



Ideas + Solutions = Success

BSA/AML & OFAC Volunteer Compliance Training



Hawaii Credit Union League
Your Partner For Success

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Agenda

1. Bank Secrecy Act
2. Office of Foreign Assets Control
3. Your Compliance Program
4. Board Responsibilities

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Bank Secrecy Act (BSA)

- Financial **Recordkeeping & Reporting** of Currency & Foreign Transactions Act (commonly known as BSA)
 - Keep records (cash purchases of negotiable instruments)
 - File reports (SARs and CTRs)
- Enacted 1970 - help identify & reduce money laundering
- Highly visible after 9/11/01
- Part of government's arsenal to fight terrorism
- Protects America, your members, & the CU

Bank Secrecy Act (cont.)

Made up of several statutes

1. Currency & Foreign Transactions Reporting Act
 - Currency Transaction Reports (CTRs)
 - Sale of traveler's checks, money orders, wire transfers
2. Money Laundering Control Act
 - Suspicious Activity Reports (SARs)
3. USA Patriot Act
 - CIP-Customer Identification Program – Know your member
 - Information Sharing
4. OFAC (separate entity with rules and penalties)
 - Sanctions Lists

Bank Secrecy Act (cont.)

- Acts work together to detect & curtail criminal activity
- Aids in investigations into criminal activities; such as:
 - income tax evasion,
 - money laundering by organized crime, &
 - other illegal criminal activities
- Enforced by Financial Crimes Enforcement Network (FinCEN) & NCUA
 - Supports law enforcement in fight against money laundering

Bank Secrecy Act Recap

- Your CU helps to support the nation by:
 - Reporting large cash transactions (CTR)
 - Reporting suspicious activity (SAR)
 - Knowing your member (CIP)
 - Information sharing (USA Patriot Act)
 - Blocking transactions (OFAC)



Currency Transaction Reports (CTRs)

- Designed to provide paper trail - money laundering activities
- CTRs assist law enforcement - investigating & prosecuting crimes
- Basic requirements:
 - Electronically file CTR within 15 calendar days:
 - All currency transactions exceeding \$10,000 in one day
 - Includes, payments on loans, purchase of teller checks, wire transfers, money orders, and/or traveler's checks



CTRs (cont.)

- Single transactions exceeding \$10,000 in currency
- Multiple transactions totaling over \$10,000 in currency in single day by, or on the behalf of a single person
- Currency transactions include purchase of monetary instruments (teller checks, traveler's checks, money orders)

Suspicious Activity Reports (SARs)

- Required to file a Suspicious Activity Report (SAR) within 30 days of determination:
 - Insider abuse for any amount
 - Transactions (conducted or attempted) aggregating \$5,000 or more when a suspect can be identified
 - Transactions aggregating \$25,000 or more regardless of a potential suspect
 - Report known or suspected violations
 - Safe harbor from civil liability under law, regardless of whether such reports are filed pursuant to SAR instructions

SARs (cont.)

- Suspicious Activity
 - May involve potential money laundering or any other illegal activity
 - Do you know what money laundering is?
 - It's the process by which one conceals the existence, illegal source, or illegal application of income & then disguises that income to make it appear legitimate
 - Designed to evade BSA requirements
 - May appear to serve no business or apparent lawful purpose, or is not the type of transaction that member normally conducts

SARs (cont.)

- Never disclose to anyone involved in transaction that a SAR is being filed
- Once filed, CU may contact FinCEN, law enforcement, or federal banking agencies to obtain additional assistance
- BSA officer or management must notify board of any SAR filings at least monthly
- SAR Stats for State of Hawaii as of 12/31/16:
 - 1,975 filed by FCUs
 - 5,123 filed by banks
 - Over 1M filed nationwide in 2016

USA PATRIOT Act

- Uniting & Strengthening America by Providing Appropriate Tools Required to Intercept & Obstruct Terrorism Act
- Prevents, Detects, & Prosecutes international money laundering criminals
- Amended & appended to BSA
- Primary CU sections are:
 - 326 Customer Identification Program (CIP) &
 - 314a & 314b (information sharing)

USA Patriot Act (cont.)

- Must have written Customer Identification Program (CIP) policy appropriate to your size & type of membership
- Must identify & verify any person who opens account
- Maintain records of information used to verify person's identity
- Determine whether person appears on any terrorist list
- Must give notice to member

USA Patriot Act (cont.)

- Member Due Diligence (Know Your Member)
- Effective due diligence requires CU to obtain additional information about potential members beyond CIP
- Enables CU to predict normal & expected activity on a particular account
- Type & degree of information sought varies based on risks presented, product/service sought & geographic location of account

New Final Rule on CDD

- Identify & verify identity of “beneficial owners” of **“legal entity customers”**
 - Corporations; limited liability companies; other entities created by filing a public document with a secretary of state or similar office; & general partnerships or any similar business entities formed in the U.S. or a foreign country
- Customer due diligence becomes 5th pillar of BSA/AML program (BSA officer, Internal Controls, Training, Independent Testing, and soon CDD)
- “Applicability” date – May 11, 2018

CDD Guidelines

- CDD guidelines should
 - Commensurate with BSA/AML risk assessment
 - Contain statement of management’s expectations & establish staff responsibilities
 - Ensure CU gets enough member info for suspicious activity monitoring
 - Document analysis of due diligence process
 - Ensure CU maintains customer information

CIP vs. CDD

- What they have in common:
 - Explicit legal requirement
 - Must be addressed in written, board-approved policy(ies)
 - Record retention 5 years
- Where they differ:
 - CIP not required for established member opening new account
 - CDD required every time a legal entity opens an account & for entities that continue to do business

USA Patriot Act (cont.)

- Information Sharing - 314 (a)
 - Between CU & law enforcement
 - FinCEN may require CU to search its records to determine whether it maintains or has maintained accounts for, or engaged in transactions with a specified person, entity or organization during past 12 months
 - Must report to FinCEN within 14 days, unless request specifies otherwise
 - Sent out every 2 weeks via secured website
 - Must be kept confidential

USA Patriot Act (cont.)

- Information Sharing - 314 (b)
 - Between financial institutions (FI)
 - FI must notify FinCEN of its intent to engage in information sharing
 - Notice to share information is effective for one year only
 - Should ensure that other FI has filed its notice also
 - Cannot share SARs or SAR filing information
 - If request relates to a transaction subject to a SAR, disclose only transaction & member information requested

Office of Foreign Assets Control (OFAC)

- OFAC (U.S. Treasury) administers & enforces economic & trade sanctions against targeted:
 - Foreign governments
 - Individuals
 - Entities
 - Activities
- Requirements separate from BSA, but share common national security goal

OFAC (cont.)

- Should have policy & procedures, may be part of your BSA policy
- OFAC Compliance Procedures
 - Identify suspect transactions & parties
 - Investigate potential sanctions relationships
 - Initiate contact with OFAC (if appropriate)
 - Document the incident

OFAC (cont.)

- Block/freeze accounts & other property of specified countries, entities, & individuals
- Prohibit or reject unlicensed trade & financial transactions with specified countries, entities & individuals
- Report "blocks" within 10 days of occurrence & annually by September 30 (for blocks as of June 30)
- OFAC publishes list of individuals & entities; CU must review list regularly, (3rd party vendor)
- Designate person to oversee OFAC compliance
- Annual compliance audit for OFAC not required by regulation, but good practice

Your Compliance Program

1. Compliance Officer

- ❑ Must be appointed by the board
- ❑ Responsible for coordinating & monitoring day-to-day BSA compliance
- ❑ Must have sufficient authority & resources (monetary, physical & personnel)
- ❑ Must be able to report to the Board or management of ongoing BSA compliance

Your Compliance Program (cont.)

2. Internal Controls

- ❑ Controls & monitoring systems for timely detection & reporting of money laundering & suspicious transactions
- ❑ Clearly defined roles & responsibilities
- ❑ Segregation of duties – employee responsible for completing reporting forms should not be responsible for filing reports
- ❑ Written policy & procedures
- ❑ Comprehensive risk assessment

3. Training

- ❑ All personnel, including **volunteers**
- ❑ Tailored to specific duties/responsibilities
- ❑ Expanded training for BSA officer
- ❑ Address requirements of your policies, procedures, monitoring systems
- ❑ Must be documented
- ❑ Performed at least annually
- ❑ Reviewed by NCUA

4. Independent Testing (audit)

- ❑ Performed every 12-18 months by qualified party
- ❑ Review internal controls, adequacy of staff training, effectiveness of suspicious monitoring systems, & whether CTRs & SARs filed timely
- ❑ Include transaction testing
- ❑ Violations, exceptions, or deficiencies included in audit report & reported to senior management & Board
- ❑ Document corrective actions for deficiencies found through testing
- ❑ Address deficiencies found in independent testing (develop training)

Board Responsibilities

- Ensure CU has comprehensive & effective BSA/AML compliance program
- Approve BSA/AML compliance program
- Designate a BSA/OFAC officer
- Review policies at least annually
- Review **risk assessment** every 12-18 months (when new product/services added)
- Receive & review independent testing reports
- Ensure policies adhered to in practice

Board Responsibilities (cont.)

- Does your policy include:
 - ❑ Compliance program
 - ❑ Monitoring
 - ❑ Reporting
 - ❑ Recordkeeping
 - ❑ Information sharing
 - ❑ Member/Customer Identification Program (USA Patriot Act)

Board Responsibilities (cont.)

- Ensure senior management integrated BSA/AML compliance objectives into management goals
- Senior management responsible for implementing board approved BSA/AML compliance program
- Senior management responsible for communicating & reinforcing compliance

Board Responsibilities (cont.)

- Set appropriate culture of compliance
 - FinCEN Advisory issued on 8/11/14 on Promoting a Culture of Compliance
 - Highlights the importance of a strong culture of BSA/AML compliance regardless of CU size
 - In response to BSA/AML shortcomings that triggered civil & criminal enforcement actions
 - These enforcement actions confirm that the culture of an organization is critical to its compliance
 - Information in advisory should not be new to you

Board Responsibilities (cont.)

- Failure to maintain strict compliance can subject CU to high levels of:
 - compliance risk
 - reputation risk
 - financial losses
 - other risks such as **civil & criminal penalties**

Supervisory Committee Responsibilities

- Verify the Board has approved a BSA, Member ID Program, & OFAC policy
- Verify that above are reviewed & revised as necessary
- Verify that knowledgeable BSA compliance officer(s) have been appointed & are regularly monitoring the program for compliance
- Confirm that adequate BSA tools have been implemented at the CU & are appropriate for the CU's level of risk
- Ensure that an independent audit & staff training are conducted at least annually

What Gets Examined?

- NCUA must by law, determine at each exam whether the CU:
 - Conducts money laundering schemes
 - Complies with technical reporting & recordkeeping requirements
 - Adopted policies & implemented procedures to detect, deter, & report unusual or suspicious activities related to money laundering

What Gets Examined? (cont.)

- Risk assessments reviewed/updated
- Board & senior management commitment to ongoing education/training, compliance & frequency of training (comprehensiveness of training)
- Employee accountability – ensuring BSA compliance
- Coverage – ensuring applicable policies & procedures included in “required annual training”

Common Violations

- CTR filing
 - ❑ Not filed timely (within 15 days of transaction)
 - ❑ Not completed accurately based on form instructions or does not include all required information
 - ❑ Structured activity not being monitored
 - ❑ Copies & supporting documentation not maintained for appropriate period
- SAR filing
 - ❑ Not filed timely (within 30 days of determination)
 - ❑ Not completed accurately based on form instructions or does not include all required information
 - ❑ Copies & supporting documentation not maintained for appropriate period
 - ❑ Failure to notify board of SAR filing

Common Violations (cont.)

- Training
 - ❑ Inadequate for staff or board members
 - ❑ Not documented
- Internal Controls
 - ❑ Risk assessment not completed or updated
 - ❑ Suspicious activity monitoring system inadequate
- Information Sharing
 - ❑ Failure to complete records search within required timeframe (within 14 days)
 - ❑ Failure to update 314(a) point(s) of contact

Common Violations (cont.)

- Inadequate CIP
 - Written & board approved
 - Required information
 - Name
 - Date of birth
 - Address
 - Identification number
 - Verification methods: documentary/non-documentary
 - Recordkeeping & retention requirements
 - Comparison with government lists
 - Adequate customer notice

BSA Penalties

CTR violations

- \$500 each incomplete or inaccurate CTR
- \$10,000 if not filed within 15 days
- \$10,000 for each day a required report not filed
- Up to \$50,000 for pattern of negligent violations

OFAC Penalties

- Criminal Penalties - Individual
 - Up to \$250,000, or 5 yrs. prison, or both
 - Up to \$500,000, or 10 yrs. Prison, or both if committed with another U.S. law
- Criminal Penalties – Credit Union
 - Up to \$1,000,000 or 2x's value of transaction

Penalties (cont.)

- Civil money penalties – Credit Union
 - Up to \$5,000/ day (1st tier)
 - Up to \$25,000/day (2nd tier)
 - \$1M or up to 1% of assets (3rd tier)
- Suspension or permanent removal of institution affiliated individuals
- Loss of safe harbor?

NCUA Authority

- If timely action does not occur, remedies may include:
 - Letters of understanding (LUAs)
 - Publish cease and desist orders (C&D)
 - Loss of charter
 - Civil money penalties (CMPs) in extreme cases
 - Usually receive 90 days to correct

CU Penalties

- Bethex FCU, NY – Liquidated Dec 2015 for not taking steps to update AML program when it expanded its FOM & began providing services to MSBs. Relied on 3rd party to conduct much of due diligence & suspicious activity monitoring without appropriate verification or inspection of the 3rd party's compliance activity. \$500,000 fine.
- North Dade Community FCU, FL - Liquidated Mar 2015 for failure to designate BSA officer, complete risk assessment, revise policies, training, internal controls, & independent testing. \$300,000 fine.
- Bagumbayan CU, IL - Liquidated in Jan 2014 for recordkeeping issues
- Garden Savings FCU, NJ – Cease & Desist Jul 2007. \$200,000 fine; CU reinstated
- Dover N J Spanish American FCU – Cease & Desist Feb 2007 (22 items listed, all to do with BSA/AML/OFAC issues)
- Polish & Slavic FCU, NY – Failure to file CTRs. Sep 1999. \$185,000 fine

NCUA Resources

- BSA section may be accessed by going to:
<https://www.ncua.gov/regulation-supervision/Pages/bank-secrecy-act.aspx>
- Compliance Self-Assessment Guide (on NCUA website) <https://www.ncua.gov/regulation-supervision/Pages/manuals-guides/consumer-compliance.aspx>
- OSCUI videos & webinars on BSA & OFAC
<https://www.ncua.gov/services/Pages/small-credit-union-learning-center/services/videos-webinars.aspx>

Other BSA Resources

- CUNA e-Guide
<http://www.cuna.org/Compliance/Compliance-E-Guide/E-Guide-Entries/Bank-Secrecy-Act/>
- League InfoSight
http://hi.leagueinfosight.com/Bank_Secrecy_Act_10245.html
- FFIEC BSA/AML Examination Manual, Aug 07
http://www.ffiec.gov/bsa_aml_infobase/default.htm
- FinCEN's Q&As on BSA
<https://www.fincen.gov/resources/statutes-regulations/fincens-mandate-congress>

OFAC Resources

- NCUA Letters to Credit Unions
 - 01-CU-25, OFAC Regulatory Compliance Examination Questionnaire
- NCUA Regulatory Alerts
 - 99-RA-6, Office of Foreign Asset Control
 - Various Alerts regarding updates to the SDN list
 - 05-RA-2, SAR on OFAC blocked transactions
- The OFAC website
<https://www.treasury.gov/resource-center/sanctions/Pages/default.aspx>
- Your NCUA examiner

Conclusion

- BSA & OFAC compliance is critical
- Failure to comply can subject you & your CU to significant penalties
- Resources available to help you comply
- Call or e-mail if you have questions (808.203.6412 or 1.888.331.5646 or dorie.fitchett@hcul.org) or contact your NCUA examiner