transactions is more than \$10,000. The total sales price of all items sold for a trip or entertainment event, which includes the sales price of items such as airfare, hotel rooms and admission tickets.

Example: Ed Johnson asks a travel agent to charter a passenger airplane to take a group to a sports event in another city. He also asks the travel agent to book hotel rooms and admission tickets for the group. He pays with two money orders, each for \$6,000. The travel agent has received more than \$10,000 cash in the designated reporting transaction and must file Form 8300.

<https://www.irs.gov/businesses/small-businesses-self-employed/irs-form-8300-reference-guide>

What is not cash?

Cash does not include:

- Personal checks drawn on the account of the writer.
- A cashier's check, bank draft, traveler's check or money order with a face value of more than \$10,000.

When a customer uses currency of more than \$10,000 to purchase a monetary instrument, the financial institution issuing the cashier's check, bank draft, traveler's check or money order is required to report the transaction by filing the FinCEN Currency Transaction Report (CTR).

Example: Jim Roberts purchases an automobile from ABC Auto Dealers for \$19,000. He pays with \$4,000 in currency and wires \$15,000 from his bank account to the dealerships bank account. A wire transfer does not constitute cash for Form 8300 reporting purposes, since the remaining cash remitted to ABC Auto Dealers was below \$10,000 the dealer has no filing requirement.

- A cashier's check, bank draft, traveler's check or money order that is received in payment on a promissory note or an installment sales contract (including a lease that is considered a sale for federal tax purposes). However, this exception applies only if:
 - The business uses similar notes or contracts in other sales to ultimate customers in the ordinary course of its trade or business and
 - The total payments for the sale that the business receives on or before the 60th day after the sale are 50 percent or less of the purchase price.

<https://www.irs.gov/businesses/small-businesses-self-employed/irs-form-8300-reference-guide>

- A cashier's check, bank draft, traveler's check, or money order that is received in payment for a consumer durable or collectible, and all three of the following statements are true:
 - The business receives it under a payment plan requiring:
 - One or more down payments and
 - Payment of the rest of the purchase price by the date of sale.
 - The business receives it more than 60 days before the date of the sale.
 - The business uses payment plans with the same or substantially similar terms when selling to ultimate customers in the ordinary course of its trade or business.
- A cashier's check, bank draft, traveler's checks, or money order received for travel or entertainment if all three of the following statements are true:
 - The business receives it under a payment plan requiring:
 - One or more down payments and
 - Payment of the rest of the purchase price by the earliest date that any travel or entertainment item (such as airfare) is furnished for the trip or entertainment event.
 - The business receives it more than 60 days before the date on which the final payment is due.
 - The business uses payment plans with the same or substantially similar terms when selling to ultimate customers in the ordinary course of its trade or business.

What is a related transaction?

The law requires that trades and businesses report transactions when customers use cash in a single transaction or a related transaction. Related transactions are transactions between a payer, or an agent of the payer, and a recipient of cash that occur within a 24-hour period. If the same payer makes two or more transactions totaling more than \$10,000 in a 24-hour period, the business must treat the transactions as one transaction and report the payments. A 24-hour period is 24 hours, not necessarily a calendar day or banking day.

Example: A retail motorcycle dealer sells a motorcycle for \$9,000 in cash to Gary Smith at 10 a.m. During the afternoon on the same day, Mr. Smith returns to buy another motorcycle for his son and pays \$9,000 in cash. Since, both transactions occurred within a 24-hour period, they are related transactions, and the motorcycle dealer must file Form 8300.

Transactions are related even if they are more than 24 hours apart when a business knows, or has reason to know, that each is a series of connected transactions.

Example: A client pays a travel agent \$8,000 in cash for a trip. Two days later, the same client pays the travel agent \$3,000 more in cash to include another person on the trip. These are related transactions, and the travel agent must file Form 8300.

Example: A customer purchases a vehicle for \$9,000 and then within the next 12 months pays the dealership additional cash of \$1,500 for items such as a new transmission, accessories, customized paint job, and others. The dealership is not required to file a Form 8300 if the additional transactions are not part of the original sales contract and the customer has no additional legal obligation to make such additional transactions.

SSN/TIN Requirements

A business must obtain the correct TIN of the person(s) from whom they receive the cash. If the transaction is conducted on behalf of another person or persons, the business must also obtain the TIN of that person or persons. Failure to include all required information or inclusion of incorrect information, on Form 8300, may result in civil or criminal penalties. However, a filer may be able to avoid penalties when the customer refuses to provide a TIN by showing that its failure to file is reasonable under circumstances more fully described in 26 CFR 301.6724-1(e) and (f). (i.e. Must make at least two written attempts to obtain TIN in writing prior to conclusion of transaction).

Under the filing exception as described in [Publication 1544 PDF](#), a filer is not required to provide the TIN of a person who is a nonresident individual or foreign organization. However, name and address verification is required, and the source of the verification must be included in item 14 of Form 8300. For nonresident aliens, acceptable documentation would include a passport, alien registration card or other official document.

Example: A nonresident alien with no SSN or [ITIN](#) makes a purchase requiring Form 8300 reporting and presents a Mexican driver's license to verify his name and address. A driver's license issued by a foreign government would be acceptable documentation for name and address verification purposes.

Reporting Suspicious Transactions

There may be situations where the business is suspicious about a transaction. A transaction is suspicious if:

- It appears that a person is trying to prevent a business from filing Form 8300,
- It appears that a person is trying to cause a business to file a false or incomplete Form 8300, or
- There is a sign of possible illegal activity.

The business may report suspicious transactions by checking the “suspicious transaction” box (box 1b) on the top line of Form 8300. Businesses may also call the IRS Criminal Investigation Division Hotline at 800-800-2877, or the local IRS Criminal Investigation unit to report suspicious transactions. If a business suspects that a transaction is related to terrorist activity, the business should call the Financial Institutions Hotline at 866-556-3974.

The business may voluntarily file a Form 8300 in those situations where the transaction is \$10,000 or less and suspicious. Because the Form 8300 is not required in those situations, there is no requirement to send a statement to the payor.

When to Report

The amount of cash a customer uses for a transaction and when the customer makes the transaction are the determining factors for when the business must file the Form 8300. Generally, a business must file Form 8300 within 15 days after they receive the cash. If the 15th day falls on a Saturday, Sunday, or holiday the business must file the report on the next business day.

Example: An attorney receives more than \$10,000 cash from a person as advance payment for legal services. Even though no service has been performed at the time the cash is received, the attorney is required to file Form 8300 within fifteen days after the cash is received. Once a person receives (in a transaction or related transactions) cash exceeding \$10,000 in a person's trade or business, a Form 8300 must be filed.

Multiple Payments

In some situations, the payer may arrange to pay in cash installments. If the first payment is more than \$10,000, a business must file Form 8300 within 15 days. If the first payment is not more than \$10,000, the business adds the first payment and any later payments made within one year of the first payment. When the total cash payments exceed \$10,000, the business must file Form 8300 within 15 days.

After a business files Form 8300, it must start a new count of cash payments received from that buyer. If a business receives more than \$10,000 in additional cash payments from that buyer within a 12-month period, it must file another Form 8300 within 15 days of the payment that causes the additional payments to total more than \$10,000.

If a business must file Form 8300 and the same customer makes additional payments within the 15 days before the business must file Form 8300, the business can report all the payments on one form.

Example: On January 10, a customer makes a cash payment of \$11,000 to a business. The same customer makes additional payments on the same transaction of \$4,000 on February 15, \$5,000 on March 20, and \$6,000 on May 12. By January 25 (fifteen days from January 10), the business must file Form 8300 for the \$11,000 payment. By May 27 (fifteen days from May 12), the business must file another Form 8300 for the additional payments that total \$15,000.

Example: Hospital Emergency Rooms often treat patients that pay for the services via installment payments, with cash or monetary instruments of less than \$10,000. When an installment arrangement is established on a single transaction, in this case the treatment received during the emergency room visit, the hospital must file a Form 8300 when cash payments received exceed \$10,000 within a 12-month period. After filing the Form 8300, a new count of cash payments from the patient would begin. Since this is not a *designated reporting transaction*, the expanded definition of cash to include monetary instruments would not apply, unless the hospital knows that the payer is trying by the manner of the payment to keep the hospital from reporting on Form 8300 the transaction or payments.

How and Where to File

Businesses can file Form 8300 electronically using the [Bank Secrecy Act \(BSA\) Electronic Filing \(E-Filing\) System](#) E-filing is free, and is a quick and secure way for individuals to file their Form 8300s.

Businesses can also mail the Form 8300 to the IRS at:

The Detroit Federal Building

P.O. Box 32621

Detroit, MI 48232

Required Written Statement

When a business is required to file a Form 8300, the law requires the business to provide a written statement to each person(s) named on Form 8300 to notify them that the business has filed the form. This requirement to provide a written statement does not apply with respect to a Form 8300 filed voluntarily, including a Form 8300 to report a suspicious transaction involving less than \$10,000.

The statement must include the following information:

- The name and address of the cash recipient's business,
- Name and telephone number of a contact person for the business,
- The total amount of reportable cash received in a 12-month period, and
- A statement that the cash recipient's is reporting the information to the IRS.

The code and regulations only specify the information that the business is required to include on a statement, not the format of the statement. A business may use its invoice for the statement of notification, as long as the invoice includes all required information. Providing a copy of Form 8300 to the payer(s), although not prohibited, is not advisable due to the sensitive information contained on the form, for example, the Employer Identification Number (commonly called an EIN) or SSN of the filer.

The business filing Form 8300 must provide its identified customers with the written statement **on or before Jan. 31** of the year that immediately follows the year the customer made the cash payment.

<https://www.irs.gov/businesses/small-businesses-self-employed/irs-form-8300-reference-guide>

Exercises

1. ABC Retail Jewelers sells jewelry to John Smith for a total price of \$12,500. Mr. Smith pays the total amount with a personal check. Is ABC Retail Jewelers required to file Form 8300?

a. Yes

b. No

2. Jim Jones purchases lumber and hardware for a home improvement project from Joe's Lumber Company. The total price is \$10,500 and Mr. Jones pays with a cashier's check with a face value of \$10,500. Does Joe's Lumber Company need to file Form 8300?

a. Yes

b. No

3. If Jim Jones purchased \$10,500 worth of lumber and hardware as in question 2, but paid with \$500 in currency and a cashier's check with a face value of \$10,000, would Joe's Lumber Company need to file Form 8300?

a. Yes

b. No

4. City Motors is a retail auto dealership who sells a car to Anita Robbins for a total price of \$17,700. She pays with a personal check for \$8,000 and says that she will be back later that afternoon with the balance of \$9,700. She does, indeed, return that afternoon with \$9,700 in currency. Does City Motors need to file Form 8300?

a. Yes

b. No

5. Same scenario as in question 4, except that Ms. Robins pays you with a cashier's check for \$8,000 and returns in the afternoon with \$9,700 in currency. Does City Motors need to file Form 8300?

a. Yes

b. No

Exercises

6. Thomas and Amanda Moore buy a boat from Marina Boating, valued at \$16,000 and scheduled delivery in 10 days. They pay for the boat with currency. The following day Mr. Moore comes to Marina Boating Company and cancels the sale. Marina Boating Company refunds his \$16,000 in the form of a company check. Does Marina Boating need to file Form 8300?

- a. Yes
- b. No

7. Otto's Farming Equipment Leasing leases equipment to Marcus Jones, who signs a lease agreeing to pay \$1,000 per month, not to exceed 24 months. Mr. Jones pays on the first day of every month starting Feb 1, 2015 through Jan 1, 2017, and he always pays you in currency. Does Otto's Farming Equipment Leasing need to file Form 8300?

- a. Yes
- b. No

8. Referring to question 7, by which date(s) does Otto's Farming Equipment Leasing need to file Form 8300?

- a. November 16, 2015
- b. December 16, 2015
- c. November 16, 2016
- d. December 16, 2015, and Nov 16, 2016

9. Referring to question 7, by which date(s) must Otto's Farming Equipment Leasing provide a written statement to Marcus Jones?

- a. December 31, 2015
- b. January 31, 2016
- c. January 31, 2017
- d. January 31, 2016, and Jan 31, 2017

Defending a Form 8300 Audit

- Limit Examination Period - See I.R.M. 4.26.11.7.3.2
 - Form 8300 examination period is the most current 12 month calendar year.
 - Examiner will typically select six months for an in-depth examination.
 - The six months do not have to be the most current six months nor do the months need to be consecutive. The selection of the six months should depend on the risk as determined by the examiner.
 - As the Taxpayer's representative, see if examiner is willing to start with three months to limit scope. The larger the scope the more room for potential errors or omissions.
- Preparing Taxpayer and Staff for The Interview - See I.R.M. 4.26.11.9.2
 - Looking at Taxpayer's internal controls and procedures
 - Who handles cash receipts, prepares bank deposits slips, etc.
 - Looks at types of records maintained
 - Whether business has filed any form 8300
 - Procedures used by business to ensure information on form 8300 is correct and accurate
 - Procedures used by business to notify transactors.

Civil and Criminal Penalties for Non-Compliance

For returns due to be filed during calendar year 2020:

The IRS adjusts the penalty amounts *annually* for inflation. The following are the penalties rates for Forms 8300 due during the 2020 calendar year, on or after January 1, 2020.

Civil penalties and applicable rules are:

- The penalty for negligent failure to timely file, to include all required information or to include correct information is \$270 per return, not to exceed \$3,339,000 per calendar year. IRC Section 6721(a)(1).
- For persons with average annual gross receipts of not more than \$5,000,000, the ceiling is \$1,113,000. The penalty applies to each return. IRC Section 6721(d)(1)(A).
- If any failure to file under IRC Section 6721(a) is corrected on or before the 30th day after the required filing date, the penalty is reduced to \$50 in lieu of \$270 and the maximum amount imposed shall not exceed \$556,500 per calendar year. IRC Section 6721(b)(1). The ceiling is \$194,500 for persons with average annual gross receipts of not more than \$5,000,000. IRC Section 6721(d)(1)(B).
- The penalty for intentional disregard of the requirement to timely file or to include all required information, or to include correct information is the greater of: (1) \$27,820 or (2) the amount of cash received in the transaction, not to exceed \$111,000 (with no calendar year limitation applicable). The penalty applies to each failure. IRC Section 6721(e)(2)(C).
- The penalty for negligent failure to furnish a timely, complete, and correct notice to the person(s) required to be identified on the Form 8300 is \$270 per statement, not to exceed \$3,339,000 per calendar year. IRC Section 6722(a)(1). For persons with average annual gross receipts of not more than \$5,000,000 the ceiling is \$1,113,000. IRC Section 6722(d)(1)(A).
- If any failure to furnish described in IRC 6722(a) is corrected within 30 days, the penalty is \$50 in lieu of \$270, and the ceiling is \$556,000. IRC 6722(b)(1). For persons with gross receipts of not more than \$5,000,000 the ceiling is \$194,000. IRC 6722(d)(1)(B).
- If any failure described in subsection (a)(2) is corrected after the 30th day referred to in paragraph (1) but on or before August 1 of the calendar year in which the required filing date occurs the penalty is \$110 in lieu of \$270, and the ceiling is \$1,669,500. IRC 6722(b)(2). For persons with gross receipts of not more than \$5,000,000 the ceiling is \$556,500. IRC 6722(d)(1)(C).
- Intentional disregard of the requirement to furnish timely, correct, and complete notices is \$550 per failure or, if greater, 10 percent of the aggregate amounts of the items required to be reported correctly (with no calendar year limitation applicable). IRC Section 6722(e)(2)(A).

Civil and Criminal Penalties for Non-Compliance

Criminal Penalties

A person may be subject to criminal penalties for:

- Willfully failing to file a Form 8300,
- Willfully filing a false or fraudulent Form 8300,
- Stopping, or trying to stop, a Form 8300 from being filed, or
- Setting up, helping to set up, or trying to set up a transaction in a way that would make it seem unnecessary to file Form 8300.

Any person required to file Form 8300 who willfully fails to file, fails to file timely, or fails to include complete and correct information is subject to criminal sanctions as a felony under IRC Section 7203. Sanctions include a fine up to \$25,000 (\$100,000 in the case of a corporation), and/or imprisonment up to five years, plus the costs of prosecution.

Any person who willfully files a Form 8300 which is false with regard to a material matter may be fined up to \$100,000 (\$500,000 in the case of a corporation), and/or imprisoned up to three years, plus the costs of prosecution. IRC Section 7206(1)

The penalties for failure to file may also apply to any person (including a payer) who attempts to interfere with or prevent the seller (or business) from filing a correct Form 8300. This includes any attempt to structure the transaction in a way that would make it seem unnecessary to file Form 8300. “Structuring” means breaking up a large cash transaction into small cash transactions to disguise the true amount of cash involved in the transaction.

Case Study:

Used Car Dealership

- Prior to audit, counsel prepped owner and employees for 8300 Interview to make sure each person that handled money knew the basic requirements and had a procedure in place for handling and reporting cash transactions. In addition, counsel made sure that policy and procedures were documented and posted throughout business.
- During interview and tour, Counsel made sure to show auditor the procedures and storage rooms containing records. Due to large volume of sales, Counsel was able to request auditor to limit scope of in-depth inspection of records to only 3 months.
- Upon reviewing 3 months, auditor created IDR request for transactions in question.
- Counsel provided proof of cancelled checks, wire transfers, credit card receipts, and cash payment receipts for requested transactions.
- At the conclusion of audit, auditor found that Taxpayer negligently failed to file timely two forms 8300 resulting in civil penalty of \$540.



Questions?

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