



BSA Training for Officials

Presented by

Stephanie Lyon, Esq., NCCO, CAMS,
NCBSO, NCRM

National Association of Federally-
Insured Credit Unions



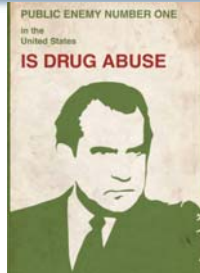
Roadmap

1. Overview of the Bank Secrecy Act (BSA)
2. The Role of Government Agencies
3. Regulatory Requirements of a BSA Program
4. Reporting & Recordkeeping Requirements
5. Examiner's Expectations
6. Directors' and Supervisory Committee Oversight
7. Penalties for Noncompliance
8. A Primer on the Office of Foreign Assets Control



Overview of the Bank Secrecy Act

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



Role of Government Agencies in the BSA





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



UNITED STATES DEPARTMENT OF THE TREASURY



- 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 5th year in a row**
- NCUA requires that all federally insured credit unions establish and maintain a board-approved BSA compliance program



Regulatory Requirements of a BSA/Anti-Money Laundering (AML) Compliance Program



BSA Requirements

- a) Risk-Based Program 
- b) 5 Pillars of BSA Compliance
- c) Reporting
- d) Record Keeping



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 warns poor culture of compliance leads to shortcomings in a CU's BSA/AML program, so it provided the following recommendations:
 - 1) Leadership should be engaged
 - 2) Compliance should not be compromised by revenue interests
 - 3) Information should be shared throughout CU
 - 4) Leadership should provide adequate resources
 - 5) BSA program should be independently tested by competent party
 - 6) Leadership & staff should understand how BSA reports are used



Pillar # 1 Know Your Members



Customer
Identification
Program

- Identify and verify members and beneficial owners of legal entities

Member 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



Pillar # 2 Internal Controls

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



Pillar # 3 Independent Testing

- **What:** Independent testing will vary depending on the CU's size, complexity, scope of activities, risk profile, quality of control functions, geographic diversity, and use of technology
- **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)
- **Who:** Should be conducted by internal audit, outside auditors, consultants, or other qualified independent parties and reported directly to board



Pillar # 4 BSA Officer



- Board must designate 1 or more qualified individual(s) to serve as BSA Officer(s)
- The primary function of the BSA Officer is to 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



Pillar # 5 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



BSA/AML Reporting and Recordkeeping Requirements

Reporting

- BSA rules requires that certain information be reported to FinCEN such as:
 - Currency Transaction Reporting (CTRs)
 - Suspicious Activity Reporting (SARs)
 - Designation of Exempt Person (DOEP)





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 SARs have been filed
 - Look for trends, patterns and changes
- No particular notification format required
 - May provide actual copies of SARs, 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 ~~5 years~~ (e.g., SARs)
- Records related to the identity of a member must be maintained for ~~5 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 AIREs 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
- Additional examination priority for 2018: *“...NCUA remains vigilant in ensuring the credit union system is not used to launder money or finance criminal or terrorist activity...Examiners will begin assessing compliance with [the CDD rule] in the second half of 2018.”*

(emphasis added)



Board Oversight and Control

Understand....

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



Supervisory Committee

- Ensure independent BSA audit is completed
- Review audit findings and follow up progress
- NCUA's Supervisory Committee Guide suggests committee members should ensure Management is aware of BSA's record keeping and reporting requirements of the BSA



Penalties for Noncompliance



Penalties & Fines



- Penalties for noncompliance can be **civil and/or criminal**.

Examples:

- Willful Violation (\$54,789-\$219,156): Can be assessed against the credit union and any employee, manager or director found to be involved in the violation
- Pattern of Negligent Behavior (\$84,236): If the credit union engages in a pattern of negligence of *any* of the provisions of the BSA
- False Statements: Fine of up to \$10,000 or imprisoned for up to 5 years
- **Any** person who willfully violates any provision of the BSA and breaking another law can be fined up to \$500,000 and imprisoned for up to **10 years**.
- A person convicted of money laundering can face up to 20 years in prison and fined up to \$500,000

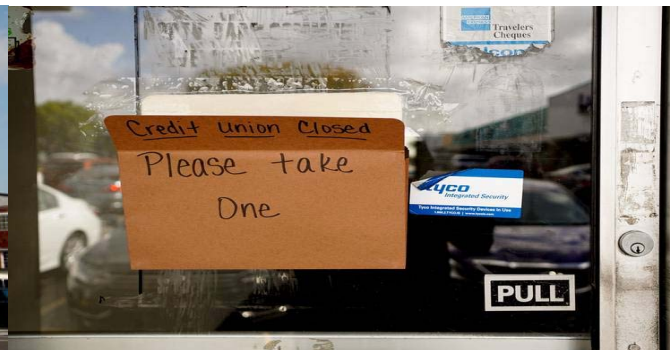


How Bad Can It Get?

Violation of BSA Laws: If the credit union is found to be in violation, it can be assessed a penalty of \$1,000,000 per violation.



Reputation
Risk



Out of
Business



Recent BSA Penalties



- **2/15/2018 \$185 million civil money penalty** against [U.S. Bank National Association](#) for severe internal control violations and recklessly limiting compliance staff
- **11/01/2017 \$2 million penalty** against [Lone Star National Bank](#) for willful violations of the BSA including failure to conduct proper due diligence on foreign correspondent accounts or reporting suspicious activity
- **02/27/2017 \$7 million penalty** against [Merchants Bank of California](#) for willful BSA violations
- **01/19/2017 \$184 million penalty** against [Western Union Financial Services, Inc.](#) BSA/AML deficiencies and failing to file timely SARs
- **12/15/2016 \$500K penalty** against [Bethex FCU](#) for significant AML violations



Office of Foreign Assets Control Overview



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 was formalized during the Korean War



OFAC Basics

- 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 Requirements

- OFAC requires the (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 for blocked transactions
- OFAC requires risk-based compliance



OFAC Program

- a) OFAC Compliance Program
 - OFAC Risk Assessment
- b) Internal Controls
- c) Independent Testing
- d) Designated OFAC Officer
- e) Training



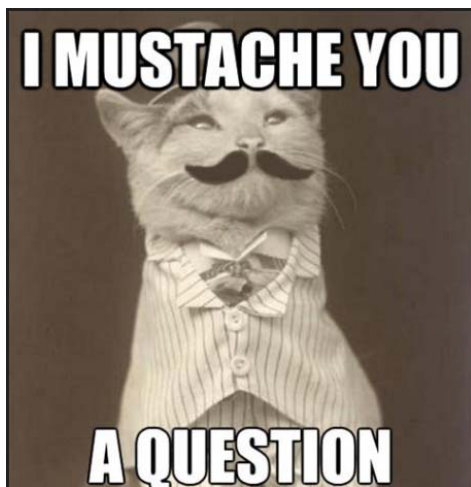


OFAC Examination and Guidance

- 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](#)"



Questions?



Contact Information:

Stephanie Lyon

slyon@nafcu.org

703-842-2247