



BSA Training for CU Directors

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Roadmap

Bank Secrecy Act (BSA)

Office of Foreign Assets Control
(OFAC)

Regulatory Updates



Roadmap

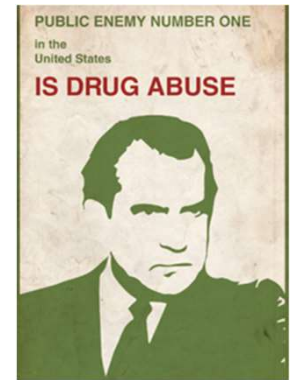
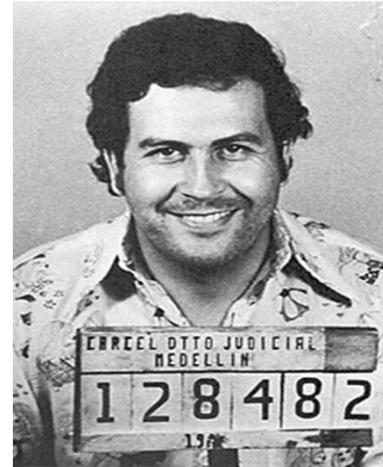
Bank Secrecy Act (BSA)

- Overview of the Act & Role of Government Agencies
- BSA Program Requirements
- Penalties for Non-Compliance



Overview of the Bank Secrecy Act

- 1970s
 - The BSA was Enacted
 - “War on Drugs”
- 1980s
 - Reagan’s “Just Say No” Campaign
- 2001
 - Terrorists Attacks World Trade Center & Pentagon
- 2016
 - Customer Due Diligence Rule Finalized



Money Laundering

A TYPICAL MONEY LAUNDERING SCHEME





Role of Government Agencies





U.S. Department of the Treasury

- Administers and enforces economic and trade sanctions
- Treasury is authorized to require financial institutions to establish certain reports and maintain records of certain transactions
- Delegated to FinCEN the responsibility to implement, administer and enforce compliance with the BSA





Financial Crimes Network

- A bureau of the U.S. Treasury established in 1990
- Delegated administrator of the BSA
- FinCEN issues regulations and interpretive guidance, provides outreach to regulated industries, supports the examination functions performed by federal banking agencies and pursues civil enforcement actions when warranted





National Credit Union Administration

- FinCEN relies on NCUA to examine credit unions for compliance with the BSA
- **BSA is a supervisory priority for the 6th year in a row**
- NCUA requires that all federally-insured credit unions establish and maintain a board-approved BSA compliance program





Roadmap

Bank Secrecy Act (BSA)

- Overview of the Act
- Role of Government Agencies
- BSA Program Requirements
 - Risked-Based BSA Program
 - 5 Pillars of BSA Compliance
 - Reporting Requirements
 - Recordkeeping Requirements
- Penalties for Non-Compliance



Risk-Based BSA Program

- Develop a risk-based BSA program
 - Board establishes **culture of compliance**
- Risk Assessment
 - Identify and measure risk posed by:
 1. Products/Types of Accounts
 2. Services
 3. Members
 4. Geographic location
 - Updated to reflect changes and/or 12-18 months





Culture of Compliance

- FinCEN has warned that a poor culture of compliance leads to shortcomings in a BSA/AML program. FinCEN has provided the following recommendations:
 - Leadership should be engaged
 - Compliance should not be compromised by revenue interests
 - Information should provide adequate resources
 - BSA program should be independently tested by competent party
 - Leadership and staff should understand how BSA reports are used.



5 Pillars of BSA Compliance

- 1 Know Your Member
- 2 Internal Controls
- 3 Independent Testing
- 4 BSA Officer
- 5 Training



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Know Your Member



Customer Identification Program

- Identify and verify members and beneficial owners of legal entities

Customer Due Diligence

- Risk rate members
- Establish “normal” behavior and report suspicious activity
- Update member information

Enhanced Due Diligence

- Gather/investigate additional information for higher-risk members



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Internal Controls

- Internal controls are the credit union's policies, procedures and processes.
 - Designed to limit/control risks and to achieve BSA compliance
- Sophistication of controls should take into account size, structure, risk and complexity
- **The board (through management) is ultimately responsible for ensuring internal controls are effective**



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Independent Testing

- Independent testing varies depending on the CU's size, complexity, scope of activities, risk profile, quality of control functions, geographic diversity, and use of technology
 - **Who:** Conducted by internal audit, outside auditors, consultants, or other qualified independent parties and reported directly to board
 - **When:** Frequency is not specifically defined but a sound practice may be to conduct generally every 12 to 18 months (commensurate with the credit union's BSA risk profile)



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BSA Officer

- Board must designate 1 or more qualified individual(s) to serve as BSA Officer(s)
 - Primary function: Coordinate and monitor day-to-day BSA/AML compliance program and ensure BSA compliance
- **BOD is ultimately responsible for BSA/AML compliance**, so BSA Officer should keep the BOD and management informed of ongoing compliance



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Training

- **When:** According to NCUA guidance, no less than annually but could be more frequently depending on the CU's BSA risk
- **Who:** Board of Directors and Volunteers must receive training on an annual basis
 - Training should be tailored to the functions of the staff if possible





Currency Transaction Reports

- Credit unions must file a CTR for **currency transactions** of more than **\$10,000** by, through or to the CU in a single day
- Filing deadline: Within **15 Calendar Days** from date of reportable transaction
- Some persons may be exempt from CTR reporting (e.g., banks, some publicly traded companies)
- CTR filing are not generally reported to the BOD



Suspicious Activity Reports



- SARs are used to report suspicious activity, transactions, or behavior that is observed
 - Some activity requires SAR reporting (e.g., insider abuse for any amount)
- Generally, SARs must be filed within **30 calendar days** of determining suspicious activity occurred
- Credit unions have a safe harbor from civil liability for SAR reporting



SAR Confidentiality & BODs

- Directors **must** be notified when SARs have been filed
 - Look for trends, patterns and changes
- No particular notification format required
 - May provide summaries, tables of SARs or other form
- SARs, supporting documents, and any information that reveals existence of SARs are **confidential!**
 - Exceptions: FinCEN, law enforcement, NCUA



Recordkeeping/Retention Rules

- In general, credit unions must maintain BSA records for at least **five years** (e.g., SARs)
- Records related to the identity of a member must be maintained for **five years after** the account is closed
- A credit union may be ordered or requested to maintain some of these records for longer periods by law enforcement, Department of Treasury, etc.



BSA Examiner Expectations

- NCUA examines credit unions from a risk-focused approach
- The NCUA AIRE Questionnaire details the items that will be examined for BSA compliance and notes the 3 areas of focus: (1) risk assessment; (2) independent testing; (3) monitoring for suspicious activity
- NCUA Letter to CU's August 2018 Re CDD Rule: *"The NCUA examiners have been instructed to accept a credit union's reasonable and good faith efforts to comply with the new rule throughout 2018."*
- In 2019, examiners will begin more in-depth review with CDD requirements.



Board Oversight and Control

Understand....

- ✓ ☐ Your BSA/AML program
- ✓ ☐ Products and services
- ✓ ☐ Membership
- ✓ ☐ Exam Reports
- ✓ ☐ Independent Audits
- ✓ ☐ Board reports



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Penalties for Non-Compliance

- Penalties for non-compliance can be civil and/or criminal:
 - Willful Violation (\$55,907-\$223,629): Can be assessed against a CU, any employee, manager, officer, or director found in violation.
 - Pattern of Negligent Behavior (\$86,976)
 - False Statements: May be fined up to \$10,000 or imprisoned for up to 5 years.
 - Any person who willfully violates any provision of the BSA can be fined up to \$500,000 and imprisoned up to 10 years.



Recent Enforcement Actions

- Peer-to-Peer Virtual Currency Exchanger (April 2019)
 - FinCEN assessed a civil money penalty against an individual for willful BSA violations.
 - FinCEN's first enforcement action against a peer-to-peer virtual currency exchanger.
 - Failure to register as a money service business (MSB), implement and maintain an effective AML program, file SARs and CTRs.





Recent Enforcement Actions

- U.S. Bank N.A. (Feb. 2018)
 - FinCEN assessed a \$185 million penalty for willful BSA violations.
 - Failure to establish and implement an adequate AML program, inadequate processes and procedures to ID high-risk customers, and failure to report SARs and CTRs.





Roadmap

Office of Foreign Assets Control (OFAC)

- Overview of OFAC
- OFAC program requirements
- Examinations
- Penalties for Non-compliance



History of OFAC

- OFAC is the successor to the Office of Foreign Funds Control, which was established during World War II following the German invasion of Norway in 1940
- OFAC formally created in 1950, during the Korean War





Overview of OFAC

- OFAC is an office of the U.S. Treasury that administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against certain individuals and entities
- OFAC maintains the list of Specially Designated Nationals (SDN), which includes the names of individuals and entities whose transactions are prohibited
- All credit unions must comply with OFAC regulations





OFAC Program Requirements

- OFAC requires:
 - (1) Blocking accounts and other property, and
 - (2) rejecting certain transactions of SDNs
- Credit unions must report all blocked and rejected property/transactions to OFAC within 10 days and annually (by September 30th) for blocked transactions
- OFAC requires risk-based compliance



OFAC Program Requirements

- Board approved OFAC Compliance Program
 - OFAC Risk Assessment
- Internal Controls
- Independent Testing
- Designated OFAC Officer
- Training





OFAC Examination

- NCUA examines credit unions for OFAC compliance
- NCUA guidance can be found in NCUA Examiner's Guide, Federal Credit Union Handbook, Letters to Credit Unions, and NCUA Regulatory Alerts
- NCUA had developed an *examiner checklist* to document their review of a credit union's OFAC compliance program
- For information on OFAC penalties, see "[Economic Sanctions Enforcement Guidelines](#)"



OFAC Penalties

- OFAC can issue civil money penalties that may be as much as \$250,000 per violation or twice the amount of a transaction, whichever is greater
- OFAC takes into account mitigating factors when making enforcement determinations, including the adequacy of a compliance program and self-reporting



Roadmap

Regulatory Updates

- Federal Financial Institutions Examination Counsel (FFIEC) Innovation Efforts
- Interagency Statement on Sharing BSA Resources
- FinCEN's Permanent CDD Exemption
- OFAC Compliance Framework
- FinCEN Interpretive Guidance on Virtual Currencies
- Proposed Legislation



FFIEC Innovation

- Joint agency statement on innovative efforts to combat money laundering and terrorist financing was issued on 12/3/2018, between OCC, Federal Reserve, FDIC, NCUA, and FinCEN.
 - Recognized that private sector innovation, including things like artificial intelligence (AI) can help ID money laundering.
 - The agencies will not penalize or criticize credit unions that maintain effective BSA/AML compliance programs, but choose an innovative approach.



Sharing Resources

- Interagency statement issued 10/3/2018, addresses when credit unions can enter into collaborative arrangements to share resources for BSA/AML obligations.
 - Agreements are used to pool human, technology, or other resources to reduce costs, increase operational efficiencies, and better use specialized expertise.
 - Consider: Risks and benefits



CDD Exemption

- FinCEN made a permanent exemption from CDD requirements for certain financial products that are not treated as new accounts, and present low risks of money laundering or terrorist financing
 - Applies only to rollovers, renewals, modification, or extension
- 4 types of accounts are exempt from the collection of beneficial ownership information
 - Certificates of Deposit (share certificates)
 - Loan Renewals, Modifications and Extension
 - Commercial Lines of Credit and Credit Cards
 - Safe Deposit Boxes



OFAC Compliance Framework

- OFAC published a framework for compliance to provide organizations OFAC's perspective on the essential components of a sanctions compliance program
- 5 essential components of compliance: (1) management commitment; (2) risk assessment; (3) internal controls; (4) testing and auditing; (5) training
- Previously, OFAC did not require certain types of compliance programs, and it is up to the regulators



FinCEN Guidance

- FinCEN issued interpretive guidance on May 9, 2019 regarding virtual currencies
- Does not establish any new regulatory requirements or expectations
- Guidance addresses whether certain cryptocurrency-related businesses, including digital wallets and virtual currency payment processors, need to be regulated as money services businesses and comply with the BSA



Proposed Legislation

- H.R. 388 – Financial Reporting Threshold Modernization Act
 - Increase CTRs threshold to \$30k, and SARs to \$10k
- H.R. 389 – Kleptocracy Asset Recovery Rewards Act
 - Designated geographic FinCEN employees
- H.R. 2513 - Corporate Transparency Act of 2019 – Require legal entities to register their beneficial owners with FinCEN at the time of incorporation. FinCEN would be tasked with maintaining the database and financial institutions can only access with consent
- Discussion Drafts:
 - To Make Reforms to the Bank Secrecy Act and Anti-Money Laundering Laws, and For Others Purposes – Create an information sharing exchange

